



## Return of Case Files in Pre-Prosecution of Child Abuse Crimes

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**Abstract:** The purpose of this research is to know and analyze the inhibiting factor of the case file that cannot be delegated to the prosecution stage by the prosecutor at the Gorontalo District Attorney. This research uses a type of empirical legal research that uses facts in the field as the main data in compiling the research. Research results The inhibiting factor of the case file cannot be delegated to the prosecution stage by the prosecutor at the Gorontalo District Attorney's Office, namely the first factor is the unfulfilled formal requirements referred to namely *visum et repertum* whose contents do not refer to the crime of child molestation so that the prosecutor considers the case file difficult to process. charged at a later trial which may lead to consequences. Second, from the factor of material requirements, namely, the Minutes of Examination (BAP) are not focused, the Investigator has not properly ensnared the article, the evidence is not completely listed, the witness statements are not completely listed, the *modus operandi* is not clearly stated.

**Keywords:** Effectiveness; Return of Case Files; Pre-Prosecution; Crime, Child Abuse.

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## 1. Introduction

One of the mandates of the Opening of the 1945 Constitution of the Republic of Indonesia as the *modus vivendi* (noble agreement) for the formation of the Indonesian state in the fourth paragraph states that one of the goals of the state is "to protect the entire Indonesian nation", this has provided a bridge to the existence of holistic and comprehensive protection that become the responsibility of the state along with the elements of the state inherent in it. As is well known, that Of course, if you read the nuances of kebatinan from the birth certificates of this country, then substantively this country was formed to be free from all forms of oppression, both physically and psychologically for all the people and society mediating the Unitary State of the Republic of Indonesia, including in this case is the child.<sup>1</sup>

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so the recognition of the regions under the auspices of the State of Indonesia is still recognized.<sup>2</sup> An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.<sup>3</sup> Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.<sup>4</sup> Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.<sup>5</sup>

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.<sup>6</sup> At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security

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<sup>1</sup> N. M. Alhasni, M. R., Badu, L. W., & Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur," *Jurnal Legalitas* 12, no. 2 (2019): 110-23.

<sup>2</sup> Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

<sup>3</sup> Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

<sup>4</sup> Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

<sup>5</sup> Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68-93., 73

<sup>6</sup> Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution.<sup>7</sup> Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.<sup>8</sup> The state is firmly obliged to try to fulfill the rights of every citizen.<sup>9</sup>

In Article 1 paragraph (3) of the 1945 Constitution it is stated that the State of Indonesia is a State of Law. This article means that in the Unitary State of the Republic of Indonesia, law is the lifeblood of all aspects of life. Law is the root from the point of view of social activity. Law has an essential and prominent position in human life in an area based on law, law as a pattern that can work properly in a human sphere if the means of its realization are complete with tasks in the field of enforcing a regulation. The Attorney General's Office of the Republic of Indonesia is one of these tasks. The presence of the Prosecutor's Office in the Unitary State of the Republic of Indonesia as a legal institution has a core role and tips in enforcing regulations, because the Attorney General's Office acts as a filter between investigations and a series of actions in court. Therefore, its presence in human activities can fulfill the mission of law enforcement.<sup>10</sup>

According to Friedman, the position of the prosecutor is one of the executors of the legal figure who determines whether the law can be properly enforced, whose function is to ensure that the law can be carried out properly. Law enforcement figures include the police, prosecutors, courts and correctional institutions (Lapas). The stages in criminal justice include the stages of investigation, investigation, prosecution, judicial process, and enforcement of decisions.<sup>11</sup>

Based on Article 1 Paragraph (5) of the Criminal Procedure Code defines the Investigation Stage as a series of investigative actions to search for and find an event suspected of being a crime in order to determine whether or not an investigation can be carried out. it can be concluded that the investigation stage is the stage to determine whether the criminal event really existed, in the implementation of the investigation carried out by

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<sup>7</sup> Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

<sup>8</sup> Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

<sup>9</sup> Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

<sup>10</sup> Marwan Efendy, *Kejaksaan RI Posisi Dan Fungsinya Dari Perspektif Hukum* (Jakarta:Gramedia Pustaka Utama, 2005).

