

# Juvenile Justice and John Rawls' Justice Perspective on Serious Crime Committed by Minors

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## ABSTRACT

The management of minors in legal trouble continues to be geared toward a restorative justice approach as it develops. Unfortunately, as of yet, the method for putting the restorative justice concept into practice is still dispersed over a number of linked institutional norms and has not been incorporated into laws. The goal of this study is to evaluate the juvenile court system's rules for providing for minors who need legal assistance as well as John Rawls' perspective on justice as it relates to significant crimes committed by juveniles, which is now handled using a restorative justice strategy. This research uses normative legal methodologies in conjunction with statutory, conceptual, and case approaches. According to the findings of the study, the juvenile justice system in Indonesia continues to prioritize the interests of the minors; this is done so that perpetrators do not lose their rights as a kid or the future generation. Nonetheless, in serious crimes, such as murder, the kid (perpetrator) can be condemned to jail for no more than 1/2 (one-half) the maximum term of imprisonment for adults. According to John Rawls' perspective on justice, these requirements are adequate to provide justice. But, in order to build a restorative strategy, policies at the level of legislation that may give legal certainty must be developed, especially for law enforcers such as judges in imposing criminal sanctions so as not to offend the sense of justice for victims.

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## I. INTRODUCTION

Criminal acts are perpetrated not just by adults, but also by youngsters as they grow up. Minors conduct a wide range of crimes, from small offenses to major offenses. This situation eventually leads to children having to deal with the law, and cases of youngsters having to deal with the law occur in practically every location. According to data supplied by the Indonesian Child Protection Commission (KPAI), there were 187 occurrences of minors dealing with the law as perpetrators between January and November 2022 (Rizaty, 2022).

Juridically, children in the perspective of Indonesian positive law (*ius contitutum/ius operatum*) are often regarded as immature individuals (*minderjarig/person underage*), people who are underage / underage conditions (*minderjarig/inferiority*) or frequently as children who are under the supervision of a guardian (*minderjarig ondervoordij*) (Sambas, 2013, p. 4). Such circumstances are frequently examined when imposing criminal consequences on children, particularly children as national development assets to be assessed and taken into account in terms of their quality and future. Even today, the crime prevention policy perpetrated by kids aims to preserve and restore children's rights, whether they are victims or perpetrators, also known as the notion of restorative justice.

But what if the crime is classed as a major crime that causes in the death of someone? As in multiple examples reported in Indonesia, for example: *First*, in 2012, a 16-year-old teenager with the initials DE buried a classmate in a bag in Bandar Lampung (Detik News, 2012); *Second*, The case of AQJ aka Dul Putra Ahmad Dhani involved a tragic collision on the Jagorawi Km 8+200 Toll Road in 2013 that killed seven people, however he was acquitted since he was 13 years old (Saputra, 2013); *Third*, the murder case by three teenagers from Bitung City, North Sulawesi against the victim Jose Josua Mahagati in Girian Weru Satu Village, Girian District in 2022 (Mandey, 2022); as well as the *Fourth* the tragic murder case in Makassar City, South Sulawesi, which was perpetrated by 2 teens against an 11-year-old child called Fadli, where the two youths that became the culprits were AR (17) and AF (14) (Detik Sumut, 2023). Among the four incidents mentioned before, these obviously conclude how terrible crimes, like murder, can be committed by minors, and there are still many other such situations that the author cannot discuss one by one.

In Indonesian positive law, there are various approaches to the legal system and the punishments issued for crimes committed by adults and crimes committed by minors, despite the fact that both are grave

offenses. The way these youngsters are handled is distinctive since it is also controlled under various rules. Nonetheless, there is frequently ambiguity in actual practice about the strategy used by law enforcement personnel and the severity of the punishments imposed by courts. In view of the possibility for relatively minor punishment or even acquittal for offenders, it is interesting to investigate from the perspective of justice, especially justice for victims.

Thus, in light of the foregoing description, this research will investigate how the regulation of children engaging with the law and the administration of punishments against major offenses committed by children in the context of justice, as defined by John Rawls.

