

The Nature of the Legal Protection of Children Who Commit Crimes in the Child Criminal Justice System

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Abstract: The purpose of this dissertation research is to analyze and discover the nature of legal protection for children in dealing with the law in the juvenile criminal justice system, analyze the implementation of legal protection against children in dealing with the law in the child criminal justice system in Gorontalo Province, and to analyze the Factors which affects the implementation of legal protection against children dealing with the law in child criminal justice system in the jurisdiction of Gorontalo Province. This research is in the realm of legal science by using empirical juridical research types. By using a sociological juridical approach in order to address the problem of implementing legal protection against children in dealing with the law in child criminal justice system in Gorontalo Province. Research is descriptive. The data used are primary data and secondary data. The techniques used to collect data are documentation study techniques and interview techniques. This study uses a non-probability/non-random sampling technique. Overall data collected from both primary and secondary data are processed and analyzed using qualitative data analysis.

Keywords: Children, Legal Protection, The Child Criminal Justice System

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I. INTRODUCTION

Children in the social sphere are vulnerable groups that are considered weak and have the potential to become subjects and objects of crime (children who are in conflict with the law, children who are in conflict with the law, and children who are victims of criminal acts). Children as small creatures, can even be said as a weak group that must get protection from anyone, not only from their parents but also from the community around their environment.

In terms of realizing child protection, based on Article 28B section (2) of The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as The 1945 Constitution), regulates that “*every child has the right to live, to grow and to develop, and has the right to protection from violence and discrimination*”.

The government has tried to provide legal protection for children, by enacting of Law of the Republic of Indonesia Number 17 of 2016 on Enactment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection Becoming Law (hereinafter referred to as Law No. 17 of 2016) and Law of the Republic of Indonesia Number 11 of 2012 on the Child Criminal Justice System (hereinafter referred to as Law No. 11 of 2012). This is a legal instrument that provides legal protection for children. The birth of this law is very important in the development of criminal law in Indonesia. Legal protection efforts for children can be interpreted as efforts to protect the law against various violence and children’s rights as well as various efforts relating to the welfare of children.¹ In Article 1 number 2 of Law No. 17 of 2016, explain that:

“*Are all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination.*”

This law was formed with the aim of ensuring the fulfillment of children’s needs so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, for the realization of quality, noble and prosperous Indonesian children.²

¹Arief, Barda Nawawi. (1996, 5 Oktober). Masalah Perlindungan Hukum Bagi Anak. Paper presented in *Seminar Nasional Peradilan Anak*, organized by Universitas Padjadjaran, at Bandung, p. 3.

²Teguh, Harrys Pratama. (2018). *Teori dan Praktik Perlindungan Anak dalam Hukum Pidana*. Yogyakarta: Penerbit Andi, p. 3.

Based on research data in Gorontalo Province, the number of child protection cases in 2017 where 181 were reported, and increased in 2018 where 218 cases were reported.³ This indicates that legal protection against children has not been (less) effective because there are still many children conflict with the law that occurs in the jurisdiction of Gorontalo Regional Police.

In order for children to get protection as regulated in Law No. 17 of 2016 and Law No. 11 of 2012, various efforts to provide legal protection against children have been carried out continuously by both central and regional governments in order to realize the fulfillment of children's rights as a small part of society and the state, in order to realize prosperity, security and comfort in the lives of the next generation of the nation and the next generation of families. But in reality there are still obstacles and obstacles encountered in its implementation and have not run in accordance with what is expected by all parties concerned.

II. STATEMENT OF THE PROBLEM

1. What is the nature of the legal protection of children in conflict with the law in the child criminal justice system?
2. How does the implementation of legal protection against children deal with the law in the child criminal justice system in Gorontalo Province?
3. What factors influence the implementation of legal protection against children in dealing with the law in the juvenile criminal justice system in the jurisdiction of Gorontalo Province?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Legal Protection Theory

The theory of legal protection is one of the most important theories to study, because the focus of the study of this theory is on the legal protection provided to the public. Society based on this theory is a society which is in a weak position from the juridical aspect. Grammatically, protection is: a place of refuge or thing/act of protecting is causing protection. The meaning of protecting includes; cover so as not to be seen or seen, guarding, caring for or caring for, saving or providing help.

Philipus M. Hadjon, that there are two types of legal protection for the people, namely preventive legal protection and repressive legal protection. Protection that is preventive, is a legal protection that is preventive. Protection provides the opportunity for people to submit objections (*insprak*) to their opinions before a government decision gets a definite form. So that this legal protection aims to prevent disputes from occurring and is of great significance for government actions based on freedom of action (*discretion*). Repressive legal protection functions to resolve if a dispute occurs, including its handling in a judicial institution.⁴

Bambang Purnomo, in criminal law there are two legal protections: first, primary legal protection, namely to protect the public and individuals from criminal interference; the second is legal protection, namely to protect the public and individuals from unfair treatment by the authorities. In this case what is meant by legal protection is legal protection in abstracto for victims of trafficking in persons. So it can be understood that the extent to which the public and victims can be protected by their rights in accordance with applicable laws and regulations.⁵

Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.⁶

2. Law Enforcement Theory

Law enforcement is an attempt to realize legal ideas and concepts that are expected by the people to become reality. Law enforcement is a process that involves many things.⁷

Law enforcement according to Satjipto Rahardjo is a concrete form of law enforcement in everyday people's lives.⁸

The structure as the main substance of the legal system is the legal framework or framework, including law enforcement institutions, legal procedures, court jurisdiction and the people involved in it (law

³Retrieval of data for 2017-2018 in the Sub Directorate of General Criminal Investigation, Gorontalo Regional Police, on October 8, 2019.

⁴Hadjon, Philipus M. (1987). *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-prinsipnya, Penanganannya oleh Peradilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. Surabaya: PT. Bina Ilmu, p. 20.

⁵Thalib, Hambali. (2009). *Sanksi Pidana dalam Konflik Pertanahan, Kebijakan Alternatif Penyelesaian Sengketa Pertanahan di Luar Kodifikasi Hukum Pidana*. Jakarta: Kencana Prenada Media Group, p. 53.

⁶Rahardjo, Satjipto. (2000). *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, p. 20.

⁷Shant, Dellyana. (1988). *Konsep Penegakan Hukum*. Yogyakarta: Liberty, p. 32.

⁸Rahardjo, Satjipto. (2000). *Op. Cit.*, p. 81.

enforcement). The legal structure is a pattern that shows how the law is carried out according to its formal provisions by legal institutions or law enforcement officers.⁹

According to Jimly Asshiddiqie, law enforcement is the process of making efforts to uphold or function of real legal norms as guidelines for behavior in traffic or legal relations in community and state life.¹⁰ To provide a clear understanding of the meaning of law enforcement, the understanding of law enforcement will be described in terms of the subject (the culprit) and the definition of law enforcement from the point of view of the object (the law).

Furthermore, according to Soerjono Soekanto, there are five factors that greatly affect law enforcement. The five factors are closely interrelated, so that it is the essence of law enforcement, and is a measure of the effectiveness of law enforcement. The five factors are:¹¹

- a. The legal factors themselves, especially the law.
- b. Law enforcement factors, namely the parties who form and apply the law.
- c. Factors of facilities or facilities that support law enforcement.
- d. Community factors, namely the environment in which the law applies or is applied.
- e. Cultural factors, namely as a result of works, inventions, and tastes based on human initiative in the association of life.