<sup>11</sup> *ibid.*

investigators. Once an event or criminal act is found, it proceeds to the investigation stage.

Pursuant to Article 1 Paragraph (2) of the Criminal Procedure Code, the Investigation Stage is defined as a series of investigative actions in terms of and according to the methods stipulated in this law to seek and collect evidence with which evidence sheds light on the crime that occurred and to find the suspect. It can be concluded that investigation is the stage where the investigator plays a role in collecting evidence, finding the perpetrators of crimes, and determining the basis or snares of the articles that apply in accordance with the criminal acts of the perpetrators. After the evidence is found, the perpetrators of the crime are determined and the provisions of the article that were violated can then be transferred to the prosecutor's office. The position of the Attorney General based on Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia,<sup>12</sup> However, based on the elucidation of Article 30 paragraph (1) letter a, which reads:

“(1) In the field of crime, the Attorney General's Office has the following duties and powers:

- a prosecute:
- b carry out the determination of judges and court decisions that have obtained permanent legal power:
- c supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions:
- d conduct investigations into certain criminal acts based on the law:
- e complete certain case files and for that can carry out additional examinations before being delegated to the court which in its implementation is coordinated with investigators.

Based on the explanation of Article 30 paragraph (1) letter a namely in carrying out prosecutions, the prosecutor can carry out pre-prosecution. Pre-prosecution is the action of the prosecutor to monitor the progress of the investigation after receiving notification of the commencement of the investigation from the investigator, studying or researching the completeness of the case files resulting from the investigation received from the investigator and providing instructions to be completed by investigators to be able to determine whether the case file can be transferred or not to the prosecution stage.<sup>13</sup>

Based on the pre-prosecution definition, the authors conclude that the pre-prosecution function is coordination between investigators and public prosecutors in terms of investigators studying or researching case files given by investigators so that the public

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<sup>12</sup> Ook Murohim dan Ratna Herawati, “Independensi Lembaga Kejaksaan Sebagai Legal Structure Didalam Sistem Peradilan Pidana (Criminal Justice System) Di Indonesia,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (202AD): 374.

<sup>13</sup> Undang-Undang Republik Indonesia Nomor 16 Tahun 2004, “Tentang Kejaksaan Republik Indonesia” (n.d.).

prosecutor can provide directions in the form of instructions to complete the completeness of the case file so that with the pre-prosecution stage can minimize the number of case files that cannot be transferred to the prosecution stage because the case files have passed the investigation stage in terms of evidence, suspects and what articles have been violated have been found and determined by investigators.

The Gorontalo District Prosecutor's Office as a law enforcement agency, where the public prosecutor acts as the executor of the prosecution appointed based on Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, before the public prosecutor prepares an indictment, the Public Prosecutor must carry out coordination called pre-prosecution.

In the event of pre-prosecution, the things that can be done by the Public Prosecutor are as follows:<sup>14</sup>

1. Following the progress of the investigation;
2. Coordinating with investigators on the investigation of certain cases;
3. Granting an extension of detention;
4. Receive and examine the completeness of case files;
5. Provide instructions for completing case files;
6. Examining whether or not the termination of the investigation is legal, if the investigation is terminated;
7. Accept the responsibility of the suspect and evidence;
8. Carry out additional checks;
9. Draft an indictment plan

Giving instructions for the completeness of the case file is carried out by returning the case file which is one of the pre-prosecution processes with the aim that it can be completed by the investigator in accordance with what is directed in the form of instructions from the Public Prosecutor. The return stage of the case file in Pre-Prosecution is very helpful for the public prosecutor in terms of ensuring that the entire case file is under investigation status and is feasible to be forwarded to the prosecution stage..

based on a comparison of case dossier data to the prosecution stage by the Gorontalo District Prosecutor's Office with data on criminal acts of child abuse by the Gorontalo City Police, in 2020 there were 23 cases and in 2021 there were 26 cases, compared to data on child abuse case files that were able to go to the prosecution stage in In 2020 there were only 11 case files and in 2021 there were 4 cases. It can be concluded that in 2020 there were 12 case files, while in 2021 there were 22 case files which only reached the pre-

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<sup>14</sup> Undang-Undang Republik Indonesia Nomor 16 Tahun 2004, "Tentang Kejaksaan Republik Indonesia" (n.d.).

prosecution stage or could not be transferred to the prosecution stage after returning the case files to investigators. Based on the large number of case file data that cannot be transferred to the prosecution stage or at least case files that can be transferred to the prosecution stage in the last 2 years, the author concludes that there is ineffectiveness or the implementation of returning case files in pre-prosecution has not been effective by public prosecutors and investigators so that Not all of the case files are in the prosecution stage.

