

Protection of Children in Conflict with the Law in the Prosecution Process by the Public Prosecutor

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ABSTRACT

The handling of children in conflict with the law requires a special approach prioritizing their best interests and future. This study analyzes the legal protection provided to children during the prosecution process by the Public Prosecutor at the Belawan District Attorney's Office and identifies obstacles in implementation. Using an empirical juridical method with a qualitative approach through field interviews and document analysis, the study reveals that the protection of children's rights has not been fully implemented according to the restorative justice principles mandated by Law No. 11 of 2012 on the Juvenile Criminal Justice System. Challenges include the limited number of trained child prosecutors and the inconsistent application of the *ultimum remedium* principle. The findings highlight the gap between normative legal frameworks and practical realities, emphasizing the need to strengthen prosecutor capacity and adopt holistic approaches combining legal, psychological, and social dimensions.

Keyword: Philosophy; Child Protection; Public Prosecutor; Juvenile Criminal Justice System; Diversion

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1. INTRODUCTION

Indonesia as a country of law guarantees the protection of children from violence and discrimination that can befall them. Everyone, including children, has the right to feel safe and free from threats and the right to protection. The enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity, and receive protection from violence and discrimination. Every child has the right to receive education and teaching in the context of personal development and intellectual growth according to their interests and talents.

Article 105 paragraph (1) letters e and f of the SPPA Law emphasizes that within a maximum of five (5) years after the enactment of this Law, the ministries that carry out government affairs in the field of law are obliged to build LPKA and LPAS in each province. Ministries that carry out government affairs in the social sector are obliged to build LPKS. In Article 108 of the SPPA Law, it is stated that this Law comes into force two (2) years from the date of promulgation.

The Prosecutor's Office, in carrying out its duties and authorities, is *dominus litis*. The Prosecutor's Office as the controller of cases or *dominus litis* has a central position in law enforcement because only the Prosecutor's institution can determine whether a case can be submitted to the court or not, based on valid evidence according to the criminal procedure law. In addition to being the holder of *dominus litis* (*procureur die de procesvoering vaststelt*), the Prosecutor's Office is also the only agency that implements criminal judgments (*executive ambtenaar*) (Marwan Effendy, 2005). Regarding the implementation of these duties and authorities, the Prosecutor's Office as the controller of the case should master all laws and regulations related to the case being handled, in this case, laws and regulations related to children, so that the implementation of case handling is in accordance with the principle of legal protection of children.

2. RESEARCH METHOD

The research method used is normative juridical with a philosophical approach, namely *mahzab positivism*, which will be an analytical knife to analyze this problem (Eka N.A.M. Sihombing, Cynthia Hadita, 2022). To achieve a philosophy of the division of authority between regional heads and deputy regional heads, a philosophical approach is needed to answer it.

3. RESULTS AND DISCUSSION

A. *Protection That Needs to Be Done in Handling Cases of Children in Conflict with the Law in the Prosecution Process*

In the perspective of the theory of legal protection put forward by Philipus M. Hadjon, legal protection can be preventive and repressive. Preventive protection aims to prevent violations of children's rights by providing legal guarantees through laws and regulations, such as the SPPA Law which requires the application of diversion at the prosecution stage. Meanwhile, repressive protection is present as an effort to resolve violations of children's rights during the prosecution process, such as through pretrial mechanisms or supervision by the Indonesian Child Protection Commission (KPAI). In the context of handling children's cases, this theory emphasizes that the state through its law enforcement officials (prosecutors) is obliged to provide comprehensive legal protection so that children do not become victims of a repressive and punitive justice system.