3. Legal Effectiveness Theory

Legal effectiveness theory is a theory that studies and analyzes successes and failures and factors that influence the implementation and application of law. There are three studies of the theory of legal effectiveness which include:

a. Success in the implementation of the law, is that the law made has achieved its purpose. The purpose of legal norms is to regulate human interests. If the legal norms are obeyed and implemented by the community and law enforcement, then the implementation of the law is said to be effective in its implementation. This can be seen in the community in implementing the rule of law.

b. The failure in its implementation is that the legal provisions that have been determined do not achieve its purpose or are not successful in its implementation. Influencing factors are things that cause or influence the implementation and application of the law.

c. Factors that influence it, success includes the legal substance, legal structure, legal culture and facilities. The legal norm is said to be successful if the norm is obeyed and implemented by the community and law enforcement officials themselves. Whereas failure in implementation is due to vague legal norms or unclear corrupt legal apparatuses or people who are not aware or obedient to the legal norms. Facilities that support the legal norm are so minimal that it is difficult to create the effectiveness of the law.

Lawrence M. Friedman suggested 3 elements that must be considered in law enforcement. These three elements include the structure, substance, and legal culture.¹²

4. Accountability and Criminal Theory

a. Criminal Liability Theory

Criminal liability in foreign terms is called the theory ofbaardheid or criminal responsibility, which leads to the criminalization of the offender with a view to determining whether a person accused or accused is responsible for an offense or not.¹³

The development of the concept of "liability" or "accountability" can be seen in terms of legal philosophy. A great philosopher in the field of law in the 20th century, Roscou Pound, in "*An Introduction to the Philosophy of Law*", has expressed his opinion "*I ... use The simple word" liability "for the situation where one is exact legally and other is legally subjected the exaction"*.¹⁴

According to the concept of legal theory, there are three issues that are always the focus of attention, namely criminal acts, criminal liability and criminal punishment. From these three aspects, criminal law science

⁹Musakkir, Musakkir. (2014). *Problem Penegakan Hukum oleh Aparat Penegak Hukum di Indonesia*. In *Problematika Hukum dan Peradilan*, (pp. 136-163). Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, p. 141.

¹⁰Waluyo, Bambang. (2015). *Penegakan Hukum di Indonesia*. Jakarta: Sinar Grafika, p. 98.

¹¹Soekanto, Soerjono. (2004). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, pp.5-6.

¹²Friedman, Lawrence M. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, p. 16.

¹³Sambas, Nandang& Mahmud, Ade. (2019). *Perkembangan Hukum Pidana dan Asas-Asas dalam RKUHP*. Bandung: Refika Aditama, p. 153.

¹⁴Atmasasmita, Romli. (1989). *Asas-Asas Perbandingan Hukum Pidana*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, p. 79.

is developed, both related to political criminal policies which do not merely function to frighten or threaten violators, but criminalization must be able to educate and repair offenders.¹⁵

Criminal liability can only occur after a person has previously committed a crime.¹⁶ There is no criminal liability, if it is not preceded by a criminal act. Thus the crime is separated from criminal liability, or separated from the element of error.¹⁷

b. Criminal Theory

Punishment is a criminal sentence/sentencing as a legitimate effort based on the law to impose misery on someone who through a criminal justice process is proven legally and convincingly guilty of committing a crime. The reason for criminalization can be classified into three main groups, namely as belonging to the retaliation theory group, the objective theory group, and the combined theory group.

According to the Criminal Code system, the imposition of basic crimes may only be 1 type in the case that only one criminal offense is committed, that is, one of the main crimes that are threatened alternatively in the relevant criminal offense. It is not justified to impose a basic crime, which is not threatened in the relevant criminal offense. For these basic crimes one or more additional crimes can still be added. It can be said, it means that the addition of additional crimes is facultative, meaning that it is additive and does not have to exist. If it's not necessary, it doesn't have to be held.¹⁸

5. The Criminal Justice System Theory of Children

a. Legal System Theory

The legal system theory according to Lawrence M. Friedman, he said that the legal system consists of 3 (three) elements, namely (1) Legal Structure (structure), (2) Legal Material (substance), and (3) legal culture (legal culture). According to Lawrence M. Friedman, said:¹⁹

"... the structure of a system is its skeleton framework, it is the permanent shape, the institutional body of the system, the thought, rigid bones that keep the process flowing within bound".

So the structure in a legal system is a framework that has a permanent form, or is an institutional system that is robust in maintaining processes within work ties. Then Lawrence M. Friedman explained that the legal structure in the legal system concerns the legislative body (Parliament), Executive (Government) and Judiciary (judicial power), how the court decides a case and what cases are decided by this judicial body. The legal structure is a body or institution that deals with the form, pattern and model (form, pattern, persistent system) of how the Legislature carries out its function as a legislator. Likewise with the Executive, what the President and his ministers, bureaucrats and the police may do and cannot do, how the police carry out their duties.²⁰

b. Criminal Justice System Theory

Criminal Justice is a derivation of the word fair, which is interpreted as impartial, impartial, or even balance and overall justice in this case is to show to a process that is the process to create or realize justice. The "criminal" in criminal science (criminal scientific by law) is defined as punishment, sanctions and/or approaches that are given, which can disrupt the physical or psychological existence of the person affected by the crime.²¹ Criminal justice is a process that works in several law enforcement agencies. The criminal justice process shows that there is a close relationship between law enforcement agencies, or in other words proves the existence of a criminal justice system. Why criminal justice is a system, behind this paper. It also knows how this system is according to Law of the Republic of Indonesia Number 8 of 1981 on the Code of Criminal Procedure (hereinafter referred to as Law No. 8 of 1981).

¹⁵Sholehuddin, M. (2003). *Sistem Sanksi Hukum Pidana: Ide Dasar Track System & Implementasinya*. Jakarta: PT. Raja Grafindo Persada, p. 162.

¹⁶Huda, Chairul. (2006). *Dari Tiada Pidana tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana tanpa Kesalahan: Tinjauan Kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group, p. 20.

¹⁷Moeljatno, Moeljatno. (1993). *Asas-Asas Hukum Pidana*. Jakarta: PT. Rineka Cipta, p. 57.

¹⁸Kanter, E. Y. & Sianturi, S. R. (2002). *Asas-Asas Hukum Pidana di Indonesia dan Penerapannya*. Jakarta: Stora Grafika, p. 454.

¹⁹Friedman, Lawrence M. (1977). *Law and Society: An Introduction*. New Jersey: Prentice Hall, p. 14.

²⁰*Ibid.*

²¹Renggong, Ruslan. (2016). *Hukum Acara Pidana: Memahami Perlindungan HAM dalam Proses Penahanan di Indonesia*. Jakarta: Kencana Prenada Media Group, p. 153.

c. The Criminal Justice System Theory of Children

Based on Article 1 number 1 of Law No. 11 of 2012, explain that:

“The Child Criminal Justice System is the whole process of resolving cases of children dealing with the law, from the investigation stage to the guidance stage after undergoing sanctions.”

In the child criminal justice system there are principles that apply in its implementation based on Law No. 11 of 2012, including:²²

