

International Journal of Judicial Law

Legal protection of juvenile offenders during investigation in katingan subregional police

Rigen Pandehen Rawung ^{1*}, Diana Haiti ², Ahmad Syaafi ³

Students Law Masters Program, Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

Lecturer Faculty of Law, Lambung Mangkurat University, Banjarmasin, Indonesia

* Corresponding Author: **Deny**

Article Info

ISSN (online): 2583-6536

Volume: 02

Issue: 01

January-February 2023

Received: 02-01-2023;

Accepted: 19-02-2023

Page No: 23-29

Abstract

The limitations of the child's abilities are unstable and not as impeccable as adult people in discovering their identity, as well as their situations that exist outside the child. Those situation are frequently the cause of a child committing a crime. The protection of children is a foundation of the Juvenile Justice System because prison is not a place for the children. The necessity of children is education and direction. This research aims to analyze the legal protection of children offenders during the Investigation in the Katingan Subregional Police.

This research type is empirical legal research and field research, conducted on the actual situation using primary data in the form of interviews and document studies.

The result of the research proves that legal protection for children in the investigation process at the Katingan Subregional Police is based on the theory of legal protection, and the theory of punishment through diversion given based on restorative justice has been fulfilled. However, some rights have not been fully accomplished in implementation process. The children's rights are the right to be promptly investigated, the right to be separated from adult detainees, the right to receive consideration and/or advice from a social advisor, the right to acquire legal assistance, and the right to deliver the information freely.

Keywords: Legal Protection, Child, Offender, Criminal offence, Investigation

Introduction

Children are one of the human resources that have the potential as the successor of the nation's ideals in the future. Children need guidance and protection to maintain balanced physical, mental, and social growth development. (Primasari, 2022) ^[10] Childhood is an essential phase since it is a period of identity formation, personality, and character development. After going through childhood, in the future, someone will have the strength and ability to stand firm in pursuing life. (Maidin, 2008) ^[6]

Child is an integral part of the development of the nation and state. On the Constitution of the Republic Indonesia, child has a strategic role that affirmly stated on the Article 28B The 1945 Constitution of the Republic of Indonesia stated that "Every child shall be entitled to viability, to grow up, and to develop as well as be entitled for protection against violence and discrimination". Therefore, children's best interests must be considered as human survival's most significant interest (Hidayat, 2010) ^[7]. Thus, continual protection and guidance are necessary for life sustainability, growth, mental, physical and social development. (Arifin, 2007) ^[4]

Children will go through various phases or stages during their lives. Teenager/adolescence is one of the stages that they will go through. This phase is a transition into the adulthood.

During their teenage phase, they portray potentially anti-social behavior accompanied by a potential anti-social behavior and emotional turmoil and distress that makes teenager lose control of themselves. If they are unable to handle their emotion, it will turn into boomerang for themselves if not taken care without proper guidance and direction. Then child delinquency will be behavior that leads to criminal acts. (Sutedjo, 2008) ^[15]

Several factors create unlawful acts committed by children. Such as, due to the negative impact of rapid development growth, globalization in communication and information, advancement in science and technology, and adjustment in style or way of life.

Some elderly have brought fundamental social changes in people's lives, which significantly impact children's values and behavior. Beside of that, children who do not receive love, affection, guidance, and encouragement in developing their attitudes, behavior, and self-adjustment are probably dragged into unhealthy social interaction and detrimental to personal development. (Rondonuwu, 2015) ^[12]

The limitations of the child's abilities are unstable and not as impeccable as adult people in discovering their identity, as well as their situations that exist outside the child. Those situation are frequently the cause of a child committing a crime.

Law enforcement issues must be thoroughly examined when imposing criminal punishment on juveniles. Children's action is not only delinquency but may also lead to actions that violate norms, ethics and public order and therefore be classified as criminal crimes.