Thus, the researcher is interested in conducting research related to The Effectiveness of Returning Case Files in the Pre-Prosecution of the Crime of Child Abuse at the Gorontalo District Attorney.

## **2. Method**

This type of research is empirical research, the research method is a way of doing something by using the mind carefully to achieve a goal by searching, writing, formulating and analyzing a report.<sup>15</sup> This research uses techniques Data analysis is a research activity in the form of studies or research on the results of data processing using previously obtained theories.

## **3. The Inhibiting Factors of the Case File cannot be delegated to the prosecution stage by the Prosecutor at the Gorontalo District Prosecutor's Office**

In determining which case files can be transferred to the prosecution stage, the case files must go through several mechanisms through coordination in terms of investigations between the Police (Investigators) and the Prosecutor's Office (Public Prosecutor), this is done in the following stages:

- a After the Police (Investigators) carry out investigative activities, the Head of Police in the unit concerned (Kapolres/Kapolsek) immediately sends a Notice of Commencement of Investigation (SPDP) to the Chief Public Prosecutor via the Kejari/Kejati. This SPDP delivery is the starting point of the coordination relationship between the police (investigators) and the Attorney General's Office (Public Prosecutor) in the case of carrying out an investigative activity.
- b Furthermore, the Attorney General's Office and the Prosecutor's Office will appoint the Prosecutor to monitor the progress of the investigation and conduct research on case files (form letter P-16A). It is this appointed prosecutor who will coordinate with investigators in terms of determining whether or not a case is eligible for escalation at the prosecution stage.
- c After the investigator has finished carrying out investigative actions, such as examining witnesses, experts and suspects, confiscating, arresting, detaining and

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<sup>15</sup> Chilid Narbuko dan Abu Achmadi, *Metodologi Penelitian* (Jakarta : PT. Bumi Aksara, 2003).

so on, the results of these investigative activities are set forth in a case file thorough.

- d The Research Prosecutor conducts research on the case file, whether the case file meets the formal and material requirements to be transferred to the trial. The Criminal Procedure Code determines a maximum of 7 (seven) days from receipt of the case file. This is regulated based on Article 138 paragraph (1) of the Criminal Procedure Code which reads: "The public prosecutor, after receiving the results of the investigation from the investigator, immediately studies and examines them and within seven days is obliged to notify the investigator whether the results of the investigation are complete or not"
- e Prosecutors have to make a statement. In this case there are 2 (two) attitudes of the Research Prosecutor, namely:
  - 1) If the case dossier has been declared complete, the investigating prosecutor will draw up an Opinion Minutes stating that the case dossier is complete and the case dossier can be advanced to the prosecution stage. If this attitude is taken by the Research Prosecutor, it means that the investigation has been completed and the Pre-Prosecution stage will automatically move on to the Prosecution stage. The consequences of the transition from the Pre-Prosecution stage to the Prosecution stage also result in the transfer of "juridical responsibility" for criminal cases from the hands of investigators to the hands of public prosecutors after investigators hand over responsibility for suspects and evidence to the Public Prosecutor (Article 8 paragraph (3) letter b of the Criminal Procedure Code ), besides that the Research Prosecutor also immediately drafted an indictment plan that would be handed over to the court.
  - 2) If the case dossier is declared incomplete, the Research Prosecutor will immediately issue a Letter (P-18) stating that the case dossier is returned to the investigator, because the dossier is still incomplete, then within 14 (fourteen days) of receipt of the dossier. The Research Prosecutor must provide instructions to investigators, both in the form of completeness of formal and material requirements
- f After receiving instructions from the Prosecutor to complete the case file, the investigator is "obliged" to complete the case file in accordance with the Prosecutor's instructions. In this case, coordination is also carried out by way of the investigator facing the Prosecutor to obtain concrete instructions in completing the deficiencies in the Case Files. After the case file is completed by the investigator. Investigators within 14 days must submit or resubmit the files and additional investigation results to the public prosecutor (Article 11-paragraph (2) and (3) and Article 138 paragraph (2) KIHAP). Article 138 paragraph (2) which reads: "In the event that the results of the investigation turn out to be incomplete, the public prosecutor returns the case dossier to the

investigator accompanied by instructions on what must be done to be completed and within fourteen days from the date of receipt of the dossier,

