PERAN JAKSA PENUNTUT UMUM DALAM MELAKUKAN PENUNTUTAN TERHADAP ANAK YANG MELAKUKAN TINDAK PIDANA PENGANIAYAAN
(Studi di Kejaksaan Negeri Binjai)

SKRIPSI

JEPRIMSA SITEPU

NPM : 14.840.0174

FAKULTAS HUKUM
UNIVERSITAS MEDAN AREA
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ABSTRACT

THE ROLE OF THE PUBLIC PROSECUTOR IN PROSECUTION OF CHILDREN WHO CONDUCT THE CRIMINAL ACTION ABUSE

(STUDY AT THE BINJAI DISTRICT PROSECUTOR'S OFFICE)

BY

JEPRIMSA SITEPU
NPM : 14.840.0174

The prosecution stage is one of the stage of settlement of a criminal case carried out by the Public Prosecutor whose provisions are subject to Article 30 of Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office, which one of the duties and authorities of the Prosecutor is carry out prosecution, and is also subject to the Criminal Procedure Code.

The problems in this research are what is the role of the Public Prosecutor in prosecuting children who have committed a criminal act of abuse, what are the procedures for prosecuting children who have committed a criminal act of abuse, and what are the obstacles for the Public Prosecutor in prosecuting children who have committed a criminal act of maltreatment.

This type of research in writing this thesis, namely empirical legal research method research is a legal research method that functions to see the law in a real sense and examine how the law works in the community. This research is descriptive analysis, which aims to describe precisely what the characteristics of an individual, condition, symptom, or group are, or to determine the spread of a symptom with other symptoms in society.

Regulations regarding the role of the Attorney General's Office in prosecuting children who commit criminal acts between regulations have shown synchronization, synchronization can be seen in all variables, namely the variables of obligations, powers, rights and work mechanisms. All the substance of the regulations starting from KUHAP, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The prosecution mechanism for juvenile offenses carried out by the public prosecutor at the Binjai District Prosecutor's Office, namely starting from the completion of the investigation stage, the police immediately delegate the case to the District Attorney by submitting the case file to be checked for completeness by the public prosecutor, after the public prosecutor commits examination of case files and making letters. Facilitators at the Attorney General's Office (Prosecutor for Children) who have the authority to implement it at this stage are very minimal and public knowledge about the Diversion concept also needs to be improved. Agree on an alternative solution that protects children and still improves child offenders.

Keywords: Role, Public Prosecutor, Prosecution, Children, the Crime of Persecution

CHAPTER I

INTRODUCTION

1.1 The Background

Children as part of the younger generation are the successors to the ideals of the nation's struggle and are human resources for future national development. Continuous guidance is needed for children's survival, physical, mental and social growth, and development—the protection from all possibilities that endanger or damage the child's future.

The task of nurturing and nurturing, educating and respecting children is certainly not easy, and it isn't easy to carry out. The position of children is critical and strategic as a golden potential for the growth and development of a nation in the future. Children are precisely part of one of the human resources, which are the successors of the ideals of the nation's struggle. They have a strategic role and unique characteristics, requiring guidance and protection to ensure their physical, mental, and social growth and development. This specialty lies in his attitude and behavior in understanding the world around him, which he must face.[1]

In particular, the characteristics and characteristics inherent in children are framed in Article 28B of the 1945 Constitution of the Republic of Indonesia; every child has the right to survive, grow and develop and has the right to protection and violence and discrimination. Especially for children who conflict with legal cases and children who are victims of criminal acts, Article 64 of Law no. 35 years old

[1] Ahmad Sofian, *Child Protection in Indonesia Dilemmas and Solutions,* Sofmedia, Jakarta, 2012, page 4.

2014 concerning Child Protection, ensures that the protection model that must be implemented, namely: humane treatment of children according to the child's dignity and rights; provision of special assistant officers for children from an early age; provision of special facilities and infrastructure; imposing appropriate sanctions in the best interests of the child; continuous monitoring and recording of the development of children in conflict with the law; providing guarantees to maintain relationships with parents and family; and, protection through identity reporting through mass media and to avoid negative labeling.

One of the efforts to prevent and overcome child delinquency (child criminal politics) is currently through the implementation of the juvenile justice system. Implementing the juvenile justice system is not solely aimed at imposing criminal sanctions for children who have committed crimes but is more focused on the premise that the imposition of sanctions is a means of supporting the welfare of children who are perpetrators of crimes.[2]

Internationally, it is desired that the purpose of implementing a juvenile. The justice system is to prioritize the welfare of children. This is as confirmed in the United Nations regulations in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMR-JJ) or The Beijing Rules that the objectives of juvenile justice (Aims of Juvenile Justice) are as follows: "The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders.

[2]Ibid.

shall always be in proportion to the circumstances of both the offender and offense."(The criminal justice system for children/adolescents will prioritize the welfare of adolescents and will ensure that any reaction to juvenile lawbreakers will always be commensurate with the circumstances of both the lawbreakers and the lawbreakers).

Children who conflict with the law will be closely related to the legal rules. Initially, the current practices in Indonesia could not be separated from international instruments (International Conventions) associated with the fulfillment of children's rights. After the ratification of the Convention on the Rights of the Child by the Government of Indonesia by issuing Presidential Decree Number 36 of 1990, legally, it creates an obligation on Indonesia (participating countries) to implement the rights of these children by absorbing them into national law, which in this case is stated in the Law. -Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law no. 35 of 2014 concerning Child Protection.[3]

Facing and dealing with juvenile justice processes involved in criminal acts, the first thing that should not be forgotten is to look at his position as a child with all its unique characteristics and characteristics thus. The orientation is based on protecting children in the handling process, so this will be based on the idea of child welfare and the child's interests. Handling children in the process of law requires unique approaches, services, treatment, care, and protection to provide legal protection for children in conflict with the law.

