

The Diversion of the Children In Conflict With the Law of the Human Rights Perspective in South Sulawesi

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Abstract:The purpose of this study is to know, analyze and discover the nature of diversion in conflicting children in the perspective of Child Rights, to know, to analyze and to find the implementation of the diversion of children in conflict with the law in the perspective of Child Rights, and to know, analyze and find the factors that influence the implementation of the diversion of children in conflict with the law in the perspective of Child Rights. The research method used is empirical legal research that is the research on the implementation of the rule of law in empirical and legal effectiveness. The results of this study indicate that the nature of diversion in children in conflict with the law is to provide assurance of protection of human rights and welfare to children who berkonflik with law. The diversion in the Police, State Attorney and District Court has not yet guaranteed the protection of human rights to children in conflict with the law.

Keyword: The Nature of Diversity, Conflict With Law

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I. INTRODUCTION

Human rights are basic rights which are a direct gift from God inherent to the nature of human beings as civilized beings. HAM is an implication of humanity of a person. Therefore, this right is inalienable, non-transferable, deprived or inviolable ; is also imprescriptible, can not be lost, disappeared, no matter how it has been eradicated or failed in its fulfillment. HAM is the inherent rights of human beings and reflects their dignity, so it must obtain legal guarantees. This is because the rights can only be effective if the right can be protected by law.¹

The law is basically a reflection of human rights, because when we discuss about whether or not fair law will be associated with human rights which is at the core of its guarantee. So the law is no longer seen as a mere reflection of power, but it must also radiate protection of the rights of citizens.²

The protection of children's human rights internationally has been considered very important given the child is in a weak position and easy human rights violations. The commitment to the protection of children increasingly finds momentum with the birth of several international provisions that govern the protection of children, namely Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in Armed Conflict; Minimum Age Convention, 1973 (No. 138); dan Worst Forms of Child Labour Convention, 1999 (No. 182).

In every international and national human rights instruments. One example that can be considered is when talking about the rights of children. Article 2 Paragraph 2 of the Convention on the Rights of the Child states: "States Parties shall take all appropriate measures to ensure that the child is protected against any form of discrimination or punishment based on the status, activities, opinions or beliefs of the child's parents , his legal guardian or a member of his family ".

The protection of human rights is widely disseminated in order to promote respect for and protection of human rights, as an important feature of a democratic constitutional state. The formation of a state and so is the exercise of the power of a state, should not diminish the meaning or meaning of freedom and human rights, therefore the protection and respect for human rights is a very important pillar in every country which is called a state law. If in a human rights state neglected or deliberately violated and the suffering it causes can not be dealt with fairly, the country concerned can not be called a huku state in the real sense.

¹Nadia Oktaviani Zulfa dkk, "Implementasi Diversi Sebagai Wujud Perlindungan Hak Anak" *JurnalGEMA*, Thn XXVII / 50 / Pebruari - Juli 2015, hlm.1809.

²*Ibid.*

One of the elements that must exist within the state of law and democracy, the protection of human rights includes the protection of the children we expect as the future determinants of the Indonesian nation and as future generations must get clear arrangements. This needs to be done, considering the human being as a creature of God Almighty is granted the right to guarantee the existence of dignity and dignity of his own dignity so that human rights are the basic rights that are naturally inherent in human beings, are universal and lasting. Therefore, human rights must be protected, respected, retained, and should not be ignored, diminished, or deprived by anyone. For the implementation of human rights protection it is necessary to have an arrangement in the basic law in Indonesia. In addition, as a member of the United Nations, the Indonesian people should take legal and moral responsibility to uphold and implement the Universal Declaration of Human Rights.

Constitutionally, Article 28B of the 1945 Constitution of the Republic of Indonesia has laid the foundation of Indonesian human rights protection including the protection of children's human rights. The consequences of the provisions of Article 28B of the 1945 Constitution of the State of the Republic of Indonesia need to be followed up by establishing government policies aimed at protecting the Child.

The aim of the juvenile justice in the perspective of human rights is the best interest for the child. The indictment and punishment is certainly a form of coaching, not just scaring especially if there is an element of revenge. In the effort to protect human rights in the juvenile court, the threat aspect, the indictment must be done in such a way that the child will not experience depression and deep psychological pressure.

