

The Authority of Prosecutors in Handling Cases Involved by Children Who Commit Repeated Crimes

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Abstract. *Recidivist or Repeat Offender refers to a situation where a person commits multiple offenses or more after having been sentenced by a judge. When associated with children, the term "child recidivist" refers to a former juvenile inmate who, after being released from a correctional facility, commits a similar crime again, often referred to as a habitual offender. The purpose of this research is to identify and analyze the Prosecutor's Authority in handling cases involving children who commit repeat offenses, as well as to examine the challenges and solutions faced by prosecutors in dealing with such cases. This legal research is normative legal research, which focuses on studying legal norms or regulations. Normative legal research examines legal norms or regulations as a structured system related to a legal event. Prosecutors have broad authority in handling cases of children who commit repeat offenses, including determining the eligibility for diversion, prosecuting, and overseeing court rulings. The principle of restorative justice must be prioritized to ensure that children receive rehabilitation rather than mere punishment. Although diversion is not applicable to child recidivists, prosecutors must seek rehabilitative solutions that are not solely repressive. Challenges in handling such cases include regulatory limitations, lack of inter-agency coordination, insufficient rehabilitation facilities, and a shortage of experts. Solutions required include strengthening inter-agency coordination, enhancing rehabilitation facilities, and providing prosecutors with training in psychological and social approaches. Additionally, community involvement in community-based rehabilitation programs plays a crucial role in supporting the reintegration of children into society. With a balanced legal approach that prioritizes rehabilitation, children in conflict with the law can have a second chance and avoid reoffending.*

Keywords: Child; Legal; Prosecutor; Recidivist.

1. Introduction

In the 1945 Constitution of the Republic of Indonesia or abbreviated as UUDNRI 1945, Article 1 explains that the Republic of Indonesia is a Unitary State, in the form of a Republic whose

sovereignty rests in the hands of the people and is implemented according to the Constitution which is a state based on law.¹

Children as a trust from God Almighty have the right to receive protection from the time they are in the womb until they become adults. This protection regarding children has long been put forward. The idea of children's rights began after the end of World War I. As a reaction to the suffering arising from the disaster of war, especially experienced by women and children. A female activist named Eglantyne Jeb developed 10 statements of children's rights in 1923 adopted by the Save the Children Fund International Union. After the end of World War II, on December 10, 1948, the UN General Assembly adopted a declaration of human rights, which finally the 10 declarations of children's rights were adopted and declared by the UN, namely in the Convention on the Rights of the Child on November 20, 1989.

The Convention on the Rights of the Child is an international instrument in the field of human rights with the most comprehensive coverage of rights.² is a convention in the field of Human Rights which includes civil and political rights as well as economic, social and cultural rights.

In relation to the principle of the best interests of the child, Article 3 paragraph (1) of the Convention on the Rights of the Child states that in all actions concerning children carried out by government or private social welfare institutions, judicial institutions, government institutions or legislative bodies, the best interests of the child must be the primary consideration.³

Criminal sanctions imposed on children have not had a deterrent effect, and in fact, they have increased their crime rates. This is evidenced by several cases of children committing repeated crimes (recidivism).⁴ The function of correctional institutions is not functioning, and the purpose of criminal punishment in law enforcement efforts against children as perpetrators of crimes has not changed. Imposing criminal penalties on children should not be merely an act of revenge, but rather, more importantly, providing guidance and protection to prevent children from committing similar or other crimes. This protection also serves both the community and the convicts themselves, so they can repent and become good members of society.⁵

Repeated criminal acts committed by children (recidivism) can be caused by various factors. Judges should also consider the specific conditions of the child when imposing criminal sanctions so that law enforcement efforts for children do not result in children losing their

¹Muhlashin, The State of Law, Democracy and Law Enforcement in Indonesia. Al-Qadau Journal: Islamic Family Law and Justice, 8(1), 2021, pp. 87-100.

²Supriyadi W. Eddyono, "Introduction to the Convention on the Rights of the Child", http://lama.elsam.or.id/downloads/1262854039_20._Konvensi_Hak_Anak.pdf, accessed October 5, 2024.

³Law Number 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law

⁴Busnarma, T. (2019). Application of Criminal Sanctions in the Form of Fines Against Perpetrators of Narcotics Abuse and Illicit Trafficking in the Padang District Court. *Soumatra Law Review*, 2(1), pp. 172-192.