- g The Research Prosecutor again conducted a research on the case dossier and after being declared complete, immediately notified the investigators to hand over the suspect with evidence to the Public Prosecutor. However, if according to the Research Prosecutor it is found that the case file is still incomplete, then the case file is returned to the Investigator and the process of going back and forth on the case file will occur until the case file is declared complete by the Prosecutor

In determining which case files can be categorized as pre-prosecution, if the case files do not meet the material and formal requirements as follows:

### **Formal Terms**

Formal completeness is something related to formality or requirements regarding investigative procedures which must be accompanied by an order and minutes whose validity is in accordance with the provisions of the law. This also includes name, place of birth, age or date of birth, place of residence of the suspect, gender, nationality and religion.

The formal conditions referred to are based on the Republic of Indonesia Prosecutor's Office Regulation Number 6 of 2021 concerning Guidelines for Handling Cases for Crime of Child Affair and Crime of Obscene Acts against Children in Chapter II related to pre-prosecution point 3, namely<sup>16</sup>

- a Documents for registering the birth of the victim's child or a photocopy of it
- b Marriage registration document, family card and/or decision of the court of adoption or a photocopy of it in the event that the crime is committed by the parents and/or a person who has a family relationship with the victim's child
- c work contract, employee appointment letter, and/or assignment letter or photocopy in the event that the crime is committed by a nanny, educator, educational staff, and/or apparatus in charge of child protection
- d Visum et repertum (hereinafter abbreviated as Ver) or a medical certificate or forensic examination of a child victim, including in cases where a crime results in a child victim experiencing serious injury, infectious disease, impaired or loss of reproductive function and or a child victim who dies. If it is needed to support evidence, VeR can also be carried out on a suspect.
- e results of forensic laboratory examinations, including examination of body fluids, hair and/or body cells of suspects and child victims which prove penetration (penis) and/or ejaculation into the vagina, anus and/or oral and others.

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<sup>16</sup> Peraturan Kejaksaan Republik Indonesia Nomor 6 tahun 2021, "Tentang Pedoman Penanganan Perkara Tindak Pidana Persetubuhan Anak Dan Tindak Pidana Perbuatan Cabul Terhadap Anak" (n.d.).



- f Visum et Repertum Prikatrikum (hereinafter abbreviated as VeRP) or a certificate from a psychiatrist or psychologist specialist against child victims to find out the psychological impact of a crime, especially if it is needed to support evidence, VeRP can also be carried out on suspects.

Several formal documents are in the form of photocopies, and must be legalized by the authorized official. If the completeness of the formal requirements is not met, this can certainly prevent the case file from being transferred to the prosecution stage because based on the conditions it does not meet.

As for the inhibiting factors in the case file for the crime of child abuse, it cannot be transferred to the prosecution stage which is included in the formal requirements, namely Visum et repertum, which is one of the letters included in the third category of documentary evidence. The definition of visum et repertum is a statement made by a doctor based on the results of an examination of the human body, corpse or body parts or suspected parts of the human body, made based on a written request from the authorities, based on an oath, for the benefit of justice.

Visum et repertum is one of the pieces of evidence that can be used to strengthen the existence of a criminal act of obscenity, based on interviews conducted by the author with the public prosecutor at the Gorontalo District Attorney's Office, several cases are also often hampered by evidence in the form of a letter, namely Visum et repertum regarding the truth of the crime in the form of whether there is true sexual abuse of children. Two important aspects to pay attention to in sexual crime/rape cases are: collecting evidence of intercourse, such as a torn hymen, presence of semen and/or sperm cells, looking for signs of violence, such as a history of loss of consciousness and injuries.

