

# The Prospection of the Structural Criminal Liability for Juvenile Offenders in Indonesia

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Juvenile criminal liability in positive criminal law is individual criminal liability. Children who commit a crime are seen as not yet fully accountable like adults, so in accountability they should also be different. Juvenile offenders are generally influenced by the way of monitoring / educating parents who are wrong, so that with the study of penal policy which is based on a policy approach and value approach, the idea of accountability by parents towards children who commit a criminal offense needs to be present in penal policy in the future. The reason for the need for criminal liability by parents against children who commit crimes is the need for expansion of individual criminal liability to be structural in nature, so that the legal objectives of justice, benefit and certainty are achieved. the value of individual responsibility, in criminal responsibility is not felt to fully provide benefits and justice, considering that children who commit a criminal offense have not been fully capable of being accountable like adults. The parent factor in educating and supervising children determines a child in determining his will.

**Key words:** *structural criminal liability; juvenile offenders*

## Introduction

Criminal liability in positive criminal law basically has the nature of individual responsibility. However, in line with the changing times, in various comparative studies of criminal law,

especially in the family family of common law criminal law, criminal liability of an individual nature for certain matters can be expanded to become structural responsibilities. Structural criminal liability in common law criminal law, it is often applied to crimes committed by children, where parents can be accounted for if the parents are to blame for crimes committed by children. Crimes committed by children are rife. Even crimes committed by children classified as sadistic. As reported by Indonesia Police Watch, there are a number of crimes that are categorized as being threatened with "top-level" crimes, such as: (<http://www.kpai.go.id/berita/kpai-anak-terlibat-kriminalitas-karena-terinspirasi-lingkungan-tak-ramah-anak/>):

October 5, 2014. Three students desperate to strangle and slit the throat of his playmate to death. Then take the cellphone and motorbike victim Chaerul (16) lighthouse vocational student. The three are Rio Santoso (15) Students of SMK Karya Ekonomi, Ikhwan (16) Students of SMP Nurul Ikhsan, and M Febriyansah (14) students of Nurul Ikhsan Middle School. Armed with a knife, the victim was tortured to death in front of Modern Market, Jakarta Garden City Housing, Cakung, East Jakarta. June 13, 2014. Two members of a vehicle thief gang. minors, namely IH (17) and SS (16) were arrested by the police in Cisauk, Tangerang. While its chairman, Irfan alias Keling (18) was forced to shoot his leg for fighting when he was about to be arrested. The last action they took took place on the night of June 11, 2014. Jeri Irawan (20) who was passing by his friend on Jl Raya Pasar Jengkol, Tangerang. They beat them down and their motorbikes were taken.

May 4, 2014. Renggo Khadafi (10) died after being persecuted by his classmate Sy (10) on April 28, 2014. The act of persecution was carried out in class and witnessed by his friends in Class V SDN 9 Makassar, East Jakarta. May 18, 2014. RM (17) and AP (12) were arrested by police after robbing the house of businessman Wevie Viyana (35) in the MA Teratai Complex, Pamulang, South Tangerang. While one of his friends R (18) is still being hunted by the police. A number their gold jewelery and mobile phones looted from the victim's house. May 14, 20014. Bambang (16) along with a friend who was also a teenager killed a 14-year-old teenager, whose identity was not yet known in Babelan, Bekasi, West Java. After trapping his neck, the victim and his motorcycle were taken to Rorotan, Cilincing, North Jakarta. When they wanted to dispose of the victim's body, the action of the perpetrator was known to the residents. As a result, Bambang was mobbed by a mob, while his friend escaped. May 10, 2014. Yakobus Yunusa alias Bush (14) was killed stabbed with clurit by MF alias Alit (14) in Ciracas, Jakarta. East, with gaping wounds on the chest and left waist. The class I junior high school student was killed by his friend because he often mocked.

If departing from a positive criminal law, the child who commits the crime is personally liable for the crime committed. However, this matter still needs to be studied further, the considerations of the law which apply thus, have also been based on the context of the Indonesian people's way of life? Is it not possible if the criminal liability is also borne by

parents? For the sake of greater benefit? Given the philosophy, humans as individual creatures, depend also from other humans. The role of parents towards foster children is very large. KPAI also reported that in general criminal acts committed by children arise due to social environment factors that are unhealthy / not child-friendly. Such as easy access to media that smells of pornography, games / games that smell of violence. Especially in the era of globalization, where technological advances, causing the flow of information that goes into a country unlimited, unstoppable, can be easily accessed by children. The role of parents to educate children is very important in order to create healthy social hygiene for children.