[3]Ibid

According to Retnowulan Sutianto, child protection is a field of National Development; protecting children protects humans and builds people as a whole as possible. The essence of National Development is the development of an entirely virtuous Indonesian human being. Ignoring the issue of child protection means that it will not strengthen national development.[4] As a result, the absence of child protection will cause various social problems that interfere with law enforcement, order, security, and national development. Thus, this means that child protection must be sought if we are to pursue satisfactory national development.[5]

Handling children in conflict with the law is closely related to law enforcement and the juvenile *justice system*. The Criminal Justice System is essentially a "system of power to enforce criminal law," which is embodied in 4 (four) subsystems, namely:

1. Investigative Power (by the Investigating Agency/Agency);
2. Power of Prosecution (by the Public Prosecutor's Body/Agency);
3. Power to Judge and Impress decisions/criminals (by the Court Body);
4. Power to Implement Criminal Decisions (by the Agency/Implementing Apparatus/Execution).

The four-pillar institutions of the juvenile criminal justice system have been regulated in different laws and regulations as the juridical basis for law enforcement officers in carrying out their authority. Protection in the process of investigating children against crimes committed by children is a form of special attention and treatment to protect the interests of children.

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[4] Romli Atmasasmita, *Juvenile Justice in Indonesia,* Mandar Maju, Bandung, 1997, page 166.

[5] Ibid.

[6] Barda Nawawi Arief, *Head of the Selection of Criminal Law on Integrated Criminal Justice System,* Publishing Agency Diponegoro University, Semarang, 2006, page 20.

The special attention and treatment are in the form of legal protection so that children do not become victims of the wrong application of the law that can cause mental, physical, and social suffering. The safety of children has been regulated in the legal provisions regarding children. Especially for children in conflict and conflict with the law, it is held in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law no. 35 of 2014 concerning Child Protection. That Law no. 11 of 2012 and Law no. 35 of 2014 provide different treatment and protection for implementing children's rights and obligations, including all criminal procedure procedures, starting from investigation to investigation and ending with illegal execution.[7]

The perspective of criminal science believes that the imposition of crimes against delinquents tends to harm the mental development of children in the future. This detrimental tendency results from the effects of criminal penalties, especially imprisonment, which is in the form of a stigma (wrong stamp). Barda Nawawi also stated that social protection law requires the abolition of a view of anti-social acts and replacing criminal responsibility (mistake).

The substance regulated in Article 64 of the Child Protection Law is a form of protection for children in conflict with legal cases and children who are victims of criminal acts, and the most fundamental thing in this Law is a strict regulation regarding *Restorative Justice* and Diversion, which is intended to avoid and keep children away. From the judicial process to prevent stigmatization of children in conflict with the law, it is hoped that children can naturally return to the social environment. Therefore, all parties' participation is needed to make this happen.

[7]Ibid.

This process must aim to create *restorative* both for the child and victim.[8]

Legal events in everyday life, of course, many can lead to criminal cases and or legal proceedings in court, especially in cases where the perpetrators are minors, as referred to in Law Number 11 of 2012 concerning the Judicial System. Juvenile Crime as a substitute for Law Number 3 of 1997 concerning Juvenile Court. Article 1 number 3 stipulates that: "Children in conflict with the law, from now on referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime".

In the event of a violation of the law, the law will act through its instruments, namely law enforcers. Law enforcers will process a case from the level of investigation, investigation, and prosecution to the examination process in court. This is intended to seek material truth which is the purpose of criminal procedural law.

The Prosecutor's Office of the Republic of Indonesia, as a government agency in the power structure of law enforcement and justice agencies, is authorized to exercise state power in prosecution. In carrying out the prosecution, the prosecutor acts for and on behalf of the responsible state according to hierarchical channels. In carrying out the prosecution, the prosecutor must have valid evidence for justice and truth based on the One Godhead. As the executor of his role, in carrying out his duties and authorities, the prosecutor acts based on the law and respects religious and moral norms, and is obliged to explore the values of humanity, law, and justice that live in society.[9] The Public Prosecutor's Office, as the authorized party in the prosecution stage,

[8]Ibid

is expected to make indictments able to provide a deterrent effect on the perpetrators with the sentence charged by the Public Prosecutor while still fulfilling the rights of the perpetrators.

The prosecution stage is one of the stages of resolving criminal cases carried out by the Public Prosecutor. Their provisions are subject to Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The prosecution is also subject to the Criminal Procedure Code. However, the prosecution process is different for children themselves because the principle of *lex specialis derogat legi generalis* is applied, which means that special legal rules will override general legal rules as regulated in Law Number 3 of 1997 concerning Juvenile Court, which Law later replaced No. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Juvenile justice is held to re-educate and improve children's attitudes and behavior so that they can leave the bad behavior they have been doing.[10] Although children, in terms of quality and quantity, may commit unlawful acts as adults do, the treatment provided does not have to be the same as the treatment for adults who commit crimes because the application of criminal sanctions given to children is different from adults who commit crimes.

The United Nations agency for children, UNICEF, reports that around 5,000 Indonesian children are brought before the courts every year. Although the number is uncertain, the number of children in conflict with the law grows every year.

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[9] Efran Helmi Juni, *Philosophy of Law,* Pustaka Setia, Bandung, 2012, page 343.
[10] Maidin Gultom, *Legal Protection of Children in Indonesia's Juvenile Criminal Justice System,* PT Refika Aditama, Bandung, 2008, page 77.

Because every year, the number of children who commit crimes continues to increase due to several factors that become the basis for children to commit crimes or crimes. In this case, the crimes that children often commit vary, including the crime of persecution.

In the prosecution carried out by the Binjai District Attorney, several things were not by the laws and regulations, one of which was in Article 41 paragraph (2) of the Juvenile Criminal Justice System Law, which reads that he has attended technical training on juvenile justice.