- 1) Protection. Child protection is intended to protect and nurture children who are in conflict with the law so that they can meet their long-term future and provide opportunities for children to develop their identity to be independent, responsible, and useful for themselves, family, society, nation and state. Child protection also includes activities that are direct and indirect from actions that harm the child physically and/or psychologically.
- 2) Justice. Justice is that every settlement of a child’s case must reflect a sense of justice for the child. All parties involved in criminal offenses must avoid and keep children away from the judicial process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment properly. The child criminal justice process since its arrest, detention and trial coaching must be carried out by special officials who truly understand the problems of children. The judge in deciding the case of a child must be absolutely sure that his decision can be one of the strong foundations to return and take the child towards a good future to develop himself as a citizen who is responsible for the life of his family, nation and state.
- 3) Non-discrimination. Is the absence of different treatment based on ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, birth order of children, and physical and/or mental conditions.
- 4) The Best Interest for Children. All actions and decision-making concerning children, whether carried out by families, communities or legal stakeholders, the survival and development of children must always be a primary consideration.
- 5) Appreciation for Children’s Opinions. Is to give freedom to children in order to develop creativity and intellect (reasoning power). Respect for the right of children to participate and express their opinions in accordance with the age of the child in decision making, especially if it involves matters that affect the child’s life.
- 6) Child Survival and Growth. Are the most basic human rights for children protected by the state, government, society, family, and parents;
- 7) Child Coaching and Guidance. Coaching is an activity to improve the quality of piety to God Almighty, intellectual, attitude and behavior, skills training, professional, and physical and spiritual health both inside and outside the criminal justice process. Guidance is the provision of demands to improve the quality of piety to God Almighty, intellectual, attitude and behavior, skills training, professionalism, as well as physical and spiritual health of correctional clients.
- 8) Proportionality. Is all treatment of children must pay attention to the limits of needs, age, and condition of children. Children who are in conflict with the law need help and protection to be balanced and humane. Children must be treated according to the situation, mental and physical conditions, social justice with their abilities at a certain age.
- 9) Deprivation of Independence and Criminalization as a Last resort. Deprivation of independence is the last resort, which means basically that children cannot be deprived of their liberty, unless they are forced to do a case settlement.
- 10) Retaliation Avoidance. All parties involved in finding solutions to improve, reconcile, and pacify the heart are not based on retaliation. Retaliation avoidance is the principle of alienating retaliation in the criminal justice process.

B. Review of Nature

The word true (Haqiqat) is a noun that comes from Arabic namely from the word “Al-Haqq”, in Indonesian the main word is the word “rights” which means truth, or which actually exists, whereas etymologically it means the core something, the peak or source of everything. True science means knowledge that is used to find a truth. Ordinary nature also means the essence or the real reality, the theory of nature is very broad, the same as the extent of the object of philosophical study.²³

²²Prakoso, Abintoro. (2016). *Pembaharuan Sistem Peradilan Pidana Anak*. Yogyakarta: AswajaPressindo, pp. 100-103.

²³Daring, KBBI. (2016). Hakikat. In *Badan Pengembangan Bahasa dan Perbukuan, Kementerian Pendidikan dan Kebudayaan Republik Indonesia*. Retrieved at the date on 3 Januari 2019.

The pragmatic theory of truth (the pragmatic theory of truth) as part of epistemology implies that a truth and statement are measured by the criteria of whether the statement is functional in human life. A theory or an idea is true if it leads to satisfying consequences, if it applies in practice if it has practical value.²⁴

It can be concluded that Itself is a sentence or phrase that is used to show the true meaning or the most basic meaning of something such as an object, condition or thought. Itself aims at truth, absolute truth and scientific truth. Where absolute truth is truth that only exists in Allah SWT, while scientific truth is relative truth or truth of science that can still be tested (falsified) and can be true/false on an object of a particular place/space and/or time.²⁵

C. Review of Child Protection

1. Definition of Children

According W. J. S. Poerwadarminta, giving understanding of children as small human beings.²⁶ Furthermore R. A. Koesnoen, gave understanding of children as young people, young in age, young in soul, and life experiences because they are easily affected by the surrounding circumstances.²⁷ According to Kartini Kartono, a child is a normal human condition who is young and is determining his identity and is very unstable in his soul, so it is very easy to be affected by his environment.²⁸

In the Criminal Code there is no term “child,” but what we will find is the term “immature”, which is based on Article 45 of Law of the Republic of Indonesia Number 1 of 1960 on the Criminal Code, regulates that “*in the case of criminal prosecution of someone who is immature for committing an act before the age of sixteen*”. From this provision, it can be concluded that a child or juridical term for someone who is not old enough is a child who is not yet sixteen years old or a child under the age of sixteen.

2. Protection of Children

Bismar Siregar writes about the legal aspects of child protection emphasizing the rights of children rather than the obligations of children, because children are not legally burdened with obligations and are not held accountable.²⁹ According to Arif Gosita, child protection law is a written or unwritten law that guarantees that children can actually carry out their rights and obligations.³⁰

Broadly speaking, child protection can be divided into two characteristics. First, juridical protection includes legal protection both in the field of public law, and civil law. Second, non-juridical protection, covering social, health, and education. The definition of Child Protection based on Article 1 number 2 of Law No. 17 of 2016, explain that:

“Are all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination.”

Law No. 17 of 2016 is established with the aim of ensuring the fulfillment of children’s needs so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination, for the sake of the realization of qualified, noble and prosperous Indonesian children. Every human being has human rights that have been enacted by the state to its citizens, meaning a human has human rights since birth, as well as children who certainly have rights that are slightly different from those who are adults according to the laws in force in Indonesia.³¹

3. Children’s Rights

The 1945 Constitution regulates the rights of children regulated in 2 (two) Articles, namely: Article 28B section (2) of The 1945 Constitution, regulates that “*every child has the right to live, to grow and to develop, and has the right to protection from violence and discrimination*”, and Article 34 section (2) of The 1945 Constitution, regulates that “*the state develops a system of social security for all of the people and empowers the inadequate and underprivileged in society in accordance with human dignity*”.

Children’s rights and obligations in Law No. 17 of 2016, namely the Rights of the Child are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, countries, governments, and local governments. Children have the right to live, develop and participate in social life to

²⁴Rumi, Fuad, Ramli, Mansyur, & Mallongi, Syahrir Daeng. (2013). *Filsafat Ilmu dan Metode Ilmiah: Dalam Pandangan Sekuler dan Islami*. Makassar: PT. Umitoha Ukhuwah Grafika, p. 119.

²⁵*Ibid.*

²⁶Poerwadarminta, W. J. S. (1987). *Kamus Umum Bahasa Indonesia*. Jakarta: Balai Pustaka, p. 735.

²⁷Koesnoen, R. A. (1966). *Susunan Pidana dalam Negara Sosialis Indonesia*. Bandung: Sumur, p. 120

²⁸Kartono, Kartini. (1981). *Gangguan-Gangguan Psikhis*. Bandung Sinar Baru, p. 187.

²⁹Siregar, Bismar, et al. (1986). *Hukum dan Hak-Hak Anak*. Jakarta: Rajawali Pers, p. 3.

³⁰Gosita, Arif. (1983). *Masalah Korban Kejahatan*. Jakarta: Akademika Pressindo, p. 53.

³¹Teguh, Harrys Pratama. (2018). *Loc. Cit.*

maintain and enhance their dignity and human values, free from various forms of discrimination and treatment in any form that violates the laws and regulations in force in Indonesia. Although there is Law No. 17 of 2016, violations against children in Indonesia are still often even sometimes even ignored. The basic rights possessed by children as a form of human rights are the right to life, the right to develop, the right to obtain protection and the right to be able to participate in both family and community life.

4. Children Who are Confronting the Law

Based on Article 1 of Law No. 11 of 2012, explain that:

2. Children who deal with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.

3. Children in conflict with the Law, hereinafter referred to as Children, are children aged 12 (twelve) years, but not yet 18 (eighteen) years who are suspected of committing criminal offenses.

4. Children who become Victims of Crimes, hereinafter referred to as Victim Children, are children who are not yet 18 (eighteen) years of age who suffer physical, mental, and/or economic losses caused by criminal acts.

5. Children who become Criminal Witnesses, hereinafter referred to as Child Witnesses, are children who are not yet 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution, and examination in court regarding criminal cases that have been heard, seen, and/or experienced alone.

Harry E. Allen and Clifford E. Simonsen explained that there are 2 (two) categories of child behavior that make children have to deal with the law, namely:³²

a. Status Offence is a child's delinquency behavior which if done by an adult is not considered a crime, such as disobeying, ditching school, or running away from home;

b. Juvenile Delinquency is a child's delinquency behavior which if done by an adult is considered a crime or a violation of the law.

The difference between children facing the law and perpetrators today is seen in their convictions, adult perpetrators of the death penalty are the last criminal for adult offenders, while children are imprisoned as a last resort and are not allowed the death penalty/life imprisonment.