This regard, the state needs to consider the criminal liability of parents against children who commit crimes, in order to provide "psychological coercion" for parents so that supervision of children is more leverage, so that criminal acts committed by children can be suppressed. Criminal Law Reform is required that demands research and thought on a very fundamental and very strategic central problem. The central issues that are very fundamental and strategic include the formulation of principles in criminal law. These principles are the basic principles of criminal law and the operation of criminal law. The importance of the formulation of principles in criminal law is emphasized in the Results of *Seminar Hukum Nasional I, poin f ke-2 Bidang Asas-Asas Tata Hukum Nasional dalam Bidang Hukum Pidana, March, 11, 1963*, in Jakarta which stated:

It is recommended in the New Criminal Code that the general part containing general principles (fundamental) should be arranged progressively in accordance with culture of Indonesia and the development of the revolution, after studying the general criminal rules in the Criminal Code in others- another country. Starting from the above, the theme of this study will focus on structural criminal liability on juvenile offenders who commit crimes in Indonesia.

## Results and Discussions

### *Reason for Structural Criminal Liability for Children who commit Criminal acts*

Children who commit crimes also individually take responsibility for their own actions. This can be seen in the history of the regulation, starting from the regulations in the Criminal Code, in Articles 45, 46 and 47. Then Article 45, 46 and 47 of the Criminal Code was revoked based on Act No. 3 of 1997 concerning Juvenile Court. Until Act No. 3 of 1997, which has been replaced by Act No. 11 of 2012 concerning the Juvenile Justice System.

Children who can be liable for in criminal law according to Law No. 11 of 2012 is known as a child in conflict with the law, with an age limit of 12 to 18 years (Article 1-3 of Law No. 11 of 2012). Different from the previous rule, namely Law No. 3 of 1997 ie aged 8 years to 18 years and has never been married (Article 4 paragraph 1 of Law. No. 3 of 1997). Then if a child who commits a crime within the age limit (8 years to 18 years) is submitted to the court beyond that age limit but has not reached the age of 21 years he will still be submitted to the child's trial (Article 4 paragraph 2 of Law No. 3 of 1997). Rules in the Criminal Code

(already revoked under Law No. 3 of 1997), a person who has not reached the age of 16 can still be criminally liable (Article 45 of the Criminal Code). There seems to be a difference in the age limit for criminal liability of children in Law No. 11 of 2012, Law No. 3 of 1997 and the Criminal Code. In Law No. 11 of 2012 children who are not yet 12 years old cannot be accounted for, and in Law no. 3 of 1997 children who are not yet 8 years old cannot be accounted for. Whereas in the Criminal Code there is no minimum limit of criminal liability for children. Someone who is not yet 16 years old, can still be accounted for. The establishment of a person's minimum age for criminal liability is based on the Convention on the Rights of the Child (Article 40 paragraph (3a) as ratified in Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child).

U No. 11 of 2012 adheres to the idea of a double track system in formulating sanctions. Sanctions imposed on children who commit crimes are criminal and acts. Children who have not reached the age of 14 years can only be subject to action (Article 69 paragraph (2) of Act No. 11 of 2012). Criminal sanctions that can be imposed on children consist of basic and additional crimes. The main criminal law consists of:

1. criminal warning
2. Criminal conditions:
  - a. coaching outside the institution
  - b. society service
  - c. supervision
3. Job training
4. Coaching in institutions
5. Prison

Whereas additional crimes consist of:

1. Deprivation of profits derived from criminal acts
2. Fulfill customary obligations

While children who are not yet 12 years old who commit a crime are returned to their parents / guardians or coaching in institutions (Article 21 of Act No. 11 of 2012).

