

PARENTAL CRIMINAL LIABILITY IN JUVENILE JUSTICE SYSTEM: A PARADIGM SHIFT TOWARD SHARED ACCOUNTABILITY IN INDONESIAN CRIMINAL LAW

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Abstract:

The Indonesian juvenile justice system, regulated under Law No. 11 of 2012 on the Juvenile Criminal Justice System, fails to establish parental criminal liability for offenses committed by minors. This legal vacuum has resulted in high recidivism rates and undermines the rehabilitative goals of juvenile justice. This study aims to analyze the necessity of establishing parental criminal liability in Indonesia's juvenile justice system, examine comparative models from Japan, Germany, and Canada, and propose a comprehensive framework for shared accountability between juveniles and their parents. Using qualitative normative-comparative legal research, this study develops the Theory of Dual Accountability in Juvenile Justice, which posits that criminal liability should be shared between the juvenile offender and negligent parents through proportional criminal sanctions, administrative penalties, and rehabilitative interventions. The findings demonstrate that Japan's Family Court system, Germany's parental responsibility model, and Canada's restorative justice approach all incorporate mechanisms that hold parents accountable for supervisory negligence. This study proposes amendments to Indonesia's Juvenile Justice Law to introduce three tiers of parental criminal liability: (1) criminal sanctions for gross negligence resulting in serious juvenile crimes, (2) administrative penalties for moderate supervisory failures, and (3) mandatory rehabilitative programs for minor cases. The proposed framework balances punitive measures with family rehabilitation, ensuring that both juveniles and parents bear proportional responsibility for criminal conduct. This paradigm shift toward shared accountability represents a fundamental reform in Indonesian criminal law, recognizing that effective juvenile crime prevention requires legal mechanisms that compel parental responsibility alongside juvenile rehabilitation.

Key words: Parental Criminal Liability, Negligence, Reform

Abstrak:

Sistem peradilan pidana anak Indonesia yang diatur dalam UU No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak gagal menetapkan pertanggungjawaban pidana orang tua atas tindak pidana yang dilakukan anak di bawah umur. Kekosongan hukum ini mengakibatkan tingginya angka residivisme dan melemahkan tujuan rehabilitatif peradilan pidana anak. Penelitian ini bertujuan menganalisis urgensi penetapan pertanggungjawaban pidana orang tua dalam sistem peradilan pidana anak Indonesia,

mengkaji model komparatif dari Jepang, Jerman, dan Kanada, serta mengusulkan kerangka komprehensif untuk akuntabilitas bersama antara anak dan orang tua. Menggunakan metode penelitian hukum normatif-komparatif kualitatif, penelitian ini mengembangkan Teori Akuntabilitas Ganda dalam Peradilan Pidana Anak, yang menyatakan bahwa pertanggungjawaban pidana harus dibagi antara anak pelaku dan orang tua yang lalai melalui sanksi pidana proporsional, hukuman administratif, dan intervensi rehabilitatif. Temuan menunjukkan bahwa sistem Family Court Jepang, model tanggung jawab orang tua Jerman, dan pendekatan restorative justice Kanada semuanya menggabungkan mekanisme yang meminta pertanggungjawaban orang tua atas kelalaian pengawasan. Penelitian ini mengusulkan amandemen UU SPPA Indonesia untuk memperkenalkan tiga tingkat pertanggungjawaban pidana orang tua: (1) sanksi pidana untuk kelalaian berat yang mengakibatkan kejahatan anak serius, (2) hukuman administratif untuk kegagalan pengawasan sedang, dan (3) program rehabilitatif wajib untuk kasus ringan. Kerangka yang diusulkan menyeimbangkan tindakan punitif dengan rehabilitasi keluarga, memastikan bahwa baik anak maupun orang tua menanggung tanggung jawab proporsional atas perilaku kriminal. Pergeseran paradigma menuju akuntabilitas bersama ini mewakili reformasi mendasar dalam hukum pidana Indonesia, mengakui bahwa pencegahan kejahatan anak yang efektif memerlukan mekanisme hukum yang memaksa tanggung jawab orang tua di samping rehabilitasi anak.