Law Number 11 Year 2012 on the Child Criminal Justice System is established to protect children especially when in court. Specific protection models are also organized including the model of trial and the diversion model, but it continues to be a question of whether the model has reflected the protection of child rights that focuses on the best interests of the child. This is what must be considered continuously.

Law Number 11 Year 2012 on the Criminal Justice System of Children. Article 2 The Child Criminal Justice System shall be implemented on the basis of: (a) protection; (b) justice; (c) non-discrimination; (d) the best interests of the Child; (e) appreciation of the opinion of the Child; (f) the survival and growth of the Child; (g) Child coaching and mentoring; (h) proportional; (i) deprivation of independence and punishment as a last resort; and (j) avoidance of retaliation. Article 643 (1): Special protection for children in conflict with the law referred to in Article 59 includes children in conflict with the law and child victims of criminal acts, is the obligation and responsibility of the government and the community.

According to Jasa Putra, Commissioner of the Indonesian Child Protection Commission (KPAI), the issue of children in Indonesia is still high. In the past five years, said Jasa, more than 8,200 cases of children against the law occurred. There are physical and psychological violence experienced by anak.Laporan who entered into KPAI period 2011-2016, there are about 23,800 cases of children in nine clusters. There are three groups of the highest problem, namely children berurusandengan law, alternative child care, and education problems.³

Diversi is a renewal in the criminal justice system of children. Diversions that involve the transfer of the judicial process to public service assistance are usually conducted on a formal and informal basis within some legal systems. Such service practices need to be prioritized to avoid the negative consequences of juvenile justice administration, since the involvement of children in the judicial process is actually experiencing a stigmatization process. Thus, transfers are carried out at all levels of decision-makers at both the police, prosecutorial and court level levels.⁴

Diversi is first conducted at the investigator stage, in principle, the investigator must seek the conversion within a maximum of 7 (seven) days after the investigation begins. The above-mentioned diversion process shall be executed no later than 30 (thirty) days after the commencement of the diversion. In the event that the diversi- gration process reaches an agreement, the investigator submits the version of the diversion event and the diversion agreement to the District Court Chairperson for a determination. If the verdict fails, the investigator shall continue the investigation and delegation of the case to the Public Prosecutor. Furthermore, the Public Prosecutor shall attempt to have a maximum of 7 (seven) days after receiving the case file from the investigator and the above-mentioned version shall be executed no later than 30 (thirty) days. In the event that the diversion process reaches an agreement, the Public Prosecutor submits the version of the diversified event and the diversion agreement to the President of the District Court for determination. In the event of failure, the Public Prosecutor shall submit the proceedings of the diversi- sion and submit the case to court by enclosing the report of the results of the research of the society.

³Danang Firmanto KPAI: "Ada Lebih dari 8.200 Kasus Anak Berhadapan dengan Hukum", <https://nasional.tempo.co/read/893559/kpai-ada-lebih-dari-8-200-kasus-anak-berhadapan-dengan-hukum>, diakses pada 1 Nopember 2017.

⁴Dwidja Priyatno, *Wajah Hukum Pidana Asas dan Perkembangan*, (Bekasi : Grama Publishing, 2012), hlm.303

II. FORMULATION OF THE PROBLEM

What is the nature of the diversion of children in conflict with the law in the perspective of Child Rights, How is the implementation of the diversion of children in conflict with the law as in the perspective of Child Rights.

III. THEORETICAL FRAMEWORK

1. Theory of the State of Law (The Rule Of Law)

The idea of a state of law has emerged in varying forms in different legal systems. Historically, there are two very influential terms or concepts in the world relating to the law-based state idea, the concept of *rechtsstaat* that developed in Continental Europe (the nineteenth century) and the concept of rule of law developed in Anglo-Saxon countries. Both concepts relate to the typology of the state in terms of the relationship between the state (government) as the ruling party and the citizen as the controlled party.⁵

The concept of *rechtsstaat* based on the civil law system was born out of a long struggle against the absolutism of state power (*machtstaat*), whereas the concept of rule of law relies on a common law system which is a matter of deciding cases delegated to judges based on common custom of England. Although, between the concept of *rechtsstaat* and rule of law have different historical backgrounds, but basically both are concerned with the protection of the civil liberties of citizens' rights from the possibility of arbitrary acts of state power.⁶

The concept of a state of law adopted and applied in Indonesia is not purely to adopt the concept of legal state *rechtstaat* in countries that adhere to the civil law system, as well as the concept of rule of law in countries that adhere to common law law system, but adheres to and implements the concept of the rule of law which is adapted to the condition and the soul of the Indonesian nation that is the concept of Pancasila law state which historically was born not because of the resistance to the absolutism done by the ruler or king as the background of the emergence of *rechtstaat* and rule of law thought, but born because of the desire of the Indonesian nation to be free from shackles imperialism and colonialism committed by Dutch colonialism.

