

Deconstructing Dominus Litis Towards the Parens Patriae Paradigm of the Prosecutor's Office in Protecting Child Victims

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Abstract

This study aims to reconstruct the role of the Prosecutor's Office in the Indonesian juvenile criminal justice system, particularly in addressing the phenomenon of child delinquency where the perpetrator is under 12 years old. The fundamental problem arises when the prosecution process is formally halted (based on Article 21 of the SPPA Law), which implicitly causes the Prosecutor to ignore the victim's rights by his capacity as Dominus Litis. Through normative juridical research methods with a philosophical and conceptual approach, this study identifies a systemic



failure in realizing substantive justice for child victims. The originality of this thinking lies in the deconstruction of the Prosecutor's rigid role from merely a public prosecutor to a representative of the state through the doctrine of Parens Patriae. The results of the study recommend an integrative protection model based on Pancasila Justice, where the Prosecutor acts as a restorative catalyst that guarantees restitutio in integrum for child victims through an institutionalized non-litigation mechanism.

KEYWORDS

Prosecutor's Office, Child Delinquency, Parens Patriae, Pancasila Justice, Modern Victimology

Introduction

The Pancasila as Staatsfundamentalnorm is the source of all sources of law which mandates that every inch of law enforcement in Indonesia must be based on the values of humanity and social justice. ¹ The second principle, "Just and Civilized Humanity," and the fifth principle, "Social Justice for All Indonesian People," axiologically demand that the state provide protection for all without exception. However, in the discourse on juvenile criminal justice, there is a tension between efforts to protect juvenile offenders and fulfilling the rights of child victims. ² In legal philosophy, justice is often caught in a dichotomy between legal certainty

¹ Jimly Asshiddiqie, «Court Of Ethics And Constitutional Ethics», *Indonesia Law Review* 6, zenb. 1 (2016(e)ko): 111–13, <https://doi.org/http://dx.doi.org/10.15742/ilrev.v6n1.207>.

² Jahirul Islam, Masahiro Suzuki, eta Nurunnahar Mazumder, «International Journal of Law , Crime and Justice Promoting access to justice in Bangladesh : Towards a hybrid justice model», *International Journal of Law, Crime and Justice* 77, zenb. February (2024(e)ko): 100655.1-9., <https://doi.org/10.1016/j.ijlcj.2024.100655>.

and expediency.³ Gustav Radbruch reminded that if a conflict occurs, justice must be prioritized over legal certainty.⁴

Deviant acts committed by adolescents, also known as “juvenile offending,” have become an increasingly global and worrying problem.⁵ Children's participation in criminal activity has serious consequences for social, legal, and human development. Countries around the world are attempting to address this issue in various ways, but they still face obstacles in enforcing the law and protecting children's rights. Globally, UNICEF reports that one in ten children aged 5 to 17 is involved in dangerous or illegal activities.⁶ According to data from the International Juvenile Justice Observatory (IJJO), around one million children are imprisoned each year worldwide, mostly aged 15 to 17. In developed countries, such as the United States, the number of juveniles committing crimes is very high, around 50,000 each year.⁷ Meanwhile, in developing countries, data is often incomplete and difficult to obtain, making it difficult to determine accurate figures. This issue not only affects crime rates but also reflects inequities in the juvenile justice system. Many children are imprisoned for minor offenses, and unfavorable judicial processes often exacerbate their plight. Furthermore, economic factors, lack of education, and instability in the

³ Petter Gottschalk, «and barriers for national police agencies», *Journal of Economic Criminology* 3, zenb. January (2024(e)ko): 100051.1-7., <https://doi.org/10.1016/j.jeconc.2024.100051>.

⁴ Atikah Mardhiya Rohmy, I Gusti Ayu, eta Ketut Rachmi, «Trees , Forests and People Judicial Mafia and ecological in-justice : Obstacles to policy enforcement in Indonesian forest management and protection», *Trees, Forests and People* 17, zenb. June (2024(e)ko): 100613.1-6., <https://doi.org/10.1016/j.tfp.2024.100613>.

⁵ Louise C S Smallenburg et al., «Sex Differences in Associations Between Adolescent», *Journal of the American Academy of Child & Adolescent Psychiatry Open* 3, zenb. 4 (2025(e)ko): 972–83, <https://doi.org/10.1016/j.jaacop.2024.12.002>.

⁶ Katrin Chauvir, «Child Abuse & Neglect The increase in online child sexual solicitation and abuse : Indicator 16 . 2 . 3 of the UN Sustainable Development Goals (SDG) documents a hidden and growing pandemic . Population-based surveys fail to capture the full picture», *Child Abuse & Neglect* 164, zenb. November 2024 (2025(e)ko): 1-11., <https://doi.org/10.1016/j.chiabu.2025.107452>.