Based on this description, this paper is set to discuss issues regarding the role of the prosecutor's office in prosecuting children who commit crimes of abuse.

1.2. The Identification of Problem

Based on the description of the background above, it can be identified the problems found, namely:

1. To find out the role of the Public Prosecutor in prosecuting children who commit crimes of abuse.
2. To find out the constraints of the Public Prosecutor in prosecuting children who commit crimes of abuse.
3. To find out the procedure for prosecuting children who commit abuse crimes.

1.3. The Limitation of the Problem

The author limits the scope of the problem in completing this thesis; the limitations of the problems in this thesis are:

1. This research was conducted at the Binjai District Attorney

   This study examines the public prosecutor's role in prosecuting children who commit criminal acts of persecution.
2. This study examines the obstacles faced by the Public Prosecutor in prosecuting children who commit crimes of abuse.

1.4. The Problem Formulation

In every research implementation, it is essential to describe the problem formulation. Thus, the limitations and implementation of the research and the discussion carried out can be seen. So, the formulation of the problem is as follows:

1. What is the role of the Public Prosecutor in prosecuting children who commit crimes of abuse?
2. What is the procedure for prosecuting children who commit abuse crimes?
3. What is the problem with the Public Prosecutor in prosecuting children who commit abuse crimes?

1.5. The Research Objectives and Benefits

Based on the description in the problem formulation above, the objectives of this thesis research are:

1.5.1. The Research Objectives

1. To determine the role of the Public Prosecutor in prosecuting children who commit crimes of abuse.
2. To find out the procedure for prosecuting children who commit abuse crimes.
3. To find out the constraints of the Public Prosecutor in prosecuting children who commit crimes of abuse.

1.5.2. The Research Benefits

The benefits of research are:

1. Theoretical Benefits

   a. To add to the legal literature or literature related to criminal procedural law, especially regarding prosecution.

   b. To develop the knowledge gained in lectures and develop it in practice.

   c. As a vehicle for developing discourse and thoughts for researchers.

   d. Adding literature or scientific materials that can be used to conduct further studies and research. 2. Practical Benefits

   a. Contribute thoughts on the benefits of bankruptcy. b. The results of this study serve as material for knowledge and insight for the author, especially in criminal science, about cases of prosecuting criminal acts of child abuse.

CHAPTER II

REVIEW OF LITERATURE

2.1. Overview of the Public Prosecutor

1. Definition and Legal Basis

Prosecutors are functional officials authorized by law to act as public prosecutors and implement court decisions that have permanent legal force and other powers based on law.[11]

During the New Order era, there were new developments concerning the Indonesian Prosecutor's Office by the amendment from Law Number 15 of 1961 to Law Number 5 of 1991 concerning the Attorney General's Office of the Republic of Indonesia. This development also includes fundamental changes to the organizational structure and procedures for the Prosecutor's Office based on Presidential Decree no. 55 of 1991, dated November 20, 1991.

The Reformation Period came under intense scrutiny from the Indonesian government and existing law enforcement agencies, particularly in dealing with Corruption Crimes. For this reason, entering the reformation period, the Law on the Prosecutor's Office also changed, namely with the enactment of Law Number 16 of 2004 to replace Law Number 5 of 1991. Many parties welcomed the presence of this law because it was considered as confirmation of the existence of the Prosecutor's Office, which is independent and free from the influence of government power, as well as other parties.[12]

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[11] Drafting Team, *Legal Dictionary,* Citra Umbara*,* Bandung, 2016, page 169.

In Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Article 2 paragraph (1) it is emphasized that "The Attorney General's Office is a government institution that exercises state power in the field of prosecution and other authorities based on the law." As the controller of the case process (*Dominus Litis*), the Prosecutor's Office has a central position in law enforcement because only the Prosecutor's Office can determine whether a case can be submitted to the Court based on valid evidence according to the Criminal Procedure Code. Apart from being a person with Dominus Litis, the Prosecutor's Office is also the only agency implementing criminal decisions (*executive ambtenaar*). For this reason, the new Law on the Prosecutor's Office is seen as more decisive in determining the position and role of the Indonesian Prosecutor's Office as a state government agency that exercises state power in the field of prosecution.

Referring to the law, the implementation of state power carried out by the Prosecutor's Office must be carried out independently. This affirmation is contained in Article 2 paragraph (2) of Law no. 16 of 2004, that the Prosecutor's Office is a government institution that independently exercises state power in prosecution. This means that in carrying out its functions, duties, and authorities regardless of government power and the influence of other forces. The provision protects the prosecutor's profession in carrying out his professional responsibilities.[13]

During the Reformation period, the Attorney General's Office also received assistance with the presence of various new institutions to share roles and responsibilities. These new institutions with specific responsibilities should be viewed positively as partners of the Prosecutor's Office in fighting corruption.

[12] Wikipedia, the "Prosecutor" through www.wikipedia.org, accessed on September 1, 2019, at 15.00 wib.

Previously, law enforcement efforts against criminal acts of corruption often encountered obstacles. This is not only experienced by the Attorney General's Office but also by the Indonesian Police and other agencies. These constraints include:

a. Modus operandi, which is classified as sophisticated;

b. Perpetrators receive protection from the corps, superiors, or friends; c.object is complicated (complicated*)*, for example, because it is related to various rules;

d. The difficulty of gathering preliminary evidence;

e. Human Resource Management;

f. Differences in perception and interpretation; (among existing law enforcement agencies)

g. Inadequate facilities and infrastructure; and

h. Psychological and physical terror, threats, negative news, even kidnapping and burning of law enforcement houses.