The concept of a state of law undergoes changes, in terms of time it turns out the concept of a legal state developing dynamic and not static.

according to Brian Z Tamanaha, the formal conception of the rule of law is aimed at the way in which the law is declared (by the authorities), the clarity of the norm and the temporal dimension of the enactment of the norm. The formal conception of a state of law is not directed to the settlement of legal judgments over the reality of the law itself, and it does not relate to whether the law is good or bad. While the substantive conception of the rule of law moves beyond that, it continues to recognize the above-mentioned formal attributes. The conception of a substantive law state wants to move farther than that. The basic rights or derivation is to be essentially a concept of a substantive state law. The concept serves as a foundation which is then used to distinguish between good laws that fulfill these basic rights and bad laws that ignore basic rights. The formal concept of a state law focuses on the appropriateness of the source of the law and its legal form while the substantive concept also includes the requirements on the content of the legal norm.⁷

2. Theory of Justice

Justice is one of the most studied topics in philosophy. Natural law theories that prioritize the search for justice from Socrates to Francois Geny retain justice as the crown of the law. The question of justice is an interesting issue to examine more deeply because of the many things involved in it, both with morality, the state system, and social life. Justice has been a serious subject since the beginning of Greek philosophy. Even in Islam, justice gets the most important part of the study among the other studies. Islam as a religion is expected to play its role in upholding justice and developing ethics of justice.

According to John Rawls, justice is a value that embodies a balance between the parts in the union between personal goals and common goals. Thanks to justice, the stability of everyone's life and society is guaranteed. The values of justice referred to are where those who first experience a better life (strong socioeconomic position) are obliged to set aside some of their wealth, energy and mind to help the less

⁵A. Mukthie Fadjar, *Reformasi Konstitusi dalam Masa Transisi Paradigmatik*, (Malang : Bayu Media dan In-TRANS, 2003), hlm. 8-9.

⁶*Ibid.*, hlm. 8-9.

⁷*Ibid.*

fortunate. The obligation here is not as mercy but is the fruit of mutual interest to create and ensure the uprightness of justice in society.⁸

To realize the values of justice in question, then according to John Rawls, that one must return to his original position, a position in which everyone is equal in his natural position. There are no structural barriers that distinguish one human from the other. This position is actually just a fiction, but it is needed so that everyone can understand the values of justice built not contaminated with dishonest elements. The values of justice resulting from an honest process are called justice as fairness. Justice that emerges from the depths of the deepest human heart is what we often call the term "sense of community justice"

Based on that original position, John Rawls, formulates two principles of justice that is the equal principle (equal equal) that everyone has equal rights over the basic freedom to achieve the welfare of life and the principle of difference (the different principle) ie social and economic inequality should be arranged in such a so that the inequality benefits those less fortunate. Based on the above concept, justice requires the distribution of social benefits and sanctions for the parties involved, justice requires legitimate power to mediate the contradictions to implement the social benefits, justice requires equality and balance; and justice must be done with respect to the rights that should be accepted by others especially when there is a problem (conflict).

IV. DISCUSSION

A.The Nature of Diversity in Children in Conflict with the Law in the Perspective on the Rights of the Child.

Freedom is the right of every citizen and guaranteed by law. In the first paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia affirms that: that independence is the right of all nations and, therefore, the occupation of Indonesia must be abolished because it is incompatible with humanity fairies and fairies. Detention is a limitation or deprivation of liberty over a suspected offender but the suspect also still has Human Rights to be respected. Detention allows the suspect to be deprived of his / her right of freedom to undergo the usual activities.

In the world of practice of detention it becomes an opportunity for law enforcement officers to blackmail the suspect if the suspect wishes not to be detained. This happens because there is no openness from the law enforcement officers to the suspect in connection with the terms of detention whether it is enough to prove that the alleged offender of the crime must be detained or not to be detained. Often the perpetrator of a crime does not know whether his or her actions are worthy of detention at that time after he or she is designated as a suspect whereas the provisions of the Criminal Procedure Code stipulate that the suspect may be detained if they meet subjective and objective requirements so that such matters create legal uncertainty for the suspect. The absence of legal certainty for the suspect to make his human rights was lost.