Criminal liability towards children is carried out individually, by children who commit the crime itself. A child who commits a crime is actually, he is in a state of influence of determinism, which means the child is not yet fully able to realize that the act is illegal. This state of determinism is the opposite of a state of indeterminism which means that humans are born with free will. Free will has the consequence that a person is able to realize that the actions carried out are good or bad. Considering that a child who commits a criminal offense does not yet fully have free will, because many things lie behind the person's child in a deviant act, the environment is responsible for the growth and development of the child's

soul. The role of the parent or guardian of the child is very large over the child's psychological growth and development. The problem of crime in this case crime is a social problem that must be addressed. Crime prevention efforts is a crime prevention policy called criminal policy. Criminal policy can be pursued in two ways, namely the penal policy and non-penal policy. Penalty policy means using criminal law to deal with crime. Whereas the non-penal policy is a policy of overcoming crime by means of non-criminal law. The criminal law policy does not only formulate acts which are prohibited by the criminal law, but also formulates the principles as the basis for the criminal law.

Meanwhile, in the Common Law family law, the doctrine of criminal liability, based on liability without error with maxim *actus non facit reum, nisi mens sit rea*, but there are exceptions, for certain crimes it is also possible for a person to be criminally accounted for without error (strict liability). Likewise, doctrine common law criminal liability that adheres to individual liability, there are exceptions in the form of vicarious liability. The teachings of common law criminal law are not only corporations that can be subject to substitute criminal liability, but also individuals. Vicarious liability means Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties (Employer / supervisor responsibility for the actions of his subordinates based on work relations )(Henry Campbell Blacks, 2009).

Vicarious criminal liability in the conception of Islamic criminal law, also known. Vicarious criminal liability is an exception to individual liability. The legal basis / principle of individual responsibility in Islamic criminal law is the Holy Qur'an, Surah Al-Fathir: 18 which states "one does not bear the sins of others" (Makhrus Munajat, 2008). Vicarious liability in Islamic criminal law is limited to criminal acts with *diyat* criminal sanctions (fines). The reasons for vicarious criminal liability in Islamic criminal law are:

1. The principle of justice, someone who must bear *diyat* for crimes committed, often unable to bear *diyat* in large numbers, so that the community, in this case the family, or *ulil amri* represent the community, or the community can work together to help the offender to pay the *diyat*.
2. The target of *diyat* is not only for the victims, but also for their families and heirs. So here all the principles of social justice are achieved, both perpetrators who are assisted by families and communities, also victims, heirs, families also feel *diyat* benefits, the principle of benefits is also achieved in this case.
3. A family that only bears *diyat* in semi-intentional / reckless / *dolus eventualis* fingers, can be likened to negligence. In the concept of Islamic criminal law, errors in the form of negligence and carelessness, arise from wrong care / wrong students. The parties responsible for educating are people who are related to the perpetrators, namely the family, while the family is affected by the environment.

4. Family and community life is formed on the basis of helping, so it has become the duty of community members to cooperate and help other fellow family members, so that the burden of the perpetrators is light.
5. Islamic Sharia also commands to preserve the soul, both individuals and society. Diyat is a substitute for the soul, so if the perpetrator is unable to pay diyat, then, the victim's soul becomes useless.
6. In addition, criminal responsibility must also be borne by his family, giving lessons to the members to be more careful in educating family members, both perpetrators or others.

If examined, the concept of "vicarious liability" in Islamic criminal law is different from the concept of common law criminal law. the conception of responsibility in Islamic criminal law, can be vicariously (as in common law) that is without mens rea (mens rea is assumed to exist and actions need to be proven) from a substitute for a criminal offense committed by someone else. Then it can also be structurally, meaning that not only are the perpetrators individually convicted, but also others who are structurally related to the criminal offenses committed by the perpetrators. Even those people who are structurally involved are not involved in committing crimes committed by the perpetrators. (Makhrus Munajat, 2008). Not being involved means that I mean it is not a criminal act of inclusion (*deelneming*) in a crime. Vicarious criminal liability also exists in the concept of Baduy customary criminal law. Vicarious criminal liability of Baduy custom can occur, if there are children who commit a crime, then the parent is responsible. Likewise a crazy person, who commits a crime, then his parents / or family is responsible. (Ferry Fathurakhman, 2016).

