

A Normative Analysis of Juvenile Sentencing Laws in Indonesia: Reconciling Justice, Rehabilitation, and Victim Redress

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Abstract:

The issue of sentencing minors for criminal behavior persistently garners widespread public attention, stemming from the acknowledgement that children, too, can engage in illicit activities. Within the Indonesian context, juvenile punishment is formally governed by Act 11 of 2012, which outlines the Juvenile Criminal Justice System. This normative study aspires to scrutinize and answer two primary research questions, which are 1) To what extent does the existing stipulation in Act 11 of 2012, concerning the duration of incarceration for minors convicted of serious offenses, adhere to recognized principles of justice and accomplish the intended goals of the sentencing? and 2) What ideal legislative provisions should be adopted or revised pertaining to the length of incarceration for juveniles guilty of severe crimes in order to align with just principles and effectively fulfill the objectives of sentencing in future implementations? While the study maintains that the welfare and psychological well-being of children must be safeguarded against the adverse effects of detention, it simultaneously argues that equal consideration must be extended to the grievances and trauma experienced by the victims of juvenile crimes.

Keywords:

Normative, Juvenile, Sentencing, Justice, Rehabilitation, Redress

I. Introduction

In the Republic of Indonesia, adherence to the rule of law is considered sacrosanct; every transgression is subject to legal scrutiny, regardless of the age of the individual committing the violation. This is reflective of Indonesia's deeply rooted commitment to being a country governed by legal norms and statutes.

A significant cornerstone of this legal architecture is the Juvenile Criminal Justice System Act, formally known as Act 11 of 2012. This specific piece of legislation provides a detailed framework for the treatment and prosecution of minors involved in criminal activities. Article 1, Clause 3 of the Act defines the term "children in conflict with the law" as individuals who are aged between 12 and 17 and are suspected of having participated in unlawful activities. This definition lays the groundwork for the Act's subsequent sections, which delineate the procedures and penalties that are applicable to this age group.

Within Indonesia's broader criminal law, often referred to as its 'positive criminal law,' the Act plays a crucial role in governing how juvenile offenders are to be penalized. Unlike a mere extension of the general criminal law, Act 11 of 2012 serves as a specialized legislative tool designed to address the unique challenges and ethical considerations involved when juveniles commit crimes.

Given the sensitivity and complexity surrounding the issue of juvenile justice, the Act aims to strike a balance between safeguarding the rights of the child and maintaining the integrity of the legal system. It serves as the principal guide for law enforcement agencies, judicial bodies, and welfare institutions tasked with administering justice in cases involving minors.

To sum up, in Indonesia, every act that contravenes the law is met with appropriate legal action, and this holds true even when the perpetrators are minors. The Juvenile Criminal Justice System Act, established by Act 11 of 2012, provides the regulatory framework for addressing such juvenile offenses. This legislation is not just a subsection of Indonesia's overarching criminal law but a comprehensive legal text devoted to regulating how the country handles young individuals suspected of committing crimes.

According to Article 71 of the Juvenile Criminal Justice System Act, the main types of sentences for children are: 1) Criminal penalties. 2) Criminal with the following conditions: a. Development outside the institution, b. Community service, c. Supervision. 3) Job training. 4) Development within the institution. 5) Prison.

The incarceration of juveniles within the criminal justice system of Indonesia has long been a subject of intense scrutiny and debate. Numerous experts and advocates have voiced their concerns over the effectiveness and ethics of sending children to juvenile detention centers, primarily due to the long-lasting negative impact it can have on their development.

Seto Mulyadi, a prominent figure in this discussion, posited in 2009 that the traditional framework of juvenile prisons should be reformed to centers focused on nurturing creativity and positive personal growth in children. Mulyadi argued that the prevailing perception of juvenile detention facilities is overwhelmingly negative. This stigmatization has profound implications; when children exit these facilities, society labels them as criminals, which severely hampers their social reintegration and future opportunities. Mulyadi asserts that by renaming and reorienting these institutions to emphasize creative and constructive activities, we can foster a more positive self-image among these young individuals and thus, mitigate the long-term damage caused by incarceration.

