

Juridical Review of the Criminal Process Against Children as Offenders After the Age Of 18 Based on the Indonesian Penal System

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Abstract: This study aims to analyze and determine the legal status for children who commit criminal acts that are processed by the court at the age of 18 years and to analyze and find out the criminal law arrangements in the juvenile justice process that are carried out after the perpetrator (child) is 18 years old. The research method used is normative legal research using a legislative approach and a conceptual approach, The data source in this study comes from secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials which are analyzed qualitatively and then draw conclusions using a deductive thinking process. The results of this study are: 1). In the juvenile justice process that is carried out after the perpetrator (child) is 18 years old, the legal position still refers to the age at which the crime was committed (tempus delicti). This reinforces the principle that juvenile criminal law is retroactive to a certain age limit; 2). The juvenile justice process that is carried out after the perpetrator (child) is 18 years old is still based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

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INTRODUCTION

Children are a gift from God Almighty, and have the dignity and dignity of being fully human. Every individual child has dignity and values that must be maintained, and every baby has the right to this without having to ask for it. This is in line with the provisions of the Convention on the Rights of the Child which has been approved by the Government of Indonesia through Presidential Decree Number 36 of 1990 and subsequently regulated in Law Number 4 of 1979 concerning Child Welfare and Children's Law and Law Number 23 of 2002 concerning Child Protection¹.

The age limit for children in laws and regulations in Indonesia currently varies greatly. At the time of the enactment of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, the child in Article 1 is a person who has not reached the age of 18 years and the child is still in the womb².

Each child has unique characteristics that require special attitudes and attention. In the process of child growth and development, there are various *internal* and *external* factors that affect personality formation. A

¹Muh. Fadhlan Fadhil Bahri and Muh. Chairul Anwar, "The Juvenile Criminal Justice System." Journal of Law, University of West Sulawesi, Vol. V No. 3 October 2022, pp. 1-2.

² Muchlis Ibrahim, "Synchronization of the Law on the Age Limit of Minors in a Positive Legal Perspective in Indonesia." Journal of Notary of the UMSU Postgraduate Notary Study Program, Vol. I No. 1 January-June 2022, p. 84.

child's personality can affect his or her behavior, including behavior that deviates or violates norms. Of course, any deviant behavior of children will be subject to legal action.³

In the process, the handling of criminal cases against children is different from cases against adults. The treatment of children is special as regulated in regulations related to the juvenile criminal justice system. However, even though they understand the process of handling children's cases, there are still some community groups who do not really understand so that sometimes it causes different assessments, especially if handling children's cases is a wrong decision that affects its handling.

The juvenile criminal justice system is the entire process of resolving children's cases that face the law from the investigation stage to the guidance stage after undergoing a criminal process based on protection, justice, non-discrimination, the best interests of the child, respect for the child, survival and development of the child, proportionality, deprivation of independence and punishment as a last resort and avoidance of retaliation.⁴ The age limit of children is very important in juvenile criminal cases, because it is used to find out whether a person is suspected of committing a crime in the category of children or not. In the juvenile criminal justice system, children in conflict with the law are children who are 12 years old but not yet 18 years old who are suspected of committing criminal acts.

Law Number 11 of 2012 concerning the Juvenile Justice System is an update of Law Number 3 of 1970 concerning the Juvenile Court, this change is a new chapter for the special criminal justice system for children in Indonesia. Where there is a paradigm shift from initially still prioritizing appropriate and *absolute* punishment for children who commit criminal acts to using a *more humane* restorative justice approach.⁵

The concept of *Restorative Justice* is a new paradigm in criminal law enforcement, although in fact the concept has long been developed and practiced in the resolution of criminal cases in several countries that adhere to the *common law system*. Efforts to apply this concept in criminal law enforcement practices in Indonesia still encounter various obstacles. This obstacle occurs due to factors from the community who do not understand awareness in law enforcement.⁶

Broadly speaking, the criminal justice apparatus for children who commit delinquency is the same as the Criminal Justice System that applies to adults, but for children there are specificities required for the enforcement officers. The most different thing is that in the juvenile justice process, a special institution is needed, namely Correctional Officers.⁷ To determine which judicial environment has the right to prosecute, it is necessary to look at the legal status of the defendant. In this case, if the defendant mentioned is considered to be an adult, then it is assumed that his age at least at the time of committing the criminal act and being submitted to the court is 18 years old or more. This is based on the definition of children in Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System⁸.

