

## **The Role of the Prosecutor's Office in Providing Legal Protection for Children as Witnesses in the Criminal Justice System**

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**Abstract.** *The Prosecutor's Office is an authorized body in enforcing law and justice. The Prosecutor's Office plays and aims to be a controller of the case process (Dominus Litis), has a central position in law enforcement and protection, in providing Legal Protection for children as witnesses in the criminal justice system. The research method used is sociological juridical with direct primary data collection in the field and secondary data in the form of laws and regulations, journals, and scientific works. The research specification used is the analytical descriptive method conducted by interviewing predetermined respondents. This research was conducted at the Banjar Regency District Prosecutor's Office. The results of this study can be concluded: The role of the Prosecutor's Office in providing legal protection for children as witnesses is carried out in accordance with its duties and authorities by providing guarantees of safety both physically, mentally, and socially and having access to information regarding the development of the case and Children as witnesses must get their rights based on the best interests of the child and respect for children. The obstacles faced are insufficient budget, incomplete facilities and infrastructure owned and less than optimal cooperation between the Police, Prosecutor's Office, and Courts, non-governmental organizations and other law enforcement officers. The solution to overcome these obstacles is to improve coordination with the Police, especially the Police in the PPA Unit, community assistance, from criminal acts committed by the perpetrators must be truly proven in finding material truth in court, because the impact of the perpetrator's actions can rob the child's future and can result in quite severe trauma for the victim, namely the child.*

**Keywords:** *Legal; Prosecutor's; Protection.*

## 1. Introduction

Indonesia is a country of law<sup>1</sup> which means that the State is obliged to uphold the law, so that every human or community activity that is part of its life activity must be based on existing regulations and norms that apply in society. In everyday life, citizens sometimes neglect to carry out their obligations so that they harm society, this means that the citizen has violated the law.

The presence of criminal law in society is intended to provide a sense of security to every individual and group in society to carry out daily life activities.<sup>2</sup> Criminal law enforcement in Indonesia provides an opportunity to carry out legal processes in accordance with the values of local community wisdom.<sup>3</sup> Examination of criminal cases in the criminal justice system, starting from the process of investigation, inquiry, and prosecution which in all these processes are the framework of criminal law enforcement to determine the truth of a criminal event. One of them is related to witness statements, especially in court. In the process of disclosing a criminal process from the investigation stage to the trial evidence stage, the existence and role of witnesses are highly expected.<sup>4</sup>

As regulated in Article 184 of the Criminal Procedure Code, one of the valid evidence is witness testimony. A witness is a person who can provide information for the purpose of investigation, prosecution, and trial in a criminal case that the witness heard, saw, and experienced himself.<sup>5</sup> Witness testimony, especially from children, is one of the pieces of evidence in criminal cases in the form of information from witnesses regarding a criminal event that the witness heard, saw and experienced themselves, stating the real reasons for their knowledge without any coercion or threats from various parties who have examined the witness concerned.<sup>6</sup>

Children are one of the assets of national development, worthy of consideration and calculation in terms of quality and the future of children. Without reliable quality and a clear future for children, national development will be difficult to implement and the fate of the nation will be difficult to imagine.<sup>7</sup> Protection of children who are witnesses in the criminal justice process cannot be separated from the context of child protection law. The law, which is the highest rule, must

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<sup>1</sup>Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

<sup>2</sup>Amir Ilyas, 2012, *Principles of Criminal Law and Criminal Responsibility*, Rangkang Yogyakarta, Yogyakarta, p. 1.

<sup>3</sup>Syukri Akub and Sutiawati, 2018, *Restorative Justice*, Litera, Yogyakarta, p. 100.

<sup>4</sup>Mamay Komariah, "Legal Protection of Witnesses and Victims by the Witness and Victim Protection Agency (LPSK)", *Galuh Justisi Scientific Journal* Vol 3, No.2 (2015), p. 231, url: <https://jurnal.unigal.ac.id/galuhjustisi/article/view/421/365> accessed on June 20, 2024.

<sup>5</sup>Article 1 Number 26 of the Criminal Procedure Code

<sup>6</sup>Article 1 Number 27 of the Criminal Procedure Code.