Similarly, Hadi Supeno, who served as the Chairman of the Indonesian Child Protection Commission (KPAI) from 2007 to 2011, expressed a stringent view against the idea of imprisoning children. According to Supeno, detention centers fail to offer an environment conducive to the healthy emotional and psychological development of children. He depicted these places as rife with violence, discriminatory practices, and an internal culture that further indoctrinates criminal behavior. Even more damaging is the lasting stigmatization and labeling that follows these children once they leave, often marking them as outcasts for life. Supeno contends that these children are, more often than not, victims of various systemic issues — such as flawed parenting, inadequate educational systems, ineffective local governance, and societal pressures — that have influenced them to act in ways contrary to law. Tragically, many of these children are unaware that their actions are even unlawful, as they have been shaped by deeply ingrained societal norms and values from a very young age.

These criticisms resonate with the principles laid out in the Indonesian Constitution of 1945, specifically Article 28 B, paragraph 2, which states, "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." Moreover, according to the Academic Paper of the Indonesian Criminal Code, criminal offenses resulting in sentences ranging from 1 to 7 years are categorized as severe crimes. Legal scholar Barda

Nawawi Arief further clarifies this, noting that a crime punishable by a 4 to 7-year detention is indeed classified as a severe crime.

In conclusion, the current system of juvenile detention in Indonesia is fraught with ethical and legal complexities that call for urgent reassessment and reform. The input from experts such as Seto Mulyadi and Hadi Supeno should serve as a catalyst for reevaluating our approaches to juvenile justice, in alignment with constitutional mandates and evolving understandings of child psychology and human rights.

There are several previous studies related to detention for children, including:

- A. Research on the Application of Criminal Sanctions for Children Crime Perpetrators by Bilher Hutahean. The study results indicate that in criminal law, the notion of children essentially refers to the issue of the age limit for criminal liability (*toerekeningvatsbaarheid*). In the Juvenile Court Law, the age limit for criminal liability is between 8 and 18. The range of age limits in the Juvenile Court Law is recognised as an improvement compared to the existing provisions in the Criminal Code, which do not regulate the minimum age limit. (*Jurnal Yudisial*, 2013).
- B. Research by Dwi Putri Melati on the Criminalization of Children as Perpetrators of the Crime of Murder. The result of the study is that the judge decides that the defendant fulfils the elements contained in Article 339 of the Criminal Code. In connection with the perpetrator being a child who is still a minor, Article 339 is accompanied by Article 26 paragraphs (1) and (2) of the Republic of Indonesia Act Number 3 of 1997 concerning Juvenile Court, which is subject to a ten-year prison sentence. The sentence of 10 years in prison is the maximum sentence under the laws and regulations, and the verdict is considered too severe for a child, which can be minimised from the maximum penalty for a child. The judge's considerations in passing a verdict in which the perpetrator is a child are: Legal facts obtained in court, Legal psychology of the case committed by the child, Restorative justice, The existence of a Correctional Center that accompanies the defendant and provides an opinion, The best advice on the matter, Age factor, and Fulfilment of criminal elements.
 - a. I was looking at things that were aggravating. Meanwhile, there is no mitigating factor for the defendant.
 - b. There was no justification or excuse for the defendant that could erase the defendant's guilt.
 - c. Immediate consequences for the victim. (*Jurnal Keadilan Progresif*, 2015).
- C. Research from Dede Kania on Prison Penalties in Renewing Indonesian Criminal Law. The study results indicate that detention, as one of the leading crimes, is the type of crime most threatened in the Indonesian Criminal Code and the Draft Law on the Indonesian Criminal Code. In implementing detention, many shortcomings must be corrected so that the sentence imposed on the perpetrators of crimes does not harm them and their families. In addition, the sentence imposed on the perpetrators of crimes must simultaneously improve the condition of the victim and the victim's family and restore the state of the community following the development of the sentence concept toward restorative justice. (*Jurnal Yudisial*, 2015).
- D. Research by Nashriana on Reformulation of Sanctions Arrangements for Children Perpetrators of Criminal Acts: as an Effort to Optimize the Application of Action Sanctions. The results show that when viewed from the perspective of regulatory/formulating policies, efforts that can be made so that decisions that are not detention (action sanctions) are given to naughty children, of course, by reforming the criminal law, specifically by reconstructing the regulation of sanctions against children who commit delinquency. The basis for the value of substantive justice and the value of benefits for children must, of course, be considered so that legislators can make improvements to the system of threatening