The handling of criminal acts in law enforcement cannot be detached from law reform and development because law enforcement is a subsystem of the entire national criminal law enforcement system or policy. Essentially, penal policy, whether *in abstracto* or *in concreto* is part of the overall policy of the national law enforcement system and is part of efforts to support national development policy. To create juvenile justice system policies, it is necessary to pay attention to the existing signs from all national development policies. (Sambas, 2010) ^[13]

The criminal justice system must protect the rights of children. The legal procedure for child defendants must be handled differently from the legal process for adult defendants. Therefore, the early procedure of dealing with criminal crimes performed by children at the investigation stage significantly impacts on the child's future. It is essential to strive for diversion treatment based on a restorative justice approach. This condition is in accordance with Juvenile Justice System Law in order to protect the child's dignity. Children have the right to receive special protection, especially legal protection as a method of ensuring the welfare of children offenders. (Mulyadi, 2014) ^[9]

A fair Juvenile Justice must provide protection of children as suspects, defendants or convicts. Protecting children is a foundation of the Juvenile Justice System because prison is not an environment for children. The necessity of children is education and direction. Imprisonment of children is killing their future. Labeling or stigmatizing of children as a prisoner will punish them for life and become a record of bureaucracy. (Supeno, 2010) ^[14]

In legal protection framework, handling children as offenders of criminal acts cases cannot be detached from legal provisions with a comprehensive series of investigations. A child protection component is the investigation that begins from the police, public prosecution, courts and, correctional institutions. As regulated in Article 3 of Law No. 4 of 1979 Concerning Child Welfare, stipulates that children have the right to be the first to receive help, assistance and, protection in a harmful situation.

To prevent and deal with cases of child crime, referring to Law No. 11 of 2012 Concerning the Juvenile Justice Systems with a restorative justice approach, which is carried by the diversion or transfer of child case settlement from the criminal justice process through the outside criminal justice. Restorative justice is a method of resolving cases involving perpetrators, victims, and other related parties to achieve an agreement on settlement and recovery. In practice, diversion

can be implemented whether through judicial process or outside the judicial process.

Restorative justice is a way of thinking that reacts to the development of the criminal justice system by underlining the need for the involvement of victims, perpetrators, and the community who feel excluded from the mechanisms that work in the current criminal justice system. (Syaufi, 2023) ^[16]

In the case of children as perpetrators of criminal acts, priority is given to a process outside the judiciary. This procedure called as diversion which aims to protect the children's right as stated in the the 1945 Constitution.

Diversion is a step of collective deliberation by the perpetrator and the victim. However, in various cases of child crime settlements, there are still many problems that have not been able to offer protection for children's rights.

Referring to quantitative and qualitative data, there are various crimes committed by children and it is on the rise. In the analysis and evaluation report of Kamtibmas Legal Jurisdiction Katingan Subregional Police in 2020, based on the age category, adolescents committed 60 criminal cases aged 14 to 20 years (Central Kalimantan Regional Police, 2010). In 2021, it increased to 112 cases (Central Kalimantan Regional Police, 2021). In 2022 around 80 cases of crimes (Central Kalimantan Regional Police, 2022). Based on the data on the children in conflict with the law handled in the case settlement period in 2022, there were 15 children as victims of violence and 28 children as perpetrators in handling child cases at the Central Kalimantan Regional Police, with only 1 case successfully diverted. (Indonesia, 2020)

According to the data on handling cases of minors as perpetrators at the investigation level at the Central Kalimantan Regional Police, only several cases that have diversified. In reality, if based on the legal regulations, dealing with juvenile offenders prioritizes children's rights at each investigation stage. Based on the observations, contradictions discovered in the process of investigating juvenile offenses in the form of inadequate treatment, particular facilities of investigation for children are not provided, child are placed among the adult suspects.

The duration of judicial process at the Police office indicates the suffering of the children. The process during judicial process will remain and complicated to disregard. This is clearly contradictory with Law No 35 of 2014 on the Amendment of the Law No 23 of 2002 on Child Protection and The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), and Law No. 39 of 1999 concerning Human Rights. In the handling of investigation on child cases process, hopefully, police use diversion rather than continuing the legal process. Based on the description above, the authors are interested in conducting research through legal protection for child offenders in the Investigation process at Katingan Subregional Police.