Thus, although the victim in this criminal case is a child, the defendant is an adult, and the trial is carried out to try the defendant. So that what is enforced is a criminal justice system for adults in the general justice environment. So it becomes a problem then if the legal process is still ongoing while the age of the perpetrator, in this case a child, has exceeded the age limit of 18 years. Therefore, this attracted the attention of the author

³Bambang Surabangsa and Tajul Arifin, "An Analysis of the Concept of Diversion and Restorative Justice in Juvenile Criminal Justice in Indonesia: Perspectives of Islamic Law." *Journal of Islamic Law UIN Suska Riau*. Volume XXII Number 1 June 2022, p. 54.

⁴Mahir Sikki Z.A., "Juvenile Criminal Justice System". <https://pn-palopo.go.id/30-news/article/363-glance-about-the-juvenile-criminal-justice-system>, downloaded January 7, 2025, at 22.05 WITA.

⁵Yory Fernando, "The History of the Juvenile Criminal Justice System in Indonesia." *Journal of Social Sciences and Education*. Vol. IV No. 4 November 2020, p. 32.

⁶Renita Dharma Pratiwi and Moch. Ardi, Rosdiana, "Obstacles to the Application of the Principle of Restorative Justice in Child Crime Cases." *Lex Suprema Journal*. Volume I Number 2 September 2019, p. 12.

⁷M. Afrizal, "Judges' Considerations in the Imposition of Criminal Sanctions on Children of Narcotics Offenders." *Journal of Law and Humanities*, Vol. IV Number 1 September 2021, pp. 16-17.

⁸Sovia Hasanah, S.H. "Where is it tried if an adult commits a crime against a child?", <https://www.hukumonline.com/klinik/a/diadili-dimana-jika-orang-dewasa-yang-melakukan-pidana-terhadap-anak-lt5029e564d49a3/>, accessed January 20, 2025, at 00.11 WITA.

to conduct research related to the legal position and its regulation for perpetrators (children) of criminal acts whose age exceeded 18 years old while the judicial process was still ongoing.

Based on the above background description, the following problems are formulated: 1). What is the legal position for children who commit criminal acts that are processed by the court at the age of 18? 2). How is the Criminal Law arrangement in the juvenile justice process carried out after the perpetrator (child) is 18 years old?

METHOD

This research is normative research that is descriptive with the aim of providing an explanation as it is as the results of the research conducted without justifying the research results.⁹ To support this research, the author uses two approaches, namely the legislative approach and the conceptual approach. The sources of legal materials used in this study are sourced from primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials in this study include: the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; Secondary legal materials include all publications about the law, such as books, legal journals, and so on¹⁰; Meanwhile, tertiary legal materials include the Great Dictionary of the Indonesian Language (KBBI) which complements this research. The three legal materials were collected through literature studies which were then analyzed qualitatively using a deductive thinking approach to produce conclusions that could solve the problem.

RESULT AND DISCUSSION

Legal Status for Children Who Commit Criminal Acts That Are Processed By Their Courts At The Age of 18

According to Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children who are in conflict with the law are children who are 12–18 years old when committing a criminal act. Every child has rights that have existed since he or she is still in the womb. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every child to survival, growth and development, and protection from violence and discrimination. This provision is the constitutional basis for juvenile justice arrangements that are oriented towards recovery (*rehabilitation*) rather than retribution (*retribution*), including for offenders who are processed after adulthood.

From a human rights perspective, the 1989 International Convention on the Rights of the Child ratified by Indonesia through Presidential Decree No. 36 of 1990 affirms the principle of the *best interest of the child* in every legal process (Article 3 of the Convention on the Rights of the Child). In addition, Article 40 of the Convention on the Rights of the Child obliges the state to treat children of criminal offenders while respecting human dignity and values.

In the Child Protection Law, precisely in Article 59 of Law Number 35 of 2014 concerning Child Protection, the child of a criminal offender is classified as a child in need of special protection. This protection includes legal assistance, psychosocial assistance, and rehabilitation facilities, regardless of age status during the judicial process. This is also in accordance with the Juvenile Crimes related to the regulation specifically regarding the principle of *ultimum remedium* (Article 2), diversion (Article 7), and the obligation of the juvenile court to prioritize the *restorative justice approach*. This provision remains valid even if the perpetrator is over 18 years old at the time of the trial, as long as the criminal act was committed while still a child as stipulated in the Juvenile Justice System Law.