Other differences also exist in the judicial process, for children the detention process in the process of investigation, prosecution, and justice is relatively shorter than adults. In addition, during the process, ABH must also be accompanied by parents/guardians, Hall Correctional, Social Workers, and other relevant parties. In contrast to adults who only get the right accompanied by a legal authority or get legal assistance.

Other differences also exist in the judicial process, for children the detention process in the process of investigation, prosecution, and justice is relatively shorter than adults. In addition, during this process, children who are in conflict with the law must always be accompanied by parents/guardians, correctional institutions, social workers, and other relevant parties. Unlike adults who only get the right accompanied by a lawyer or get legal assistance.

IV. DISCUSSION

A. The Nature of Legal Protection Against Children in the Criminal Justice System

The nature of the legal protection of children in the criminal justice system, must be intended to prevent and keep children away from the judicial process. One form of legal protection for children in conflict with the law (children in conflict with the law) is one of them in the form of legal settlement through diversion that leads to efforts to realize Restorative Justice. And it is an obligation for law enforcement officials to prioritize the approach of restorative justice in dealing with cases of children dealing with law and the concept of diversion is one alternative that must be done in the current criminal justice system for children. This is like in the provision of Article 5 section (1) of Law No. 11 of 2012, regulates that "*The Child Criminal Justice System must prioritize the Restorative Justice Approach*". The concept of restorative justice is known as the process of diversification. In essence Diversity efforts are one way to prevent children who are in conflict with the law and keep children from formal court proceedings. With the alternative settlement of cases of children who are in conflict with the law, it is hoped that children can avoid the stigmatization of naughty children and it is hoped that children can return to the social environment of society and live a normal life.

Based on Article 7 section (1) of Law No. 11 of 2012, regulates that "*at the level of investigation, prosecution and examination of cases of Children in the District Court, must be sought diversion.*" Diversion is as a transfer of the settlement of the case of children from the criminal justice process to the process outside of criminal justice. Whereas Restorative justice in the general explanation of Law No. 11 of 2012 is a diversion

³²Purniati, Purniati, Supatmi, Mamik Sri, & Martini, Ni Made. (2004). *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia*. Jakarta: Departemen Kriminologi FISIP Universitas Indonesia, p.2.

process, namely all parties involved in a particular crime jointly resolve the problem and create an obligation to make things better by involving victims, children, victims/perpetrators' parents and the community in finding solutions to improve, reconcile and pacify the heart and not avoid the element of retaliation that has been committed by the perpetrators. Thus the legal protection of children in conflict with the law must prioritize the best interests of the child.

Basically, this diversion will be able to become a form of Restorative Justice if children who commit a criminal act are still held accountable for the actions they have done, children must be given the opportunity to replace their mistakes with kindness to the victims of their actions, the victim participates are given the opportunity in the diversion process to find the best solution in solving problems that have been carried out by child offenders, children are given the opportunity to be able to maintain good relations/kinship with the perpetrators/families or victims/family, and opportunities for reconciliation and healing in the lives of people who have been harmed by children who commit the crime.³³

The implementation of diversification in the child criminal justice system is based on the desire to distance and prevent children from the negative effects that can arise on the souls of children and the development of children as the next generation of the nation so that the diversion must prioritize the provision of protection for children from criminal sanctions in the form of imprisonment.

From the above description it can be concluded that the nature of legal protection against children in conflict with the law in the child criminal justice system, namely the implementation of legal protection against children by developing and applying the concept of diversion and restorative justice in the implementation of the child criminal justice system. Legal protection that leads to diversion as a form of restorative justice to children without ignoring the obligation of children to remain responsible for the actions they have done in an effort to provide legal protection for children by continuing to prioritize a balanced sense of justice.

B. Implementation of Legal Protection Against Children in the Criminal Justice System in Gorontalo Province

1. Legal Basis for Implementing Children's Legal Protection in the Criminal Justice System

It needs to be known and understood that related to the handling of children in conflict with the law, of course, it is based on a number of specific statutory provisions which include the following:

- a. Law of the Republic of Indonesia Number 11 of 2012 on the Child Criminal Justice System;
- b. Law of the Republic of Indonesia Number 17 of 2016 on Enactment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection Becoming Law;
- c. Government Regulation of the Republic of Indonesia Number 65 of 2015 on Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (twelve) Years;
- e. Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Child Criminal Justice System;
- f. Regulation of the Attorney General of the Republic of Indonesia Number PER-006/A/J.A/04/2015 on Guidelines for the Implementation of Diversion at the Prosecution Level.

The protection of children is a major milestone in the child criminal justice. The implementation of the renewal of the child criminal justice system is applied to all processes and stages of criminal justice, which are interrelated and constitute a unity, namely: Child Investigators, Child Prosecutors, Child Judges, and Children Penitentiary Officers.³⁴

2. Implementation of Legal Protection against Children by Investigators

As the first institution to deal with children in conflict with the law, the police are required to provide legal protection for children. Before proceeding with the investigation of children in conflict with the law, the police must provide legal protection, that is, they must seek diversion in accordance with the provisions expressly stated in the Criminal Justice System for Children.

Investigations were attempted to be carried out by female police, and carried out in a family atmosphere. In addition, the investigation in terms of examinations is carried out with an effective and sympathetic approach. Effective in the sense that the examination does not take a long time, using language that is easy to understand, and can invite suspects to provide information as clearly as possible. Sympathetic means that at the time of the investigation the investigator was polite and friendly and did not frighten the suspect. The goal is that the examination runs smoothly, because a child who feels frightened when facing an investigator

³³Tarigan, Fetri A. R. (2015). Upaya Diversi Bagi Anak Dalam Proses Peradilan Pidana. *Lex Crimen: Jurnal Elektronik Bagian Hukum Pidana, Universitas Sam Ratulangi*, 4(5), pp. 104-112.

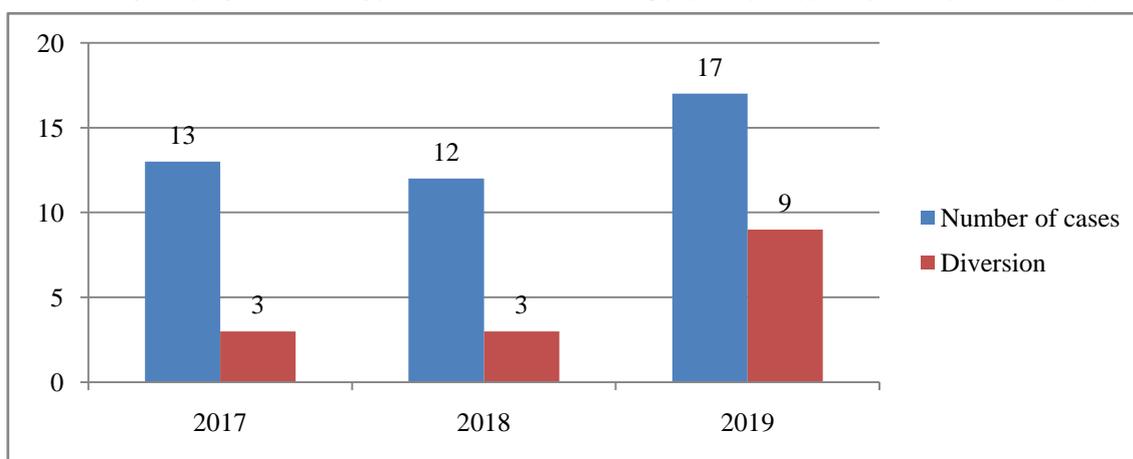
³⁴Prakoso, Abintoro. (2016). *Op. Cit.*, p. 165.

will find it difficult to reveal the true and clear information. but it also avoids coercion, intimidation, which can cause trauma to children.³⁵