2. Research Methodology

The type of research used is empirical legal research or field research (Ali, 2015) research carried out on the actual or the real situation that occurred in the form of handling cases of criminal acts committed by children in the process of investigation in the legal jurisdiction Katingan Subregional Police. After the required data is collected, the next step is problem-identification, and the final step is problem-solution. The source of data is primary data, namely data obtained

directly from respondents or informants in the field based on the results of interviews and document studies (Adi, 2004) related to the implementation of the process of investigating children who commit crimes in the jurisdiction of Polres Katingan.

3. Result of Research and Discussion

Child protection aims to guarantee children and their right to grow and protect them from all types of violence and discrimination. Protection of children not only focus on children as victims or witnesses, but also on children in conflict with the law or children as criminals.

As pointed out in Article 1 paragraph (1) of Law No. 11 of 2012 Concerning the Juvenile Justice System states that the juvenile justice system is the entire process of resolving cases involving children in conflict with the law, from the investigation stage to the guidance and supervision stage after serving a sentence.

Based on an interview with the Subregional Police Katingan regarding the handling cases of children as perpetrators of criminal acts, as stated by Faradhita Yuli Astisa as Banit PPA Satreskrim Polres Katingan on Wednesday, 29 March 2023, that children as suspects in criminal acts still have the right to obtain legal protection, children's rights are considered in every aspect of the investigation process.

In terms of legal protection for children, especially in the investigation process, when a child is in a position as a suspect based on a statutory inventory. The child has the right to be investigated immediately, the right to be separated from adult detainees, the investigator to inquire consideration and/or advice from a social advisor, the right to receive legal protection, the right to deliver the information freely, and a confidential investigation.

Based on the points in the legal protection of child perpetrators of criminal acts, from practical arrangements related to the fulfillment of children's rights in the investigation process in Katingan Subregional Police, as follows:

a. The Right to Be Promptly Investigated

The efforts to fulfill children's rights at the investigation stage, which is the rights to be examined immediately in a family environment (Analiansyah, 2015) ^[11] as stipulated in Law No. 8 of 1981 Concerning the Criminal Procedure Code, Article 50 paragraph (1) which explained that a suspect shall have the right to be examined promptly by an investigator and thereafter to have his case referred to the public prosecutor. This is accordance with the provisions of Law No. 11 of 2012 Concerning the Juvenile Justice System which is an effort to accelerate the handling stated in Article 31 paragraph (1) that in conducting an investigation, the investigator shall coordinate with the public prosecutor. On paragraph (2) explained that the coordination must be carried out within a maximum of 1 X 24 hours since the investigation begin.

Based on the result of the interview and sources of documentation, it is known that not all cases are handled immediately and coordinated with the prosecutor after the report is received within 1 X 24 hours. For example, in handling cases on police reports of LP/B/61/V/2022/SPKT/POLRES KATINGAN/POLDA KALTENG, 24 May 2022. According to the interview and documentation sources, the due of the procedure is because of administrative problems. Meanwhile, the resolution must be implemented as fast as possible. Because of this situation,

the children's right to promptly investigate not optimally implemented.

b. The Investigator must ask consideration or advice from the social advisor

Considerations and suggestions from community counselors are a form of legal compliance. The legal compliance in the form of protection to ensure that children are treated properly during the procedure.

In Article 27 paragraph (1) and (2) of Law No. 11 of 2012 concerning the Juvenile Justice System stated that in investigating into a juvenile case, the investigator is required to seek advice or recommendations from a Social Guidance Officer after the criminal act is reported. In addition, Article 2 stated that if deemed necessary, the investigator may seek advice or recommendations from education experts, psychologists, psychiatrists, religious figures, professional social workers or social welfare workers, and other experts.