Efforts to eradicate corruption have been carried out for a long time by establishing various institutions. The government still gets highlights from time to time since the Old Order regime. The old Corruption Law, namely Law no. 31 of 1971, was considered toothless, so it was replaced with Law no. 31 of 1999. In this law, reverse evidence is regulated for corruption perpetrators and the imposition of more severe sanctions, even the death penalty for corruptors. Lately, this law is also seen as weak and has led to the escape of corruptors because there is no Transitional Rule in the law. The polemic regarding the authority of prosecutors and police in investigating corruption cases also cannot be resolved by this law.

Finally, in his explanation, Law no. 30 of 2002 explicitly states that conventional law enforcement and eradication of corruption have been proven to experience various obstacles. For this reason, an extraordinary law enforcement method

is needed by establishing a state agency that has broad, independent authority and is free from any power in eradicating corruption, considering that corruption has been categorized as an *extraordinary crime*.

Therefore, Law no. 30 of 2002 mandates the establishment of a Corruption Court, which has the task and authority to examine and decide on corruption crimes. Meanwhile, for the prosecution, it was submitted by the Corruption Eradication Commission (KPK), which consists of a Chair and 4 Deputy Chairs who each oversee four areas, namely Prevention, Enforcement, Information and Data, Internal Monitoring, and Public Complaints.

Of the four fields, the field of prosecution is tasked with conducting investigations and prosecutions. The investigators are taken from the Police and Indonesian Attorney General's Offices. While specifically for prosecution, the staff carried are functional officials of the Prosecutor's Office. The presence of the KPK marks a fundamental change in criminal procedural law, including in the field of investigation.[14]

The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power independently, especially in implementing duties and authorities in prosecution. It carries out responsibilities and authorities to investigate and prosecute criminal acts of corruption, gross human rights violations, and other authorities based on the law. The exercise of state power is carried out by:

[13] Wikipedia, "Prosecutors" through *www.wikipedia.org*, accessed on September 1, 2019, at 15.00 WIB.

a. The Attorney General's Office is domiciled in the capital city of Indonesia, and its jurisdiction covers the territory of the Indonesian state. The Attorney General's Office is led by an Attorney General who is a state official, the highest leader, and the person in charge of the Public Prosecutor's Office, who oversees and controls the implementation of the tasks and powers of the Attorney General's Office, the Republic of Indonesia. The Attorney General is appointed and dismissed by the president.

b. The high prosecutor's office is domiciled in the provincial capital, and its jurisdiction covers the province. The High Prosecutor's Office is led by the head of the high prosecutor's office, the leader and person in charge of the prosecutor's office. It controls the implementation of the duties and authorities of the prosecutor's office in his jurisdiction.

c. The district attorney's office is domiciled in the district/city capital, and its legal area covers the district/city area. The District Attorney's Office is led by the head of the state prosecutor's office, which is the leader and guarantor.

The prosecutor's responsibility is to lead and control the execution of duties and the prosecutor's authority in his jurisdiction. Insure State Prosecutors: District Prosecutors are guided by the Head of the District Attorney's Office.

Prosecutors are functional officials authorized by law to act as public prosecutors and implement court decisions with permanent legal force and other powers based on the law. This is by the provisions of Article 1 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

[14] Wikipedia, "Public Prosecutors" via *www.wikipedia.org*, accessed on September 1, 2019, at 15.00 wib.

Meanwhile, based on the provisions of Article 1 paragraph (3) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the prosecution is an action by the Public Prosecutor to delegate the case to the competent District Court in terms of and according to the method regulated in the Criminal Procedure Code with a request to be examined, and decided by the judge in court.

The Prosecutor is also a functional official who has technical expertise in the organization of the Prosecutor's Office, which allows for the smooth implementation of his duties. Meanwhile, according to Article 13 of the Criminal Procedure Code, the public prosecutor himself is a prosecutor who is authorized by this law (KUHAP) to carry out prosecutions and carry out judge's decisions.

2. Main Duties and Functions

The provisions in Article 14 of the Criminal Procedure Code are regulated the duties and authorities of the public prosecutor, including:

a. Receive and examine investigation case files from investigators or assistant investigators;

b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraphs (3) and (4) by giving instructions in the context of completing the study from the investigator;

c. Provide an extension of detention, carry out further detention and or change the status of the detainee after the investigator has delegated the case;

d. Make an indictment;

e. Delegate the case to court;

f. Deliver notification to the defendant regarding the provisions on the day and

time the case will be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined;

g. Carry out prosecutions;

h. Close the case for the sake of law;

i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this Law;

j. Carry out the judge's determination.

3. Organizational Structure

The prosecutor's authority covers the areas of criminal, civil, and state administration, and public order and peace. The organizational structure of the Indonesian Attorney General's Office is contained in Article 7 of the Decree of the Attorney General of the Republic of Indonesia concerning the Organizational Structure and Work Procedure of the Indonesian Attorney General's Office. “The organizational structure of the Attorney General's Office consists of:

Figure 1

Organizational Structure of the Attorney General's Office of the Republic of Indonesia

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Structure:

a. Attorney General;

b. Deputy Attorney General;

c. Deputy Attorney General for Development;

d. Deputy Attorney General for Intelligence;

e. Deputy Attorney General for General Crimes;

f. Deputy Attorney General for Special Crimes;

g. Deputy Attorney General for Civil and State Administration;

h. Deputy Attorney General for Supervision.

i. Centers:

1) Education and Training Center;

2) Research and Development Center;

3) Legal Information Center;

4) Center for Legal Information and Criminal Statistics.

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2.2 Letter of Prosecution

Prosecution (*vervolging*) is a process that is the absolute authority of the public prosecutor.[15] Based on Article 1 paragraph (7) of the Criminal Procedure Code (KUHAP), the definition of prosecution is stated as follows: Prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in terms of and according to the method regulated in this law by request to be examined and decided by a judge in court.

The prosecution stage is divided into two, namely the pro-prosecution stage and the prosecution stage itself, which is manifested by preparing an indictment and delegation to the court accompanied by a request to examine cases brought to court. The public prosecutor then reviews the case file submitted by the investigator to the public prosecutor in the pro-prosecution process. KUHAP mentions pre-prosecution but does not regulate what is called pre-prosecution.