From the perspective of justice theory influenced by John Rawls's thought, the protection of children in conflict with the law at the prosecution stage must consider the principle of justice as fairness. According to Rawls, justice must prioritize vulnerable groups through the principle of difference principle, where special treatment of children who are in conflict with the law is not a form of discrimination, but a corrective step to achieve substantive justice. The application of diversion, stigma avoidance, and rehabilitative approaches in the prosecution process are tangible manifestations of efforts to ensure justice oriented towards the recovery of children, not solely on retribution or punishment. Thus, justice theory supports the need for a humanist and restorative prosecution system for children.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) has provided a comprehensive legal basis to protect children in the legal process, including at the stage of investigation, prosecution, and criminalization. However, in practice in the field, there is still a significant gap. One of the main gaps is in the implementation of diversion. Normatively, diversion is mandatory for cases where the threat of punishment is under seven years and is not a serious crime, but in practice, diversion often fails due to the lack of victim participation or the unpreparedness of law enforcement officials.

Children as human beings who become the next generation of the nation must be kept away from bad influences that can harm their physical and mental development, so that concrete child protection laws are needed both substantially, structurally, and culturally which are expected to be regulated in laws and regulations, so that basic rights and basic freedoms from birth to adulthood will be more stable as a generation of future successors who will be the foundation pillars of the family, society, nation, and state, becoming stronger and more independent in realizing national goals (Abdussalam and Adri Desasfuryanto, 2014).

The Government of Indonesia, in an effort to provide protection for children in general and children as perpetrators of criminal acts in particular, has ratified the Convention on the Rights of the Child (KHA) by issuing Presidential Decree No. 36 dated August 25, 1990, and signed the Beijing Rules agreement, then also outlined in the Law of the Republic of Indonesia No. 4 of 1979 concerning Child Welfare and the Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection as amended into Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System. All of these state the general principles of child protection, namely non-discrimination, the best interests of the child, survival, growth and development, and respect for children's participation. However, in reality, the provisions in the regulation have not been optimally the best solution to resolve children's cases in conflict with the law.

Children as perpetrators of criminal acts must be responsible for their actions. Given the characteristics of children and for the protection of children, cases involving children in conflict with the law must be heard in the juvenile court in the general judicial environment. The number of criminal acts committed by children has resulted in efforts to prevent and overcome them, one of which is the implementation of the Juvenile

Criminal Justice System. The judicial process of child cases since they are arrested, detained, and tried must be carried out by special officials who understand children's problems. The Juvenile Criminal Justice System does not solely aim to impose criminal sanctions for children who commit criminal acts, but rather focuses on the idea that the imposition of sanctions is a means of support to realize the welfare of children who are in conflict with the law.

The Indonesian Criminal Law System has experienced developments in its implementation. One form of reform is the regulation of criminal law in the perspective and achievement of justice towards the improvement and restoration of the situation after the events and processes of criminal justice known as restorative justice, which is different from retributive justice (emphasizing justice in retribution) and restitutive justice (emphasizing justice in compensation) that have been implemented in our country.

Child protection has a principle known as the principle of non-discrimination, which focuses on the best interests of children, the right of children to live, develop and survive, so children must have recognition (D.S. Dewi Fatahilla and A. Syukur, 2011). Therefore, an idea has emerged that perpetrators of criminal acts committed by children must be avoided as far as possible from the criminal justice process. Based on this thought, a concept called diversion was born, which in Indonesian terms is called *diversi* or diversion (Marlina, 2010). The diversion of the juvenile criminal justice process is to keep children away from the criminal justice system that will have a negative impact on them, such as being labeled due to guilty statements or criminal impositions. The purpose of this diversion is to reduce the number of children arrested, detained, and imprisoned, abolish the stigma or evil label, and return the child to the community environment (Ach. Alif Suhaimi, 2013).

The implementation of diversion and restorative justice at the Belawan District Attorney's Office shows the need for the commitment of law enforcement officials to prioritize deliberation and peaceful settlement. In the diversion process, the role of the Public Prosecutor as a facilitator and community leader is very important to explore the child's background and find the best solution, including restitution, apology, or social activities carried out by the child.