Article 28 states that the results of community research must be submit by the Probation Officer to the Investigator within a maximum of 3 x 24 hours after receiving the investigator's request.

In practice, suspects rights and the obligation of the investigator to inquire consideration and advice from community counselors in handling cases are constantly attempted to be fulfill, as the report of LP/B/61/V/2022/SPKT/POLRES KATINGAN/ POLDA KALTENG, on 24 May 2022, which contains evidence of Command Letter (*Surat Perintah*) No. W17.PAS.PAS-14.PK.01.04- on 30 May 2022 regarding the assistance in the process of investigation for ABH (client) under the request of Kapolres Katingan No: B/1457/V/RES.1.6/2022/Reskrim, on 25 May 2022. However, the investigator faced difficulty coordinating with the Correctional Facility (*Balai Pemasyarakatan/BAPAS*) on some cases. The difficulty arise because of the office located in Palangka Raya which not every s a result, not all children's rights to receive assistance from social workers are fulfilled, as in the case mentioned on LP/B/21/V/2023/SPKT/POLRES KATINGAN/ POLDA KALTENG on 20 January 2023.

c. The right to detained separates from the adult detainees

An essential aspect of the investigation process is when children force to be detained in some cell with the adult. According to Article 3, one of the child's rights separated from the adult and place on the distinctive cell referred to Article 33 paragraphs (1), (2), (3), (4), and (5) Law No. 11 of 2012 Concerning the Juvenile Justice System. It states that the detention for the purpose of investigation shall not exceed 7 (seven) days and can be extended by the prosecutor for a maximum of 8 (eight) days. When the period mentioned on paragraph 1 and 2 has expired, the child shall be released by law. Furthermore, paragraph (4) mentions that detention is carried out in *Lembaga Penempatan Anak Sementara/ LPAS* (Temporary Placement Institution for Children) if it is not available, detention can be carried out in *Lembaga Penyelenggaraan Kesejahteraan Sosial/ LPKS* (Social Welfare Service Provider Institution).

Suspension of child detention practically be request at the Katingan Subregional Police by the guardian. It is important to consider when the child is still a student or another factor unless the children under supervision. A monitoring mechanism is still still has to be reported. The parent and the

chairperson of the surrounding environment can report the monitoring mechanism. According to Hendro, as the *Kanit IV PPA Satreskrim Polres Katingan* (Head Unit IV of the Protection of Women and Children Criminal Investigation of Katingan Subregional Police), in the cases where children force to be detained for investigation, children should be detained in a separate cell from the adult. However, this situation is still limited, so sometimes, children are forced to be placed with adults. So, actualization children's rights not to be detained on the same cell as adults still require concern.

d. The Right to Acquire Legal Assistance

Normatively, children's right to receive legal assistance in criminal justice system is in Article 23 Paragraph (1) of Law No. 11 of 2012 Concerning the Juvenile Justice System. This regulation contained that in every level of investigation, the child must be provided with legal assistance and accompanied by a Community Guidance Officers (CGOs) or other accompanying personnel in accordance with the provisions of the legislation.

Practically, the fulfillment of the children's right who commit crimes to obtain legal assistance in the Investigation process at the Polres Katingan from the Investigation Reports documentation in each case, most children are not accompanied by legal advisors. Furthermore, some refuse to be accompanied by a legal advisor, as already pointed out by the investigator. Thus, in terms of fulfilling the child's right to obtain legal assistance, it has been made as regulated in normative legal instruments.

e. The Right to Deliver the Information Freely

Article 52 of the Criminal Procedure Code contains the right to deliver information freely. A suspect has the right to freely deliver the information to the investigator in investigation or judges in trial stage. The distinction between the provisions in Article 52 of the Criminal Procedure Code and the criminal cases from the author's research is whether, during the execution of this examination the suspect was under pressure from investigators.

In order to see the fulfillment of the suspect's rights in giving information freely or not under pressure from the investigator or suggestion from others, the researchers try to compare and explore this aspect through the suspect's investigation to find the variety or direction of questions of the investigator.