The investigation is the initial stage in a preliminary examination according to the Criminal Procedure Code. This stage is not only the basis for a trial before the court, but also reflects the actions of the Police (Investigator, Investigator and Assistant Investigator) against the suspect/defendant which is a measure of human rights protection and law enforcement. This provision reflects the legal protection of children, if done properly by the investigator. However, if an investigator does not conduct an examination in a family atmosphere, no legal sanctions can be imposed on him. If the investigator neglects the obligation to examine the suspect not in a family atmosphere, then there should be legal consequences, both for the official who examined and the results of the examination, and this matter has not been clearly regulated and has legal consequences in the Criminal Justice System Act.³⁶

To find out the implementation of legal protection for children who are dealing with the law in the child criminal justice system at the Investigation stage in the Police can be seen in the chart below:

Chart 1. The Case of Children in Conflict with the Law in Gorontalo Resort Police from 2017 to 2019



Source: Primary Data Processed of 2020

Based on chart 1 above shows that from 2017 to 2019 at the Gorontalo District Police Research site, it shows that the cases/cases of children in conflict with the law/in conflict with the law in the last 3 years amounted to 42 cases, and a total of 15 cases that were successfully attempted diversion. So 27 cases that were unsuccessful/failed to be attempted diversion.

In the initial stages, an examination will be conducted in accordance with Article 27 section (1) of Law No. 11 of 2012, regulates that “in investigating a child's case, the Investigator must seek consideration or advice from the Community Guidance Officer after the crime has been reported or complained”.

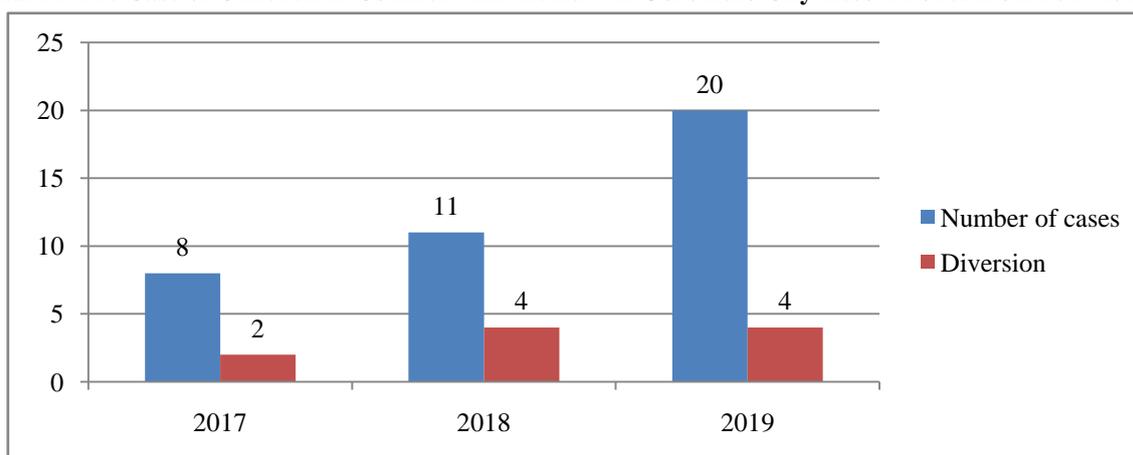
In the case of detention this is based on the considerations given, if during the investigation process the parents are able to supervise their children, and there is no possibility to escape, do not repeat their actions and parents are able to present and confront the child to the investigator if further information is needed, then children will not be detained. Another consideration is that the home and family are the best environment for children.

Data on criminal cases committed by children as well as writers obtained at the Gorontalo City Resort Police Research site, can be seen in the chart below:

³⁵Gultom, Maidin. (2014). *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung: Refika Aditama, p. 125.

³⁶*Ibid.*, p. 127.

Chart 2. The Case of Children in Conflict with the Law in Gorontalo City Resort Police from 2017 to 2019



Source: Primary Data Processed of 2020

Based on chart 2 above shows that from 2017 to 2019 in the research location of the Gorontalo District Police Station, the case/case of children dealing with the law/in conflict with the law in the last 3 years amounted to 39 cases, and as many as 10 successful cases diversion is sought. So 29 cases that were unsuccessful/failed to be attempted diversion.

In handling cases children must pay attention to the best interests of the child and must always prioritize a family atmosphere, among other things during the examination of the suspect child investigators do not wear official clothing and approach effectively and sympathetically. In the examination does not take a long time, use language that is easy to understand and can invite children to provide information that is as clear as possible, and at the time of the investigation the investigator is polite and friendly and does not frighten the child suspects. It can also prevent a child from coercion, intimidation and similar treatment during an investigation. So that when conducting a case examination the child does not encounter any obstacles in its implementation. So far the members of the Gorontalo City Police Unit IV in dealing with criminal acts committed by children are guided by existing provisions. This embodies the legal protection of children, even though the child has been considered a criminal offense.

3. Implementation of Legal Protection against Children by Public Prosecutors

In the criminal justice process, prosecution is the stage after the investigation. Based on Article Pasal 1 number 7 of Law No. 8 of 1981, explain that:

“Prosecution is the act of a public prosecutor to submit a criminal case to the district court in charge of matters and in the manner stipulated in this law with a request to be examined and decided by a judge at a court hearing.”

In principle, the Child Criminal Justice System Act requires that every Public Prosecutor’s Office has a Child Prosecutor to handle a Naughty Child. But if the Public Prosecutor’s Office does not have a Child Prosecutor, because no one has fulfilled the specified requirements, or because it has moved/transferred. Then the task of prosecuting a child case is borne by the Public Prosecutor who carries out the task of prosecuting a criminal offense committed by an adult. And if this is viewed from the aspect of child protection, it cannot yet be said that a child who is dealing with the law does not get protection.

The Child Prosecutor in carrying out his duties examines the minutes submitted by the Investigator, so that if necessary and with the approval of the Child Judge, there is no need to go to court. Enough children are returned to their parents with reprimands and admonished. Parents/guardians/foster children need to be warned, given advice. Basically, children need attention, love, care, protection, guidance, education and a sense of security both spiritually and physically. In addition, social workers, such as from the Penitentiary, are involved in handling and fostering children, as well as parents/guardians/foster parents of children.³⁷

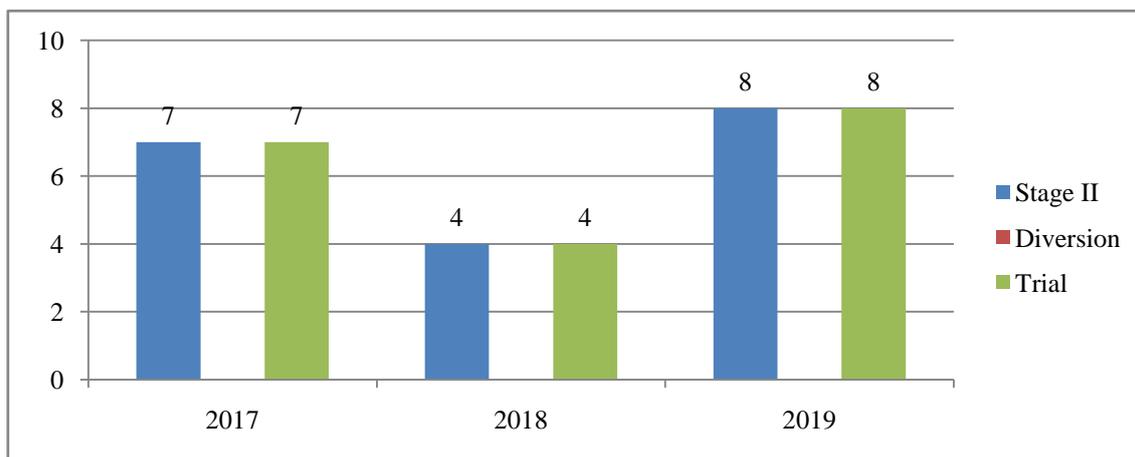
The guidelines on the procedure for implementing Diversion by the Public Prosecutor namely Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversity and Handling of Children Not 12 Years Old and Regulation of the Attorney General of the Republic of Indonesia Number Per-006/A/JA/05/2015 concerning Implementation Guidelines Diversity at Prosecution Level. The core of the regulation is a guideline for public prosecutors in resolving child cases at the prosecution level with the

³⁷*Ibid.*, p. 140.

obligation to make diversion efforts based on restorative justice with the aim of creating a common perception and uniformity in the technical and administrative procedures for public prosecutors in implementing diversion.