sanctions for actions that are more varied and not only intended for children aged between 8-12 years, but for all groups/qualifications classified as a child/adolescent (Nashriana, 2010).

Given the troubling issues previously outlined concerning juvenile detention in Indonesia, the author feels compelled to delve deeper into the topic. The objective of this endeavor is to critically evaluate the policies and practices that guide the sentencing of children to detention centers. The study, aptly named "A Critical Examination of the Detention Protocols for Juvenile Offenders," aims to dissect the intricacies of existing legislation and social attitudes surrounding this issue.

The inspiration for this research is rooted in the growing consensus among experts, scholars, and human rights activists that the current system is inherently flawed and requires immediate reform. Various stakeholders, from legal scholars to child protection advocates, have criticized the existing framework for juvenile detention. They argue that it does not serve the interests of justice, rehabilitation, or the long-term well-being of the children it purports to correct.

This study will not only probe the ethical and legal aspects of the juvenile justice system but also aims to scrutinize the broader social and psychological impacts of detention on children. The focus will extend to the dissection of legislative mandates, particularly the Juvenile Criminal Justice System Act of 2012, which serves as the guiding law for sentencing minors in Indonesia. The act's congruence or incongruence with both domestic constitutional principles and international human rights norms will be examined.

Of particular interest will be the severity of detention sentences for various crimes committed by juveniles, especially those classified as 'serious' offenses. These are legally defined as crimes that carry a detention penalty ranging from 1 to 7 years, according to the Academic Paper of the Indonesian Criminal Code, and further elaborated by legal scholars like Barda Nawawi Arief.

By pursuing this in-depth analysis, the author aims to contribute to the ongoing discourse on juvenile justice reform. It is hoped that this critical examination will generate valuable insights that can inform and inspire policy changes to better align with the principles of justice, child welfare, and societal well-being.

II. Reviews of Literature

According to Aristotle, in the theory of Vindicative Justice, retaliation is applied in criminal law with a balanced measure of proportionality between the acts committed and the retaliation or sanctions applied (Arifin, 1993). Aristotle's opinion aligns with Article 6 of Act Number 12 of 2011 concerning the Establishment of Legislation that every material contained in in-laws and regulations must reflect proportional justice for every citizen. According to John Rawls:laws and institutions, no matter how efficient and well-regulated, must be reformed or abolished if they are unjust justice denies "the loss of liberty for some made righteous for the common good by others" (Rawls, 1999).

Legal politics serves as a vital subset of jurisprudence focused on understanding and critiquing the evolution of existing laws and regulations in order to better adapt them to the evolving needs and values of society. In essence, legal politics operates at the intersection of law and social change, providing a platform for scholarly analysis, discussion, and recommendation

on how current legal structures and statutes should be revised, removed, or newly enacted to reflect societal progress and aspirations.

This area of legal science is not merely an academic endeavor but a pragmatic necessity, particularly for communities, nations, and entire countries that are in various stages of transformation and development. Such transitions may entail rejuvenating outdated legal frameworks or, alternatively, crafting entirely new laws where none previously existed. According to legal scholar Soehino in his 2010 work, the role of legal politics is pivotal in both contexts, whether it is revamping the old or conceptualizing the new.

Legal politics becomes especially essential in fast-paced, rapidly evolving societies where traditional legal systems may become obsolete or inadequate. It acts as a barometer, gauging the appropriateness of existing legal stipulations and their effectiveness in fulfilling the current and future requirements of social life. It questions whether existing laws, often termed 'constitutum,' are adequately aligned with the present-day 'constituents'—the ever-changing values, needs, and expectations of society.