The definition of sexual intercourse legally is the insertion of the penis into the vagina, partially or completely, with or without ejaculation, at least passing through the vestibule. Meanwhile, the notion of obscenity is any sexual assault without intercourse.

In the event that sexual violence is suspected to have occurred in a case of sexual abuse, a thorough anogenital and laboratory examination must be carried out in accordance with standard examination procedures. The discovery of bruises, abrasions and or lacerations around the genitals, such as the vulva, vagina and hymen, can lead to the conclusion that the injury is a sign of violence. In the event that the sign of violence is located in a deeper area such as the vaginal hymen, it can be concluded that penetration is likely or almost certain (it does not have to be complete penetration, and it does not have to be by the penis).

Indeed, it must be admitted that there are still weaknesses in this conclusion, namely that it cannot be certain when the violence occurred, especially if the injury was an "old"

injury. A hymen tear that is five days old generally has the same characteristics as other old tears

## **Material Terms**

Material Requirements are completeness related to the crime committed by the perpetrator of the crime in the form of time and place of the crime committed (tempus delicti and locus delicti), the complete chronology of the case, as well as the articles violated by the perpetrator of the crime.

Material completeness, namely the completeness of data information, facts and evidence needed for the purposes of proof and whether it has fulfilled the criminal elements.

As for the inhibiting factors in the case file of the crime of child molestation, it cannot be transferred to the prosecution stage which is included in the material requirements obtained based on interviews conducted with one of the Public Prosecutors at the Gorontalo District Attorney's Office as follows:

- A The case report (BAP) is not focused, the main case listed by the investigator in the case report is not focused or widened from the actual case. Therefore, the Public Prosecutor cannot understand and master the main points in the BAP properly. So that it is feared that the main case is considered not a criminal act.
- B Investigators were inaccurate in determining the article that had been violated by the suspect, the criminal article imposed on the suspect was felt by the Public Prosecutor to be inappropriate with the crime that had been committed by the suspect. Investigators were not careful in using articles adapted to the criminal acts committed by the suspect.
- C The evidence listed in the BAP is incomplete. The evidence found during the investigation was not included by the investigator in full in the BAP. This makes it difficult for the Public Prosecutor to prosecute and prove the crimes committed by the suspect in court later. In a case that is going through the investigation stage, at least in completing it related to the case file, the investigator must be able to confirm 2 pieces of evidence. Legal evidence according to the Criminal Procedure Code is in Article 184 of the Criminal Procedure Code, namely:
  - 1) Witness Statement  
Witness statements according to Article 1 paragraph (27) of the Criminal Procedure Code are statements from a witness regarding a criminal event that he himself heard and experienced by himself stating the reasons for that knowledge. The testimony of a witness alone is not enough to prove that the defendant is guilty of the actions he is charged with. The statements of several independent witnesses about an

incident or situation can also be used as valid evidence if the statements of the witnesses are related to one another in such a way as to justify the existence of a particular event or situation. As a whole, in the handling of the criminal act of child abuse by the Public Prosecutor at the Gorontalo District Attorney's Office, it is related that the testimony of the witness did not match the time and place of the incident which was included in the minutes of the examination. So that this makes the public prosecutor return the case file to the investigator, but if this cannot be resolved, this can hinder the case file from being transferred to the prosecution stage by the public prosecutor.

2) Expert Statement

Expert testimony according to Article 1 paragraph (28) of the Criminal Procedure Code is information given by someone who has special expertise on matters needed to shed light on a criminal case for the purposes of examination. Article 180 paragraph (1) of the Criminal Procedure Code states that in the event that it is necessary to clarify the situation of issues that arise in court proceedings. The expert's statement is when the expert comes during the trial and he gives information orally. And if he gives information verbally and also brings supporting documents verbally, then it still goes into the evidence of expert testimony.

3) Letter

Information or data in the form of documents or Letters can be used as evidence in court.