Refer to the case LP/B/61/V/2022/SPKT/POLRES KATINGAN/ POLDA KALTENG, it was found that there were more productive questions, namely the form of questions that led to revealing evidentiary value rather than unproductive questions in Police Investigation Report (*BAP/Berita Acara Pemeriksaan*). This indicates that the investigators have implemented the correct investigation procedures. Nevertheless, violations against the children's right during the investigation can be seen in the questions deliver by investigators to the suspect. The violations include offering opinions, suggestions, cornering the suspect and offer complex questions (Bachari, 2018)^[5] as found in the form of suggestive questions on Police Investigation Report number 14:

Do you know that your actions to beat up the victim with other suspects are resulting in pain or injury to the victim?

This form of a question is a question that suggests an answer in the question posed to the suspect. This type of question is

classified as an unproductive question because the information is not obtained voluntarily from the suspect and does not come initially from the suspect's confession but from the investigator. (Bachari, 2018)^[5]

This form of a question is a question that suggests an answer to the question posed to the suspect. This type of question is classified as an unproductive question because the information is not obtained voluntarily from the suspect and does not come initially from the suspect's confession but from the investigator.

Thus, based on fulfilling the rights aspects at the Investigation level, it is also based on Restorative Justice. The settlement of criminal cases involves the perpetrator, victim, family of the perpetrator/victim, and other related parties to find resolution by emphasizing restoration to its original state, and not retaliation through a diversion mechanism, namely the transfer of settlement of child cases from the criminal justice process into the process outside the criminal justice system as mandated in Law No. 11 of 2012 Concerning the Juvenile Justice System.

The application of the diversion process at the Investigation stage is guided by Law No. 11 of 2012 Concerning the Juvenile Justice System, Government Regulation No. 65 of 2015 Concerning Guidelines for the Implementation of Diversion and Handling of Children Not Aget 12 (Twelve) Years Old and also Regulation of the Chief of the Indonesian National Police No. 1 of 2012 Concerning the Implementation of the Standards of the Working Procedures on Handling Cases of Children in the Environment of the Indonesian National Police.

Based on the interview, it stated that the diversion at the investigation stage is always made with consideration when the child is still a student. Both parties have an agreement and a guarantee from the suspect's family. Meanwhile, the inhibiting factors for the diversion usually occur because there is no agreement between the parties, and the child is a recidivist.

Based on the process of implementing criminal justice for children from the investigation until supervision, generally, the protection can not only be resolved through the judicial process but also can be resolved through the criminal justice process or known as diversion. The diversion process involves perpetrators, victims, families of perpetrators/victims, and related parties to seek a fair solution by emphasizing restoration to its original state and not retaliation which is known as a restorative justice approach. (Wahyudhi, 2015)^[17]

Diversion, as defined in Article 1 paragraph (7) of the Juvenile Justice System Law, is shifting juvenile cases from the criminal justice process to a process outside the criminal justice system. Diversion, as defined in Article 1 paragraph (7) of the Juvenile Justice System Law, is shifting juvenile cases from the criminal justice process to a process outside the criminal justice system. Diversion can be implemented at the investigation, prosecution, and examination stage of child cases at the District Court. The obligation to pursue diversion can be accomplish when the crime committed is punishable by imprisonment for under 7 (seven) years and is not a repetition of the crime. So, the child who commits the abuse will be legally processed, but in the case of a child who commits a crime, each legal process differs from the adult criminal case. The legal process for perpetrators of criminal acts who are still minors must prioritize aspects of protecting the rights of these children.