The area of legal politics is dynamic and must consider a range of factors, including but not limited to cultural shifts, technological advancements, economic fluctuations, and international influences. It must also balance these considerations against ethical principles and the broader objectives of justice and equality. This makes legal politics a complex but indispensable tool for any society committed to achieving legal systems that are not only effective but also equitable and attuned to the unique circumstances and challenges of the day.

In summary, legal politics is an indispensable field that provides the analytical and conceptual tools necessary for modernizing legal systems. By examining how laws can evolve from their current form, known as *constitutum*, to better meet the demands of an ever-changing society, or constituents, legal politics helps lay the groundwork for more responsive and socially aligned legislation. Whether a nation is in the process of overhauling existing structures or constructing new ones from scratch, legal politics offers the insights and methodologies for achieving a legal system that truly serves the evolving needs of its people.

According to Sudarto, legal politics are: a.) Efforts to realise reasonable regulations by the circumstances and situations at a time (Sudarto, 1981). b.) Policy from the State through the competent bodies to establish the desired regulations expected to express what is contained in society and achieve what is aspired to (Sudarto, 1983).

According to Soerjono Soekanto, the main problem in law enforcement is the factors that might influence it. These factors have a neutral meaning, so the positive or negative impact lies in the content of these factors. These factors are as follows:

- a. The legal factor itself
- b. Law enforcement factors include the parties that form and apply the law.
- c. Factors of facilities or facilities that support law enforcement
- d. Community factors, the environment in which the law applies or is applied
- e. Because of work, creativity, and taste, cultural factors are based on human initiative in social life.

These five factors are closely related because they are the essence of law enforcement and a measure of the effectiveness of law enforcement (Soekanto, 2010). Theory of the Purpose of Sentencing

If the judge decides to impose a sentence on a child, the judge should consider the purpose of the sentence. In criminal law, there are several theories of illegal imposition, which are generally divided into three groups:

- a. Absolute Theory or Theory of Retaliation: the imposition of a crime is justified solely because a person has committed a crime or criminal act.
- b. Relative Theory or Theory of Purpose: the crime is not to retaliate against the perpetrators of the crime but has specific valuable purposes. These goals are:
 - Calming people who are restless as a result of crimes that have occurred
 - Preventing crimes can be divided into:
 - General prevention: prevent everyone who will commit a crime.
 - Unique prevention: People who have committed crimes do not repeat offences.
 - Combined Theory: is a combination of Absolute Theory and Relative Theory (Setiady, 2010).

III. Research Method

The research was conducted in the odd semester of 2019/2020, carried out in the library to obtain legal materials. The legal materials used are:

1. The primary legal material used is the Criminal Code, Act Number 11 of 2012 concerning the Juvenile Criminal Justice System
2. The secondary legal materials used are books, journals
3. The tertiary legal material used is a dictionary.

The data procured for this study were scrutinized through a qualitative analytical lens. Rather than relying solely on numerical or statistical presentations, the research findings have been articulated in a narrative form, specifically designed to directly respond to the posed research questions. This narrative-based approach offers a more nuanced and context-rich understanding of the data, making it easier to grasp the complexities and subtleties inherent in the issues being explored.

To address the challenges and questions at the core of this study effectively, a multi-theoretical framework is employed as an analytical tool or, metaphorically speaking, an "analytical knife." This multi-pronged theoretical approach serves multiple functions:

- **Deepening Understanding:** By applying various relevant theories, we aim to delve deeper into the complexities of the subject matter. This multi-layered analysis enables us to dissect the data from different angles, thereby revealing intricate details and hidden dimensions that a single-theory approach might overlook.
- **Contextual Relevance:** Different theories often offer unique perspectives that are particularly suited to certain contexts or specific types of data. Utilizing a range of theories ensures that the analysis remains sensitive to the context-specific intricacies of the data, enhancing the validity and reliability of the findings.
- **Interdisciplinary Insights:** The use of multiple theories often allows for an interdisciplinary approach to analysis. This can be especially valuable in complex or multi-faceted issues that cannot be fully understood through a single disciplinary lens.
- **Contrast and Comparison:** The simultaneous application of multiple theories offers the advantage of being able to contrast and compare findings generated through different theoretical perspectives. This can lead to a more balanced and comprehensive understanding of the data, as

it reduces the risk of analytical bias that could arise from relying on a single theoretical framework.