⁷ Albert Andrew, «Health policy New Zealand ’ s world-first smokefree legislation ’ goes up in smoke ’ : A setback in ending the tobacco epidemic», *Health policy* 147, zenb. July (2024(e)ko): 105123.1-5., <https://doi.org/10.1016/j.healthpol.2024.105123>.

family environment are among the most important factors driving children to criminal behaviour.⁸

In Indonesia, juvenile delinquency is a very serious problem. Data from the Central Statistics Agency (BPS) shows that the number of juvenile crimes in Indonesia is increasing every year. In 2022, nearly 12,000 children were recorded as having committed crimes across the country, an 8% increase compared to the previous year. Most of the cases involved theft, minor violence, and traffic violations⁹. Analysis from the Attorney General's Office also indicates that the majority of cases handled involve children aged 15 to 17 years.¹⁰ However, Indonesia faces challenges in implementing a just and humane legal system for juvenile offenders. The country's juvenile justice system is often hampered by legal issues between child rights protection and law enforcement. The Child Protection Law (Law No. 35 of 2014) regulates child protection, but its implementation is often hampered by a lack of facilities, a shortage of experts, and inadequate infrastructure in affected areas. Furthermore, the social stigma surrounding juvenile offenders makes it difficult for them to access rehabilitation and social reintegration programs. Many are detained with adults, which can complicate the recovery process and increase the likelihood of them re-offending. This situation of juvenile delinquency and legal uncertainty highlights the need for a comprehensive and sustainable approach. Internationally, there is an urgency to harmonize child protection standards within the criminal justice system and strengthen cooperation between countries. In Indonesia, rebuilding the child protection system is crucial by improving the performance of relevant institutions, creating better

⁸ Chipo Chitereka et al., «Child Protection and Practice Factors contributing to the increase in juvenile delinquency in Zimbabwe: The case of high-density urban residential areas», *Child Protection and Practice* 6, zenb. February (2025(e)ko): 100220.1-11., <https://doi.org/10.1016/j.chipro.2025.100220>.

⁹ Andry Juliansen et al., «Journal of Medicine , Surgery , and Public Health Mental health issues and quality of life amongst school-based adolescents in Indonesia», *Journal of Medicine, Surgery, and Public Health* 2, zenb. October 2023 (2024(e)ko): 100062.1-11., <https://doi.org/10.1016/j.glmmedi.2024.100062>.

¹⁰ Sakit Bhayangkara eta Makassar Tahun, «Jurnal Penelitian dan Pengkajian Ilmiah», *Jurnal Penelitian dan Pengkajian Ilmiah* 2, zenb. 7 (2025(e)ko): 1126–49.

rehabilitation programs, and implementing more rights-based and humane policies.

The urgency arises from the phenomenon of child delinquency, namely unlawful acts committed by children who chronologically have not reached the age of criminal responsibility. In Indonesia, referring to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), the age limit is 12 years. Legally, if the perpetrator is under 12 years old, the Public Prosecutor cannot prosecute.¹¹ Cases often stop at the pre-prosecution stage with administrative actions such as return to parents or foster care. This situation creates a so-called vacuum of justice. Prosecutors, who traditionally hold a monopoly on prosecution through the principle of *Dominus Litis*, often cease all involvement once the formal requirements for prosecution are met. As a result, child victims lose access to restitution or recovery mechanisms that should be facilitated by the state. This is where secondary victimization occurs, where the state, through the procedural rigidity of the Prosecutor's Office, ignores the victim's suffering in favor of compliance with formal norms.¹²

The urgency of this research is to examine how the *Parens Patriae* doctrine can be integrated into the Prosecutor's Office's authority to guarantee legal protection for child victims within the framework of Pancasila Justice. Therefore, the purpose of this research is to analyze how to reconstruct the role of the Prosecutor's Office so as not to fall into rigid positivism.

¹¹ Nevey Varida Ariani, Yuhanif Yusof, et al Restorative Justice Perspectives, «Reforming Indonesia's Drug Sentencing Law: Normative, Comparative and Restorative Justice Perspectives», *Journal of Cultural Analysis and Social Change* 10, zenb. 2 (2025(e)ko): 3301–13, <https://doi.org/https://doi.org/10.64753/jcasc.v10i2.2099>.

¹² «Analysis of the prohibition of consensus justice in the criminal process of children and adolescence», *ensamiento Americano Journal* 17, zenb. 35 (2024(e)ko): 1-20., <https://doi.org/https://doi.org/10.21803/penamer.17.35.762>.

Methods

The approach used in this research adopts a qualitative-descriptive normative legal method, with the aim of exploring and analyzing in detail the legal aspects and concepts related to the topic discussed. The normative legal method was chosen because the primary objective of this research is to examine existing legal norms, applicable regulations, and relevant legal doctrines. This approach prioritizes research on legal sources written in existing laws, thus providing a comprehensive and structured understanding of the development, implementation, and impact of law in the context being studied. With its qualitative-descriptive nature, this research focuses more on an in-depth understanding of the meaning, concepts, and relationships between existing legal components, rather than quantitative measurements.