To find out the implementation of legal protection for children who are dealing with the law in the child criminal justice system. As for the case data that entered into the prosecution stage by the Public Prosecutor in the Gorontalo District Prosecutor's Office, the Gorontalo City State Prosecutor's Office and the Bone Bolango Prosecutor's Office for the period of 2017-2019, can be seen in the following chart below:

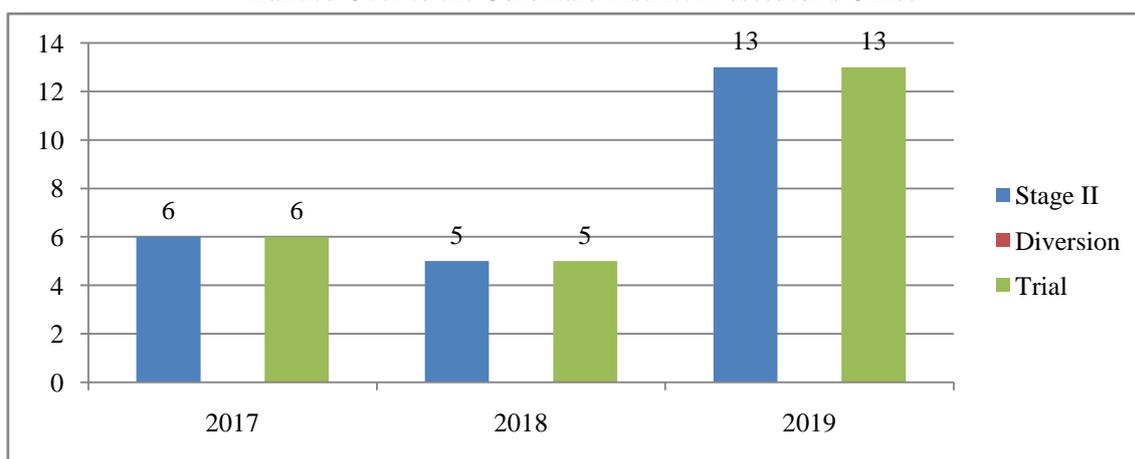
Chart 3. The Case of Children in Conflict with the Law in Gorontalo are Based on the Number of Cases Submitted to the Gorontalo District Prosecutor's Office



Source: Primary Data Processed of 2020

Based on chart 3 above shows that the Authority of the Public Prosecutor's Office as a Public Prosecutor or delegation of cases in phase II who entered the Gorontalo District Prosecutor's Office in 2017 was 7 cases, whereas in 2018 there were 4 cases, and in 2019 there were 8 cases, and of the total number of cases that have been submitted to the court hearing. The diversion attempt by the Public Prosecutor was unsuccessful/failed.

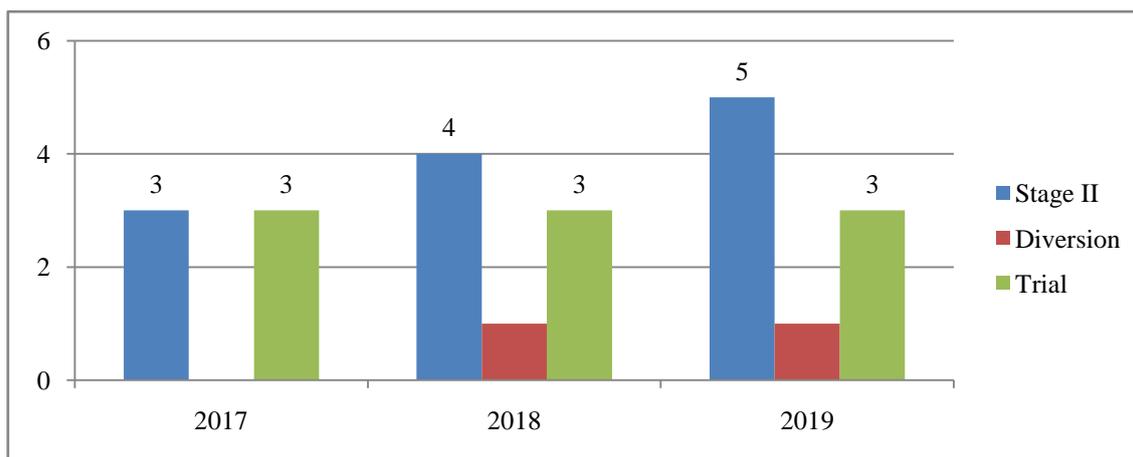
Chart 4. The Case of Children in Conflict with the Law in Gorontalo are Based on the Number of Cases Handed Over to the Gorontalo District Prosecutor's Office



Source: Primary Data Processed of 2020

Based on chart 4 above shows that the Authority of the Public Prosecutor's Office as a Public Prosecutor or the delegation of cases in phase II that entered the Gorontalo City Prosecutor's Office in 2017 was 6 cases, whereas in 2018 there were 5 cases, and in 2019 it increased to 13 cases, and of the number of cases that have been submitted, they will be referred to the court hearing. The diversion attempt by the Public Prosecutor was unsuccessful/failed.

Chart 5. The Case of Children in Conflict with the Law in Gorontalo are Based on the Number of Cases Submitted to the Bone Bolango District Prosecutor's Office



Source: Primary Data Processed of 2020

Based on chart 5 above shows that the Authority of the Bone Bolango District Attorney as the Public Prosecutor or the delegation of cases in phase II that entered the Bone Bolango District Attorney in 2017 was 3 cases, and these 3 cases proceeded to the delegation of quality and conducted a court hearing, whereas in 2018 there were 4 cases, and 1 case was successfully attempted diversion by the Public Prosecutor, the remaining 3 cases proceeded to the transfer of documents and examination of the court, while in 2019 there were 5 cases, and 1 case was successfully attempted diversion by the Public Prosecutor, and 4 cases proceed to the file transfer and trial hearing.

Technical matters in the examination and trial so far have been carried out and followed by public prosecutors specifically appointed to handle cases concerning children. Procedures and actions to provide legal protection for children as defendants are carried out by prosecutors based on considerations established by law. Prosecutors and public prosecutors dealing with child offenders have carried out procedures in accordance with the provisions of Law No. 17 of 2016 and Law No. 11 of 2012.