<sup>7</sup>Bunadi Hidayat, 2010, *Criminalization and Accountability of Minors*, PT. Alumni, Bandung, p.1.

be followed by society in carrying out social interactions, and also by state authorities as organizers of state and community life.<sup>8</sup>

Children are part of the younger generation as one of the human resources which is the potential and successor to the ideals of the nation's struggle, which has a strategic role and has special characteristics and traits.<sup>9</sup> Furthermore, it is explained in the explanation of Law Number 11 of 2012 concerning the Juvenile Justice System that children are an inseparable part of human survival and the sustainability of a nation and state. Thus, children are an important component of the Indonesian nation so that their position is as a party that must be protected.<sup>10</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children who commit crimes or in daily practice in court are referred to as children in conflict with the law, must be treated humanely, accompanied, provided with special facilities and infrastructure, sanctions given to children in accordance with the principle of the child's best interests, family relationships are maintained, meaning that children in conflict with the law should not be detained/imprisoned if they are imprisoned/detained, they are placed in a special detention room for children and not with adults. In addition, a guarantee of protection is also provided for children in conflict with the law who are designated as a group of children who need Special Protection. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes that children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. The child who is facing the case is a child who is 12 years old, but not yet 18 years old, while a child who is a witness to a criminal act, hereinafter referred to as a Child Witness, is a child who is not yet 18 years old who can provide information for the purposes of investigation, prosecution, and examination in court regarding a criminal case that he/she has heard, seen, and/or experienced himself/herself.

In carrying out the duties, functions and authorities of the Prosecutor's Office, it is part of all state bodies, especially in the field of law enforcement and justice to implement and foster cooperation based on the spirit of openness, togetherness and integration in an atmosphere of familiarity to realize an integrated criminal justice system. The relationship is carried out through verification and horizontal coordination in stages and in balance without eliminating the functions, duties and

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<sup>8</sup>Salman Luthan, "Law Enforcement in Sociological Context, *Journal of Law: Law of Social Change*", *Al-Qadau Journal of Islamic Family Law and Justice* Vol. 4, No. 7 (1997), p. 57-58, url: <https://journal.uin-alauddin.ac.id/index.php/al-qadau/article/view/14899/10014> accessed on June 20, 2024.

<sup>9</sup>Mohammad Taufik Makarao, Wenny Bukamo, & Syaiful Azri, 2013, *Child Protection Law and Elimination of Domestic Violence*, First Edition, Jakarta: PT. Rineka Cipta, p. 1.

<sup>10</sup>Wiwik Afifah, "Legal Protection for Children as Witnesses in the Juvenile Criminal Justice System", *Journal of Legal Studies* Vol. 10, No. 20 (2014), p. 63-75, url: [https://www.researchgate.net/publication/340177760\\_Legal\\_Protection\\_for\\_Children\\_As\\_Witn esses\\_in\\_the\\_Juvenile\\_Criminal\\_Justice\\_System](https://www.researchgate.net/publication/340177760_Legal_Protection_for_Children_As_Witn esses_in_the_Juvenile_Criminal_Justice_System) accessed on June 20, 2024.

authorities of each.<sup>11</sup>Based on the description above, the background for the author to conduct research is to determine and analyze the role of the Prosecutor's Office in providing legal protection for children as witnesses in the criminal justice system.

## **2. Research Methods**

The research method used in this study is sociological juridical which examines the applicable legal provisions and what happens in society. This approach is not only seen from the perspective of legislation or positive law but also pays attention to the sociological aspects of law in social interactions and the implementation of legal protection that occurs in society.<sup>12</sup>This method uses primary data obtained directly from sources in the form of information and statements obtained from the Public Prosecutor and secondary data obtained through library study materials in the form of applicable laws and regulations, journals, and scientific works.

The data collection method was obtained by conducting a literature study and interview with the Public Prosecutor at the Banjar District Prosecutor's Office. The data analysis method is based on the nature of this research which uses a descriptive analytical research method, the data analysis used is a qualitative approach to primary data and secondary data. The description includes the content and structure of positive law, regarding the activities carried out by the author to determine the content or meaning of the legal rules used as references in resolving legal problems that are the object of the study.<sup>13</sup>In addition, the existing legal data or materials are then combined with other legal data or materials, combined with supporting theories to be used as a conclusion of this writing.

## **3. Results and Discussion**

### **3.1. The role of the Prosecutor's Office in providing legal protection for children as witnesses in the criminal justice system**

#### **1) Role of the Prosecutor's Office**

The existence of regulations in the justice system used in Indonesian criminal law that have regulated many institutions that are under the scope of law, namely, the police, prosecutors and judges in the Court and also the institutions in society that are the pillars of the legal system in Indonesia. That way, these pillars already have a very close bond with each other and also need each other, so that the smoothness of the justice system will be sustainable. The author will explain the role of the Police in this case the Indonesian National Police and also the

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<sup>11</sup>Suharto RM, 2014, Prosecution in Court Practice, Jakarta, Sinar Grafika, p. 20.

<sup>12</sup> Zainudin Ali, Legal Research Methods, Sinar Grafika, Jakarta, 2014, p. 105.

<sup>13</sup>Ibid., p. 107.