To analyse the applicable legal framework, a statutory approach is specifically used to explore various relevant regulations, such as the Child Protection and Management Law (UU SPPA), the Prosecutor's Office Law, along with a number of implementing regulations and related doctrines. This approach provides researchers with the opportunity to thoroughly understand the legal content and provisions contained within the laws, as well as evaluate their relevance and effectiveness in the context of child protection and criminal law enforcement for child victims. The analysis of the law was conducted systematically, identifying key articles, general provisions, and normative interpretations and applications in legal practice. Furthermore, this approach was used to assess the extent to which existing regulations align with national and international legal principles related to child protection and restorative justice.

In addition to the legislative approach, this research also adopted a conceptual approach aimed at analysing victimology theory and the doctrine of *Parens patriae*. The purpose of this conceptual approach is to critically evaluate the fundamental principles underlying victim protection and the role of the state in ensuring the rights of child victims of crime. This

approach allows researchers to provide an in-depth explanation of victimology theory as it relates to the rights and protection of crime victims, including the psychological and social aspects that influence the victim's recovery process and justice enforcement mechanisms. Conversely, the doctrine of *Parens patriae* is explored to understand the state's position as guardian and protector of vulnerable children and how this principle is implemented within both national and international legal frameworks. This conceptual approach is crucial to ensure that legal interpretation is not merely rigid but also contains a rich philosophical and theoretical understanding, thus building a strong foundation for creating more humane and just legal policies. This research also applies a philosophical approach to explore the values of Pancasila as a philosophical foundation for legal reconstruction. This approach focuses on deepening the core values contained in Pancasila, such as social justice, just and civilized humanity, and belief in the One Almighty God. With this approach, the researcher attempts to interpret the meaning of Pancasila values in the legal realm, in order to provide a moral and ethical foundation for formulating more just and civilized legal regulations and practices. This philosophical approach also provides an opportunity for critical reflection on existing legal norms and analyses the relevance and support of Pancasila principles in addressing various contemporary legal challenges, particularly those related to child protection and juvenile criminal justice. Thus, this approach adds a crucial moral and ethical dimension to the context of legal research, while enriching the analysis from a legal philosophy perspective.

In data collection, the method used was literature research, namely the collection of secondary data from classical legal literature and reputable international journals. Classical legal literature includes textbooks, legal doctrine, and scholarly works that serve as the foundation of thinking in the legal realm. Furthermore, leading international journals were utilized to obtain the latest insights and analysis from international academics on legal issues, victimology, and child protection. This data collection method was

conducted in a documentary and systematic manner, identifying appropriate and reliable sources to ensure the validity and accuracy of the data obtained.

The data analysis technique used was deductive analysis. In deductive analysis, data collected from literature and legal documents is analyzed by outlining general theories and concepts, then harmonizing them to interpret and apply these findings to the context of the specific case and issue being studied. This analysis process involves interpreting the contents of the law, victimology theory, the doctrine of *Parens patriae*, and the values of Pancasila, and compiling these findings into a synthesis of thought that can provide new and constructive understanding of the legal issues being studied. This deductive approach allows researchers to test the alignment between existing legal theories and norms with practice in the field, as well as identify gaps and opportunities for necessary legal reform.

Result and Discussion

Critical Analysis of the Role of Prosecutors in the Juvenile Justice System Law: The Ontological Failure of Legal Positivism

The role of prosecutors in the Indonesian criminal justice system is crucial, as they are at the forefront of law enforcement and justice.¹³ However, within the framework of the Juvenile Criminal Justice System Law (UU SPPA), there are various challenges and issues related to the underlying legal philosophy and paradigm. To critically understand the role of prosecutors. Relevant legal theories, especially from the perspective of legal positivism and criticism of the concept, as well as their impact on the implementation and interpretation of the role of prosecutors in practice. Theories that are in line with the critical analysis of the role of prosecutors

¹³ Ade Paranata, «A Systematic Literature Review of Anti-corruption Policy : A Future Research Agenda in Indonesia», *Public Organization Review* 25, zenb. 62 (2025(e)ko) : 1181–1214, <https://doi.org/https://doi.org/10.1007/s11115-025-00847-8>.

in the UU SPPA are Legal Positivism and the views of Hans Kelsen.¹⁴ Legal positivism, particularly as advocated by Hans Kelsen through his Pure Law theory, views law as a collection of norms free from external moral elements. According to Kelsen, law is a system of norms that apply formally and logically, without relying on moral or ethical values. Law must be objective, consistent, and unaffected by subjective moral interpretations. In the context of the Child Protection Act, this paradigm is evident in how prosecutors interpret certain articles, particularly Article 21, which states that children under 12 cannot be tried. Prosecutors tend to interpret this regulation literally, assuming that their responsibility is over once they declare that the child cannot be subjected to legal proceedings. This approach ignores the dimensions of substantial justice and the need to protect children's rights as a whole. The Theory of Ontological Failure of Legal Positivism. The main criticism of legal positivism here is that this theory ignores the ontological aspects of justice and moral values in the application of law. Positivism tends to view law as a system of formal norms without considering the social, moral, and humanitarian background of these norms. As a result, the law becomes a rigid instrument and is unable to meet the needs of substantive justice, especially in the case of children involved in the criminal justice system.¹⁵