4. Implementation of Legal Protection against Children by Judges in Courts

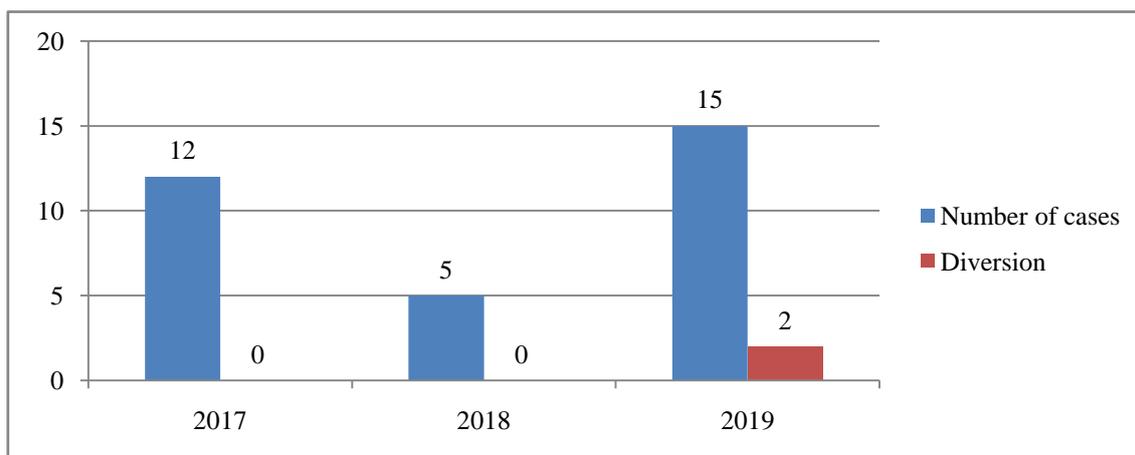
In the process of upholding the structure of the juvenile criminal justice the last structure is the Judge who is in charge as a case adjudicator of children who are dealing with the law. The examination of the child trial is carried out by the Child Judge. The juvenile judge was appointed based on a Supreme Court Decree at the suggestion of the Chair of the High Court. Based on Article 43 section (2) of Law No. 11 of 2012, regulates that requirements that must be met to become a Judge ... including:

- a. experienced as a judge in the general court environment;
- b. have interest, attention, dedication, and understand the problems of children; and
- c. has followed technical training on juvenile justice.

The juvenile judge for the first instance (District Court), examines and decides a case as a single judge, but in certain cases the criminal threat for a criminal offense is threatened with imprisonment of 7 (seven) years or more and it is difficult in the case of proof to be examined by the panel of judges. To examine cases of appeal carried out by the Children of Appeals Judge, and carried out by a Single Judge except in certain cases and deemed necessary by the Chair of the Court of Appeal the examination can be carried out with a panel of judges. At the Cassation level, the Cassation Judge is appointed by a child appointed based on a Supreme Court decision.

To find out the implementation of legal protection for children who are dealing with the law in the child criminal justice system, especially in the District Court. As for the case data that entered the examination stage at the Gorontalo District Court and Gorontalo City District Court from 2017 to 2019, can be seen in the following chart below:

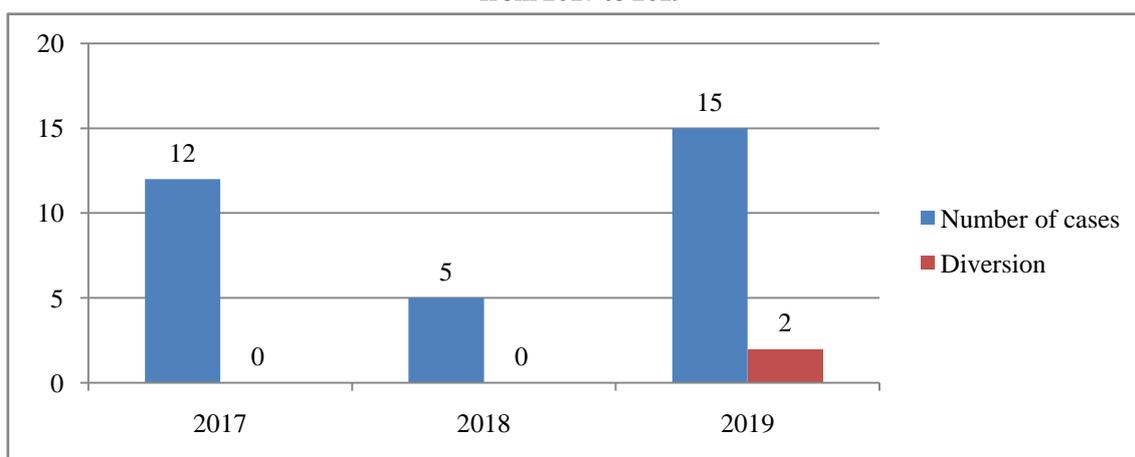
Chart 6. The Case of Children in Conflict with the Examination Stage in Gorontalo District Court from 2017 to 2019



Source: Primary Data Processed of 2020

Based on chart 6 above shows that the number of cases of children who entered and examined by the Judge and the Board of Judges of the Gorontalo District Court in 2017 amounted to 12 cases, and no single case was successfully attempted diversion, as well as in 2018 there were 5 cases, not diversified successfully, while in 2019 there were 15 cases and there were two cases that were successfully sought peace.

Chart 7. The Case of Children in Conflict with the Examination Stage in Gorontalo City District Court from 2017 to 2019



Source: Primary Data Processed of 2020

Based on chart 7 above shows that the number of cases of children who entered and examined by the Judge and the Judges of the Gorontalo District Court in 2017 amounted to 17 cases, and there were 9 cases that were successfully attempted diversion, in 2018 there were 8 cases that entered but were unsuccessfully attempted diversion, whereas in 2019 there were 17 cases and there were 3 cases that were successfully pursued peacefully.

If you look at the data above, it can be said that from the number of cases that have been entered and examined at the District Court, some cases of children dealing with the law cannot be resolved by diversion. So with this it can be said that the diversion efforts undertaken by judges and judges have not been effectively implemented.

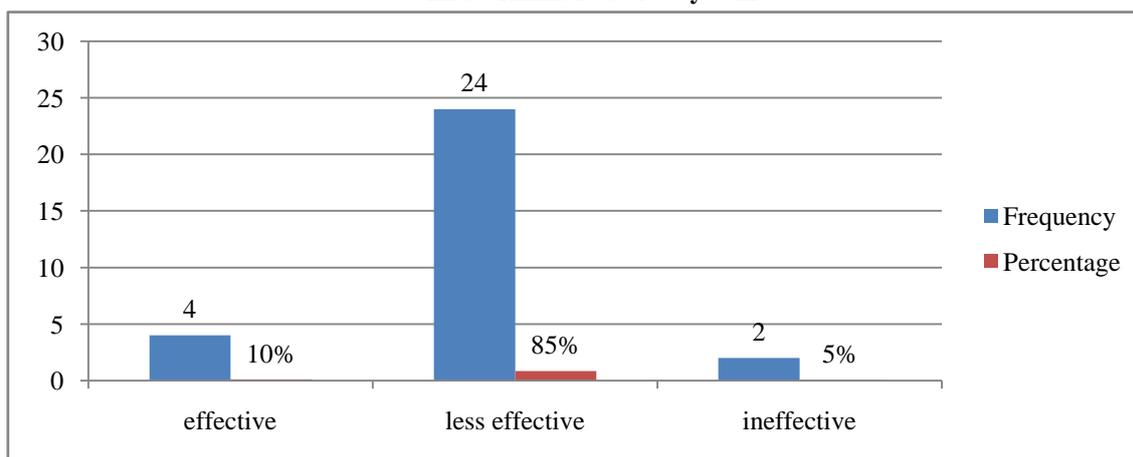
C. Factors Affecting the Implementation of Legal Protection Against Children in the Criminal Justice System in the Legal Region of Gorontalo Province

1. Legal Substance

Legal Substance Factors, which include laws and regulations. Legislation is a written regulation that contains legal norms covering the type and hierarchy of legislation as stipulated in Article 7 section (1) of the Republic of Indonesia Law Number 12 of 2011 concerning the Formation of Legislation.

