



## Problems of Investigators in the Legal Process Against Children as Perpetrators of Abuse

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**Abstract:** This study aims to determine investigators' problems in the legal process against children as perpetrators of abuse. The research method used is empirical research descriptive qualitative research approach and using descriptive data analysis techniques. The results of this study indicate that there are two problems faced by investigators in the legal process against children as perpetrators of abuse, namely internal problems, and external problems. Internal problems of course consist of several things, including investigator resources, the lack of an investigative budget, and the lengthy stages of the legal process. While the external problems faced are the lack of community support, the legal awareness of the community is still minimal, and the problem of evidence and technological developments is increasingly sophisticated.

**Keywords:** Problems; Law; Perpetrator; Persecution;

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### **How to cite (Chicago Style):**

Pulukadang, PM D. "Problems of Investigators in the Legal Process Against Children as Perpetrators of Abuse" *Estudiante Law Journal*. Vol. 5 (2), (Juni, 2023): 421-440

## 1. Introduction

The State of Indonesia itself is a constitutional state as explained in Article 1 Paragraph 3 of the 1945 Constitution. Therefore, as a rule of law, the objectives of the Republic of Indonesia are also clearly stated in the 1945 Constitution of the Republic of Indonesia that the state aims to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, participate in efforts world peace based on freedom, eternal peace, and social justice. Indonesia is the highest agreement of the state's formers, even though it 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>1</sup> The 1945 Constitution of the Republic of Indonesia as a product of the MPR did not come from a vacuum but is an actualization of political will. As a consequence of constitutional democracy, the constitution must contain fundamental aspects, including arrangements regarding guarantees for the human rights of its citizens.<sup>2</sup> The state is firmly obliged to try to fulfill the rights of every citizen.<sup>3</sup>

One of the phenomena of crime that occurs in today's society, there are so many acts of persecution in the community carried out by perpetrators of crime, the behavior of persecution is a social problem that originates from the mental attitude of people who live in the environment and those who have the potential to commit crimes in terms of this is persecution. Acts of persecution in Indonesia in the Criminal Code are described in (article 351 of the Criminal Code). Acts of abuse are not only carried out by adults but even children can and have the courage to do such things. If a child commits a crime, sanctions will be imposed. Sanctions are a logical consequence of an act committed. Sanctions have a broad meaning. There are many forms of sanctions, for example, moral sanctions, and legal sanctions. Legal sanctions can be distinguished again based on the field of law, for example, Criminal Sanctions, Administrative Sanctions, and Criminal Sanctions. Sanctions can have the same meaning as punishment, but the meaning is different from punishment.<sup>4</sup>

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<sup>1</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>2</sup> Fence M. Wantu Novendri M. Nggilu, "Menapaki Jalan Konstitusional Menuju Zaken Cabinet: Ikhtiar Mewujudkan," *Jurnal Hukum*. 15, No. 1 (2020): 126-140., 127

<sup>3</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>4</sup> Sri Sutatiek., *Hukum Pidana Anak Di Indonesia*. (Yogyakarta: Aswaja Pressindo, 2015)., 5

In our daily lives, even in society, 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>5</sup>

The writer saves that in the case of violations against children, there is no need to punish them but to give them advice and support so that they can mature and develop into healthy, intelligent, and normal children. Children are a gift from Allah SWT, God Almighty, and are candidates for the next generation of the nation because they are still in a period of physical and mental growth. However, sometimes children are faced with challenging situations that violate the law. Children who break the law, however, should not be punished and certainly not sent to jail. As if it would never end, it happens every day and every major media outlet in Indonesia even has a special rubric for Gorontalo. Law is a product of politics,<sup>6</sup>

Based on Law Number 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection it also mentions the rights and obligations of children, in this law child protection is given priority, where this must still be done even if the mother or father is in dispute one of them believes outside of Islam, or between them are different nations, but in deciding on the child's choice one must look for the benefit of the child which in this case is not only the benefit of the world but also the end of this world, namely the hereafter. Legal protection is needed because it is an effort to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.<sup>7</sup>