⁵Hamamah, F. (2020). Criminal Law Policy in Handling Problematic Children in Relation to Law No. 23 of 2002 Concerning Child Protection. *FOCUS: Journal of Law*, 1(1), pp. 1-9.

rights to grow and develop. Recidivism or repeat criminal acts is when someone commits several or more acts that have been punished by a judge. Recidivism in the legal dictionary is defined as a repeat crime, the occurrence of someone who has been punished for committing a crime, committing another crime.⁶

Recurrence occurs when a person has committed a crime and is sentenced to a sentence. The sentence is carried out, but after serving their sentence and returning to society, they commit another crime within a certain period of time. In relation to children, a child recidivist is defined as a former child convict who, after being released from prison, commits a similar crime again, or is referred to as a repeat offender.

The criminal act of recidivism is not found in general regulations, but in articles 486 to 488 of the Criminal Code, regulating the application of the element of recidivism in special regulations (book II and book III) Chapter XXXI of the Criminal Code as regulated in the sentencing of a convict. In principle, the time limit determines whether a person can be qualified as a recidivist or not, depending on the period of 5 (five) years between the law currently being served in a crime charged to him.

Repetition of criminal acts is not a new thing in the world of law, because where there is crime there is also repetition of crime and repetition of crime is considered as a continuation of evil intentions as stated by Bartolus, a legal expert that "Humanum enimest peccare, angilicum, seemendare, diabolicum perseverare" or crime and repetition of crime is considered as a continuation of evil intentions, then it can be ascertained that the practice of repetition of crime itself is as old as the practice of crime.

Cases of children in conflict with the law, according to data from the Directorate General of Corrections at the Ministry of Law and Human Rights, showed an increasing trend in the period from 2020 to 2023. As of August 26, 2023, nearly 2,000 cases were recorded. children in conflict with the law of these, 1,467 children are currently in detention and undergoing the legal process, while 526 are currently serving sentences as convicts.⁷

The increase in cases of crimes committed by children resulting in repeated criminal acts (recidivism) is caused by a criminal justice system for children that does not provide a deterrent effect and instead, punishment for children only results in suffering.⁸In addition, someone repeats a crime due to several factors, including the ineffective functioning of one of the sub-systems of the criminal justice system in Indonesia, errors in the application of the law, economic, social and cultural factors.

Based on the legal incidents above concerning children as repeat offenders, it is necessary to protect children's rights in law enforcement efforts. Applying the law to children and making

⁶Patuju, L., & Afamery, SS (2016). Recidivism in the Perspective of Legal Sociology. Volkgeist Law Journal, 1(1), pp. 104-114.

⁷Yohanes Advent Krisdamarjati: The Increasing Number of Children in Conflict with the Law is a Warning to Society and the State <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>, accessed September 10, 2024

⁸Sripah, S., & Afifah, W. (2017). Alternative Sentencing for Repeat Pedophilia Crimes. Mimbar Keadilan, Vol 4 No 2, pp. 183-208.

them repeat offenders will disrupt their future. Consideration should be given to the group of children who experience obstacles in their growth and development, both spiritually, physically, and socially.

2. Research Methods

Method is the process, principles and procedures for solving a problem, while research is a careful, diligent and thorough examination of a phenomenon to increase human knowledge, so the research method can be interpreted as the process of principles and procedures for solving problems faced in carrying out research.⁹ This legal research is normative juridical legal research, that is, research that focuses on legal rules or regulations. Normative legal research examines legal rules or regulations as a system structure related to a legal event. This research is conducted with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be handled according to law.¹⁰ Normative legal research can also be defined as a technique or procedure for review based on several legal principles, legal rules, and legal principles related to the substance of general and specific laws and regulations. Normative juridical legal research is legal research conducted by analyzing and examining primary, secondary, and tertiary library materials. In reality, this research was conducted to analyze problems by combining legal materials with field conditions, where the results of this analysis can be used as a reference in implementation. Law enforcement in criminal cases, of course, also takes into account applicable regulations. By using the statute approach and the case approach, we can provide answers to the problems raised in this study. *Statute approach* is an approach that refers to statutory regulations, while the case approach is an approach that is based on cases that have occurred.¹¹

3. Results and Discussion

3.1. The Prosecutor's Authority in Handling Cases Involved by Children Who Commit Repeat Offenses

Child protection is a benchmark of a nation's civilization, and therefore, efforts must be made to protect children for the benefit of the nation and state. Child protection activities are legal actions, and therefore, legal guarantees are necessary for them. Legal certainty is essential for the continuity of child protection activities and to prevent abuses that could lead to unintended negative consequences in the implementation of child protection activities.