Basically everyone who has become a suspect, the investigator can make a detention for the purposes of the examination, with the intention that the suspect did not run away, eliminate evidence or repeat his actions. However, it should be noted wisely that bad boys are not the same as bad people (adult perpetrators) where most people or society, equate the bad boy just like a bad adult, or adult criminals.

Within the juvenile criminal justice system prevailing in Indonesia, naughty children may be subject to criminal sanctions, although it is not the same as criminal sanctions imposed on adult criminals. The child may be sentenced to half the criminal penalty of an adult, if convicted and convinced to have committed a lawfully prohibited act. This means that based on the rule of law of this country, it is not impossible children can be held legally accountable for the misbehavior that he did. It must be understood, however, that bad boys commit naughty deeds, as a result of the imbalance of their social environment. It should be emphasized that children become naughty, as a result of their social environment imbalance. Imbalances in social environments such as, lack of family attention, the environment, particularly government are examples of unbalanced social environment. This is then the main factor of children doing deviant behavior. In addition, the state of immature thinking and unstable souls, also greatly affect children in acting. Thus, it can be ascertained when the social environment is "wrong" or unbalanced, the behavior of children will certainly follow. Children become naughty.

In the Child Protection Act, has given special treatment to children who commit a crime. This is because the nature of the child and his psychological state in some cases requires special treatment and special protection, especially against acts that can substantially harm the mental and physical development of the child.

Article 32 of UUSPPA regulates as follows:

1. The detention of a child shall not be exercised in the event that a child obtains a guarantee from a parent / guardian / or institution that the child will not escape, will not remove or damage the evidence, and / or will not repeat the offense.
2. Detention of a child may only be made under the following conditions:

⁸ John Rawls, *Teori Keadilan*, (Yogyakarta: Pustaka Pelajar, 2006), hlm. 6.

- a. Children are 14 (fourteen) years of age or older
- b. Suspected of committing a crime with imprisonment of 7 (seven) years or more
3. The terms of detention as referred to in paragraph (2) shall be expressly stated in the detention order
4. As long as the child is detained, the physical, spiritual, and social needs of the child must remain fulfilled.
5. To protect child safety, child placement can be done in LPKS.

Under the provisions of UUSPPA known detention of children at the stage of investigation only for 7 (seven) days. The period of detention may be extended for a maximum of 8 (eight) days. However, this law is not sufficiently regulated if the investigator insists on detention despite the existence of a guarantee against the child as required in Article 32 paragraph (1) of UUSPPA. The duration of detention for children shall be filed by the respective agencies in each stage of the investigation, prosecution and examination in the courtroom as well as in the stage of remedies ranging from appeals to appeals. The essence of the barrier itself is temporary physical restraint of a child based on a court decision or during a child in the criminal justice process. Under UUSPPA, special protection begins by providing special treatment during detention, which is to separate detention of children from adults. In addition, the reinforcement is done by a separate section separated from the adult section. This is intended to avoid the child against the adverse effects of other more mature prisoners because of the mental and psychological state of children who easily imitate adult behavior.

Other protections were also apparent at the time of the investigation and trial. The hearing was closed because it was intended to create a calm atmosphere and full of kinship so that the child can express his right to give his testimony in the events he did openly and honestly during the trial run. In addition, the use of abbreviations of the name of the child, parent, guardian or foster parents meant that the identity of the child and his family does not become general news that would be more pressing feelings and mental disorders of children. The hearing on the case of the child as the perpetrator of the crime itself has limited time, so the judge who examines and decides the child's case uses a single judge, because by using a single judge, the matter will be settled smoothly and the judgment will be better and more appropriate. A child's judge may follow the progress of a child who is serving his or her crime, so that you may appropriately take his or her determination to apply for parole.

In dealing with children, punishment can not merely look at the concept of restorative justice from a single point of view to bring victims and perpetrators to solve problems, but must ensure that the child's interests are the main reference. In the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJ) or The Beijing Rules, it is stated that every competent authority has the power to discontinue the judicial process at every stage and opportunity given, the main point of view is the best interests for the child. Referring to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), UN Resolution 40/33 of 29 November 1985, in Paragraph 11.1 authorizing law enforcement authorities to as much as possible to handle child law cases without going through court. The granting of this authority aims to divert the child's case to an off-court lane, the main purpose of Diversi should be to protect the child from severe punishment and the negative effects of the formal court lane. In other words, the primary purpose and focus of diversion should be the child's interest by avoiding the child from formal court proceedings.