Based on research from the document Archive of Handling Cases of Children in Conflict with the Law on Period 2020 to March 2023 at the Criminal Investigation Unit under the Katingan District Police, 10 cases handle at the Polres Katingan for the period 2020 to 2023. However, only 2 cases were successfully handled through diversion. Based on this situation, researchers try to analyze the aspects that cause diversion can not be attempted at the investigation stage, such as:

1. LP/L/02/I/RES.1.8./2020/KALTENG/RES KATINGAN/SEK KATINGAN KUALA, 23.30 WIB, 24 January 2020, a theft crime commtted by a 16-years-old child. The case was completed during the Investigation and transferred to the Public prosecutor. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
2. LP/P/02/I/RES.1.8./2020/POLDA KALTENG/RES KATINGAN/SEK KAT. TENGAH, 19 January 2020, 05.30 WIB. a theft crime commtted by a 15-years-old child. The case is completed during the investigation and transferred to the Public prosecutor. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
3. LP/55/VI/2021/SPKT/POLRES KATINGAN/POLDA KALTENG, 29 June 2021, 05.00 WIB, a theft crime commtted by a 16 years and 10 months years old child. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
4. LP/B/09/IX/2021/SPKT/POLSEK S.MANTIKEI/POLRES KATINGAN/POLDA KALTENG, 23 September 2021, 22.30 WIB. The criminal act of rape against a minor committed by a juvenile offender aged 15 years old. The case is completed during the investigation and transferred to the Public prosecutor. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
5. LP/B/66/VII/2021/SPKT/POLRES KATINGAN/POLDA KALTENG, on 25 July 2021, 15.00 WIB. a theft crime commtted by a 15 years and 3 months years old child. The case is completed during the investigation and transferred to the Public prosecutor. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
6. LP/B/06/I/2022/SPKT/ POLRES KATINGAN/POLDA KALTENG, on 11 January 2022, 10.00 WIB. The criminal act of rape against a minor committed by a juvenile offender aged 16 years old. Diversion cannot be attempted because criminal acts committed by children are punishable by imprisonment for more than 7 years, namely with the threat of sexual intercourse with children underage Article 81 Paragraph (1) Law No. 17 of 2016 Concerning the Establishment of the Replacement of Law No. 1 of 2016 Concerning the second amendment to Law No. 23 of 2002 Concerning Child Protection. This is in accordance with the provisions in Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System stated that diversion can only be attempted for cases involving children with a potential penalty of less than 7 years and are not a repeat offense/recidivism.
7. LP/B/07/I/2022/SPKT/ POLRES KATINGAN/POLDA KALTENG, on 11 January 2022. The criminal act of rape against a minor committed by a juvenile offender aged 15 years old. Diversion cannot be attempted because criminal acts committed by children are punishable by imprisonment for more than 7 years, namely with the threat of sexual intercourse with children underage Article 81 Paragraph (1) Law No. 17 of 2016 Concerning the Establishment of the Replacement of Law No. 1 of 2016 Concerning the second amendment to Law No. 23 of 2002 Concerning Child Protection. This is in accordance with the provisions in Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System stated that diversion can only be attempted for cases involving children with a potential penalty of less than 7 years and are not a repeat offense/recidivism.
8. LP/B/ 61 /V/2022/SPKT/POLRES KATINGAN/POLDA KALTENG, on 24 May 2022, 01.00 WIB. The criminal act of minor assault under Article 351 paragraph 2 of Penal Code committed by a juvenile aged of 16 years old. The case handle through diversion with the consideration that the category of crimes committed by children was not a category of crimes punishable by imprisonment for more than 7 years, the perpetrators were minors, there were considerations from social counselors regarding the child's physical condition, and the crimes committed committed by a child is not a form of recidivism.
9. LP/B/2/I/2023/SPKT/POLRES KATINGAN/POLDA KALIMANTAN TENGAH on 20 January 2023, 01.30 Wib, the criminal act of group assault with the threat of punishment under Article 170 paragraph (2) to 1st Penal Code committed by a juvenile aged of 16 years old. Diversion cannot be attempted because a crime committed by a child is punishable by imprisonment for more than 7 years, while the provisions of Article 7 paragraph (2) Law No. 11 of 2012 Concerning the Juvenile Justice System states that diversion can be attempted in cases of children under the age of 7 years and not recidivism.
10. LP/B/2/II/2023/SPKT/ POLSEK KATINGAN TENGAH/POLRES KATINGAN/POLDA KALIMANTAN TENGAH. on 05 February 2023. the