In the context of children as perpetrators of crime, Maud A. Merrill¹² provides a formulation of juvenile delinquency, namely that a child is classified as a delinquent child if anti-social

⁹Soerjono Soekanto, Introduction to Legal Research, (Jakarta: UI-Press, 1985), p. 6

¹⁰Mukti Fajar and Yulianto Achmad, Dualism of Normative and Empirical Legal Research, Fourth Edition, (Yogyakarta: Pustaka Pelajar 2017) p. 36

¹¹Ronny Hanitijo Soemitro, Legal Research Methods and Jurimetrics, Jakarta: Ghalia Indonesia, 2015, p. 39.

¹²Cahyaningtyas, Child Protection in Special Child Development Institutions from the Perspective of Individual Child Development Models. Legality, Vol.24, (No.1), 2016, P.31.

tendencies appear to be so high that the authorities are forced or should take action against him, in the sense of detaining or isolating him.

The process of handling children in conflict with the law is closely related to law enforcement itself, specifically in the Juvenile Justice System. According to Barda Nawawi Arief¹³ The Criminal Justice System is essentially a "system of power to enforce criminal law" which is manifested in 4 (four) subsystems, namely a) investigative power (by the Investigative Agency/Institution); b) prosecutorial power (by the Public Prosecutor's Agency/Institution); c) the power to try and pass judgment/criminal sentences (by the Court); and d) the power to implement criminal decisions" (by the Implementing Agency/Apparatus/Execution).

Based on the authority of the four pillar institutions of the juvenile criminal justice system, it has been regulated in separate legislation, namely Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, as the legal basis for law enforcement officers in carrying out their duties and functions. This authority is complemented by material criminal law regulated in the Criminal Code and formal criminal law regulated in the Criminal Procedure Code.

In the investigation process, the presence of the police as a formal institution is necessary when a juvenile delinquent first comes into contact with the justice system, which will also determine whether the child will be released or processed further. Investigators who conduct investigations into juvenile cases are people who are experienced as investigators; have interest, attention, dedication, and understand the problems of children; and have attended technical training on juvenile justice (Article 26 Paragraph 3 of Law No. 11 of 2012 SPPA).

In the context of investigations, there are guidelines provided by Law Number 11 of 2012 concerning the Child Criminal Justice System, Article 8 Paragraph (1) the diversion process is carried out through deliberation involving the child and his/her parents/guardians, the victim and/or his/her parents/guardians, community counselors, and social workers/professionals.

The obligation to implement Diversion starting from the investigation is carried out in the case of a crime committed which is threatened with imprisonment of less than 7 (seven) years and is not a repeat of the crime. For children in conflict with the law (ABH) who commit crimes with a threat of more than 7 (seven) years, Diversion is not required but is still carried out with the principle of restorative and the best interests of the child. Only ABH for those who commit crimes that are threatened with imprisonment of 7 (seven) years or more and are repeat offenders, Diversion is not carried out.¹⁴

The diversion process during the investigation is carried out within a maximum of 7 (seven) days after the investigation begins. The diversion process is carried out no later than 30 (thirty) days after the start of the diversion. In the case of examining child victims and child witnesses, investigators are required to request a social report from professional social workers or social welfare workers after the crime is reported or complained about. The results

¹³Arief, Barda N. (2006). Selected Chapters on Criminal Law Concerning the Integrated Criminal Justice System. Semarang: Diponegoro University Publishing Agency, p. 21

¹⁴Laksana, Andry W. (2017). Restorative Justice in Resolving Children's Cases in Conflict with the Law in the Juvenile Criminal Justice System. Journal of Legal Reform, Vol.4, (No.1), p.58.

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of the community research must be submitted by Bapas to the Investigator within a maximum of 3 x 24 (three times twenty-four) hours after the investigator's request is received (Articles 27, 28, 29 of Law No. 11 of 2012 concerning SPPA).

If the diversion process successfully reaches an agreement, the investigator submits the diversion report and the diversion agreement to the chief justice of the district court for a decision. If the diversion fails, the investigator is required to continue the investigation and refer the case to the public prosecutor, attaching the diversion report and the community research report.¹⁵

After failing, the examination will continue by the public prosecutor. Prosecution of children's cases is carried out by the Public Prosecutor appointed by the Attorney General's Decree or another official appointed by the Attorney General. The general requirements to become a public prosecutor in handling children are that the person has experience as a public prosecutor; has an interest, attention, dedication, and understanding of children's issues; and has attended technical training on juvenile justice (Article 41 of Law No. 11 of 2012 concerning SPPA).