Based on the results of the research that during the criminal justice process in Indonesia, the majority of children are held in detention centers or penitentiaries for 2-3 months. The number of defendants sentenced to imprisonment is about 90%. Fostering children in prisons is less than optimal because of short term penalty. The judicial process does not provide a sense of justice for children. Normatively, the legal system in Indonesia has not been child-friendly and the welfare system has not been integrated. Structure and law enforcement apparatus also have no equation of perception to handling of naughty child so that need to increase human resource capacity. So also the availability of facilities and infrastructure should still be improved. People's views and behavior are many who still interpret the criminal as an act that must be punitive and retributive. The general condition of child offenders in Jakarta shows that detention is still an option for officers in the process of a child crime case, with the highest priority of detention in the State Detention Center (Rutan). The percentage of detention of child offenders in Jakarta reached 97% (112 cases), compared to 3% (3 cases) of non-detained offenders. Of the 112 cases, only 1 was determined to be a city prisoner.

Detention of children has generally begun since the child's legal process at the investigation level, and continues until the verdict. Thus, the length of the detention period is long, the average approaching the maximum period at all examination levels. This study shows that children are generally held within 61 to 90 days in 67 cases (60% of cases), followed by time span of 31 s / d 60 days with 37 cases (33%). In fact, 4 cases of which exceed the normal detention time as determined by the law of child protection.(UUSPP).

The criminal justice process and the deprivation of children's liberty are de facto reducing the rights of the child and adversely affecting the future development of children. So psycho-social imprisonment to a child does not just redeem the crime but also robs the child's right.

With regard to the protection of the human rights of children, the basic concept of human rights is all human rights because of being born human, the existence of human rights is not determined by the positive law of a country but because of its humanitarian status. It means that human rights for human beings are not limited by race, religion, citizen, gender, and other differences. The conception of human rights is a manifestation of the philosophy of natural law that developed in the Middle Ages.

According Moch Faisal Salam, child protection is an attempt to establish conditions and situations that enable the implementation of rights and obligations of children are humanly positive which is also the realization of the existence of justice in a society. Thus the protection of the child should be sought in various areas of life and state life, society and family based on law, for the right treatment, justice and welfare of children.⁹

Talking about diversions, the most heavily referenced legal instrument is the Convention on the Rights of the Child (CRC). It is stipulated in Article 37 of this international treaty that "No child shall be deprived of her or his liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort of the shortest and appropriate period of time ". Ratified Indonesia through Presidential Decree no. 36 of 1990, article 40.1 The CRC essentially states that children with legal problems are respected for their rights and dignity and for the treatment of children to be made in view of the child's age and social reintegration of the child. In accordance with article 40.3 CRC, Indonesia should make efforts to introduce the diversion of juvenile offenders and ensure that the effort is in conformity with the minimum standards. International human rights instruments as UN standards and norms can serve as a useful tool for promoting respect and promotion of human rights, enhancing the performance of the criminal justice system, and protecting people. Not only that, the instrument can serve as a foundation for developing measurable parameters related to fair play and the effectiveness of the operation of the national criminal justice system from an international perspective.

In the framework of respect, protection, enforcement, promotion and fulfillment of Human Rights Indonesia has a commitment to ratify the Convention on the Rights of the Child (CRC) with the issuance of Presidential Decree no. 36/1990. The consequences of such ratification include:

1. to socialize the Presidential Decree to the related parties;
2. be a guide in the establishment of the rule of the national law;
3. and submit periodic reports to the UN Human Rights Council on the development of children's rights in Indonesia.

Compared to other international instruments, the CRC is a leading legal instrument in relation to the juvenile criminal justice system, since it is legally and politically binding and widely applicable to all UN members (193 countries have ratified the United States and Somalia). It can be widely applied because of its unique characteristics where CRC is the result of a consensus of all societies that almost all countries in the world ratify the CRC, covering a wide range of rights including law, social, culture, civil and human rights. This is a new representation of a broad approach to the rights of children. Thus, children are not only acknowledged solely as objects of protection, but children as citizenship for children through the granting of the right to participation in any decisions that affect their lives (Article 12 of the CRC).