The basis for the birth of a special arrangement of juvenile criminal law that is different from general criminal law. The birth of special arrangements for juvenile criminal law from three main considerations, namely: 1) *Psychological*: Children's emotional and cognitive development is not stable, so criminal liability must be adjusted. 2) *Sociological*: Children are vulnerable to environmental influences, so punishment should

⁹Muhaimin, *Legal Research Methods*, Mataram University Press, Mataram. 2020, p. 105.

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, Rajawali Press, Jakarta.2003, pp. 33-37.

focus on social reintegration. 3) *Juridical* Jurisdiction: Indonesia's compliance with international human rights standards, especially the 1989 KHA and *the 1985 Beijing Rules* which emphasize the protection of children in the judiciary.

The priority of *restorative* justice and *diversion*, even after the perpetrator reaches adulthood, aims to avoid the impact of stigmatization and long-term punishment that can harm the development of former child offenders. This shows a change in the thinking of juvenile criminal law that is no longer solely oriented towards retribution, but also on social recovery and reintegration into society.

In criminal law, there is a principle of *lex temporis delicti*, which states that the law applied is the law that applies at the time of the crime, not at the time of the judicial process. Therefore, even if the individual is over 18 years of age at the time of the investigation, if his criminal act was committed while he was a minor, then he will still be processed in accordance with the provisions of the Child Criminal Justice System Act.

The handling of criminal cases against children is certainly different from the handling of cases against adults; the handling of children is special because it has been regulated in separate regulations. Understanding the process of handling children's cases, of course, there may still be some people who do not understand or understand, so that sometimes it gives rise to various assessments, even more fatal if there is a wrong assessment that the handling of children, especially children in conflict with the law, gets special treatment and there are also those who think that children cannot be punished even though it is not that far. It's just that the handling process is specifically regulated¹¹.

Criminal Law Regulations in Juvenile Justice Carried Out After the Child Offender Turns 18

Legal protection is a protection that maintains dignity and value, as well as recognition of human rights owned by legal subjects in accordance with existing regulations, in order to prevent arbitrary actions or as a set of norms that function to protect one thing from another.¹² Meanwhile, according to Setiono, legal protection is an act or effort to protect the community from arbitrary acts by the ruler that is not in accordance with the rule of law, to realize order and peace so as to allow humans to enjoy their dignity as human beings.¹³

In the process of its development, efforts to protect children in the legal realm are also regulated through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Legal protection for children in Indonesia has been regulated in a number of regulations, but it is specifically regulated in Law Number 23 of 2002 Jo Law Number 35 of 2014 concerning Child Protection.¹⁴

Article 1 number 2 of Law Number 23 of 2002 concerning Child Protection states that: "Child protection includes all efforts to ensure and protect children and their rights so that they can live, grow, develop, and participate."¹⁵

In Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old. What is meant by a child in conflict with the law as stated in Article 1 paragraph (3) of Law Number 11 of 2012 is: "A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act". In addition, what is meant by a child who is in conflict with the law can become a victim of crime, become a witness, and also become a perpetrator of a criminal act.¹⁶

¹¹Mahir Sikki Z.A., S.H., "Overview of the Child Criminal Justice System." <https://pn-belopa.go.id/index.php/berita/artikel/363-sekilas-about-sistem-peradilan-pidana-anak>, accessed May 5, 2025, at 04.56 WITA.

¹²H. Dhoni Martien, *Legal Protection of Personal Data*. Partner of Knowledge : Makassar. 2023, p. 21.

¹³*Ibid*, p. 22.

¹⁴Fransiska Novita Eleanora, et. Al. *Law on the Protection of Children and Women*. Madza Media. : Jakarta. 2021, p. 27.

¹⁵ *Ibid*, p. 28.

¹⁶ H. Amir Junaidi, *Juvenile Court*. Baskara Media : Surakarta. 2022, p. 68.

Children Facing the Law according to Law Number 39 of 1999

Law No. 39 of 1999 concerning Human Rights According to Law No. 39 of 1999 concerning Human Rights, every child has the right to protection from parents, family, society, and the state. Children's rights are human rights and are recognized and protected by law.

The form of legal protection according to Law No. 39 of 1999 is contained in:

Article 52 (1) that every child is obliged to receive protection from parents, society and the state.