Provisions related to recidivism are regulated in articles 486-488 of the Criminal Code, where based on existing developments, the repetition of this criminal act is divided into types, namely:

- a. General Reoffending: A person who commits a crime that is different from a previous crime and has already served a sentence. For example, if a perpetrator previously committed theft and has already served a sentence, then commits another offense, such as assault or murder.
- b. A repeat offender commits a crime similar to a previous offense and has already served their sentence. For example, someone who commits assault and has already served their sentence and then commits the same crime again, namely assault.

Regulations regarding children as recidivists in the Criminal Code are essentially unclear, with the general imposition of a heavier sentence being increased by one-third of the sentence imposed. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System recognizes diversion and restorative justice efforts, but these provisions do not apply to children as repeat offenders or recidivists. This means that the Juvenile Justice System Law does not recognize the imposition of additional penalties for children as recidivists, and only provides for criminal sanctions and sanctions for actions taken for their actions.

It's clear that the regulations regarding criminal sanctions for children who repeat crimes are indeed lacking in norms. The criminalization system in the Criminal Code for children who are recidivists is not clearly regulated, and the Child Protection Law (UU SPPA) also does not recognize the imposition of punishment for children who are recidivists. However, according

¹⁵Abdurrachman, H. (2016). The Rule of Law and the Idea of Restorative Justice in Handling Children in Conflict with the Law in the Investigation Process Based on Law No. 11 of 2012 Concerning the Juvenile Justice System. National Law Seminar, Semarang State University, Vol. 2, (No. 1), pp. 234-235

to Aristia, this is not an excuse to deny protection to children in conflict with the law. The concept of child protection in the Indonesian criminal justice system is evident and implemented throughout the legal process.

The legal process in question starts from the investigation stage, then arrest and detention and prosecution, including trials and guidance. Based on Article 7 of the SPPA Law, in essence, the investigation stage for children in conflict with the law is mandatory for investigators in the police to attempt diversion. However, this diversion effort cannot be carried out if the crime committed is a repetition. This is in accordance with Article 7 paragraph (2), letter (b) of the SPPA Law which states that diversion as referred to in paragraph (1) is carried out if the crime committed is not a repetition of the crime.

The Child Protection Act itself outlines the principles governing child care, including protection, which encompasses both direct and indirect activities that could endanger children physically and psychologically. Furthermore, the principle of justice requires that the resolution of child cases reflect a sense of justice for the child. There is also the principle of non-discrimination, which mandates no differential treatment based on the child's ethnicity, religion, culture, legal status, or physical or mental condition.

Furthermore, children who commit crimes are still given respect for their opinions, as a way of respecting their right to participate and express their opinions in decision-making, especially regarding matters that could ultimately affect their lives. This is in the best interests of the child, and all decision-making must consider their survival and development. This is based on the principle of survival and development, where a child's most fundamental human rights are protected by the state, their family, and their parents.

The police further stated that guidance and counseling are efforts to improve the quality, attitudes, and behavior of children, both within and outside the criminal justice process. This means that the demands placed on children in conflict with the law are intended to foster and foster future compliance. However, deprivation of liberty and criminalization are a last resort; children cannot be deprived of their liberty unless forced to do so for the purpose of resolving a case.

This effort is certainly aimed at realizing children's welfare by guaranteeing the fulfillment of their rights, as well as preventing discrimination, as children need the opportunity to grow and develop optimally, both physically, mentally, and socially. First Inspector Aristia explained, "In the process of handling these children, we often look not only at the actions taken but also at the reasons behind those actions in order to determine sanctions against the child based on the provisions contained in the law.

However, this also depends on the Public Prosecutor, who must consider the factors behind the child's crime, whether they were forced to reoffend or voluntarily. Therefore, the Public Prosecutor must be meticulous in handling these cases, especially for repeat offenders. Furthermore, the judge, in rendering his or her verdict, will ultimately determine the child's fate.

One example of a child recidivist case in Decision Number XX/Pid.sus-Anak/2022/XX, the Banjarmasin District Court tried a child's criminal case by issuing a verdict in the child's case, Name: AR, age: 14 years. Taking into account, Article 363 paragraph (1) 3 of the Criminal Code, Law Number 11 of 2012 concerning the Child Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, Declaring the child AR above, legally and convincingly proven guilty of committing the crime of "Theft under aggravating circumstances"; Sentencing the child therefore to imprisonment for 5 (five) months; Determining that the period of arrest and detention that the child has served is deducted entirely from the sentence imposed.