The influence of legal substance factors in implementing legal protection for children in the juvenile criminal justice system, can be seen in the following chart:

Chart 8. Effect of Legal Substance Factors on the Implementation of Legal Protection of Children in the Child Criminal Justice System



Source: Primary Data Processed of 2020

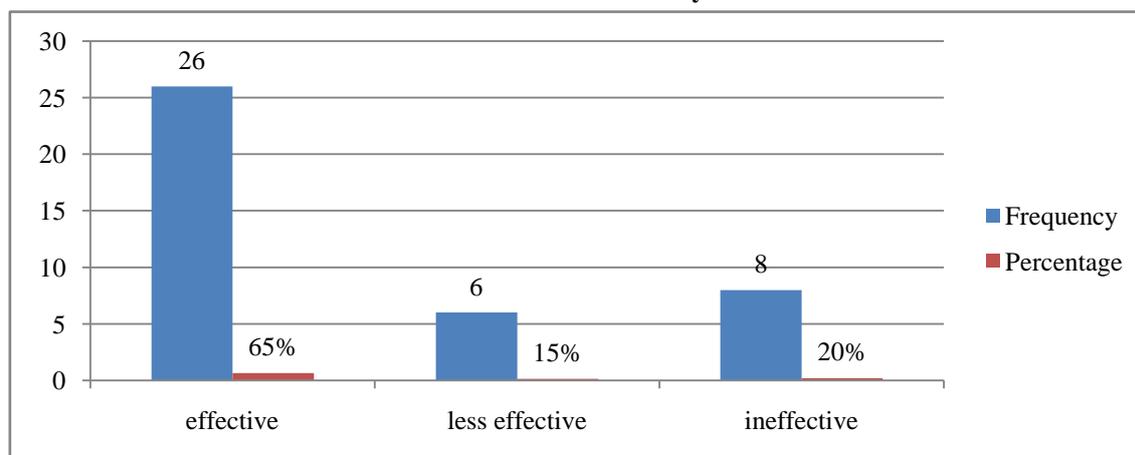
Based on chart 8 above shows, it is clear that the legal substance of the implementation of legal protection for children dealing with the law in the criminal justice system of children, there are 10% of respondents who said that the legal substance influences the implementation of legal protection for children who are dealing with the law in child criminal justice system, this is related to several existing provisions, in the opinion of respondents still needs to be reviewed in relation to the age limit of the category of children, the provisions of the implementation of diversion which is still an alternative solution and criminal sanctions applied to children who commit criminal acts. But on the other hand there are 85% of respondents stating that the Legal Substance in Law No. 17 of 2016 and Law No. 11 of 2012 is good enough and has provided maximum protection for children in conflict with the law, so that in its implementation so far no significant obstacles have been found in the field. And there are 5% of respondents who state that the substance of the law does ineffective the implementation of legal protection for children dealing with the law in the child criminal justice system.

2. Legal Structure

Legal Structure Factors include law enforcement factors. The scope of the term "law enforcement" is very broad, therefore it includes those who directly and indirectly engage in law enforcement. Law enforcers include those who form and implement the law.³⁸ What is meant by law enforcement will be limited to those who are directly involved in the matter of law enforcement which not only includes law enforcement but also peace maintenance. In this study the study of the legal structure factor is specific to law enforcement agencies who are directly involved in implementing legal protection against children in the juvenile criminal justice system in Gorontalo, including, Investigators, Public Prosecutors, Judges and Guidance Officers.

³⁸Soekanto, Soerjono. (2004). *Op. Cit.*, p. 8.

Chart 9. Effect of Legal Structures Factors on the Implementation of Legal Protection of Children in the Child Criminal Justice System



Source: Primary Data Processed of 2020

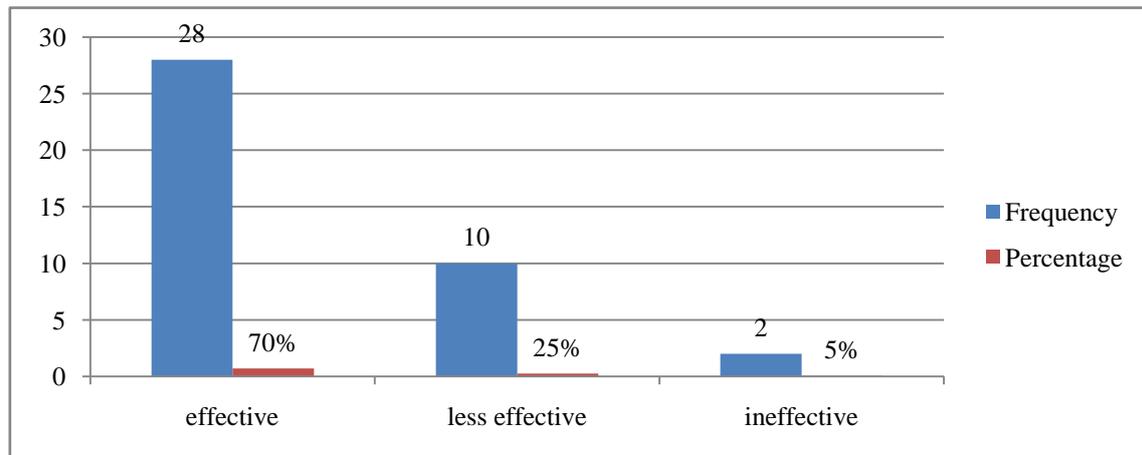
Based on chart 9 above shows, it seems clear that the legal structure factor towards the implementation of legal protection for children dealing with the law in the juvenile criminal justice system is very influential. It can be seen as many as 65% of respondents state that in terms of their relationship with the legal structure ie law enforcement officials must work together and cooperate in the implementation of legal protection against children, the lack of law enforcement officers is the most significant obstacle because in handling cases of children dealing with the law, in its implementation it must be carried out by competent and qualified law enforcement officers in their fields. But so far the problems faced by law enforcement officers are still minimal and limited in number, so this is one of the significant obstacles. There are 15% of respondents said that the legal structure factor less effective the implementation of legal protection against children in the juvenile criminal justice system, with the limited number of existing law enforcement officers, the law enforcement officials try to apply as much as possible what is stipulated by the provisions of the law applicable. And 20% of respondents said that it had ineffective on the implementation of legal protection for children in the juvenile criminal justice system.

3. Legal Culture

Legal culture basically includes the values that underlie applicable law, the values which are abstract conceptions of what is considered good (so embraced) and what is considered bad (so avoided).³⁹ According to Soerjono Soekanto, culture has a very large function for humans and society. Culture is able to regulate human beings so that they can understand life, how to act, act and determine attitudes in dealing with others. Culture provides a basic outline of behavior in a unique and unique system of rules regarding the values that must be done and those that should not be done.

³⁹*Ibid.*, p. 59.

Chart 10. Effect of Legal Cultural Factors on the Implementation of Legal Protection of Children in the Child Criminal Justice System



Source: Primary Data Processed of 2020

Based on chart 10 above shows that the legal culture factor clearly appears to reach 70% of opinions stating that the legal cultural factor influences the implementation of legal protection for children dealing with the law in the child criminal justice system. As many as 25% stated less effective and 5% said ineffective.

V. CONCLUSION

1. The nature of legal protection for children in conflict with the law in the Child Criminal Justice System, namely the implementation of legal protection against children by developing and applying the concept of diversion and restorative justice. Legal protection that leads to diversion as a form of restorative justice to children without ignoring the obligation of children to remain responsible for the actions they have done in an effort to provide legal protection against children while still prioritizing the best interests of children in the child criminal justice system.
2. The implementation of legal protection against children in the juvenile criminal justice system in Gorontalo Province has not been implemented/implemented properly based on the provisions of the applicable legislation.
3. Factors affecting the implementation of legal protection against children in the child criminal justice system in the jurisdiction of Gorontalo Province are still many obstacles encountered, including, the substance of the law cannot be implemented as it should, legal structure factors that the number of law enforcement officers who are competent in child criminal justice system, legal cultural factors lack of socialization to the public about the existence of legislation relating to children, facilities or facilities not yet available facilities and special facilities for children and community factors, the lack of awareness and public knowledge about the law.

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