The statement above diverts the case not to proceed with the legal process or is often said to be child diversion, where the child is faced with a legal process because he has committed an act that can harm other people. The focus of the researcher's research is how investigators conduct investigations when dealing with child cases. There will be two legal processes, namely resolving the case by deliberation/diversion of the child or continuing the case at a green table, in this case, the court. In the process of child diversion, researchers think that everything is fine because both parties are still thinking about how the child's life will be in the future. However, the problem is when the victim continues the legal process, Therefore, of course, there are children's rights and obligations that must be

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<sup>5</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

<sup>6</sup> Ahmad and Nasran, "Comparison of Judicial Review: A Critical Approach To The Model In Several Countries" *Journal of Legality* 14, No. 2 (2021): 85-105., 88

<sup>7</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.

sacrificed and must receive a solution from the investigator as the executor of laws and regulations, especially those related to the rights and obligations of the child, which must be fulfilled properly even though the legal process is ongoing. Quoting what was said by Lisnawaty Badu where it was said that the right to life must also be protected by the state, especially the rule of law.<sup>8</sup>

Because of the involvement of children in a crime, in handling a violation, the investigator has to conduct investigations and investigations to uncover whether a criminal offense committed by a child has occurred. Referring to the principle of the presumption of innocence, in general, if anyone commits a criminal act, then he cannot be said to be a suspect or a guilty person if he does not have a verdict from the judge. The following is data obtained from the Limboto Police:<sup>9</sup>

**Table 1**  
**Persecution Case Data**

No	Year	Number of cases	Finished	Not finished yet
1	2020	18 Cases	7 Cases	11 Cases
2	2021	21 Cases	13 Cases	8 Cases
3	2022	17 Cases	7 Cases	10 Cases
<b>Total</b>		<b>56 Cases</b>	<b>27 Cases</b>	<b>29 Cases</b>

**Source: Limboto Police, 2022**

The data on child abuse cases shown in the table above can provide an understanding that every year there are fluctuations both in terms of the increase in the number of cases and the process of solving them, so it is certain that there will be obstacles in the investigation process where cases from 2020, 2021 to 2022 still leave cases that have not yet been investigated. completed and currently processing. As said by the PPA Unit Head, the unfinished case is still under investigation and while the process is still in the investigation/investigation stage.

## 2. Method

The type of research used in this research is empirical research, referring to the opinion of Bambang Sunggono where it is said that this empirical research is data obtained from paths to fields or data obtained directly from the

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<sup>8</sup> Badu Lisnawaty, "Euthanasia Dan Hak Asasi Manusia," *Jurnal Legalitas* 5, No. 1 (2012): 1-11.1

<sup>9</sup> "The data was obtained from Mr. Rudianto Simbala as Unit 1 Criminal Investigation Unit for General Crimes at the Limboto Police, Tuesday, August 2, 2022, 10:22 WITA."

community.<sup>10</sup> Furthermore, using a descriptive qualitative research approach and using descriptive data analysis techniques.

### **3. Problems of Investigators in the Legal Process Against Children as Perpetrators of Abuse**

Problematics comes from the word problem which can be interpreted as a problem or problem.<sup>11</sup> Problem according to KBBI is defined as "things that are still not solved". While the problem itself according to KBBI is "something that must be resolved". So what is meant by problematic or problem is something that needs a solution because there is a discrepancy between the existing theory and the reality that occurs.<sup>12</sup> Firm action is clearly needed, but what needs to be considered is that the perpetrators of terror are children. Special steps are needed in handling the law. This is because children are the next generation of the nation as well as young seeds to bring hope for national renewal, especially since children get special attention from the state in various laws and regulations.<sup>13</sup>

The first thing that must not be forgotten in dealing with the juvenile justice system when a crime occurs is to remember the position of the child offender as a child with all its uniqueness and characteristics. Therefore, the handling of underage criminals must be based on the idea of protecting children so that their welfare and interests are protected. In an effort to provide legal protection for children with legal problems, the handling of children in the legal system requires unique strategies, services, treatment, care and protection for children. In essence, the investigation process only begins when it is clear that a crime has occurred. If it is known that a criminal act has occurred, an investigation will be carried out.<sup>14</sup>