Then with the same child perpetrator in Decision Number XX/Pid.Sus-Anak/2022/XX the Banjarmasin District Court which tried the child criminal case issued the following decision in the case of Child AR, 14 Years Old. Taking into account, Article 81 Paragraph (2) of UURI No. 17 of 2016 concerning the Determination of Perpu No. 1 of 2016 concerning the Second Amendment to UURI No. 23 of 2002 concerning Child Protection into Law Jo UUR! No. 35 of 2014 concerning Amendments to JURI No. 23 of 2002 concerning Child Protection. Law Number 11 of 2012 concerning the Child Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations: Declaring that the above Child AR, has been legally and convincingly proven guilty of committing the crime of "Intentionally persuading a child to have sexual intercourse with him"; Sentencing the child to a prison sentence of 3 (three) years and 6 (six) months of work training; Ordering that the child serve his sentence in a Special Child Development Institution.

In handling cases of children who repeat crimes, prosecutors have the authority to determine whether the case can be resolved through diversion or must proceed to trial. Diversion is an effort to resolve children's cases outside the judicial system, taking into account the interests of the victim, family, and community. However, the Child Protection and Juvenile Justice Act (UU SPPA) imposes limitations on children who commit repeat crimes. Diversion cannot be implemented if the child has committed the same crime twice or more. In these circumstances, prosecutors must consider other factors before proceeding with legal proceedings.

Prosecutors also have the authority to prosecute children who repeat criminal offenses. In this process, prosecutors must consider various aspects, including the child's age, the level of culpability, the impact of the crime, and the possibility of social rehabilitation. The Child Protection Act mandates that children may only be sentenced as a last resort (ultimum remedium). Therefore, prosecutors must ensure that any legal action taken is not merely repressive but also serves the purpose of development and rehabilitation.

In handling cases of children who repeatedly commit crimes, prosecutors also collaborate with the Correctional Center (Bapas) to conduct community research. This research contains recommendations regarding the child's social, psychological, and environmental conditions, which can be used as considerations in the legal process. This research allows prosecutors to gain a deeper understanding of the child's background, thus making decisions more aligned with the child's rehabilitation needs.

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In addition, prosecutors also coordinate with social institutions, child protection services, and the child's family to find the best solution. This multi-stakeholder involvement aims to ensure that children who repeat offenders still have the opportunity to receive appropriate guidance. This approach aligns with the principle of the Child Protection Act, which prioritizes the child's interests at every stage of the legal process.

Even if diversion is not possible in certain cases, prosecutors should still consider alternative, less severe punishments than those offered by the general criminal justice system. For example, when imposing charges, prosecutors may suggest job training, social assistance, or rehabilitation rather than imprisonment. This aims to avoid the negative impact of imprisonment on a child's psychological and social development.

However, in some serious cases, prosecutors may pursue criminal charges in accordance with the provisions of the Child Protection and Juvenile Justice Law. Children who commit repeated crimes, especially serious crimes such as theft with violence or drug abuse, may be subject to the maximum penalty stipulated in the regulations. In this case, prosecutors must ensure that children's rights are respected throughout the judicial process.

In addition to handling the legal process, prosecutors also play a role in overseeing the implementation of court decisions involving juveniles who reoffend. If the court orders a non-prison sentence, such as rehabilitation or counseling in a social institution, prosecutors are responsible for ensuring that the decision is properly implemented. This oversight is crucial to ensure the juvenile truly benefits from the counseling and prevents them from reoffending.

When facing the challenges of juvenile reoffenders, prosecutors must always prioritize a humanistic approach based on restorative justice. While law enforcement is essential, prosecutors must continue to consider that children are individuals still growing and developing. Therefore, solutions based on guidance and education must remain a priority.

In conclusion, the prosecutor's authority in handling cases of children who reoffend encompasses several important aspects, from the prosecution process, coordination with various parties, to monitoring the implementation of court decisions. In exercising their authority, prosecutors must always consider the best interests of the child and apply the principles of restorative justice. With the right approach, it is hoped that children in conflict with the law can return to society as better individuals and prevent repeating the same mistakes.

According to Philipus M. Hadjon, authority is divided into three forms, namely: attributive, delegative, and mandate authority. In this context, the prosecutor's authority over children who repeat offenders is part of the attributive authority, namely the authority directly granted by law, in this case Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) as well as the Criminal Procedure Code and the Prosecutor's Office Law. Prosecutors have the authority to prosecute, including special authority in the juvenile justice system to prioritize a restorative justice approach as regulated in Article 7 of the SPPA Law.

However, when a child commits a repeat offense (recidivism), the exercise of prosecutorial authority often faces challenges. While prosecutors must prioritize the principle of child

protection, they also have an obligation to maintain deterrence and maintain legal order. This is where Hadjon's analysis becomes relevant, as prosecutorial authority in this case is attributive, but in practice, it can also be delegative if prosecutors receive a delegation of case handling from the police or other institutions. Furthermore, in the implementation of the juvenile criminal justice system, prosecutors can also act on a mandate, for example when coordinating with the Correctional Center (Bapas) or Child Protection Agency.