Article 58 (1) states that every child is obliged to obtain legal protection from various forms of violence, sexual abuse, and unpleasant acts.

Article 64 that every child is obliged to obtain protection from work that endangers him, which may interfere with his physical, moral, and social health.

Article 65 states that every child has the right to be protected from sexual abuse, kidnapping, child trafficking, exploitation and various forms of abuse of narcotics, psychotropic substances, and other addictive substances.

Article 66 reads that every child has the right to freedom and humane treatment, the right to effective legal assistance, the right to special treatment, the right to criminal offense and the right to justice in the juvenile court¹⁷.

Children Facing the Law According to the Law of the Juvenile Criminal Justice System

Children who are in conflict with the law according to Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Criminal Justice System are children who are in conflict with the law, children who are in conflict with the law, children who are victims of the law, and children as witnesses to criminal acts. Referring to this article, children who are dealing with the law consist of:

Children in conflict with the law, namely children who are 12 years old but not yet 18 years old who are suspected of committing criminal acts.

Children who are victims of criminal acts are children under the age of 18 who experience physical, mental, and/or economic suffering caused by criminal acts.

A child who is a witness to a criminal act, namely a child under the age of 18 who can provide information for the purposes of investigation, prosecution, and examination in court about a criminal case that he or she hears, sees, and experiences himself.

In the event of a criminal act committed by a child under the age of 18 years and submitted but has not reached the age of 21, the child is still submitted to the juvenile court.¹⁸

Children Facing the Law According to Child Protection Law

Children who are in conflict with the law according to the Child Protection Law and are children in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. Children in Conflict with the Law Are children who are 12 years old but not yet 18 years old who are suspected of committing criminal acts.

The legal position of children in this situation (dealing with the law) requires a deep understanding of the principles in the Juvenile Criminal Justice System. Although the judicial process is carried out after the child is 18 years old, his legal status still refers to the age at which the crime was committed (*tempus delicti*). Thus, even though the legal process runs after adulthood, his status is subject to juvenile justice law. As stipulated in Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the status of the perpetrator of a criminal act is still considered a child if he is not yet 18 years old at the time of the act, even though the judicial process only takes place after he or she is an adult. This shows that there is a recognition that the capacity of children to take full responsibility for their actions is different from that of adults. The absence of physical, mental, and emotional maturity at a child's age is the basis for exceptions in

¹⁷Romadhona S, "5 Forms of Child Protection According to Law in Indonesia". <https://jdih.suko.harjokab.go.id/berita/detail/5-bentuk-perlindungan-anak-menurut-hukum-di-indonesia>, accessed May 18, 2025, at 19.00 WITA.

¹⁸Willa Wahyuni, "Getting to Know Children Who Face the Law", <https://www.hukumonline.com/news/a/knowning-children-who-face-with-hukum-lt64081e7f1eea9/>, accessed January 16, 2025, at 13.51 WITA.

the application of the principles of *actus reus* (criminal acts) and *mens rea* (malicious intent) as applicable to adults.

CONCLUSION

Based on the description of the results and discussion above, it can be concluded that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is the main basis in the criminal process committed by children by affirming that the age of the perpetrator (child) at the time of committing a criminal act (*tempus delicti*) is a reference, even though the judicial process is carried out after the child is 18 years old. The legal arrangements related to the juvenile justice process carried out after the perpetrator (child) turns 18 years old are still based on the arrangements stipulated in Law Number 11 of 2012 with the main principles including *ultimum remedium*, *diversion*, and *restorative justice*, which are prioritized even when the perpetrator is an adult. This shows a paradigm shift from retribution to the recovery and social reintegration of children in conflict with the law.

SUGGESTION

The suggestion is that a periodic evaluation of the implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System can be carried out in terms of identifying the obstacles and challenges that are being faced. This needs to be done so that the law can be more responsive or responsive to the needs and developments in handling child criminal cases in the present and future. In addition, it is necessary to carry out comprehensive socialization to the public about the juvenile criminal justice system and the principle of legal protection for children so that there is no stigma or misunderstanding that children who conflict with the law are treated favorably or free from legal responsibility. As well as improving the quality in terms of coordination between institutions that handle children in conflict with the law, such as the Police, Prosecutor's Office, Courts, Ministry of Social Affairs, and Child Protection Institutions to ensure that the protection process runs in an integrated and effective manner.

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