Bali's customary criminal law also recognizes the concept of substitute criminal liability. Namely if there is an action from the perpetrators who pollute the village, which is considered disturbing the magical balance in the life of the community, then a cleansing / purification ceremony called *merayascita* (Nyoman Serikat Putrajaya, 2005). The cost required for the *Merayascita* ceremony is very large, so often the perpetrators do not want to carry out the ceremony. Therefore, the community bears the cost of the ceremony in a mutual manner (Nyoman union Putrajaya, 2005). The concept of criminal liability in Balinese customary criminal law regarding *Merayascita*, is vicarious and structural / collective.

Meanwhile, the concept of criminal liability of parents in the common law tradition is criminal liability that is structural, not vicarious (Pamela K. Graham, 2000). Criminal liability by parents cannot be based because of their status as parents, but is based on *actus reus*, both acts of doing or not doing, *mens rea*, cause and effect, harmful consequences (Pamela K. Graham, 2000). Criminal liability by parents against children who commit a crime, formulated in the law (Jason Emilios Dimitris, 1998). Such is the case in the Pennsylvania Commonwealth vs. Malone Court. A child puts a bullet in a revolver and rotates it, then points it at his friend's head. Then the child pulls the trigger three times. Right on the third

pull, the gun explodes and penetrates the victim's head. In this case, if a parent is held accountable for a crime committed by his child, it must be proven that the child's parents are negligent (culpa) controlling the child (Lisa Lockwood, 2000). So in this case requires mens rea parents, in the form of negligence in maintaining the weapons he has.

### *Propection Formulation Policy for Structural Criminal Liability for Juvenile Offenders*

Children who commit a crime are considered unable to take full responsibility for committing a crime. As stated in the previous discussion, there are arrangements for criminal liability by parents against children who commit crimes, in some countries such as the United Kingdom, the United States, Islamic criminal law, Baduy customary criminal law and Balinese customary criminal law. Individual liability contained in the provisions of Act No. 11 of 2012, needs to be extended to criminal liability that is structural in nature. This structural responsibility is the responsibility of parents towards children who commit criminal acts.

As for the model of criminal liability by parents, it can be structurally, meaning that parents can also be convicted with the child, if the parent is seen as having an error against the occurrence of a crime committed by the child, or accountability in substitute, if the child is deemed not worthy of the crime it does. This mistake is purely the fault of parents in educating children. So there is a transfer of criminal responsibility from the child to the parent.

In other words, children who can be criminally accounted for are children aged 12 to 18 years, criminal liability can be carried out individually by the child, or together with parents, or parents are fully responsible for crimes committed by children . Likewise for offenses that have strict liability established in practice. Like traffic violations about driving administration. If a child is caught driving on public roads, then parents can be responsible for the actions of these children, who drive on public roads. The formulation / arrangement of criminal responsibility of children like this has the idea of elasticity, neither rigid, nor absolute.

The concept of the Criminal Code in the criminal liability chapter has defined vicarious liability in addition to strict liability as an exception to the principle of error. However, in vicarious liability, the Criminal Code Concept has not yet been formulated in terms of how a person can replace another person who commits a crime, as well as what crimes that can be subject to substitute criminal liability. Based on this, substitute criminal liability can also be applied to children who commit a crime.



## **Conclusions**

Structural criminal responsibility towards children who commit crimes in criminal law politics in the era of globalization, needs to be formulated in positive law. The reason is that a child who commits a criminal offense is basically criminally responsible, but has not yet been fully able to take responsibility. Besides other reasons, in the values that exist in the society of parents have an important role in educating children, creating healthy social hygiene to realize the goals of the country namely a just and prosperous society. The value of social justice, benefits and mutual assistance contained in criminal liability by parents against children who commit criminal acts, becomes a conceptual foundation that is in line with the values of Pancasila. The state has an important role in creating Pancasila-based law, which should also be in the field of criminal law. based on legal excavations that live in the community, as well as comparative studies (global) in Common Law countries, found criminal liability of parents against children who commit a crime.

Arrangement of structural criminal liability for children who commit crimes is to formulate structural criminal liability against children who commit criminal acts, in an elastic way. This means that children can be accounted for individually, with parents, or parents replace the responsibility of children who commit crimes. This formulation aims to maximize the role of parents in terms of educating children.

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