Thus, Philipus M. Hadjon's theory of authority shows that prosecutors in handling cases of recidivist children remain within the framework of positive legal authority, but must be able to balance the principle of child protection and broader legal interests, especially in dealing with the complexity of cases of repeated criminal acts by children.

3.2. Obstacles and Solutions for Prosecutors in Handling Cases Carried Out by Children Who Commit Repeat Offenses

Children as creatures of God Almighty have human rights or basic rights since birth, namely the guarantee of complete growth and development both physically, mentally and socially and with noble morals, it is necessary to make efforts to protect and realize their welfare which provides guarantees for the fulfillment of their rights and the existence of treatment against discrimination so that no human being or other party can take away these rights.¹⁶

In providing guidance and protection for children, there are obstacles, including deviant behavior by children that can harm themselves or others and these actions are considered by adults as naughty actions and this naughtiness appears as a form of mental instability and the child's attitude in responding to his social environment.

Children's behavioral deviations in the form of violations of the law bring children into situations that must face the applicable legal regulations and the level of crime and negative influences such as negative abuse of narcotics, psychotropics, and addictive substances, theft, abuse, threats, extortion and other general crimes are increasing, however, in the implementation of the criminal process against children in conflict with the law tends to be detrimental to children and there needs to be a paradigm shift in handling children in conflict with the law in order to improve children's welfare and provide special protection to children in conflict with the law.¹⁷

Criminal acts committed by children as perpetrators of crimes, the consequences of which ultimately require the child as the perpetrator of the crime to carry out a criminal sanction based on the criminal act committed by the child and this behavior can actually be categorized as an act of juvenile delinquency.

The 1945 Constitution in its third amendment, which was ratified on 10 November 2001, affirms in Article 1 Paragraph (3) that Indonesia is a state based on law (Rechtsstaat/rule of

¹⁶Irsan and Koesparmono, Law and Human Rights, Brata Bhakti Foundation Jakarta 2009, p. 63

¹⁷TunggalSetia Hadi, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System, Harvarindo, Jakarta, 2013, p. 59

law).¹⁸ Handling criminal cases against children in conflict with the law and are recidivists is carried out by applying criminal witnesses. This can be seen in that every child perpetrator of criminal activity will receive a prison sentence as a form of accountability for the criminal offense committed, especially if the child perpetrator repeats the crime. Therefore, the demands and verdict that will be received by the child perpetrator of criminal activity will be re-sentenced to imprisonment.

Realizing the welfare of children and upholding justice is the primary duty of the judicial body according to the Law. The judiciary prioritizes not only sentencing but also protecting the future of children, which is the goal achieved by the Juvenile Criminal Court. The philosophy of Juvenile Justice is to realize the welfare of children, so there is a close relationship between Juvenile Criminal Justice and Law 11 of 2012 concerning the Juvenile Criminal Justice System. Juvenile Justice should provide protection, guidance, and education through the decisions it makes. The aspect of Child Protection in juvenile criminal justice, viewed from a psychological perspective, aims to prevent children from violence, neglect, abuse, stress, inappropriate treatment such as molestation, anxiety, and so on. Realizing this requires a law that underpins, serves as a guideline and a means of achieving welfare and legal certainty to guarantee the treatment and actions taken against children. In realizing child welfare, children need to be tried by a separate judicial body. Efforts to realize child welfare are part of improving the development of all members of society, which is inseparable from the continuation and preservation of national civilization, which is important for the future of the nation and state.

Children's issues are an important topic to discuss because "Children are part of the younger generation as one of the human resources who are potential and continue the ideals of the nation's struggle. Children have a strategic role and have special characteristics and traits, requiring guidance and protection in order to ensure physical and mental growth and development in a complete, harmonious, and balanced manner.

Efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights and the existence of non-discriminatory treatment, children need to get the widest possible opportunity to grow and develop optimally both physically, mentally and socially and have noble morals, so that in the future they will be able to bear responsibility as a generation of the ideals of the nation's struggle, as is the goal of Child Protection.

In handling cases involving children who reoffend, prosecutors face various obstacles that can impact the effectiveness of law enforcement and rehabilitation efforts. These obstacles relate to legal, social, institutional, and human resource aspects. Therefore, a comprehensive solution is needed to ensure the juvenile criminal justice system operates in accordance with the principles of restorative justice and child protection.