This procedure, which of course includes several stages, begins with an investigation and ends with submission of case files. Of course, it must be based on existing legal procedures, especially the implementation of investigations into criminal acts of abuse against children. Based on what was the statement from the Criminal Investigation Unit I of the Limboto Police that:

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<sup>10</sup> Bambang Sunggono, *Metodologi Penelitian Hukum*. (Jakarta: Rajawali Pers, 2012), 42.

<sup>11</sup> Komarudin dan Yoke Tjuparmah S., *Kamus Istilah Karya Tulis Ilmiah*. (Jakarta: Bumi Aksara, 2000), 145

<sup>12</sup> Tim Penulisan KBBI., *Kamus Besar Bahasa Indonesia*. (Jakarta: Balai Pustaka, 2005), 896

<sup>13</sup> Moh. Rusdiyanto U. Puluhulawa, Jufryanto Puluhulawa, Moh. Fahrurrozie Hidayatullah Nur Musa. Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo. *Jurnal Yuridis*. 6 No. 2 (2019):93-117., 97

<sup>14</sup> Erna Dewi, et al. *Sistem Peradilan Pidana Anak Mewujudkan Kepastian Hukum Terbaik Bagi Anak Yang Berhadapan Dengan Hukum*. (Bandar Lampung: Pusaka Media, 2020), 65

"Regulations governing legal proceedings against children are basically specific compared to legal proceedings against adults, where in the case of children it is most important as stated in the circular of the Chief of Police concerning Restorative Justice. This prioritizes children's rights."<sup>15</sup>

Violence that occurs in children is generally no longer something new to our ears, but this has become a phenomenon that we can and often see in the field. Therefore, there were many cases that were reported to the National Police and there were also many cases that were not reported, because they only chose to make peace between the families. This is in accordance with what was said by the Minister of PPA I Gusti Ayu Bintang Darmawati that many cases of violence against women and children were not reported to law enforcement officials. In addition, many cases of violence were resolved outside law enforcement.<sup>16</sup> This is also in line with what the investigator said that:

"We hear about many cases of children in the field directly from the public, but many are not reported because they are afraid of being prosecuted by law. But there were also those that were reported, but were immediately withdrawn, because they were resolved through mediation between families."

According to the author, cases resolved by family basically provide convenience for investigators, in this case law enforcers, not to carry out further legal proceedings. This is because it is the duty and responsibility of law enforcers to protect the rights and obligations of children as stated in Articles 4 to 19 of Law no. 35 of 2014 concerning Child Protection.

It is clear that the rights and obligations of children that have been included in the regulation when compared with the Chief of Police Circular Letter Number 8 of 2018 concerning the Application of Restorative Justice in Settlement of Criminal Cases, then the above mediation process carried out by the family is already part of the guarantee of legal protection and supervision of control, in the application of the principles of restorative justice (restorative justice) in the concept of investigation and investigation of criminal acts in order to realize the public interest and a sense of justice for the community, so as to create a uniform understanding. Based on what was said by Fence M. Wantu that fair essentially means putting something in its place and giving to anyone what is due,<sup>17</sup>

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<sup>15</sup> The results of an interview with Mr. Rudianto Simbala as Criminal Investigation Unit I of the Limboto Police. Monday, December 5, 2022

<sup>16</sup> Deti Mega Purnamasari., "Menteri PPPA: Banyak Kasus Kekerasan Perempuan Dan Anak Tak Dilaporkan Ke Penegak Hukum.," accessed December 27, 2022, Kompas.com.

<sup>17</sup> Fence M. Wantu, "Mewujudkan Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Putusan Hakim Di Peradilan Perdata.," *Jurnal Dinamika Hukum*. 12, No. 3 (2012): 479-489., 485.