The Ontological Failure of Legal Positivism in Prosecutor's Practice. In practice, prosecutors often interpret Article 21 of the SPPA Law in a dogmatic and mechanical manner. When the law states that children under 12 cannot be tried, prosecutors tend to halt the legal process without considering restitution, protection of victims' rights, or a restorative justice

¹⁴ Matthias Praxmarer, Bettina Rockenbach, et al. Matthias Sutter, «Cooperation and norm enforcement differ strongly across adult generations», *European Economic Review* 162, zenb. February (2024(e)ko): 104659.1-9., <https://doi.org/10.1016/j.euroecorev.2023.104659>.

¹⁵ Yael Rimer-cohen, «Child Abuse & Neglect “ Is this ‘ minor time ’ now ? My time ? ” - Voice versus knowledge in child neglect proceedings , lessons from the guardian ad litem role in Israeli juvenile courtrooms», *Child Abuse & Neglect* 162, zenb. January (2025(e)ko): 1-11., <https://doi.org/https://doi.org/10.1016/j.chiabu.2025.107269>.

approach.¹⁶ This approach reflects the ontological failure of the positivist paradigm, which ignores the moral and humanitarian dimensions of law. The Positivist-Legalistic Justice System. The criminal justice system in Indonesia, which is still heavily influenced by the civil law tradition and the positivist-legalistic paradigm, causes prosecutors to act more as prosecution machines than as guardians of justice.¹⁷ They prioritize fulfilling formal procedures and success in the criminal process without paying attention to substantive justice, especially in cases of children who experience physical and psychological trauma.

Legal Gap Theory and Legal Discrimination Against Child Victims. Dismissing cases without mediation or remedial efforts has significant negative consequences for victims, especially traumatized children. When prosecutors focus solely on formalities and the perpetrator's age, victims' rights, such as protection, information, and restitution, are often overlooked.¹⁸ This creates a clear legal loophole that is detrimental to victims and demonstrates legal discrimination based on the perpetrator's age. Modern Victimology Perspective Theory and Victims' Rights. The current victimology approach emphasizes that victims have the right to protection, information, and compensation. Within the framework of the Juvenile Justice and Child Protection Law, prosecutors should act as representatives of the state who protect victims' rights, rather than solely focusing on law enforcement. When prosecutors neglect their role due to the perpetrator's age, this creates injustice and legal discrimination that contradicts the principle of *Lex Faveabilis*, which states that the law must provide the most favorable protection for those who are vulnerable.

¹⁶ Robyn L Holder eta Elizabeth Englezos, «Victim participation in criminal justice: A quantitative systematic and critical literature review», *International Review of Victimology* 30, zenb. 1 (2024(e)ko): 25–49, <https://doi.org/10.1177/02697580231151207>.

¹⁷ Moa Lid, «Science & Justice Can criminal justice be predicted? Using regression analysis to predict judges' decisions on petitions for new criminal trials», *Science & Justice* 64, zenb. June 2023 (2024(e)ko): 43–49, <https://doi.org/10.1016/j.scijus.2023.12.001>.

¹⁸ Ana M Nascimento, Joana Andrade, eta Andreia De Castro Rodrigues, «The Psychological Impact of Restorative Justice Practices on Victims of Crimes — a Systematic Review», *TRAUMA, VIOLENCE, & ABUSE* 24, zenb. 3 (2023(e)ko): 1929–1947, <https://doi.org/10.1177/15248380221082085>.

The Prosecutor's Role as Guardian of Justice. Ontologically, the prosecutor's office should act as a guardian of justice, maintaining a balance between law enforcement and human rights protection. If this task is narrowed to merely being a "prosecution machine," then the Prosecutor's Office's superiority as a justice enforcement agency will be lost and eroded by a bureaucratic system insensitive to the profound aspects of humanity and justice. Meanwhile, according to Hans Kelsen's Perspective and Implications in the Juvenile Justice Act (UU SPPA), in Hans Kelsen's view, the law should be free from external morality and focus on formal norms. This approach makes legal interpretation very rigid and mechanistic. In the context of the UU SPPA, this is evident in the prosecutor's attitude, who believes that the age requirement for children automatically excludes criminal proceedings, without considering aspects of humanity and restorative justice. One clear example is in cases of child abuse, where victims often experience significant physical and mental trauma. The automatic dismissal of cases without mediation or restitution efforts demonstrates that the positivist paradigm ignores the need for rehabilitation and protection for victims.