- **Generating Robust Conclusions:** Ultimately, the use of a multi-theoretical framework aims to construct well-substantiated and robust conclusions that not only answer the research questions but also contribute to the broader knowledge base of the subject matter.

By marrying qualitative analysis with a carefully chosen set of theories, the study aims to provide well-rounded, insightful, and actionable solutions to the research questions at hand. This methodological approach thus serves as a powerful tool for generating the kind of nuanced, in-depth understanding required to tackle complex issues effectively.

IV. Research Results and Discussion

The question whether the federal system of Switzerland has more advantages or disadvantages requires an ideological discussion, because it cannot be directly compared with the political systems of other countries. The Swiss federalism has so many aspects that, depending on a currently adopted point of view, they may seem both positive and negative.

Due to the multicultural character of Switzerland, it would be difficult to achieve its current level of political and social consensus without its particular form of federalism. The system ensures a fair treatment of all ethnic, religious, and linguistic minorities. Since many decisions are made at the lowest political level, citizens are protected from unjust or harmful interferences of the state.

Federalism thwarts cultural and ethnic conflicts, and allows the state to adjust its activities to the regional differences. The rare occurrence of any regional tensions or political conflicts are the best evidence of the efficient and fully democratic functioning of the Swiss federal state. Despite the fact that the process of negotiations between the cantons, as well as between the federation and the cantons, is often long and slow – which is incomprehensible to foreign observers – it leads to positive results.

The costs of the Swiss system are certainly one of its main downsides. Each of the cantons has its own government, administration, judiciary etc. – even the universities are funded by the cantons. Although it is not an ideal system, the internal and international situation of the country shows that the Swiss would not replace it with any other – even in the face of globalization and increasing European integration. Switzerland protects its cantons' competencies and its direct democracy in a consistent manner, and in case of inter-cantonal conflicts, it always looks for peaceful solutions (such as the inter-cantonal agreement called “concordat”).

V. Conclusions

The culmination of this research reveals significant gaps in the existing Juvenile Criminal Justice System Act, particularly when it comes to the stipulated length of detention for juveniles convicted of severe crimes. The current legal framework is found to be insufficient in aligning with the foundational principle of justice, thus failing to meet the intended objectives of sentencing.

Justice, as a cornerstone of any well-functioning legal system, demands equal consideration for both the victim and the offender. The current legislation related to juvenile detention appears to be incongruent with this balanced approach. It seems to either be excessively lenient, thereby

undermining the rights and sentiments of the victims, or disproportionately harsh, which jeopardizes the child's prospects for rehabilitation and societal reintegration.

Sentencing serves multiple functions, including retribution, deterrence, and societal reintegration of the offender. The existing guidelines concerning juvenile detention lengths appear ineffective in achieving these multifaceted goals. Whether it is due to the excessive leniency that undermines the retributive aspect, or the undue harshness that inhibits the rehabilitative potential, the outcome is a system that neither deters future crimes nor adequately considers the complex needs of juvenile offenders.

In light of these findings, there is a clear and urgent need for a recalibration of the legal provisions governing the length of detention for juvenile offenders convicted of serious crimes. The newly designed rules should be meticulously crafted to fulfill the principle of justice that respects both the victims and the offenders. Furthermore, they should aim to effectively meet the various objectives of sentencing, which include but are not limited to, deterrence, retribution, and rehabilitation.

In conclusion, the need for revising the juvenile detention guidelines is pressing. The goal should be a balanced system that addresses the concerns of justice and fulfills the multiple objectives of sentencing. Failing to do so will result in a system that neither protects the rights of the victims nor offers a meaningful pathway for the rehabilitation and reintegration of juvenile offenders.

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