Quoting as said by Suwitno Yutye Imran that justice serves as a guideline to distinguish between just and unfair actions, elements of the aspect of justice can be contained in substance.<sup>18</sup>

There were many factors that caused the act not to be reported to the police, such as the relationship between the victim and the perpetrator, lack of understanding of the applicable legal procedures and not having the ability from an economic point of view to take care of all matters of interest during the legal process. This is in accordance with what was said by one of the people that:

“My child has experienced violence from other children, where my child's hearing is impaired or he doesn't listen anymore. However, because the perpetrators are also family, I prefer peace, but they still bear all the losses due to the treatment of their children.<sup>19</sup>

In general, cases related to children will make it more difficult for investigators to carry out investigations and even investigations, because what investigators have to deal with is behavior that can be said to be unstable, where they will be faced with crying children, children who are silent because of fear and even other behaviors that children have. child. The process of investigation and investigation must also be carried out on children as it should be done on adults. The legal process is carried out, the process in which investigators search for and find out whether it is true that the child has committed a crime. Based on what was said by Kanit IV PPA Criminal Investigation Unit of the Limboto Police that:

"In carrying out our investigation, as investigators, we will continue to try to carry out the mediation process, which in another language is Restorative Justice, but if the two parties come to a mutual agreement. However, if there is no agreement, then we will raise this stage at the investigation stage. At this stage we are still trying to carry out the mediation process in this case diversion, but if the process still does not reach an agreement, then the legal process will continue until the submission of the BAP to the Public Prosecutor and up to the stage of prosecution by the judge "<sup>20</sup>

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<sup>18</sup> Suwitno Yutye Imran, “The Urgency of Regulation of the Ultra Judicial Principle in Criminal Judgments,” *Jambura Law Review*. 3, No. 2 (2021): 395–410., 398

<sup>19</sup> "Results of an interview with Mrs. Ida as Child Parent. Saturday, November 26, 2022, 10:25 WITA"

<sup>20</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, 5 December 2022"

An alarming phenomenon in the field of law enforcement and justice in court is legal justice which is no longer in line with social justice.<sup>21</sup> The application and enforcement of the law are elements of the legal system which must be continuously addressed in order to create a legal position in a legal state that is beneficial to the interests of society, nation and state.<sup>22</sup>

Unprofessional law enforcers in carrying out law enforcement will lead to various kinds of fraud. So that the justice that is coveted by every society is lost. For this reason, law enforcement officials need to increase their intellectual level and provide training methods that are not only carried out once, but continuously for every law enforcement officer so that law enforcement officers can achieve what the community has always wanted. A good legal process will always find the best solution to create values of justice between the two parties. According to Arthur W. Holmes and David C. Fraud is a material misstatement presented by ignoring the principles of truth with the aim of deceiving other parties.<sup>23</sup>

Based on the statement from the investigator above, if the criminal act was committed by a child, law enforcers will not hesitate to always find a solution so that the two parties can reconcile, starting from efforts for restorative justice at the investigation stage and the child diversion stage at the investigation stage. This is done to prioritize children's rights properly fulfilled as stated in the juvenile justice system. However, from the cases handled by the investigators, there were also efforts above that did not reach a mutual agreement. As explained by Kanit IV PPA that:

"Indeed there were several cases where the victim's family still objected to the diversion and restorative justice processes, so inevitably, if sufficient evidence has been collected, we will escalate the legal process to the prosecution or to the prosecutor's stage"<sup>24</sup>

One of the criminal acts that often occurs in the community is when children commit acts of violence against others. The consequences of these actions can cause harm to other people, as is the case with physical, psychological and other violence resulting from the actions taken by the child. Basically, every child has

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<sup>21</sup> Fence M. Wantu, "Kendala Hakim Dalam Menciptakan Kepastian Hukum, Keadilan, Dan Kemanfaatan Di Peradilan Perdata," *Jurnal Mimbar Hukum*. 25, no. 2 (2011): 205-218., 208

<sup>22</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI- Press, 2010)., 11

<sup>23</sup> Nurlita Novianti. Ayu Rahmantari, "Pengaruh Penegakan Hukum, Kesesuaian Kompensasi, Efektivitas Pengendalian Internal, Keadilan Organisasi Dan Gaya Kepemimpinan Terhadap Kecenderungan Kecurangan (Studi Kasus Pada Satuan Kerja Perangkat Daerah Pemerintah Kabupaten Sidoarjo).," *Artikel.*, 2019, 4.