4) Instruction

The definition of guidance in Article 188 paragraph (1) is "an act, event or circumstance which because of their agreement, either one with another, or with the crime itself, indicates that a crime has occurred and who the perpetrator is." (Djoko and Murtika, 1986)

In Article 188 paragraph (2), the instructions as described in paragraph (1) can only be obtained from witness statements, letters and statements from the accused. It can be seen that the evidence is very dependent on other evidence, and the evidence is only needed in proof if the other evidence is not considered sufficient to prove the defendant's guilt.

5) Defendant's statement

The statement of the defendant according to Article 189 paragraph (1) of the Criminal Procedure Code is whatever the defendant stated in court about the actions he committed, knew or experienced himself. The terms of the defendant's statement are not the same as the defendant's confession, because in a legal sense what is meant by the defendant's statement is not only in the form of acknowledgment but also includes the defendant's denial. Article 189 paragraph (3) of the Criminal

Procedure Code says that the statement of the accused alone is not sufficient to prove that he is guilty of committing the act he is accused of, but must be accompanied by other evidence.

In accordance with the explanation of the evidence related to the child abuse case above, there are at least 2 pieces of evidence which presumably this can strengthen the indictment of the Public Prosecutor at the trial should be fulfilled. However, because the evidence found in the investigation was not included by the investigator in full in the BAP. This makes it difficult for the Public Prosecutor to prosecute and prove the crimes committed by the suspect in court later. which of course is an inhibiting factor in the case file not being transferred to the prosecution stage

- D Statements from Witnesses That Are Not Completely Included in the Investigation Documents Information provided by witnesses who have previously been examined by investigators are not completely included in the Investigation Documents, resulting in incomplete information regarding the information presented and provided by witnesses who are related to the case. The Public Prosecutor found out about this after examining the BAP and checking the truth of the witnesses who had previously been examined by investigators.
- E The modus operandi used by the suspect in committing the crime was not clearly stated by the investigator in the BAP, so that it was difficult for the Public Prosecutor to understand the modus operandi used by the suspect in committing the crime. Modus operandi is a special method used by a criminal to get something he wants. The implementation of these tricks and methods is often carried out in alliance or carried out by more than one person in order to facilitate the crime process and help the role of the perpetrator so that the environment does not suspect him.
- F The inventory in the BAP regarding the number of suspects, related witnesses, and the date and day when the investigation, confiscation, detention and search was carried out was not included by the investigator. In this regard, there is usually a discrepancy.
- G It is difficult and complicated to study the dossier. The public prosecutor has difficulty studying and understanding the dossier that has been given by the investigator. This is because the BAP is too complicated in terms of language, writing, and the method of delivery which is written in the BAP. Based on the point of view of the Public Prosecutor at the Gorontalo District Prosecutor's Office, basically what is hindering the case file is that it cannot be transferred to the prosecution stage based on the point of view of the Public Prosecutor at the Gorontalo District Prosecutor's Office, namely in line with the reasons for the case file being returned to the investigator or what category the Public Prosecutor uses in returning the case file to the

investigator. After carrying out the return in the form of several things that are categorized to be fulfilled, the implementation cannot be fulfilled by the investigator within 14 days based on Article 138 paragraph 2 of the Criminal Procedure Code. This certainly can prevent case files from being transferred to the prosecution stage, resulting in many case files not being transferred to the prosecution stage. The decision taken by the Public Prosecutor at the Gorontalo State Prosecutor's Office when there was a case file that was considered weak to be continued for indictment which could cause the perpetrator of the crime of child abuse to go free on parole so that before this happened the public prosecutor stopped investigating the case file, resulting in several case files cannot be transferred to the prosecution stage

#### **4. Conclusion**

Based on the results of the analysis and discussion that have been described above, it can be concluded that The inhibiting factor for the case file not being transferred to the prosecution stage by the Prosecutor at the Gorontalo District Attorney's Office is the inability of the investigator to comply with the instructions given by the Public Prosecutor, both instructions related to fulfilling formal and material requirements. What is meant by formal requirements is evidence in the form of a letter, namely *Visum et Repertum* which is considered weak by the Public Prosecutor. while what is meant by material requirements is the Minutes of Examination (BAP) are not focused, the Investigator has not properly ensnared the article, the evidence is not completely listed, the witness statements are not completely listed, the *modus operandi* is not clearly stated.

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