In the case of the MR child examined by the author, even though the child's actions are criminally threatened for more than seven (7) years, the condition of the child who is not capable, the absence of malicious intentions, the absence of victims, and the results of the *litmas* from the father who recommends the child to be returned to the parents should be considered by the Public Prosecutor to be able to carry out diversion legal remedies before delegating the process of handling the child's case to the trial stage in court, considering that the SPPA Law does not regulate the prohibition of legal diversion for the actions of children who are threatened with a penalty of seven (7) years or more. Although if the Public Prosecutor considers that MR cannot be diverted because of his beliefs, the Public Prosecutor should only propose that the child be placed in a Special Children's Development Institution (LPKA) if it is really necessary and after all alternatives to coaching outside prison are not possible.

The Public Prosecutor in the case of Anak MR in the Letter of Demand (P-42) demanded that the Judge of the Medan District Court decide to declare Anak MR legally and convincingly guilty of committing a criminal act as regulated and criminally threatened in Article 2 paragraph (1) of Emergency Law No. 12 of 1951 and sentenced Anak MR to imprisonment for three (3) years, which according to the author does not consider the mandate of the best interest for children as stipulated in the SPPA Law, considering that children are still actively attending school.

The Belawan District Attorney's Office, through the intelligence field, has actually sought to empower children in conflict with the law through legal counseling, legal information, and moral coaching, especially to prevent the recurrence of criminal acts. Overall, the process of handling child cases at the Belawan District Attorney's Office has begun to reflect a commitment to the juvenile justice system that is more oriented towards fostering and social reintegration, but the implementation of procedural law still seems rigid and monotonous, not utilizing the various options provided by laws and regulations in order to prioritize the best interests of children.

The imbalance between the workload of the Prosecutor and the complexity of handling children's cases is also a factor causing the gap. Many prosecutors have to handle different types of cases at once without any special specialization in child cases. Legal protection is provided to children who conflict with the law at the prosecution stage, one of which is by placing children detained in LPAS/LPKS as mandated by the SPPA Law, while for children who have been sentenced, the coaching is carried out at the Special Children's Development Institution (LPKA).

Based on the Prosecution Level Detention Order (T-7) of MR Children, the author did not find a reason for the detention of the child who was 14 (fourteen) years old or more and suspected of committing a criminal act with a threat of imprisonment of seven (7) years or more as expressly stated as contained in Article 32 paragraph (3) of the SPPA Law. In addition, in the Child T-7, the author also found that during the judicial process, the child was detained at the Class 1 Labuhan Deli Detention House, not at LPAS or LPKS as stipulated in Article 33 paragraph (4), Article 33 paragraph (5), and Article 84 paragraph (1) of the SPPA Law, where the violation of the matters that have been described is clearly contrary to the order of the SPPA Law and is a violation of the rights of the child.

B. Strengthening the Role of Prosecutors in Protecting Children in the Face of the Law

In relation to the theory of justice, the strengthening of the role of prosecutors is in line with the principle of justice as fairness, which places children as a vulnerable group that must be prioritized in the distribution of justice. By playing the role of a facilitator of diversion and mediator between children, victims, and the community, prosecutors help realize corrective and restorative justice. The difference principle in Rawls' theory also recognizes that special treatment of children is not a form of injustice but an effort to restore social balance and prevent children from the negative effects of the retributive justice system. Thus, the prosecutor not only serves as a prosecutor but also as a protector of children's rights to achieve humanist and restoration-oriented justice.

Prosecutors have a strategic position in the juvenile criminal justice system because they are at a key point to determine whether children's cases can be stopped through diversion or continued to court. Therefore, strengthening the role of the Prosecutor is very important. The first reinforcement can be started from the specialization in handling children's cases. Prosecutors should be given special assignments and in-depth training related to child psychology, mediation, and child protection principles. The role of the Prosecutor as the Public Prosecutor is also very strategic in directing the settlement process that is not solely oriented towards punishment, but also on the recovery and future of the child, as well as social harmony.