<sup>24</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, December 5, 2022."



characteristics that cannot be guessed by an investigator. Thus, it is this difference in the nature or nature of the children that makes it difficult or easy for a case to be revealed clearly and precisely, and makes it difficult for investigators in finding criminal cases against children. As stated by Criminal Investigation Unit I of the Limboto Police that:

"There are many things that make it difficult for us in handling cases of criminal acts committed by children, one of which is the difference in the character of each child. For example when asked he just cries, or just keeps quiet, so it will indirectly make it difficult for us to carry out legal proceedings"<sup>25</sup>

According to I Made Haribawa Setiawan, et al that Responding to the provisions on child crime or child delinquency, law enforcement officials in our country have not fully implemented what has been stipulated or outlined in the United Nations (UN) Convention on the Rights of the Child, the Law No. 35 of 2014 concerning Child Protection and Law no. 11 of 2012 concerning Juvenile Justice, in treating children as suspects, not a few children who are involved in a crime receive unfair treatment.<sup>26</sup> There are several problems that can complicate investigators in carrying out legal proceedings against children who commit criminal acts, including:

#### 1. Internal Problems

Internal problems mean problems that arise within the scope of the Polres itself, especially in investigators. Among other things, there are several things that become problems that arise in it, namely:

##### a. Human Resources Investigators

If you refer to the research conducted by Lucky Elza Aditya where it is said that the imbalance between the number of officers and the number of cases that occur, often causes the neglect of some cases until they only reach the investigation stage. The number of officers present is not commensurate with the area and coverage of the area handled by the PPA unit, which can hamper the existing legal

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<sup>25</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

<sup>26</sup> I Wayan Suardana dan Gusti Ngurah Parwata. Made Haribawa Setiawan, "Proses Penyidikan Terhadap Tindak Pidana Anak Dibawah Umur." (Universitas Udayana, 2017)., 4

process.<sup>27</sup> Based on what the investigator said via WhatsApp message that:

"In my opinion, the human resources of investigators related to children are still limited, where for child investigators the Polres themselves only have 7 investigators, whereas ideally there should be 9"

Naturally, when investigators are overwhelmed in dealing with child-related cases, in terms of human resources investigators are still lacking, which is not proportional to the number of cases handled, so there are several cases from the previous year that have not been completed in the hands of the legal process because they have obstacles, one of which is human resources. Supporting human resources is certainly part of the smooth running of a legal process. Inexperience in handling cases will also be one of the obstacles to the smooth running of the legal process, because as stated that:

"Understanding of regulatory provisions must be possessed by every investigator in handling cases, one of which is handling cases that occur in children, in this case abuse committed by children, which in the future will collide or deal directly with regulations related to child protection"<sup>28</sup>

"In my opinion, human resources must be improved, such as the existence of special training related to handling juvenile crimes, so far the most training is how to carry out the legal process in general"<sup>29</sup>

Based on what is the information from law enforcement agencies above, in this case investigators, can provide an understanding that being an investigator in criminal acts committed by children is not easy, therefore one must have qualified knowledge in handling

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<sup>27</sup> Lucky Elza Aditya., "Peran Penyidik Anak Dalam Perlindungan Terhadap Anak Sebagai Pelaku Tindak Pidana Perdagangan Orang Pada Tahap Penyidikan (Studi Di Polrestabes Surabaya).," *Artikel Ilmiah. Kementerian Pendidikan Dan Kebudayaan Universitas Brawijaya.* (2014)., 11

<sup>28</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

<sup>29</sup> "Results of Interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, 5 December 2022"

child cases, not to mention will be faced with the character of the child during the legal process.