criminal act of group assault with the threat of punishment under Article 170 paragraph (2) of-1st and/or Article 170 Article (1) Penal committed by a juvenile aged of 16 years old. The case handle through diversion with the consideration that the category of crimes committed by children was not a category of crimes punishable by imprisonment for more than 7 years based on Article 170 paragraph (1) Penal Code the perpetrators were minors, there were considerations from social counselors regarding the child's physical condition, and the crimes committed committed by a child is not a form of recidivism.

Based on the cases above, 2 cases of children as perpetrators of criminal acts were resolved through diversion. Meanwhile, compared to other cases, it cannot be attempted even though the offender is a child who has not reached the age of 18 as contained in Article 1 paragraph (3). However, the crime committed by a child is punishable by imprisonment for more than 7 years, diversion cannot be attempted, and there is no consent from the victim per Article 7 paragraph (2a).

Based on the theory of legal protection, the handling of child perpetrators in the Investigation process at the Katingan Police has fulfilled the legal provisions contained in the Juvenile Justice System Law. Attempts to resolve cases of children as perpetrators of crimes through a diversion mechanism have been attempted by investigators. This is a form of legal protection for children, as the purpose of legal protection itself according to which argues that legal protection is an action or effort to protect society from arbitrary acts by authorities that are not in accordance with the rule of law, to create order and tranquility to enable humans to enjoy their dignity as human beings.

Protection of children's rights can be provided systematically through various programs, stimulation, training, education, religious guidance, and games. It can also be provided through legal assistance called advocacy and child protection laws. (Ali, 2009)^[2]

The implementation of these principles has been seen in investigations at the level of investigation for children at the Katingan Police, namely not merely to obtain retributive justice but has led to a paradigm shift, namely the application of the concept of retributive justice to restorative justice. In resolving child cases, it is proven by implementing diversion against children who are perpetrators of crimes, which focuses on efforts to recover victims and children who have committed crimes.

Based on the theory of punishment, the handling of child perpetrators of criminal acts in the Investigation process at the Katingan Police by prioritizing diversion efforts has a theory of punishment that is relative (deterrence). This theory views punishment not as retaliation for the mistakes of the perpetrators but as a means of achieving beneficial goals to protect society towards prosperity. From this theory emerges the purpose of punishment as a means of prevention, namely general prevention aimed at society. Based on this theory, the punishment imposed on juvenile offenders is to carry out the intent or purpose of the punishment, namely to improve community dissatisfaction as a result of the crime. The purpose of punishment must be viewed ideally. Apart from that, the purpose of punishment is to prevent crime. (Widodo, 2016)^[18]

Leonard argues that the relative theory of punishment aims to prevent and reduce crime. Punishment must be intended to

change the behavior of criminals and other people who have the potential or tend to commit crimes, which in this case is in line with the aim of diversion efforts carried out by investigators against children of criminal offenders, namely solely for an orderly society, not just to retaliate or repay people who have committed a crime but have specific goals that are beneficial for the good of both child perpetrators and victims of crimes committed by children.

Thus based on the above, diversion efforts in handling cases of children as perpetrators of criminal acts at the Katingan Police are in accordance with the theory of legal protection and the theory of punishment. However, there are several administrative problems in which cases/cases are not handled in accordance with the provisions stipulated in the Juvenile Justice System Law.

For example, referring to the handling of cases that were successfully diverted LP/B/ 61 /V/2022/SPKT/POLRES KATINGAN/POLDA KALTENG, on 24 May 2022. In this case the diversion agreement was submitted by the investigator to the head of the court on June 3 2022 and then a diversion determination was made by the Kasongan District Court No. 2/Pen.Div/2022/PN Ksn on 6 June 2022, 2022 in accordance with the provisions contained in Article 12 paragraphs (1) and (2), Article 29 paragraph (3) of Juvenile Justice System Law in the event that the diversion process succeeds in reaching an agreement, the Investigator submits the minutes of the diversion along with the diversion agreement to the chairman of the district court to make a decision no later than 3 days after receiving the determination court.