## II. METHOD

This research will be studied using normative legal research methods, because the focus of the study is on legal norms resulting from legal political policies in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Juvenile Criminal Justice System Law) and Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law (Child Protection Law). This research employs legislative, conceptual, and case techniques. This method to statutory regulation is designed to expand on the regulation of children engaging with the law. Thus, the conceptual method is designed to unravel the notion of justice in the perspective of John Rawls, in order to get a clear legal basis or reasons (legal reasoning) connected to the application of punishments on significant offenses by juveniles. Meanwhile, the case method is designed to serve as reference material and instances of procedural law implementation for children dealing with the law and the administration of punishments.

## III. RULES PERTAINING TO CHILDREN IN CONFLICT WITH THE LAW PROVISIONS UNDER THE JUVENILE CRIMINAL JUSTICE SYSTEM

Article 1 point 1 of the Child Protection Law defines a kid as anybody under the age of 18 (eighteen), including children still in the womb. According to Article 1 point 2 of the Juvenile Criminal Justice System Law, minors who commit crimes are considered to be in conflict with the law. Children in confrontation with the law are minors who are 12 (twelve) years old but not yet 18 (eighteen) years old who are suspected of committing a crime. Even when they have committed a crime, children under the age of 12 (or twelve) cannot yet be brought before a hearing in juvenile court since they cannot be held responsible for their acts from a sociological, psychological, or educational standpoint (Walahe, 2013, p. 44).

In the following, the author describes the criminal responsibility of minors, including those under the age of 12 (eighteen) years and those between the ages of 12 (twelve) years and 18 (eighteen) years who commit a major crime such as murder. In essence, the provisions governing responsibility for the act of murder are regulated in Article 458 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), which reads as follows: "Any person who takes the life of another person shall be punished for murder, with a maximum imprisonment of 15 (fifteen) years."

On the basis of this, anyone convicted of a crime faces a maximum sentence of 15 (fifteen) years in jail. Yet, the juvenile justice system, as specified in the SPPA Law, is what applies if the offender is a minor. If a kid under the age of 12 (twelve) commits a murder, the provisions of Article 21 of the Juvenile Criminal Justice System Law apply, which are as follows:

(1) *In the event that a child under the age of 12 (twelve) commits or is suspected of committing a crime, investigators, social counselors and professional social workers make decisions to:*

*a. give it back to the parent/guardian; or*

*b. involve them in education, coaching and mentoring programs in government agencies or Social Welfare Organizing Institution in agencies dealing with the field of social welfare, both at the central and regional levels, no later than 6 (six) months*

(2) *The decision as referred to in paragraph (1) shall be submitted to the court for stipulation within 3 (three) days at the latest.*

(3) *Penitentiary is obliged to evaluate the implementation of education, coaching and mentoring programs for children as referred to in paragraph (1) letter b.*

(4) *In the event that the results of the evaluation referred to in paragraph (3) are deemed to require a child who still needs further education, coaching and mentoring, the period of education, coaching and mentoring can be extended for a maximum of 6 (six) months.*

(5) *Government agencies and Social Welfare Organizing Institution as referred to in paragraph (1) letter b are required to submit reports on child development to the Penitentiary periodically every month.*

(6) *Further provisions regarding the requirements and procedures for making decisions as well as education, coaching and mentoring programs as referred to in paragraph (1) are regulated in a Government Regulation.*

In the meanwhile, unless otherwise indicated in the Juvenile Criminal Justice System Law as stipulated in Article 16 of the Juvenile Criminal Justice System Law, the procedural rules apply to criminal procedural law generally if the murderer is a kid who is 12 (twelve) years old.