There are 4 relevant CRC principles to implement the practice of the criminal justice system:

1. The best interest for the child, as a primary consideration in any issue affecting the child (Article 3);
2. The principle of non-discrimination, regardless of race, color, sex, language, religion, political opinion or other opinion, nationality, ethnicity or social origin, property, disability, birth or other status of a child or person old child (Article 2);
3. The right of the child to survival and growth (Article 6);
4. The right of the child to participation in any decisions that affect the child, in particular the opportunity to be heard in court and administrative proceedings affecting the child (Art. 12).

Based on the Convention on the Rights of the Child (CRC), the implementation of the juvenile justice process in confronting the law needs to consider four principles:

1. Non discrimination, which is fair and undifferentiated to all children;
2. The best interests of the child, namely to seek all decisions, activities and support of influential parties solely for the best interests of the child;
3. Prioritizing children's rights to life, survival and growth, ie activities designed to enhance the development of children based on their capabilities and developmental tasks
4. Respect the child's view, that is to pay attention and include the children's view in every process of discussion and decision making of each activity.

⁹Moch. Faisal Salam, *Hukum Acara Peradilan Anak di Indonesia*, (Bandung: Mandar Maju, 2005), hlm. 2

The main principle of implementation of the concept of diversion is persuasive action or non penal approach and provides an opportunity for a person to correct errors. The officer in carrying out the diversion shows the importance of obedience to the law and the rule to the child facing the law (the offender). Officers diversify in a persuasive approach and avoid arrests using violence and coercion, to divert a case from formal process to informal process. The transfer process is intended to provide protection against children in conflict with the law.

A. Implementation Of Diversity In Children In Conflict With Law In A Child's Human Rights Perspective.

In Indonesia police officers have discretionary authority, as set forth in Article 18 of Law no. 2 of 2002, which stipulates that for the public interest, the police officer in performing his duties and authorities may act in his or her own judgment. One of the authorities of this discretion is through the act of diversion and of course the act of diversion must not violate the rule of law. Under these provisions, police officers are given special powers (discretion) to make diversions that keep children in conflict with the law from the formal justice process, detention or imprisonment. This diversion program can be carried out in a variety of ways, including by placing children in conflict with the law under the supervision of certain social bodies to help the child solve the problems it faces. In particular, there is no provision of law in Indonesia that sets the standard of diversion measures for the implementation of child-handling conflicts with the law, but refers to the provisions contained in Article 18 of Law no. 2 Year 2002, then the handling of children in conflict with the law should not be done by following the formal criminal justice system. In other words that, in accordance with the authority it has, in the handling of children in conflict with the law, the police can be more free to take action in the form of diversion (diversion) outside of the formal criminal justice system.

A series of investigative actions should be made to file a case to be submitted to the prosecutor's office as a public prosecutor in court, but the criminal justice process for children facing the law should be distinguished from general criminal justice process due to the inadequate psychological condition of children and the need for protection from the government.

The implementation of diversion at the level of investigation has been regulated in Law No. 2 of 2002 on the Indonesian National Police formulating the authority of the Police discretion, this authority is the procurement of other acts under responsible law, and in TR Kabareskrim no. 1124 / XI / 2006 Concerning Guidelines for the Implementation of Diversi for the Police which affirmed a transfer of the settlement form from the settlement of a formal criminal process to alternative settlement in another form judged to be best in the interest of the child.

The diversion scheme at the investigation level can be seen in the figure below:



Based on the above data, the results showed that in four Polres research sites, out of 452 cases related to children in conflict with the law, Bulukumba District Police had the most cases in conflict with the law, following Polres Palopo, Polrestabas Makassar and the last Bone Polres. While the settlement of cases through diversi then Polres Bone the highest percentage.