In analyzing the role of prosecutors in handling cases of children who repeat criminal offenses (recidivists) based on the theory of punishment, approaches can be used from several classical

¹⁸Moh. Mahfud, 2000, Democracy and the Constitution in Indonesia, A Study of the Interaction of Politics and State Life, Jakarta: Rineka Cipta, pp. 27-28

and modern theories of punishment, including absolute (retaliation), relative (prevention), and integrative (combined) theories. In the context of children, Indonesia adopts a more humanistic, non-punitive approach, as emphasized in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA).

According to the relative theory, the purpose of punishment is not merely to avenge the crime, but to prevent future crimes from occurring. In the case of children who commit repeat crimes, prosecutors, as public prosecutors, must consider both general prevention (preventing the general public from committing crimes) and specific prevention (preventing the perpetrator from repeating their actions). However, in practice, sentencing children cannot be equated with that of adults. Prosecutors are still obliged to prioritize the principle of restorative justice, as long as the child still meets the requirements for diversion.

On the other hand, from an integrative theory perspective, prosecutors must balance the goals of retribution, community protection, and child rehabilitation. If a child has repeatedly committed crimes, prosecutors may consider that previous diversion approaches have been ineffective, and therefore impose a stricter, yet still educational, sentence. The primary goal is not to punish, but rather to educate and rehabilitate the child, preventing them from becoming repeat offenders.

Basically, children cannot protect themselves against various mental (psychological), physical (violence against their bodies) and social (social life) threats that will come from within or outside themselves, therefore children need help from others, both from the family, the environment, even from the government considering the situation and condition that does not yet have the ability to overcome every threat to themselves. Protection of children in a nation's society is a benchmark of the nation's civilization, because it must be increased according to the ability for the benefit of the nation and child protection activities are a legal action that has legal consequences.¹⁹Therefore, there needs to be legal guarantees for child protection activities or legal certainty needs to be sought for the sake of the continuity of Child Protection activities and to prevent abuses that have undesirable negative consequences in the implementation of Child Protection activities.²⁰

One of the main obstacles is the limited provisions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) regarding the handling of children who repeat criminal acts.²¹The Juvenile Justice and Child Protection Law emphasizes diversion as the primary solution in handling juvenile cases. However, when a child reoffends, this option becomes limited. This forces prosecutors to seek alternative solutions that still consider rehabilitation and the child's best interests.

Furthermore, prosecutors often face challenges in coordinating with relevant institutions, such as Correctional Institutions (Bapas), social services, and rehabilitation institutions. Lack

¹⁹Abdul Hakim G Nusantara, *Law and Children's Rights*, Rajawali, Jakarta, 1986, p. 23

²⁰Arif Gosita, *Problems of crime victims*, Akademika Pressindo, Jakarta, 1993, p. 222

²¹Radhwa Farah Azizah Radhwa Farah Azizah, *Implementation of Human Rights to Children as Criminal Offenders in the Juvenile Criminal Justice System Based on Law No. 11 of 2012*. (2024). *Journal of Law, Motivation, Education, and Language*, 2(2). 2024, pp. 1-19

of communication and integration between these agencies can hinder the development of optimal recommendations for juveniles who reoffend. Yet, Bapas' role in conducting community research (litmas) is crucial in providing a comprehensive picture of the child's background and providing appropriate solutions.

Another obstacle is the lack of adequate rehabilitation facilities for juvenile offenders. Many regions lack specialized institutions capable of holistically treating children, encompassing psychological, educational, and social development. As a result, children who should receive further rehabilitation are at risk of reoffending due to the lack of adequate rehabilitation facilities.

In addition to facilities, the limited availability of experts who understand child psychology and the juvenile justice system also poses a challenge for prosecutors. Handling children who reoffend requires a specialized approach involving experts such as child psychologists, social workers, and counselors. However, in many regions, these experts are still severely limited, so prosecutors often have to work with existing, albeit suboptimal, resources.

From a legal perspective, prosecutors also face a dilemma between firmly enforcing the law and upholding the principle of child protection. In some cases, children who repeat offenses are already juveniles and have committed serious crimes, requiring prosecutors to determine whether the child can still be rehabilitated or should be given a harsher sentence. This requires appropriate policymaking to ensure that the punishment imposed does not undermine the child's future.

In practice, many children who repeat criminal acts come from non-conducive family environments.²² Such factors include neglectful parents, involvement in criminal groups, or poor economic conditions. These social factors make it difficult for prosecutors to ensure that children can truly change after undergoing legal proceedings. Without appropriate environmental support, children are at risk of re-offending after leaving correctional facilities.