According to Articles 26 to 29 of the Juvenile Criminal Justice System Law, investigators will conduct inquiries into acts committed by children. According to Article 27 of the Juvenile Criminal Justice System Law, investigators are required to seek consideration or advice from community counsellors after a crime has been reported or complained about. If deemed necessary, investigators may also seek advice from education experts, psychologists, psychiatrists, religious leaders, professional social workers or social welfare workers, and other experts. Thus, the investigator is obligated to seek diversion within a maximum time of 7 (seven) days after the inquiry commences as provided in Article 29 paragraph (1) of the Juvenile Criminal Justice System Law. In accordance with Article 1 Point 7 of the Juvenile Criminal Justice System Law, diversion is the transition of juvenile case resolution from the criminal justice system to systems outside the criminal justice system. Upon the initiation of the diversion, the diversion must be completed within 30 (thirty) days. The investigator presents the diversion agreement and minutes of the diversion to the district court's chief judge for a decision if the diversion is successful in reaching an agreement. In the meantime, if the diversion is unsuccessful, the investigator is required to continue the investigation and transmit the case to the public prosecutor with the diversion minutes and sociological research reports attached, in accordance with Article 29 of the Juvenile Criminal Justice System Law.

Children have distinct traits than adults. Even though the delinquent behaviour of children is the same as that of adults, it does not follow that the punishments should be the same. Children who are experiencing a criminal term have the following rights under the requirements of Article 4 of the Juvenile Criminal Justice System Law:

- (1) *A child who is serving a criminal period has the right*
  - a. *get a reduced sentence;*
  - b. *acquire assimilation;*
  - c. *get leave to visit family;*
  - d. *obtain parole;*
  - e. *get leave before release;*
  - f. *obtain conditional leave; And*
  - g. *obtain other rights in accordance with the provisions of the legislation.*

According to Article 71 paragraph (1) of the Juvenile Criminal Justice System Law, the major sorts of punishment that can be inflicted on children are as follows:

- (1) *Primary crimes for children consist of:*
  - a. *Warning sentence;*
  - b. *Conditional sentence:*
    - 1) *coaching outside the institution;*
    - 2) *community service; or*
    - 3) *supervision*
  - c. *Work training;*
  - d. *Coaching in institutions; dan*
  - e. *Prison.*

As stated in Article 458 paragraph (1) of the Criminal Code, murder is a crime punishable by a maximum sentence of 15 (fifteen) years in prison. Children who commit murder may be subject to criminal provisions restricting freedom as stated in Articles 79 and 81 of the Juvenile Criminal Justice System Law, which state the following:

#### Article 79

- (1) *Penal limits on freedom are imposed when a minor commits a major crime or a violent crime;*
- (2) *The maximum punishment for limiting freedom imposed on a child is 1/2 (one-half) the maximum jail term imposed on an adult;*

- (3) *Children are exempt from the special minimum jail sentence;*
- (4) *Articles in the Criminal Code concerning imprisonment apply to minors as long as they do not contradict with this Law.*

#### Article 81

- (1) *Children are condemned to the Child Special Development Institute if their circumstances and conduct imperil society.*
- (2) *A child's jail term cannot be more than 1/2 (one-half) the maximum punishment for an adult.*
- (3) *Guidance at Child Special Development is provided until the child reaches the age of 18 (eighteen).*
- (5) *Children who have undergone 1/2 (one half) of the duration of coaching at Child Special Development and have good behavior are entitled to parole.*
- (6) *Imprisonment against children is only used as a last resort.*
- (7) *If the crime committed by a child is a crime punishable by death or life imprisonment, the sentence imposed is imprisonment for a maximum of 10 (ten) years.*

This occurs in the case of a child over the age of 12 (two years old). Based on this, the court decides criminal punishments against minors who commit murder by taking into account and paying respect to the requirements in Articles 79 and 81 of the Juvenile Criminal Justice System Law.

#### IV. JOHN RAWLS' JUSTICE PERSPECTIVE ON MAJOR CRIMES COMMITTED BY MINORS

John Rawls argues in his book *Theory of Justice* that justice is defined as fairness. This signifies that there is no justice for attaining more wellbeing (increased welfare) as a result of the existence of multiple disadvantaged people's situations. According to Rawls, the main virtue of the presence of social institutions is fairness (Rawls, 1971, p. 102). In the context of dealing with serious crimes committed by juveniles, it is insufficient to just act and impose punishments in the absence of any recovery and direction through social institutions (correctional institutions). Even Nevertheless, in circumstances where the culprits were acquitted and returned to their parents without any assistance from correctional facilities, such conditions would fall well short of providing victims with a feeling of justice.