The term pre-prosecution is stated in the provisions of Article 14 sub-b of the Criminal Procedure Code, which, when elaborated, the contents of the conditions reads:

> "Help pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraphs (3) and (4) of the Criminal Procedure Code, by providing instructions in the context of improving investigation from investigators.[16]

Suppose the public prosecutor declared the investigator's case file complete. In that case, the stage is continued to the following process, prosecution, marked by the preparation of an indictment. The indictment is prepared by the public prosecutor based on the case file compiled by the investigator so that if there is an error in the case file, the charge up to the examination process in court will also be wrong because the criminal justice system is a tiered system from one stage to another.

[15] Tolib Effendi, *The Criminal Justice System*, Pustaka Yustisia, Yogyakarta, 2013, page 51.

The indictment prepared by the public prosecutor must meet two conditions, namely formal requirements and material requirements. The legal requirement in the charge is that the order must be dated and signed. There is a complete identity of the accused, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation of the suspect. Whereas what is meant by material requirements is a careful, precise, and complete description of the criminal act that is being charged and mentions the time and place where the crime was committed.[17]

2.3. General Overview of Crimes

The definition of criminal acts in the Criminal Code (KUHP) is known as *Strafbaarfeit,* and the literature on criminal law often uses the term offense. At the same time, lawmakers formulate a rule using the term criminal event. Or criminal acts or crimes.

Crime is a term that contains a basic understanding in legal science, as a term formed with awareness in giving specific characteristics to criminal law events. Crime has an abstract meaning from concrete events in criminal law, so a crime must be given a scientific sense and clearly defined to separate it from the terms used in everyday life.[18]

Legal experts try to provide the meaning and content of the term, but until now, there is still no uniformity of opinion in the experts' understanding. The definition of a crime in Adami Chazawi is as follows:

[16] Ibid

[17] Ibid.

[18] Amir Ilyas,, *Principles of Criminal Law,* Rangkang Offset Masterpiece, Yogyakarta, 2012, page 18.

1. Pompe formulated that a criminal act (*strafbaar feit)* is nothing but a show that has been declared a punishable action according to a legal formulation.
2. Vos formulates that a criminal act (*strafbaar feit)* is a human behavior threatened with criminality by laws and regulations.[19]
3. Wirjono Prodjodikoro stated that a criminal act is an act for which the perpetrator may be subject to a criminal penalty.
4. Simons, formulating *strafbaar feit* is an act of violating the law that has been intentionally carried out by someone who can be held accountable for his actions, which is declared as punishable.[20]

Crime is an essential part of a mistake committed against someone committing a crime. So, for an error, the relationship between the situation and his actions that cause reproach must be intentional or negligent.

Carrying out legal practice to convict defendants brought before the court on charges of committing specific criminal acts requires that all elements contained in the crime are fulfilled. If what is being charged is an illegal act that in its formulation includes a part of error and is against the law, that element must also be included in the perpetrator, in the sense that it must be proven.

However, the formulation of the accused criminal act did not include an element regarding the person (fault); that element did not need to be proven. In this case, it does not mean that the perpetrator does not have a piece of error, considering the principle of no crime without error.

[19] Adami Chazawi, *Lesson of Criminal Law Part 1 of the Criminal System, Criminal Acts, Criminal Theories and Limits of Enforcement of Criminal Law*, PT Rajagrafindo Persada, Jakarta, 2014, page 72.
[20] Ibid.

The ability to be responsible is essential in imposing a crime and not in the case of a criminal act. For the occurrence or realization of a crime, it is sufficient to prove all the elements in the crime concerned.

Based on this, the absence of some aspects in criminal acts with the lack of the ability to be responsible in some instances is a different matter and has other legal consequences. Suppose the judge considers that one of the elements of a criminal act has not been proven, which means that the particular crime accused has not been realized. In that case, the judge's decision contains an acquittal from all charges. However, if the judge considers that the defendant is incapable of being responsible (Article 44 of the Criminal Code), the decision will contain a lawsuit waiver. According to Moeljatno, the elements of the criminal acts stated above are as follows:[21]

1. Action
2. What is prohibited (by the rule of law)
3. Criminal threats (for those who violate the prohibition)

According to R.Tresna in Adami Chazawi's book, the elements of a crime are as follows:[22]

1. Action/series of action
2. Conflicts with laws and regulations
3. Punishment action

Although the details of the two formulations above appear to be different, there are essential similarities, namely, not separating the elements regarding their actions from those related to their activities about the person.

[21] Ibid.
[22] Ibid.

The criminal acts contained in the Criminal Code can generally be translated into elements that can be divided into two kinds of elements, namely subjective elements and objective elements. Subjective elements are elements attached to or related to the perpetrator, including everything in his heart. While the objective elements are elements that have to do with circumstances, namely in cases where the perpetrator's actions must be carried out. Subjective elements of a crime are:[23]

1. Intentional or unintentional (*dolus* or *culpa*)
2. Intention or *voornemen* in an experiment or poging in Article 53 paragraph 1 of the Criminal Code.
3. Various intentions
4. Planning in advance
5. Feelings of fear

The objective elements of a crime are:[24]

1. The nature of breaking the law
2. The quality of the actor
3. Causality, namely the relationship between acting as a cause and a reality as a result.

2.4 Persecuti on

The problem of acts of persecution is a social problem that constantly attracts and demands serious attention from time to time. Moreover, according to general assumptions and several observations and research results from various parties, there is a tendency to develop an increasing trend of specific forms and types of acts of persecution, both in quality and quantity.

[23] Amir Ilyas. *Op. Cit.,* page 45.
[24] Ibid.