Meanwhile, in accordance with the principle of substantive justice and the theory of *Lex Faveabilis*, the law should provide maximum protection for the weak party, in this case, the child who is the victim.¹⁹ A more humanistic and contextual approach is needed to address the ontological failure of legal positivism in carrying out the role of prosecutors. Prosecutors must be able to carry out their role not only as formal law enforcers, but also as protectors of victims' rights and guardians of substantive justice. Integrating a restorative justice approach and the principle of *Lex Faveabilis* into juvenile justice practice is essential, so that the rights of children as

¹⁹ Anna Nikupeteri, «Children and Youth Services Review Finnish professionals' views on the position and agency of children in helping processes concerning cases of post-separation parental stalking and coercive control: A child's right perspective», *Children and Youth Services Review* 164, zenb. August (2024(e)ko): 107862.1-9., <https://doi.org/10.1016/j.chilyouth.2024.107862>.

victims can be fully protected. Furthermore, reform of the criminal justice system in Indonesia needs to be directed to be more adaptive and responsive to social and humanitarian needs, and able to address existing legal loopholes. Education and training for prosecutors on the principles of restorative justice and human rights are crucial so they can carry out their duties in a more just and humane manner.

The Indonesian criminal justice system is still heavily influenced by the civil law tradition, which tends towards positivist-legalism. From Hans Kelsen's perspective, through his Pure Theory of Law, law is seen as a set of norms sterile of external moral elements.²⁰ This view is reflected in how prosecutors interpret Article 21 of the Child Protection and Child Protection Law. When the law states that "children under 12 cannot be prosecuted," prosecutors automatically assume their task is complete. However, ontologically, the Prosecutor's Office is the guardian of justice. If prosecutors merely act as "prosecution machines," they have reduced the Prosecutor's Office's dignity from a justice-enforcing institution to a bureaucratic prosecution institution. In cases of child delinquency, victims often experience tremendous physical and psychological trauma. Discontinuing cases without mediation or ensuring restitution is a clear legal gap. Modern victimology analysis emphasizes that victims have the right to information, protection, and compensation.²¹ If prosecutors abdicate their role solely because of the perpetrator's age, they constitute legal discrimination against victims. Prosecutors should continue to fulfill their role as representatives of the state to ensure victims receive their rights, even through non-penal channels. This is a manifestation of *Lex Favorabilis*, which states that the law must provide the most favorable protection for the vulnerable (child victims).

²⁰ Michela Massimi, «The fraught legacy of the Common Heritage of Humankind principle for equitable ocean policy», *Environmental Science and Policy* 153, zenb. August 2023 (2024(e)ko): 103681.1-11., <https://doi.org/10.1016/j.envsci.2024.103681>.

²¹ Mel Andrews, Andrew Smart, eta Abeba Birhane, «The reanimation of pseudoscience in machine learning and its ethical repercussions», *Patterns* 5, zenb. 9 (2024(e)ko): 101027.1-14., <https://doi.org/10.1016/j.patter.2024.101027>.

The Construction of the Doctrine of Parens Patriae: Transformation from Prosecutor to Protector

The doctrine of Parens Patriae stems from the English legal tradition that grants the government the right to act as "guardian" for individuals unable to protect their own interests, including children and the mentally disabled.²² Conceptually, this doctrine demonstrates a shift in the government's role from merely a strict law enforcer to a protector of public interests focused on welfare. In a more modern legal context, Parens Patriae is no longer seen merely as the basis of government power, but also as an ethical and legal tool to ensure true justice, particularly for vulnerable groups. This perspective positions the government as an active entity with a moral and legal responsibility to provide protection and redress, not merely to impose sanctions. In the Indonesian legal system, the Parens Patriae doctrine is highly relevant to the values of Pancasila, particularly the Second Principle, which addresses Just and Civilized Humanity. Normatively, this requires law enforcement officials, including the Prosecutor's Office, to adopt a protection and redress approach when carrying out their duties. The Prosecutor's Office, with its principle of *Een en Ondelbaar*, which demonstrates the unity and indivisibility of the institution, is in a crucial position to consistently apply this doctrine. In cases of offenses involving children, when the perpetrator cannot be subject to full criminal sanctions, the Parens Patriae approach rejects a passive or "washing hands" attitude from the Prosecutor, because it is at this time that the government's responsibility as a protector is truly tested.

The analysis shows that the application of the Parens Patriae doctrine shifts the role of the Prosecutor from merely a public prosecutor to a proponent of restorative justice. Prosecutors not only pay attention to the legal-formal aspects but also utilize their discretion to initiate a mediation

²² Alfian Mela Maran, Yusti Probowati, eta Mary Philia Elisabeth, «Proses Diversi Anak yang Berkonflik dengan Hukum : Belajar dari Sistem Diversi di Amerika Serikat», *Binamulia Hukum*, 13, zenb. 2 (2024(e)ko): 555–71, <https://doi.org/10.37893/jbh.v13i2.957>.

process between the perpetrator, the victim, and their families. In this context, the Prosecutor acts as a mediator who ensures that the perpetrator's family takes concrete responsibility, such as providing psychological recovery for the victim, payment of rehabilitation costs, or other appropriate forms of compensation. This approach demonstrates a shift from procedural justice to substantive justice that is more sensitive to the needs of the victim and the community. The main finding from the construction of this doctrine is that the Prosecutor's failure to apply *Parens Patriae* can result in a dry and formalistic justice system. When the legal process stalls only because the child perpetrator cannot be convicted, the victim may lose the opportunity to receive proper redress. Conversely, the active application of the *Parens Patriae* doctrine further strengthens the Prosecutor's Office's legitimacy as an institution that not only enforces the law but also protects humanitarian values and social justice. Thus, this doctrine is more than a theoretical concept; it serves as a relevant operational framework for improving juvenile law enforcement practices in Indonesia to be more just and focused on human rights protection.