In particular, Rawls advances the notion of the principles of justice by fully utilizing the "initial position" (original stance) and "veil of ignorance" concepts he created. With regard to things like position, social rank, degree of intelligence, skill, strength, and other factors, Rawls strives to establish that everyone in society is in an equal condition with one another. As a result, these individuals are capable of reaching fair deals with other parties (Rawls, 1971, p. 152). From this vantage point, it is clear that, even when children commit significant crimes, everyone must be treated similarly or deemed to be in the same and equal condition. As a result, it must be treated equitably that the offenders' acts resulted in a person, regardless of whether he or she is an adult or a minor.

A paradigm shift towards settling situations of children engaging with the law, namely in a restorative orientation, may be seen in one of the amendments to the Juvenile Criminal Justice System Law. By putting a focus on returning to the previous condition rather than retribution, the goal is to find an equitable settlement. Only minors were previously dealt with in a criminal setting as offenders. Children who become victims or witnesses are now subject to regulation under the Juvenile Criminal Justice System Law. It is intended that the legal safeguards given by the restorative justice procedure, which involves children, do not enter the sphere of law and may be settled peacefully. On the one hand, the offender's obligation to the victim remains. Hence the perpetrator also does not lose his or her rights as a child or the next generation. One of them is the right to education.

However, there is a need for understanding among law enforcement, including judges, as we can see from a number of serious crime cases involving minors that not only show that punishments are often light, but some have even resulted in acquittals, such as the case of the serious accident on the Jagorawi Toll Road that claimed the lives of seven people. Hence, it would be unjust to carry out the settlement using a family approach and concentrate on the healing of the offender without taking the victim into account (direct victim or family). This circumstance also highlights the importance of including provisions connected to the restorative justice approach in regulations at the legislative level, in order to ensure the development of an ideal legal system, as envisioned by Lawrence Friedman (Fauzia & Hamdani, 2021, p. 13).

Refers to the Rawls' view of justice as fairness, or what he calls pure procedural justice. As a result, Rawls' theory of justice emphasizes the significance of a fair and impartial mechanism that provides guaranteed legal protection to all persons. Furthermore, fairness according to Rawls talks about two main things, first, how each of us can be obliged, namely by doing everything voluntarily precisely because the obligation is seen as an extension of the natural obligation (natural law concept) to act fairly; second,

regarding the conditions for whether existing institutions (in this case the state) must be fair. That means the obligations demanded by the institution only arise if the underlying conditions (constitution, law, regulations under it) are met (Darnela, 2020).

This implies that, even if matters involving children and the law are to be resolved using a restorative justice approach, unambiguous procedures that may give legal clarity and become a concrete reference for every law enforcement official are required. Similarly, the provisions in the Juvenile Criminal Justice System Law on the imposition of criminal sanctions for minors must be addressed wisely by judges in making decisions so that, in addition to paying attention to children (perpetrators) as state assets with a future, justice is also considered for victims who have lost their lives or abandoned family.

## V. CONCLUSION

- 1) In general, committing a crime is penalized by imprisonment for a maximum of 15 (fifteen) years. If the perpetrator is a kid, the juvenile justice system is used, as specified in the Juvenile Criminal Justice System Law. If the homicide is committed by a kid under the age of 12 (twelve), the requirements of Article 21 of the Juvenile Criminal Justice System Law apply. Meanwhile, if the murderer is a minor aged 12 (twelve), the procedural regulations apply to criminal procedural law in general, unless otherwise provided in the Juvenile Criminal Justice System Law as stipulated in Article 16 of the Juvenile Criminal Justice System Law.
- 2) Rawls' definition of justice is essentially fairness, or what he refers to as pure procedural justice. The significance of a fair and impartial method that ensures legal protection for all individuals is emphasized in Rawls' theory of justice. To ensure a fair and unbiased procedure, the juvenile justice system in Indonesia must be improved, particularly through the implementation of a restorative justice strategy. That justice should not be perceived by victims in a situation where law enforcement is too focused on recovering culprits by focusing on the psychological characteristics of perpetrators who are still minors.
- 3)

## CONFLICT OF INTEREST

Authors declare that they do not have any conflict of interest.

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