Talking about the concept and understanding of the act of persecution itself, there are still difficulties providing a firm definition because there are still limited understandings generally agreed upon.

In a legal sense, according to Sue Titus Reid, as quoted by Topo Santoso and Eva Achjani Zulfa, an act of persecution is legally defined unless the elements determined by criminal law or criminal law have been proposed and proven through a justified doubt. A person cannot be charged with committing an action or act that can be classified as an act of persecution. Thus, an act of mistreatment is an intentional act or a form of action or deed that constitutes negligence, all of which are violations of criminal law, which are carried out without defense or basis of truth and are sanctioned by countries as a serious crime or offense light law.[25]

Persecution in the Indonesian Language Dictionary is defined as a violent (characteristic) subject, the act of a person or group of people causing injury or death of another person or causing physical or property damage to others.

According to MH Tirtamimidjaja, persecution is as follows: Persecution is intentionally causing pain or injury to another person, but an act cannot be abused if the action is carried out to increase the body's safety.

The limitation of acts of persecution is not only acts of violating the law or the law but also acts that are contrary to *conduct norms*, namely actions that are contrary to the norms that exist in society even though the act has not been included or regulated by law.[26]

[25] Topo Santoso and Eva Achjani Zilfa, ,Rajawali Pers, Jakarta:, 2003, page 21.

[26] Adami Chazawi, *Crimes Against Body and Life*, Raja Grafindo Persada , Jakarta, 2002, page 65.

Reid in Chazawi also realizes the limitations of this legal definition or understanding in the following descriptions. There is a tendency in the opinion of social science experts that the limitation of studies on acts of abuse and perpetrators of someone convicted of violating the criminal law is too limited. Criminology of the strict legal definition. We should also include behavior called persecution, but it is not punished if committed.[27]

A criminologist, Thorsten Sellin in Chazawi, said: There is another approach, namely behavioral norms that are formed through social interaction in groups. These norms are socially defined, differ from group to group, and do not need to be made into written law. Sellin, therefore, prefers to refer to the violation of behavioral norms as abnormal behavior rather than to define abuse.[28]

Apart from the lack of uniformity in the concept of the act of persecution itself, the effort of definition is crucial. It must be an effort that precedes the study of the act of persecution itself—crime material. The consequences of actions are significant to determine whether there is persecution or not.[29]

In the Criminal Code (KUHP), the criminal act of persecution is regulated in Chapter XX Article 351 Paragraph (1) of the Criminal Code, which contains the meaning of an act that intentionally causes pain, injury, or damages the health of others. The provision of qualifications as ordinary persecution (*gewone mishandling*), which can also be referred to as basic or standard forms of persecution against Article 351, is appropriate to distinguish it from other forms of persecution.[30]

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[27] Ibid.
[28] Ibid.
[29] Ibid.

The elements of a criminal act of persecution are:

a. It is intentional;

b. Existence of Acts;

c. There is a result of the action (the intended), namely:

1) Pain in the body; and or

2) Injuries to the body.

The consequences of acts of persecution are:

a. Persecution based on Article 351 of the Criminal Code, namely:

1) Ordinary torture;
2) Persecution resulting in serious injury;
3) Persecution that results in the person's death.

b. Minor abuse is regulated in Article 352 of the Criminal Code.

c. Premeditated maltreatment as regulated in Article 353 of the Criminal Code with details, namely:

1) Causing severe injury;
2) Causing the person to die.

d. Severe abuse is regulated in Article 354 of the Criminal Code with details, namely:

1) Causing severe injury;
2) Causing the person to die.

e. Severe and premeditated persecution are regulated in Article 355 of the Criminal Code with details, namely:

1) Severe and premeditated persecution;
2) Serious and premeditated persecution that resulted in the death of a person.

f. Persecution by using dangerous materials to life or errors regulated in 365 chapters of the Criminal Code.

g. Assaults or fights are regulated in Article 385 of the Criminal Code

[30] Ibid.

2.5. Overview of Children

Talking about children is very important because it is the potential and determines the future of a nation. The progress of a nation depends on children's morality, which will later play a role in determining the country's history in the future. Before discussing children, the author will present the meaning of children themselves. In our positive law, there is a diversity of age limits for children, as a result of each legislation having criteria regarding what is meant by a minor, including:

a. Children according to Law no. 35 of 2014 concerning Child Protection.

   According to Law no. 35 of 2014 concerning Child Protection regulated in Article 1 paragraph (1), the definition of children is a person who has not reached 18 years and has never been married.

These provisions limit themselves, especially in the case of naughty children, without distinguishing gender between men and women, with minimum and maximum age being limited except for children who have never been married. Meanwhile, Article 4 paragraph (1) states that a naughty child who can be submitted to a juvenile court is at least 8 (eight) years old but has not yet reached the age of 18 and has never been married. The age limit in the two provisions above shows that the so-called child who can be criminally prosecuted is limited to between 8 (eight) years old and 18 years old. If they are under 18 but are married, they must be considered adults and not categorized as children anymore. Thus, it is not processed under the Child Protection Act, and Juvenile Justice but is based on the Criminal Code (Criminal Code) and the Criminal Procedure Code (Criminal Procedure Code).

b. Children according to the Criminal Code (KUHP). The definition of a child according to the Criminal Code (KUHP) is contained in Article 45 of the Criminal Code, which provides the report: A child is a child who has not reached the age of 16 years after committing a crime, the judge can order that the child is returned to his parents, guardian or guardian without being subject to punishment. Any

criminal sanctions.

Meanwhile, a person who is 18 years old and has committed a crime may be subject to punishment by Article 47 of the Criminal Code. Namely, the judge can impose a maximum sentence of one-third of a year if the act is a crime punishable by death or life imprisonment, then he is sentenced to a maximum imprisonment of 15 years. Year.