Prosecutor's Office where cases involving children as victims in the sexual intercourse carried out by the perpetrator where in accordance with the existence of Child Protection in accordance with Law Number 17 of 2016 the second amendment to Law Number 23 of 2002. The existence of a subsystem where the police are one of them.<sup>14</sup>

The State Prosecutor's Office of the Republic of Indonesia basically has an important role in the criminal justice system in Indonesia. Among several subsystems of the criminal justice system, the institution of the Prosecutor (Public Prosecutor) has a very important role in handling a criminal case, therefore the Prosecutor's Office has the authority to test a case in the trial process before a panel of judges in carrying out law enforcement activities.<sup>15</sup> The State Prosecutor's Office of the Republic of Indonesia as a state government institution that exercises state power in the field of prosecution must be free from the influence of any party's power, namely, it must be carried out independently, regardless of the influence of government power and the influence of other powers.<sup>16</sup> Basically, substantially in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) a distinction is made between the Prosecutor and the Public Prosecutor. Based on Article 6 letter a of the Criminal Procedure Code, the Prosecutor is an official who is authorized by law to act as a public prosecutor and to implement court decisions that have obtained permanent legal force. While in Article 6 letter b of the Criminal Procedure Code, the Public Prosecutor is defined as a prosecutor who is authorized by law to carry out prosecution and implement the judge's decision.<sup>17</sup>

## 2) Legal Protection for Children

The state's commitment to protect its citizens, including children, can be found in the opening of the 1945 Constitution. This is reflected in the sentence: "...Then, to form a government of the State of Indonesia that protects all the Indonesian people and all of Indonesia's territory and to advance public welfare, to educate the nation's life, and to participate in implementing world order based on

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<sup>14</sup>Ismu Gunadi and Jonaedi Efendi, 2014, *Criminal Law*, Jakarta: Kencana, p. 201.

<sup>15</sup>Djunaedi, "Legal Review of the Duties and Authorities of Prosecutors in Achieving the Values of Justice", *Journal of Legal Reform* Vol. 1, No. 1 (2014), p. 83-90, url: <file:///E:/DOWNLOADS/1478-2794-1-SM.pdf> accessed on June 20, 2024.

<sup>16</sup>Josua DW Hutapea, "Duties and Authorities of Prosecutors in the Investigation of Corruption Crimes", *Jurnal Lex Crimen* Vol. VI, No. 2 (2017), p. 59-65, url: <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/15344/14892> accessed on June 20, 2024.

<sup>17</sup>Mohd Yusuf DM, "The Role of the Prosecutor's Office as a Law Enforcer Associated with Law Enforcement Factors in a Sociological Perspective", *Journal of Education and Counseling* Vol. 5, No. 2 (2023), p. 161-168, url: <https://journal.universitaspahlawan.ac.id/index.php/jpdk/article/view/12619/9650> accessed on June 20, 2024.

freedom, eternal peace and social justice, the independence of the nation is formulated..."<sup>18</sup>

Child protection is any effort made to create conditions so that every child can exercise their rights and obligations for the development and growth of children in a natural way, both physically, mentally, and socially. Gosita explained that child protection is a joint activity aimed at securing, providing, and fulfilling the spiritual and physical welfare of children in accordance with their interests and basic rights.<sup>19</sup>

### 3) Children's Rights in the Criminal Justice Process

Children in the criminal justice process have several rights that need to be considered and fought for, including:<sup>20</sup>

- a. Every child has the right to be treated as if he or she is not guilty.
- b. Every child has the right to receive protection from actions that are detrimental and cause mental, physical and social suffering.
- c. Every child has the right to receive assistance from a legal advisor to assist in the criminal justice process.
- d. Every child has the right to receive counseling to help facilitate the examination.
- e. Every child has the right to express his/her opinion.
- f. Children have the right to a closed trial in their interests to avoid mental, physical and social pressure.
- g. Every child has the right to receive humane guidance in accordance with statutory regulations.
- h. The trial should not be postponed as much as possible, the consequence of which is thorough preparation before the trial begins.
- i. Every child has the right to be able to communicate with their parents and family.

### 4) Forms of Legal Protection for Children as Witnesses in General

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<sup>18</sup>Preamble to the 1945 Constitution of the Republic of Indonesia, Paragraph 4.

<sup>19</sup>Arif Gosita, 1985, Problems of Crime Victims, Akademika Pressindo, Jakarta, p. 18.

<sup>20</sup>Wagiati Soetodjo, 2010, Criminal Law of Children, PT. Refika Aditama, Bandung, p. 72.

Law Number 26 of 2000 concerning Human Rights Courts provides further protection for witnesses as in the above Article with Article 35 which states:<sup>21</sup>

- 1) Every victim and witness of a serious human rights violation and/or their heirs may receive compensation, restitution and rehabilitation.
- 2) Compensation, restitution and rehabilitation as referred to in Paragraph (1) are stated in the decision of the Human Rights Court.
- 3) Provisions regarding compensation, restitution and rehabilitation are further regulated by Government Regulation.