The doctrine of *Parens Patriae* (literally "Parent of the Fatherland") grants the state sovereign authority to act as protector for citizens who are legally unable to protect themselves, such as children and the mentally ill. In English legal history, this doctrine was used by the Court of Chancery to ensure the welfare of children abandoned by their guardians. In the Indonesian context, the doctrine of *Parens Patriae* finds resonance in the Second Principle of Pancasila. The Prosecutor's Office, as an institution that upholds the principle of *Een en Ondeelbaar* (The Prosecutor's Office is one and indivisible), must be able to implement this doctrine. When a perpetrator of child delinquency cannot be convicted, the Prosecutor must not "wash their hands." Instead, the Prosecutor must use their discretionary authority to initiate a mediation and reparation process. The Prosecutor can act as a mediator, bringing together the families of the perpetrator and the victim. In this capacity, the Prosecutor ensures that the perpetrator's family

is responsible for the victim's reparation, for example through the payment of rehabilitation costs or compensation for losses. If the prosecutor does not do this, then the justice produced will only be dry procedural justice, not the substantive justice that society expects.

Reconstructing an Integrative Protection Model Based on Pancasila Justice

Theoretically, the idea of Pancasila justice arises from the belief that law functions not only as a means of punishment, but also as a way to restore balance in society and safeguard human dignity.²³ Pancasila justice rejects a rigid view focused on retribution and instead emphasizes restorative and integrative justice, which considers the interests of offenders, victims, and society simultaneously. This view aligns with Roscoe Pound's theory, which views law as a tool for rebuilding and repairing disrupted social structures. In the context of juvenile offenses, this approach is particularly relevant because children cannot be viewed merely as violators of the law but also as individuals in a developmental stage who require protection from the state. Therefore, redesigning the protection model must incorporate the values of humanity, social justice, and state responsibility as mandated by Pancasila.

The analysis of the existing protection model indicates that the criminal justice system for children remains fragmented and focused primarily on procedures. Case handling often becomes bogged down in fulfilling formal legal requirements, while social and psychological recovery aspects remain under-implemented. In this situation, the Prosecutor's Office plays a crucial role as a liaison between legal interests, the interests of victims, and the future of child perpetrators. Reconstructing the role of the Prosecutor's Office, based on Pancasila justice, requires a shift in mindset from merely repressive prosecutors to comprehensive facilitators of protection. Prosecutors not only carry out their prosecutorial function but also actively participate in coordinating the recovery process through

²³ I Q Volume, «Ar-rā'iq volume 8, no. 2 december 2025», in *Reinterpreting Ḥadd Al-Sariqah Through Shahrūr's Theory Of Limits: Toward A Humanistic Paradigm Of Islamic Justice*, libk. 8, 2025/, 121–62.

mediation, diversion, and restorative justice approaches, involving families, communities, and relevant institutions. The key findings from this redesigned model demonstrate that integrative protection based on Pancasila justice can create more sustainable social harmony. When prosecutors use their discretion progressively and based on Pancasila values, the resolution of child abuse cases does not stop at a legal verdict but also moves toward the process of restoring damaged social relationships. Child perpetrators are not considered criminals, but are directed to undergo a process of guidance and social responsibility, while victims receive recognition, rehabilitation, and a real sense of justice. Furthermore, community and family participation in this process further strengthens the law's role as a means of education and prevention, not merely as a means of punishment. Rebuilding an integrative protection model based on Pancasila justice emphasizes that the effectiveness of the law is not measured by the severity of the sanctions imposed, but by the extent to which the law is able to restore social balance and ensure substantial justice. These results demonstrate that integrating Pancasila values into law enforcement practices, particularly by the Prosecutor's Office, is a strategic step towards building a more humane, just, and future-oriented juvenile justice system. Pancasila justice is not retributive justice (revenge), but rather restorative and integrative justice. Roscoe Pound stated that law is a tool of social engineering. Therefore, the reconstruction of the Prosecutor's Office's role must be directed at restoring social harmony disrupted by child delinquency.

The Integrative Protection Model proposed in this study encompasses three main pillars

Theoretically, the integrated protection model emerged from a critique of the positive legal perspective, which focuses too much on procedures and is

fragmented in handling cases of violations involving children.²⁴ Satjipto Rahardjo's progressive legal theory states that law should not be viewed as a harsh normative text, but as a tool for achieving justice that truly favors humanity. In this context, law enforcers are expected to have the courage to innovate when formal regulations actually hinder the achievement of justice. Furthermore, the restorative justice approach prioritizes victim recovery, perpetrator accountability, and community participation as the primary goals of law enforcement, rather than simply punishment. The theory of *restitutio in integrum* also provides a philosophical foundation that true justice can be realized when victims' rights are restored closer to their original state. These three theoretical frameworks are then combined with the Pancasila justice values, which emphasize humanity, balance, and harmony in society.