When viewed from the juridical aspect, the notion of "child" in the eyes of positive Indonesian law is commonly defined as a person who is not yet an adult (*minderjaring or person under age*), a person who is under age or a situation under the age of (*minderjaringheid or inferiority*) Or often also called as a child under the supervision of a guardian (*minderjarige onvervoodij*).

Children are one of the assets of national development; they should be considered and taken into account in terms of quality and their future. At the international level, it seems that there is no uniformity in the formulation of limits on children, the age level of a person categorized as a child from one country to another is quite diverse, namely:

Twenty-seven states in the United States determine the age limit between 8 and 17 years; there are also countries another section defines the age limit between 8 -and 16. In the UK, the age limit is set between 12-and 16 years. Australia, in most states, has an age limit of 8-16 years. The Netherlands determines the age limit between 12-and 18 years. Asian countries, including Sri Lanka, determine the age limit between 8-16 years, Iran 6-18 years, Japan and Korea determine the age limit between 14-18 years, Cambodia decides between 15-18 years, while Asian countries, including the Philippines, choose the age limit between 7-16 years.[31]

According to Law No. 3 of 1997 concerning Juvenile Court in Article 1 paragraph (1) formulating, a child is a person in a naughty child case who has reached

the age of 8 (eight) years but has not yet reached the age of 18 (eighteen) years and the child has never been married. So, children are limited by the conditions between 8 years to 18 years.

While the conditions for the two children have never been married, meaning that they are not bound in marriage or have been married and then divorced. If the child is still wrapped in his marriage or is terminated due to divorce, the child is considered an adult, even though he is not yet 18 (eighteen) years old.

According to Law No.23 of 2002 concerning Child Protection in Article 1 paragraph (1), it is formulated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. According to Law Number 4 of 1979 concerning Child Welfare in Article 1 paragraph (2), it is formulated that a child is someone who has not reached the age of 21 years and has never been married.

Article 1 paragraph (1) of Law No. 12 of 1948 concerning Basic Labor defines a child as a boy or girl aged 14 years and under. The Criminal Code (KUHP) provisions in Article 45 of the Criminal Code define a child who is not yet an adult if he is not yet 16 years old. In the Civil Code (KUHPerdata), Article 330 of the Civil Code explains that minors are those who have not reached the age of 21 years and have not previously been married.

The provisions in Law Number 3 of 1997 concerning Juvenile Court, the age limit for children, apart from the age limit, also use the concept of "unmarried" as one of the criteria for the concept of a child. In other words, a person is considered a legal adult if he is married, even though he is not yet 18 years old.

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[31] "Legal protection of children at the investigation stage" via *http://aminhamid09.wordpress.com/2012/11/15/perlindungan-law-terhadap-anak-at-p-investigation stage/*, on March 11, 2019.

The conception of being married in Law Number 3 of 1997 should be consistent with the idea that limits children's actions who can be accounted for based on age. This is relevant to the RKUHP, which uses an age-based concept to increase the age limit for which children can be legally held accountable, from 8 to 12 years.

Then with the enactment of Law Number 23 of 2002 concerning Child Protection, it no longer adheres to restrictions or defines children with the concept of married or unmarried. According to Law Number 23 of 2002, the conception of being married or unmarried does not determine whether a person is legally an adult or a child.[32]

Behaviour problems categorized as unlawful acts in the Law on Juvenile Courts provide the term "misbehaviour" so that children who violate the law are called "Naughty Children." In the law on child protection, children who break the law are termed "children in conflict with the law." According to some circles, this term is considered more appropriate to be given to children who violate the law to eliminate the terrible stigma for children who have not been proven guilty.

The Law on Juvenile Courts categorizes juvenile delinquents with a reasonably broad scope. As regulated in Article 1 paragraph 2, it states that naughty children are:

1) Children who commit criminal acts; or
2) Children who commit acts that are declared prohibited for children, both according to statutory regulations and other legal regulations that exist and apply in the community concerned.[33]

[32] Nandang Sambas, *Reform of the Child Criminal System in Indonesia*, Graha Ilmu, Yogyakarta, 2010, page 90.

2.6. The framework for thinking about

the authority of the Prosecutor's Office is contained in Article 14 of the Criminal Procedure Code, namely receiving and examining investigation case files from investigators or assistant investigators and conducting pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4). The authority of the Prosecutor's Office is also stated in Article 30 of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely in the criminal field, one of them has the authority to prosecute, the other authority is stated in the Joint Decree on Handling Children in Conflict with the Law in Article 7 which states that apart from being authorized to prosecute, it is also allowed to prepare prosecutors and administrative staff. In each Prosecutor's office, providing a particular examination room, holding regular discussions, compiling guidelines/guidelines, circulars/standard operating procedures for handling children in conflict with the law with a restorative justice approach, forming a Working Group for Handling Children in conflict with the law, conducting internal socialization, and streamline the functions of the head of the High Court.

The rights possessed by the Prosecutor's Office are contained in Article 140 paragraph (2) of the Criminal Procedure Code that the Prosecutor's Office has the right to stop prosecution if there is not enough evidence or the event is not a criminal act or the case is closed for the sake of the law. The Public Prosecutor has stated this in letter provisions whose contents are notified to the suspect whose derivatives of the decree must be conveyed to the suspect or his family or legal counsel, officials of the State Detention Center, investigators, and judges.

[33] Ibid.