To overcome these obstacles, a comprehensive solution is needed, one of which is strengthening coordination between relevant institutions. Prosecutors must play an active role in building better communication with the Correctional Agency (Bapas), social services, and rehabilitation institutions to ensure that every child who reoffends receives appropriate treatment tailored to their needs.

Furthermore, the government needs to increase the availability of rehabilitation facilities specifically for juvenile offenders. These facilities must be able to provide guidance that focuses not only on legal aspects but also on education, skills, and mental health. With adequate rehabilitation facilities, children have a greater opportunity to change and return to society in a better condition.

²²Finsensius Samara, Oktaviani Beatrix Benga Demoor, Analysis of Recidivism Cases: Repeated Criminal Acts in the Perspective of Indonesian Criminal Law, Multidisciplinary Scientific Journal (JIM), Vol 8 No. 7 July 2024, pp. 176-196

From a human resources perspective, training is needed for prosecutors to better understand the appropriate approach to handling cases of children who reoffend. This training should cover aspects of child psychology, rehabilitation methods, and social intervention techniques so prosecutors can make decisions that better meet the needs of children.

In terms of regulation, there needs to be a more flexible policy for dealing with children who commit repeat crimes. For example, prosecutors could be given the authority to consider longer rehabilitation options for children at high risk of reoffending. This way, children remain protected but are also prevented from returning to environments that could encourage them to commit further crimes.

In addition to the government's role, the community must also be involved in the rehabilitation process for children who reoffend. Community-based programs, such as mentoring by community leaders, social work programs, and family support, can be a solution to help children reintegrate into their social environment. With community support, children can feel accepted and motivated to change.

Furthermore, protection for children who commit repeated crimes must continue to prioritize the principle of restorative justice.²³ This means the legal system must be more oriented toward improving and fostering children, rather than solely focusing on punishment. Prosecutors must seek solutions that not only provide a deterrent effect but also provide opportunities for children to improve themselves.

The government can also reform policies related to the juvenile justice system to focus more on education and development. For example, by developing school-based rehabilitation programs or skills training that can help children find employment after completing their rehabilitation period.

Ultimately, handling cases of children who repeat criminal offenses must be carried out with a balanced approach between law enforcement and protection of the child's future.²⁴ Prosecutors play a key role in ensuring that legal proceedings adhere to the principles of justice for children. With appropriate solutions, it is hoped that children who have been involved in criminal activity can change and become productive members of society.

4. Conclusion

Prosecutors' authority in handling cases of children who reoffend covers a wide range, from determining the eligibility for diversion, to conducting prosecutions, to overseeing the implementation of court decisions. In carrying out their duties, prosecutors must consider the principles of restorative justice and the best interests of the child, considering that the primary goal of the juvenile criminal justice system is rehabilitation, not merely punishment.

²³Pipin Setyaningrum, Ruslan Haerani, & Ika Yuliana Susilawati. Legal Protection for Children Who Commit Crimes of Abuse Through Diversion Based on the Child Protection Law (Case Study at the Loteng Police). *Unizar Recht Journal (URI)*, 2(4), 2023, pp. 629–639

²⁴Michael Sophian Parulian, Mompang L. Panggabean, Armunanto Hutahaeen, Criminal Approach as Ultimum Remedium for Cases of Children in Conflict with the Law Due to the Failure to Achieve Restorative Justice, *Progressive Law Journal*, Vol 7 No 10 (2024): pp 14-28

Although diversion cannot be applied to child recidivists, prosecutors must still seek alternative solutions that are not only repressive but also oriented towards development. Furthermore, coordination with relevant institutions such as the Correctional Center, social services, and families is crucial to ensure that children receive optimal protection and rehabilitation opportunities. With an appropriate and comprehensive approach, it is hoped that children in conflict with the law can return to society in better condition and prevent repeating the same mistakes in the future. Prosecutors' handling of cases involving children who repeat offenses faces various obstacles, including legal, social, institutional, and human resource barriers. Limitations in the Child Protection Act (UU SPPA) that restrict diversion options for child recidivists, lack of coordination between relevant institutions, limited rehabilitation facilities, and limited expert staff are key challenges in the legal process. To overcome these obstacles, comprehensive solutions are needed, such as strengthening coordination between prosecutors, Correctional Institutions (Bapas), and social services, improving rehabilitation facilities for children, and providing training to prosecutors to better understand psychological and social approaches to dealing with child recidivists. Furthermore, community involvement in community-based rehabilitation programs and reforming child sentencing policies that are more oriented toward education and development are crucial steps in supporting the successful reintegration of children into society. With a balanced approach between law enforcement and protection of children's futures, it is hoped that children in conflict with the law can receive a second chance and prevent them from re-offending.

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