The Public Prosecutor, in carrying out his duties and authority as a case controller, should master all laws and regulations related to the case being handled—in this case, laws and regulations related to children—so that the implementation of the handling of the case is in accordance with the principle of legal protection of children. Therefore, improving the competence of prosecutors through special training in juvenile justice is very important so that the role of prosecutors in the prosecution process can truly realize comprehensive legal protection for children. The role of the Public Prosecutor as the front line in the protection of children in conflict with the law is vital. The Public Prosecutor is not only a law enforcer but also an important actor in ensuring that children get fair and humane justice.

The Belawan District Attorney's Office only has one (1) Child Prosecutor who has participated in the SPPA Integrated Training at the Prosecutor's Training Agency of the Republic of Indonesia, out of the total number of Prosecutors at the Belawan District Attorney's Office, which amounts to thirty-three (33) prosecutors. So, in handling child cases at the Belawan District Attorney's Office, at the end of every year the Head of the Belawan District Prosecutor's Office sends recommendations on the names of prosecutors who are worthy of being assigned as Child Prosecutors to the Head of the North Sumatra High Prosecutor's Office. Then, at the beginning of each year, the Head of the North Sumatra High Prosecutor's Office issues a Warrant for the Assignment of Prosecutors as Child Prosecutors in the Belawan District Attorney's area. Considering that the intensity of criminal cases handled by the Belawan District Attorney's Office is quite high, usually all names of prosecutors who serve at the Belawan District Attorney's Office are considered worthy of being recommended as Child Prosecutors.

Furthermore, if there is a child case received by the Belawan District Prosecutor's Office from the Police, then the Head of the Belawan District Prosecutor's Office will issue a Warrant for the Appointment of a Public Prosecutor to Follow the Progress of the Investigation of the Children's Case (*P-16 Anak*). If the Prosecutor *P-16 Anak* is of the opinion that the case is complete and can be delegated to the Medan District Court, then the Head of the Belawan District Prosecutor's Office will issue a Warrant for the Appointment of the Public Prosecutor for Settlement of Children's Matters (*P-16A Anak*) to the Children's Prosecutor to handle the entire prosecution process against the child.

The legal process for child crimes is not the same as judicial legal proceedings in general because the perpetrators of the crime are children who are not legally competent. Children as perpetrators can also be said to be victims. This can be influenced by various driving factors such as lack of education, poor environment,

differences in social and economic structures, absence of contact from family, and many other factors. In the author's research on the MR Child Case, the author argues that the Public Prosecutor who handles the MR case should carry out all the orders of laws and regulations related to children in order to be able to provide demands in accordance with the principle of the Best Interests for Children.

The involvement of community leaders, parents, and religious institutions is also important in preventing similar cases from recurring. Children like MR are very vulnerable to being used in conflict situations between groups because they are still in the stage of searching for identity and peer group influence. From the perspective of juridical, criminology, and victimology, MR is a victim of weak social control and weak legal education in the community. This shows that children in conflict with the law should not necessarily be considered criminals, but as individuals who need to be nurtured and protected. One of the major challenges in the juvenile justice system is ensuring that the legal process does not cause long-term traumatic effects. Therefore, aftercare coaching is very important to prepare children to return to society and avoid stigmatization. The MR case clearly illustrates how child protection in the prosecution process should be carried out in a fair and humane manner, as long as the Public Prosecutor applies the SPPA approach consistently and collaboratively. This is an important example for future studies in strengthening the juvenile criminal justice system in Indonesia.

The Prosecutor's Office in the integrated criminal justice system is one of the subsystems. The Prosecutor's Office plays a role in carrying out the prosecution process. According to Article 1 point 7 of the Criminal Code, "prosecution" is the action of the Public Prosecutor to delegate a criminal case to the competent district court in the case and in the manner regulated in this law with a request to be examined and decided by a judge at a court hearing (Ramadhani, G. S., 2021). Article 137 of the Criminal Code states that the Public Prosecutor has the authority to prosecute anyone who is charged with committing a criminal act by transferring his case to the court. So the authority to determine whether to prosecute or not is given to the Prosecutor (vide Article 139 of the Criminal Procedure Code *jo.* Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia).