The analysis shows that the practice of protecting children in conflict with the law still suffers from structural weaknesses, particularly in terms of inter-agency coordination and the limited authority of prosecutors in ensuring reparations for victims. The proposed integrated protection model offers solutions through three main pillars. The first pillar, inter-agency coordination, positions prosecutors as case managers responsible for coordinating with the Correctional Center, the Social Services Agency, and the Witness and Victim Protection Agency. This role is crucial, particularly in cases of children under 12, where treatment should focus not only on criminal accountability but also on victim recovery and social rehabilitation. This pillar represents a significant shift from a separate approach to a holistic one, placing the best interests of children and victims at the centre of policy.

The second pillar, restorative discretion, expands the meaning and function of Prosecutor's Regulation Number 15 of 2020 concerning the

²⁴ Fadi Baghdadi et al., «Child Protection and Practice The socio-ecology of child institutionalisation and foster care in Souss Massa , Morocco : a qualitative study», *Child Protection and Practice* 5, zenb. September 2024 (2025(e)ko): 100192.1-11., <https://doi.org/10.1016/j.chipro.2025.100192>.

termination of prosecution based on restorative justice. The study revealed that prosecutorial discretion should not be limited to cases that can be formally prosecuted but should also be used to facilitate restitution agreements in cases that cannot be processed criminally. Thus, the justice vacuum that has arisen due to procedural limitations can be addressed through non-litigation mechanisms that maintain legal and moral foundations. The third pillar, *restitutio in integrum*, emphasizes the importance of strengthening prosecutors' powers to guarantee real restitution for victims, including by filing *ex-officio* civil lawsuits if the perpetrator's family refuses to take responsibility. The main findings of this study indicate that this integrated protection model based on three pillars is able to bridge the gap between normative law and substantive justice. By positioning prosecutors as key progressive actors, this model not only ensures legal protection for children and victims but also helps restore social relationships damaged by juvenile delinquency. Conceptually and practically, this model demonstrates that law enforcement focused on recovery and humanity is a concrete realization of the values of Pancasila, which respects humanity and maintains sustainable social harmony.

Inter-Institutional Coordination Pillar: The prosecutor acts as a Case Manager coordinating with the BAPAS, the Social Services, and the Witness and Victim Protection Agency (LPSK). In cases under 12 years of age, this coordination focuses entirely on the victim's recovery.

Restorative Discretion Pillar: Expanding the scope of Prosecutor's Regulation (Perja) No. 15 of 2020. Discretion is not only used to stop prosecution for those who can be prosecuted, but is also used to facilitate a "Restoration Agreement" for cases that are not formally prosecutable.

Restitutio in Integrum Pillar: Ensuring that the victim's rights are restored to their original state. The prosecutor must be given the authority to file a civil lawsuit on behalf of the victim *ex-officio* if the perpetrator's family refuses to take responsibility. This construction aligns with Satjipto Rahardjo's progressive legal theory, which argues that law enforcement must have the courage to make

breakthroughs if positive law hinders the achievement of justice. By prioritizing reparation over procedure, the Prosecutor's Office truly embodies the values of Pancasila, which humanizes all people.

The main findings of this study indicate fundamental deficiencies in the prosecutor's function when handling cases of crimes against children within the context of the Juvenile Criminal Justice System Law. These deficiencies are ontological, not merely normative, because they stem from the dominant paradigm of legal positivism that still dominates law enforcement practices. Prosecutors tend to interpret Article 21 of the Juvenile Justice System Law literally and mechanically, so that if the perpetrator is a child under 12 years old, the legal process is terminated without any effort to rehabilitate the victim. These findings indicate that the law is used as a collection of formal norms, while the substantive aspects of morality, humanity, and justice are neglected. As a result, victims, often also children, experience a lack of legal protection and are denied restitution, rehabilitation, or recognition for the suffering they have experienced.

The findings of this study are theoretically very much in line with the critique of legal positivism expressed by Hans Kelsen in Pure Theory of Law. Legal positivism, with its claims of objectivity and moral neutrality, is unable to address the complexity of child cases that contain psychological and social elements. In practice by prosecutors, this paradigm leads to ontological failure because the law is understood separately from the goals of justice itself. These findings strengthen the argument that normative and formal approaches are insufficient to guarantee protection for children and victims, so that a shift towards a more substantial justice paradigm is needed. In this regard, the research findings also support the theory of *Lex Faveabilis*, which emphasizes that the law must be interpreted for the benefit of the most vulnerable party, namely the child victim. The fact that prosecutors cease their role when the perpetrator cannot be prosecuted directly contradicts this principle.