4. Conclusion

The legal protection of children during the Investigation process in Katingan Subregional Police based on the legal protection theory and the theory of punishment through diversion given based on the restorative justice approach has been fulfilled. However, some children's rights have not been fully accomplished in the implementation process. The children's rights are the right to be promptly investigated, the right to be separated from adult detainees, the right to receive consideration and/or advice from a social advisor, the right to acquire legal assistance, and the right to deliver the information freely.

5. References

1. Adi, Rianto. *Metode Penelitian Sosial dan Hukum*. Jakarta. Granit, 2004, 56.
2. Ali, Achmad. *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*. Jakarta. Kencana, 2009, 249-250.
3. Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta. Sinar Grafika, 2015, 105.
4. Arifin. *Pendidikan Anak Berkonflik Hukum Model Konvergensi Antara Fungsionalis dan Religious*. Bandung. Alfabeta, 2007, 18.
5. Bachari, Andika Dutha, Dadang Sudana, Wawan Gunawan. *Ragam Dan Arah Pertanyaan Penyidik Dalam Berita Acara Pemeriksaan Perkara Pidana Anak*, *Linguistik Indonesia*. 2018; 36(1):78-85.
6. Gultom, Maidin. *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung. Refika Aditama, 2008, 1.
7. Hidayat, Bunadi. *Pemidanaan Anak di Bawah Umur*. Bandung. Alumni, 2010, 1.

8. Indonesia, Menteri Pemberdayaan Perempuan dan Perlindungan Anak. (2021). Pelaksanaan Sistem Peradilan Anak Laporan Tahunan 2020. Jakarta, 36.
9. Mulyadi, Lilik. Wajah Sistem Peradilan Pidana Anak Indonesia. Bandung. Alumni, 2014, 102.
10. Primasari, Lushiana. "Keadilan Restoratif Dan Pemenuhan Hak Asasi Bagi Anak Yang Berhadapan Dengan Hukum", article in, 2022, <http://lushiana.staff.uns.ac.id/files/2010/07/keadilan-restoratif-bagi-anak-yang-berhadapan-dengan-hukum.pdf>. (March 30, 2023)
11. Rahmatillah, Analiensyah dan Syarifah. Perlindungan terhadap Anak yang Berhadapan dengan Hukum (Studi Terhadap Undang-undang Peradilan Anak Indonesia dan Peradilan Adat Aceh). article in Jurnal Fakultas Hukum UIN Ar-Raniry. Banda Aceh, 2015, 8.
12. Rondonuwu, Ravel Daniel. "Proses Persidangan Perkara Tindak Pidana Pencurian Dilakukan Oleh Anak". article in Lex Crimen. 2015; Vol. IV. No. 1, Jan-Mar/2015, 189.
13. Sambas, Nandang. Pembaruan Sistem Pemidanaan Anak di Indonesia. Bandung. Graha Ilmu, 2010, 195.
14. Supeno, Hadi. Kriminalisasi Anak. Jakarta. Gramedia Pustaka Utama, 2010, 119.
15. Sutedjo, Wagiyati. Hukum Pidana Anak. Bandung. Refika Aditama, 2008, 16.
16. Syaufi, Ahmad. "Remodeling of Criminal Case Settlement in Indonesia", article in WSEAS Transaction on Environment and Development. 2023; 19:236.
17. Wahyudhi, Dheny. Perlindungan terhadap Anak yang Berhadapan dengan Hukum Melalui Pendekatan Restorative Justice". article in Jurnal Hukum Universitas Jambi. Jambi, 2015, 6.
18. Widodo, Guntarto. "Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak". article in Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan. 2016; 6(1):67.