The prosecution, as referred to in Article 1 number 3 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia ("the Prosecutor's Law"), is the action of the Public Prosecutor to transfer the case to the competent District Court in the case and in the manner regulated in the Criminal Procedure Law with a request to be examined and decided by the judge at the court hearing. In addition, Article 140 paragraph (1) of the Criminal Procedure Code states that in the event that the Public Prosecutor is of the opinion that from the results of the investigation a prosecution can be carried out, he shall make an indictment as soon as possible. After the court examination process is completed, Article 182 paragraph (1) letter a of the Criminal Code applies, which reads that after the examination is declared complete, the Public Prosecutor files criminal charges (Bernadetha Aurelia Oktavira, S.H., 2019).

The Prosecutor's authority to initiate rehabilitative efforts should be expanded to include proposed social and remedial measures, not just criminal charges. This is in line with the principles of child protection and social integration. In a practical context, the Prosecutor needs to be more active in coordinating with parents, Social Services, LPKA, schools, and community leaders so that child protection efforts are not partial but synergize across sectors. In this case, the Prosecutor can be encouraged to prepare Special Internal Guidelines related to child protection in the prosecution process as a form of institutional policy that strengthens the implementation of the SPPA Law. Thus, strengthening the role of the Prosecutor is not only based on legal authority but also based on a humanitarian, psychological, and social approach to ensure that children dealing with the law continue to get a future.

4. CONCLUSION

The protective perspective that needs to be taken in handling cases involving children who are in conflict with the law in the prosecution process is to apply a holistic approach. The Prosecutor's Office of the Republic of Indonesia should be able to increase the quantity and quality of Children's Public Prosecutors by increasing the frequency of the implementation of technical training on juvenile justice so that the Public Prosecutor, in handling children's cases, can apply the principle of prison as the *ultimate remedy* and overcome the gap between norms and practices in the field. The Public Prosecutor, in carrying out the prosecution process for children in conflict with the law, needs to apply a holistic approach so that the handling of children's cases at the prosecution stage is not only oriented to the legal aspect but also includes psychological, social, and educational aspects in order to be able to implement their obligations to pay attention to the principle of the *best interests of the child*.

REFERENCES

- Abdusslam, & Desasfuryanto, A. (2014). *Hukum perlindungan anak*. PTIK.
- Dewi, D. S., & Syukur, F. A. (2011). *Mediasi penal: Penerapan restorative justice di pengadilan anak Indonesia*. Indie Pre Publishing.
- Effendy, M. (2005). *Kejaksaan RI: Posisi dan fungsinya dari perspektif hukum*. PT Gramedia Pustaka Utama.
- Marlina. (2010). *Pengantar konsep diversi dan restoratif justice dalam hukum pidana*. USU Press.
- Oktavira, B. A. (2019, September 30). Kedudukan penuntut umum dalam proses peradilan. *Hukumonline.com*. <https://www.hukumonline.com/klinik/detail/ulasan/lt5d94210cbf1d6/kedudukan-penuntut-umum-dalam-proses-peradilan/>
- Ramadhani, G. S. (2021). Peran kejaksaan mewujudkan keadilan restoratif sebagai upaya penanggulangan kejahatan. *PROGRESIF: Jurnal Hukum*, 15(1), 77–91.
- Sihombing, E. N. A. M., & Hadita, C. (2022). *Penelitian hukum*. Setara Press.
- Suhaimi, A. A. (2013). Analisis yuridis ketentuan diversi dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak dalam rangka perlindungan hak-hak anak. *Jurnal Hukum*, 1.