### **3.2. Obstacles for the Prosecutor's Office in providing legal protection for children as witnesses in the criminal justice system**

Handling criminal cases against children, especially children as witnesses, is certainly different from handling cases against adults, handling of these children is special because it is regulated in separate regulations. Understanding of the process of handling children's cases, of course, there may still be some people who do not understand, so that sometimes various assessments arise. If there is a misjudgment that the handling of children, especially children as witnesses, gets special treatment and there are also those who think that children cannot be punished, it's just that the handling process is regulated specifically.<sup>22</sup>

The obstacles that occur at the Banjar District Attorney's Office in providing protection for children as witnesses, especially children as victims of criminal acts of sexual intercourse, have 2 (two) obstacles as follows:

- 1) Internal constraints, namely the Banjar District Attorney's Office does not have enough budget, the lack of Public Prosecutors (related to human resources) at the Banjar District Attorney's Office in handling cases of sexual intercourse with children as victims, the incomplete facilities and infrastructure owned by the Banjar District Attorney's Office in providing protection for children as witnesses (victims) of sexual intercourse crimes; and the less than optimal cooperation between the Police, the Prosecutor's Office, and the Court, non-governmental organizations and other law enforcement officers in providing protection for children as witnesses (victims) of sexual intercourse crimes.
- 2) External constraints, namely the existence of a custom in Indonesian society that considers that the crime of sexual intercourse committed against children is something that often happens, but this is a violation of legal regulations, so that

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<sup>21</sup>Article 35 of Law Number 26 of 2000 concerning the Human Rights Court.

<sup>22</sup>Nabila Wulandari, "The Role of Prosecutors in Law Enforcement against Children Who Commit the Crime of Theft", Badamai Law Journal Master of Law, Lambung Mangkurat University Vol. 8 No. 2 (2023), p. 280-291, url: file:///E:/DOWNLOADS/17364-50372-1-PB%20(1).pdf accessed on June 20, 2024.



there is a tendency for children (victims) as witnesses to cover up the actions they experience, because children become afraid if they reveal it and the lack of public knowledge in this case, namely (child) victims as witnesses, about the provision of legal protection by law enforcement officers, especially the Banjar Regency District Attorney's Office.

### **3.3. The Prosecutor's Solution in Providing Legal Protection for Children as Witnesses in the Criminal Justice System in the Future**

Child protection is carried out based on the principles of non-discrimination, the best interests of the child, respect for the child's opinion, the right to live, grow and develop and the right to participate. It regulates the basic rights of children to obtain identity, freedom, health services, entertainment, and education. In its implementation, the Law has been in line with the mandate of the 1945 Constitution of the Republic of Indonesia regarding the guarantee of human rights, namely that children as humans have the same rights to grow and develop.

In addition, the Child Protection Law (UUPA) is also needed to emphasize the existence of obligations for the state, government, society, families, parents and children, considering:

- 1) The obligation to provide child protection, although it is based on a shared obligation, needs to be given a special legal basis in addition to what is already stated in the articles of the 1945 Constitution of the Republic of Indonesia or in various other laws and regulations in order to guarantee its implementation in a comprehensive manner and with appropriate handling and targets, which must be carried out by the state, government, society, family and parents of children.
- 2) There needs to be a balance between protecting children's rights and giving children obligations in the capacity of educating children. Therefore, in addition to protecting their rights, so that they do not become miscarriages, misdirected, it is necessary to also address the obligations that need to be carried out by children.

Although legal instruments have been owned, in its journey Law Number 23 of 2002 concerning Child Protection has not been able to run effectively because there is still overlap between other sectoral laws and regulations related to the definition of children. On the other hand, the rampant crimes that often occur against children in society, one of which is the crime of sexual intercourse which requires increased commitment from the Government, both Regional Governments and the community and all stakeholders related to the implementation of Child Protection.

Therefore, there needs to be legal guarantees for child protection activities. The purpose of legal protection is expected to obtain real justice or responsive, accommodating justice, for comprehensive legal interests, both from criminal and civil aspects and administrative aspects, therefore achieving responsive justice



requires legal awareness from all levels of society including government agencies and the community to comply with the law itself.

#### 4. Conclusion

Children who are positioned as witnesses in criminal cases will receive legal protection guarantees in the form of physical, mental, and social safety guarantees and have access to information regarding the development of the case. Children as witnesses must receive their rights based on the best interests of the child and respect for children. The guarantee of protection obtained is not only from Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, but also from Law No. 13 of 2006 concerning the protection of witnesses and victims. The state, in this case the government and the judicial apparatus responsible for enforcing Law 11 of 2012, must pay attention to effective implementation by considering the best interests of the child, the budget needed for enforcement, and the perspective of law enforcers.

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