In criminal cases committed by children, in general, the provisions that are violated are the criminal regulations contained in the Criminal Code, so the investigation is carried out by general investigators, in this case Police investigators. In line with the enactment of the Law on the Juvenile Criminal Justice System, it has been emphasized that investigations into cases of naughty children are carried out by Polri investigators on the legal basis of Article 26 paragraph (1) Number 11 of 2012 concerning the Juvenile Criminal Justice System and which essentially states that " investigations into child cases are carried out by investigators who are determined based on a Decree of the Head of the Indonesian National Police or other officials appointed by the Chief of the Indonesian National Police. Even though the investigators are Polri investigators, not all Polri investigators can conduct investigations into cases of naughty children. The Law on the Juvenile Criminal Justice System recognizes the existence of child investigators, who are authorized to carry out investigations. Child investigators are appointed by the National Police Chief with a Special Decree for this purpose. The Law on the Juvenile Criminal Justice System through Article 26 Paragraph (3) stipulates the conditions that must be met by an Investigator are:<sup>30</sup>

- a) Has experience as an investigator;
  - b) Have interest, attention, dedication and understanding of children's problems.
  - c) Has attended technical training on juvenile justice
- b. Lack of Investigation Budget

Referring to Wira Nadra's research where one of the inhibiting factors for the investigation was the lack of budget issued by the government so that the investigation process was hampered. The lack of investigative operational costs greatly hampered the investigative process, not a few members of the investigators spent their personal money for each assigned official assignment. However, not all investigators want to spend their personal money to carry out the investigation process. The cases they are handling

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<sup>30</sup> "Article 26 Paragraph (3) of the Law on the Juvenile Criminal Justice System"

become hampered in carrying out the investigation process.<sup>31</sup>The description above is in line with what was explained by the Criminal Investigation Unit I of the Limboto Police where it was said that:

"In the ongoing legal process, in this case the investigation certainly requires a lot of money, because it includes separate costs, as is the case with transportation and other costs. It could be that one day of business trip could be 200,000, there are 300,000 anyway the cost is uncertain depending on the circumstances of the case"<sup>32</sup>

Of course, an operational budget is needed to support the performance of investigatorsPOLRI in processing a criminal case. The effectiveness of law enforcement authorities will be hampered by insufficient investigative funds. investigatorinterviewees admitted that the operational budget for investigations is one of the obstacles in the investigation process because currently it is insufficient, thus slowing down the investigation process. As previously explained, from 2020 to 2022 the number of cases is 56, of which 29 cases have not been resolved and 27 cases have been resolved. By him none other than this was caused by various kinds of obstacles faced by investigators when carrying out the legal process.

c. Long Stages

The legal process between adults and children is fundamentally different. The implementation of the legal process on children is carried out specifically starting from the investigation to the prosecution stage which in the end will be given guidance and even the sanctions that will be given will also be lighter than the sanctions for adults. As the investigator said that:

"Basically, the legal process is different from adults, when children commit criminal acts, there is special treatment for them until the time of prosecution, where if the demands are lighter, they will be handed over to the Child Welfare

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<sup>31</sup> Wira Nadra., "Proses Penyidikan Tindak Pidana Penyelenggaraan Pendidikan Tinggi Tanpa Izin Di Kepolisian Resor Kota Besar Medan." (Universitas Muhammadiyah Sumatera Utara Medan., 2017)., 57

<sup>32</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

Institution (LKSA) to be given guidance according to with the demands."<sup>33</sup>

"We cannot determine how long the legal process will take, because everything depends on the process of investigation and investigation of cases, not to mention cases involving children, where in the process of proving that we as investigators will be overwhelmed in dealing with various kinds of children's behavior"<sup>34</sup>

The handling of criminal cases against children is regulated separately in the regulations that regulate them. There are several provisions that regulate the handling of children in conflict with the law, namely Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, Law No. 3 of 1997 concerning Juvenile Justice. Then Law No.35 of 2014 concerning Amendments to Government regulations in lieu of Law (Perppu) No.1 of 2016 concerning the second Amendment to Law No.23 of 2002 concerning Child Protection became Laws, Government Regulations (PP) No. 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under the age of 12, Supreme Court Regulation No. 4 of 2014 concerning Implementation of Diversion in the Juvenile Criminal Justice System and Attorney General Regulation No. 06/A J.