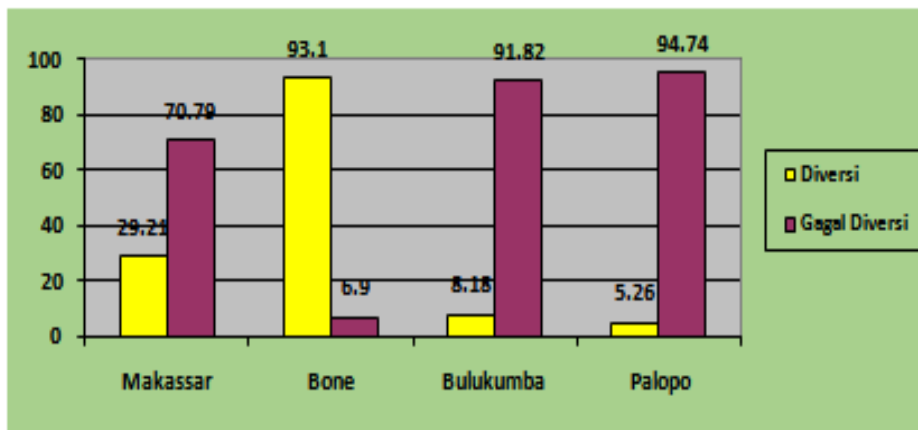
Implementation of Diversity in Police Year 2015-2017

No.	Year	Research sites							
		Makassar		Bone		Bulukumba		Palopo	
		amount	Diversi	amount	Diversi	amount	Diversi	amount	Diversi
1.	2015	31	12	5	4	84	9	41	3
2.	2016	17	11	10	9	75	9	32	3
3.	2017	41	3	14	14	61	-	41	-
Jumlah		89	26	29	27	220	18	114	6

Source: Primary data processed, 2018

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Furthermore, the percentage depiction can be seen in the diagram below:
Percentage of Diversity and Failure of Diversity in the Police Year 2015-2017

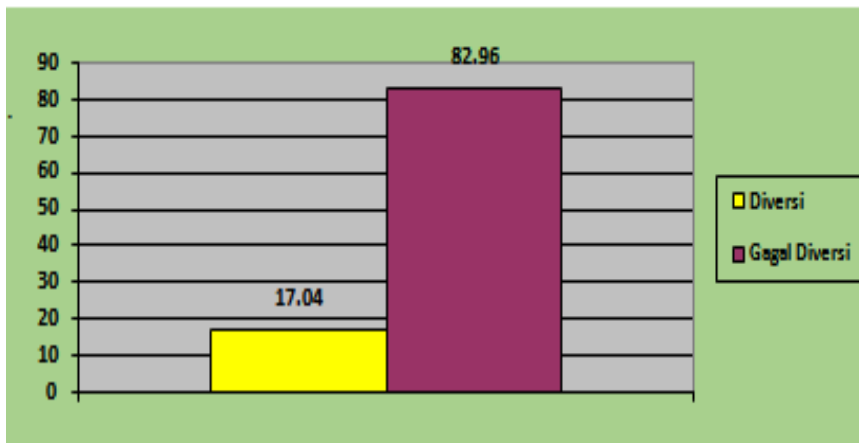


Source: Primary data processed, 2018

Based on the diagram above shows that Polres Bone is the Polres with the most percentage level in the implementation of the diversion of 93.10%, then Polrestabes Makassar by 29.21%, Bulukumba Resort Police by 8.18% and Palopo Resort Police by 5.26%.

In general, the percentage description of the implementation of diversion in four research sites can be seen in the diagram below:

Percentage of General Diversies in the PoliceYear 2015-2017



. Source: Primary data processed, 2018

According to the data in the diagram above shows that most (82.96%) cases of children in conflict with the law are formally resolved. This indicates that the potential for the protection of children's rights is neglected because the settlement is mostly done formally (legal process). Although the settlement of cases of children in conflict with the law is formally resolved, the police are still trying to pay attention to the rights of children in conflict with the law, as stated by Rosmina, Kanit PPA Bulukumba Police that in handling cases of child crime, must prioritize the approach restoration justice, as this is a mandate of the Convention on the Rights of the Child that has been ratified by the Government, Law no. 39 of 1999 on Human Rights, Law no. 3 of 1997 on Juvenile Justice and Law no. 23 of 2003 on Child Protection. Therefore, all these regulations are the juridical basis for the handling of child crime cases in the PPA Unit. If the handling of cases of child crime is done with a justice approach retributif, it will have a negative impact on the child, because the child will be in prison, so it must be separated from parents, family and community, cut off school, and even lost the opportunity to play with peers, this is a basic right of every child (interview, April 27, 2018).

V. CONCLUSION

1. The nature of the diversion of children in conflict with the law is to provide guarantees for the protection of human rights and welfare to children who are in conflict with the law.
2. The divergence of the Police, State Attorney and District Court has not yet guaranteed the protection of human rights to children in conflict with the law.

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