The working mechanism of the Prosecutor's Office is contained in the Criminal Procedure Code (KUHP) in Article 8 paragraph (3) of the Criminal Procedure Code in conjunction with Article 110 (1) of the Criminal Procedure Code, which explains that the submission of case files from investigators is carried out: (a) in the first stage the investigator only submits the file case; (b) if the investigation is deemed completed, the investigator shall hand over the responsibility for the suspect and the evidence to the public prosecutor and if the investigator has finished carrying out the investigation, the investigator must immediately submit the case file to the public prosecutor. If the file is not complete, Article 110 paragraphs (2) and (3), in conjunction with Article 138 paragraph (2), are explained in the case that the public prosecutor thinks that the results of the investigation are still incomplete, the public prosecutor shall immediately return the case file to the investigator accompanied by instructions regarding things that must be done to be completed. Within 14 (fourteen) days from the date of receipt of the file, the investigator must have returned the dossier of the case to the public prosecutor. In the Joint Decree on Handling Children in Conflict with the Law in Article 13 letter e, it is also explained that the Public Prosecutor can carry out prosecutions with a restorative justice approach.

CHAPTER III

RESEARCH METHODS

3. 1. Type, Nature, Location, and Time of Research

3.1.1. Type of Research

type of research in writing this thesis is the empirical legal research method research. This legal research method functions to see the law realistically and examines how the law works in the community. Because this study examines people in life relationships in society, the empirical legal research method can be permitted, sociological research. It can be said that legal research is taken from the facts that exist in a society, legal entity, or government agency.

3.1.2. Nature of research

This research is descriptive analysis, which aims to describe y the characteristics of an individual, condition, symptom, or group or determine the spread of a symptom with other symptoms in society.

3.1.3. Research Location

This research took place in the City of Binjai, which housed the Binjai District Attorney. The consideration regarding the choice of this research location was that by conducting research at this location, the authors were able to obtain complete, accurate, and adequate data.

3.1.4. Research Time

This research was started and carried out from August 2018 to November 2020.

No	Activity	Month/Year																											
		August 2018				October 2018				March 2019				December 2019				August 2020				September to November 2020				December 2020			
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1				2				1	2	3	4
1	Planning, Preparation of Thesis		v	v	v																								
2	Seminar Proposal Thesis						v																						
3	Improvement Proposal Thesis									V	v	v																	
4	Thesis Compilation													v	v	v													
5	Seminar Results																			v									

6	Improvement Thesis																							V					
7	Session Thesis																										v		

3.2. Data Collection Techniques

In writing this thesis, the author has tried his best to collect data to complete the perfection of the discussion of this thesis; wherein this case, two research methods are used, namely:

1. Library Research.

   Here the author conducts research by studying existing reading materials, both scientific essays and some literature that support the writing and discussion of this thesis.

2. Field Research (*Field Research*)

   In completing the research, the author conducted research at the Binjai Prosecutor's Office, asking for data related to this scientific work and analyzing it to compare theory and practice in the field.

3.3. Data Analysis

The research conducted by the author is normative legal research. So, word processing is essentially an activity to analyze the problems studied. The data analysis technique used is the qualitative data analysis technique, namely collecting data, qualifying, then connecting theories related to the problem, and finally concluding to determine the results in writing this proposal.

Data analysis was carried out using a descriptive technique, namely the use of an as-is description of a particular situation and condition, an interpretation technique, namely the use of interpretation in legal science, in this case, a performance-based on regulations, an evaluation technique, namely a comprehensive assessment of the formulation of the norms studied, a. Argumentation techniques, which are related to evaluation technique is an assessment that must be based on legate l opinion.

CHAPTER V

CLOSING

5.1. Conclusion

Based on the results of the research and discussion that have been described, it can be concluded as follows:

1. Regulations regarding the role of the Prosecutor's Office in the prosecution of children who commit crimes between regulations have shown synchronization; synchronization can be seen in all variables, namely the variables of obligations, authorities, rights, and mechanisms work. All the substance of the regulations starting from the Criminal Procedure Code, Law no. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, and the Joint Decree of the Chief Justice of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the State Police of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, and the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia, Number: 166 A/KMA/SKB/XII/2009, Number: 148 A/A/JA/12/2009, Number: B/45/XII/2009, Number: M.HH-08 HM.03.02 the Year 2009, Number: 10/PRS 2/KPTS/2009, Number: 02/Men.PP and PA/XII/2009 concerning Handling Children in Conflict with the Law is by the contents of the constitution Article 24 paragraph (3) because the constitution it gives authority to the Law Invite to clarify and implement it by the

   Act itself.

2. The mechanism for prosecuting children's crimes by the public prosecutor at the Binjai District Prosecutor's Office starts from the completion of the investigation stage. The police immediately delegate the case to the District Attorney by submitting the case file to be checked for completeness by the public prosecutor; if in If the public prosecutor thinks that the research results are incomplete, the public prosecutor immediately returns the case file to the investigator accompanied by instructions for completion (P-19), if within 14 days the public prosecutor does not replace the file, the investigation is considered complete (P-21), after the public prosecutor has examined the case file and made a letter.
3. Several inhibiting factors, both internal and external. Facilitators at the Public Prosecutor's Office (Children's Public Prosecutor) who have the authority to implement it at this stage are minimal, and public knowledge about the concept of Diversion also needs to be improved. Agree on an alternative solution that is more protective of children and continues to strengthen child offenders.

5.2. Suggestions

1. It is hoped that the Government, through the Prosecutor's Office, should further increase the number of Child Public Prosecutors to avoid the appointment of Public Prosecutors who carry out prosecutions of criminal acts committed by adults in child cases. This can harm the child because the Public Prosecutor who prosecutes illegal actions committed by adults (not the Child Public Prosecutor) does not necessarily understand the condition and soul of the child and the best interests of the child 2. It is expected that law enforcement officers, especially the Child Public Prosecutor, increase socialization with the community regarding the importance of child protection through the diversion process (solving problems non-litigation), what is the purpose of diversion so that the community can eliminate the nature of retaliation (retributive) in resolving a criminal act but through deliberation on cases of children

dealing with the law.

3. It is hoped that the government will be more severe and support in implementing the diversion process by building facilities and infrastructure to support the diversion process, such as accelerating the development of BAPAS in each Regency/City, increasing the number of LPAS and LPKA and increasing the number of Community Counselors.