All of these regulations go through the process of resolving cases of children in conflict with the law starting from the investigation stage to the mentoring stage. In the juvenile justice system, namely children in conflict with the law who are 12 years old but not yet 18 years old who are suspected of committing a crime. In the case of a crime committed by a child before the age of 18, he will be brought to court after the child has exceeded the age limit of 18 but has not yet reached the age of 21, then he will still be brought to trial in accordance with Article 20 of Law No.11 of the Year 2012 concerning the Juvenile Criminal Justice System. Juvenile criminal justice is regulated in Law No. 3 of 1997 concerning Juvenile Courts

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<sup>33</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, December 5, 2022."

<sup>34</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, December 5, 2022."

deviating from the Criminal Code. Given that children have specialties that cannot be equated with adults,<sup>35</sup>

In the legal process against children, it certainly requires such long stages, so this is one of our obstacles in handling cases against children. For example in the detention of children who must be extended regularly.

“The child's detention period is only 10 days while the legal process is underway, and the time extension is only 10 days. Therefore at that time we had to work together again with BAPAS and the Social Service, in this case social workers. We do this collaborative process to make it easier for us to carry out the legal process for children.”<sup>36</sup>

## 2. External Problems

External problems are basically problems that often occur outside of law enforcement, such as those that occur among perpetrators and victims, society and even occur outside of law enforcement itself. There are several things that can become obstacles or external probematics from investigators in handling cases of juvenile crimes, including:

### a. Lack of Community Legal Support and Awareness

The process of law enforcement, in this case supervision, is not only the duty of the police, but also part of the task of the community itself. Because with the supervision carried out by the community, at least it can reduce violence that occurs among children. Based on what was said by Reskrim Unit I of the Limboto Police that:

"Community support will certainly be able to help us in terms of carrying out legal proceedings, especially in supervision in the community environment, besides that in the school environment it is necessary to be supervised by teachers, so that criminal acts are not repeated in both the community and school environment"<sup>37</sup>

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<sup>35</sup> E-Buletin., “Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana.,” accessed December 27, 2022, hukumonline.com.

<sup>36</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

<sup>37</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

In addition to the support of the community which is very much needed in the legal process to run smoothly, then what is very important is how the community understands the laws that apply in their environment. Based on what was stated by Kanit IV PPA Criminal Investigation Unit of the Limboto Police that:

"There are many people who still lack knowledge, so many of them reject mediation efforts in this case there is restorative justice and diversion in terms of prioritizing children's rights so that they are properly protected, but with minimal understanding from the community they still object and are still continue the legal process, on the grounds that the perpetrators have given up on what they have done"<sup>38</sup>

"Many of the victims' parents do not want to resolve their cases through diversion. The reason put forward was the desire to make the perpetrators give up if they were put in prison. Another reason is that the crimes committed by the perpetrators are crimes that are punishable by severe punishment, law enforcers do not support peace. In addition, there are no implementation instructions or technical instructions for law enforcement officials to implement this non-litigation settlement method."<sup>39</sup>

It can be analyzed that increasing legal awareness can be done through regular legal information and counseling on the basis of good planning regarding the consequences that will be caused by the criminal acts committed. Legal counseling to the community is one of the duties of the legal community in general and in this case in particular, those who play a very important role in socializing or counseling about the prohibition of committing criminal acts are the police officers.

What the investigators said earlier is true, that the main obstacle to the ability of the police to carry out diversion is as explained above. Due to the low awareness of parents, the government and the police must actively promote the diversion system as an option in handling juvenile criminal cases. Socializing children can be done by making them aware that this activity is not only for members of

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<sup>38</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, December 5, 2022."