The results of this study align with modern victimology theory, which

positions victims as the primary subjects in the criminal justice system. Victimology affirms victims' rights to information, protection, and compensation, regardless of whether the perpetrator can be prosecuted or not.²⁵ However, this study found that victims' rights are often neglected because prosecutors believe their authority is limited to prosecution. This situation creates a significant legal loophole and results in discrimination against victims based on the perpetrator's age. Thus, the study's findings reinforce the victimology-based critique that a criminal justice system that focuses too much on the perpetrator and procedural aspects can exacerbate structural injustice. The study's findings are also strongly consistent with the *Parens Patriae* doctrine, which positions the state as the protector of individuals unable to defend themselves.²⁶ This doctrine demands a shift in the role of prosecutors from mere prosecutors to protectors of the public interest and victims. This study found that when the *Parens Patriae* doctrine is not internalized, prosecutors tend to act passively and formally. Conversely, the application of this doctrine allows prosecutors to exercise discretion progressively, encourage mediation, and ensure reparation for victims through mechanisms beyond prosecution. These findings are consistent with Satjipto Rahardjo's progressive legal theory, which emphasizes that law enforcers must be bold in innovating when positive law hinders the achievement of justice.

From the perspective of previous research, this study confirms the findings of existing studies, which indicate that the criminal justice system for children in Indonesia still uses an overly legalistic approach and is not

²⁵ Gaironeesa Hendricks, Deidre Schippers, et al. Benita Moolman, «A systematic review of the evidence on one-stop centre models for victims of gender-based violence in low- and middle-income countries : Implications for Thuthuzela Care Centres in South Africa», *International Review of Victimology* 23, zenb. 2 (2025(e)ko): 1–21, <https://doi.org/10.1177/02697580251394732>.

²⁶ Practice Parameter, «Practice Parameter for Child and Adolescent», *Journal of the American Academy of Child & Adolescent Psychiatry* 50, zenb. 12 (2011(e)ko): 1299–1312, <https://doi.org/10.1016/j.jaac.2011.09.020>.

fully restorative.²⁷ Previous research has shown that diverse processes and restorative justice are often understood as administrative measures, rather than as a philosophy of law enforcement. This study complements these findings by highlighting that the main problem relates to the ontological paradigm of prosecutors acting as "prosecution machines" rather than guardians of justice. Therefore, this study not only strengthens previous findings but also makes a conceptual contribution by proposing a reconstruction of the prosecutor's role based on the values of Pancasila justice and the doctrine of *Parens Patriae*.

The implications of this research are both theoretical and practical. Theoretically, this study emphasizes the importance of integrating law, morality, and Pancasila values in the law enforcement process for children. Legal positivism cannot be the sole paradigm in the juvenile criminal justice system. Practically, these findings demonstrate the need for policy changes in the Prosecutor's Office, particularly in improving the application of restorative discretion and strengthening the role of prosecutors in ensuring restitution for victims. An integrative protection model based on inter-institutional coordination, restorative discretion, and *restitutio in integrum* can serve as a normative and operational reference in reforming the juvenile criminal justice system.

The limitations of this research are normative and qualitative, so it has not been supplemented by empirical data in the form of case studies or in-depth interviews with prosecutors and victims. Second, the analysis was conducted in the Indonesian context, so generalizations to other countries' legal systems must be made with caution. Third, this research has not yet explored in depth the institutional and political-legal constraints that may arise during the implementation of the integrative protection model.

²⁷ Terhadap Uniform et al., «The Relevance Of Children ' S Age In The Criminal Justice System : Critique Of Uniform Age Threshold From A Restorative Justice», *Jurnal Penelitian Hukum Galunggung* 2, zenb. April (2025(e)ko): 42–54.

Conclusion

This study concludes that the role of prosecutors in addressing crimes involving children still has fundamental weaknesses, which are ontological in nature, not merely technical or normative. The influence of the legal positivism paradigm has led prosecutors to interpret the provisions of the Juvenile Criminal Justice System Law literally and mechanically, particularly Article 21 of the Juvenile Justice System Law. As a result, when dealing with child perpetrators under the age of 12, the legal process is terminated without any redress for the victim. This practice demonstrates that the law is viewed solely as a formal norm, while the moral, humanitarian, and substantive dimensions of justice are ignored. This study confirms that this legalistic approach directly impacts the neglect of the rights of victims, who are often also children. Victims do not receive adequate protection, restitution, rehabilitation, or recognition of the suffering they have experienced. These findings illustrate the existence of structural injustice in the juvenile justice system, where an excessive emphasis on perpetrators and procedures actually worsens the situation for victims. This study strengthens the critique of legal positivism and encourages a shift towards a substantive justice paradigm based on victimology, the doctrine of *Parens Patriae*, and the principle of *lex favabilis*. Prosecutors should not only act as prosecutors but also as protectors of the public interest and victims, especially vulnerable groups. The application of restorative discretion and a progressive legal approach are crucial demands when positive law fails to deliver justice.

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