<sup>39</sup> "Results of an interview with Mr. Sumarlin Dale as Head of Unit IV PPA Criminal Investigation Unit of the Limboto Police. Monday, December 5, 2022."

certain groups. Therefore, they should be reluctant to use diversion tactics if their child is the victim because it does not rule out that the child will also be a party to criminal prosecution.

#### b. Evidence Problems

In the process of investigation and investigation of actions that will be traced by the law enforcers themselves, namely the evidence and evidence used by the perpetrator. From the evidence, one of them is the testimony of the suspect and the victim, which is difficult to give a statement.

“It was very difficult to get witness statements, sometimes they were silent and even cried, so we couldn't continue the process of taking their statements”<sup>40</sup>

Referring to Article 184 paragraph (1) of the Criminal Procedure Code, valid evidence includes witness statements, expert statements, letters, instructions, statements of the accused. From the story you told, there is documentary evidence in the form of post-mortem results (stipulated in Article 187 of the Criminal Procedure Code letter c). In addition, the victim himself, who is a child, can give his testimony as a victim witness. Supported by the testimony of his friends to strengthen the judge's conviction.

The suspect's statement is part of the examination of the actions he committed and is part of the investigation in which to seek and find valid evidence. So that the information from the suspect is very important to uncover a crime, but the existence of convoluted information from the suspect makes investigators confused about conducting an investigation. But on the other hand the confession of the suspect is not the end of proof whether he has committed a crime but there is still other evidence as is the case with witness statements, letters, experts and other clues.

#### c. Development of Social Media

Based on what was put forward by the investigators was that one of the causes of children committing criminal acts was by imitating what was seen from the media, be it TV or cell phones. Both of these

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<sup>40</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"



media tools often show acts of violence which basically if they can't be digested properly, then they can be imitated.

"Sometimes the reason they commit crimes is because there is an imitation of television or what is seen on social media"<sup>41</sup>

As law enforcement officials who are also the foremost investigators with all activities that occur in society, the public's impression or image of the police, especially police officers, in almost all regions in Indonesia has not improved. This situation seems to be forever so. Even if the efforts of the police to improve the negative image continue to be increased, these efforts will still not result in a positive image of the police. Between the negative image of the police and efforts to improve this image, it is meant as two parallel lines that will never meet, the more negative the image towards the police, the more efforts to positive the said image will increase. No matter how successful the police are in preventing and overcoming crime in the context of maintaining public order and security, negative image will never be extinct. From all the literature relating to police matters, both in developed areas and remote areas, even though the results of research or observation will only be obtained, it is almost never implied.

The definition of an investigation is a series of investigative actions to seek and find an event that is suspected of being a crime in order to determine whether or not an investigation can be carried out according to the method stipulated in the law. Investigation or what is commonly called supervision in foreign terms is called "osporing" in Dutch, which is the preparation of equipment to carry out a prosecution (Vervolging) in other words, it is the basis for carrying out prosecutions. Therefore, prosecution cannot be carried out before the investigation or investigation is carried out. The act of investigating or investigating is an attempt and action to seek and find the truth about whether a crime actually occurred, who committed the act.<sup>42</sup>

#### **4. Conclusion**

There are two problems faced by investigators in the investigation of children as perpetrators of criminal acts of abuse, namely internal problems and external problems. Internal problems of course consist of several things, including investigator resources, the lack of investigative budget and the lengthy stages of the legal process. While the external problems faced are the lack of community

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<sup>41</sup> "Results of an interview with Mr. Rudianto Simbala as Criminal Unit I of the Limboto Police. Monday, December 5, 2022"

<sup>42</sup> M. Harun. Husein, *Penyidik Dan Penuntut Dalam Proses Pidana*. (Jakarta: PT rineka Cipta, 1991)., 56

support, the legal awareness of the community is still minimal, the problem of evidence and technological developments is increasingly sophisticated.

Investigators should further optimize collaboration with all stakeholders, in this case schools and the community, not just working together in terms of resolving cases. But cooperation is also needed to be able to supervise children's actions both in the community and in the school environment, especially the children's environment.

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