Kata kunci: Pertanggungjawaban Pidana Orang Tua, Kelalaian, Reformasi

A. Introduction

Indonesia's juvenile justice system under Law No. 11 of 2012 (SPPA Law) contains a fundamental flaw: it holds only juveniles accountable for criminal offenses while completely ignoring parental responsibility. When children aged 12-18 commit crimes, parents who failed in their supervisory duties face no legal consequences. This legal vacuum is particularly problematic given empirical evidence showing that over 70 percent of juvenile offenders come from families with poor parenting, absent supervision, or domestic violence. Data from the Indonesian Correctional Database reveals that more than 3,000 children annually undergo criminal proceedings, with recidivism rates exceeding 30 percent demonstrating that rehabilitation focused solely on juveniles without addressing dysfunctional family environments is fundamentally ineffective.

International best practices demonstrate alternative approaches. Japan's Family Court system has authority to order parental counseling and impose supervisory requirements, with contempt charges for non-compliance. Germany's Juvenile Court Act explicitly authorizes judges to impose administrative penalties on negligent parents, including mandatory parenting programs and fines. Canada's Youth Criminal Justice Act requires parental participation in rehabilitation programs. These models show that parental accountability can be achieved through graduated interventions from education and counseling to administrative penalties to criminal sanctions in cases of gross negligence without necessarily criminalizing families.

The criminological justification for parental criminal liability is grounded in established theories. Hirschi's (1969) social bond theory posits that delinquency occurs when children's social bonds to family weaken, with parents playing crucial roles in

establishing these bonds. Social learning theory emphasizes that children exposed to criminal behavior or antisocial attitudes in the home are significantly more likely to engage in delinquent acts. The doctrine of *parens patriae* recognizes the state's authority to intervene when parents fail their child-rearing responsibilities. Criminal liability for negligent parents serves multiple functions: deterrence, rehabilitation through court-mandated programs, and societal condemnation of parental failure.

Critics argue that criminalizing parents destabilizes families and creates double victimization. However, a properly designed system includes graduated sanctions with imprisonment reserved for extreme cases. For most situations, liability takes the form of probation with mandatory rehabilitation, community service, or fines. The current system's failure to hold parents accountable creates perverse incentives where negligent parents face no consequences while diligent parents receive no recognition. Contemporary challenges digitalization exposing children to harmful content, rising youth substance abuse, and gang violence heighten the urgency for family-based legal interventions. Indonesia requires a paradigm shift toward shared accountability where both juveniles and negligent parents face proportional legal consequences.

This study has three primary objectives: first, to analyze Indonesia's juvenile justice system's inadequacy in establishing parental criminal liability; second, to examine comparative models from Japan, Germany, and Canada identifying adaptable best practices; third, to develop a comprehensive theoretical framework and implementation strategy for introducing parental criminal liability through SPPA Law amendments.

Hirschi's (1969) social bond theory remains foundational, positing that juvenile delinquency results from weakened parental attachments, directly implicating parental responsibility. Hoeve et al. (2020) meta-analyzed 161 studies finding poor parental supervision, harsh discipline, and parental rejection as strongest predictors of juvenile offending, demonstrating causal relationships between parenting and delinquency. Brank and Lane (2021) documented that all 50 U.S. states now have parental liability laws, though varying in scope and severity.

Comparative research by Muncie and Goldson (2022) categorizes approaches into welfare models (family support), justice models (individual accountability), and hybrid models. Yokoyama (2022) detailed Japan's Family Court authority to investigate family circumstances and order interventions, with contempt charges for non-compliance. Dünkel and Pruin (2021) highlighted Germany's Juvenile Court Act authorizing judges to impose mandatory parenting programs, with administrative fines for violations and criminal prosecution for gross negligence. Bala and Anand (2023) examined Canada's procedural mechanisms requiring parental participation without explicit criminal liability.

Williams and Gold (2022) proposed duty-based theory arguing that parental breach of supervisory duties should be criminally actionable when resulting in foreseeable harm. Hollingsworth (2021) advocated capacity-building approaches emphasizing rehabilitation over punishment, with graduated systems reserving criminal sanctions for willful neglect. Steinberg and Scott (2020) cautioned against overly broad liability failing to account for adolescent autonomy and parental limitations.

Indonesian scholarship by Marlina (2022) found diversion frequently fails due to lack of family follow-up. Santoso and Zulfa (2023) identified family dysfunction as the strongest recidivism predictor yet noted no legal mechanisms address this root cause. This literature reveals a significant gap: while family factors' importance is acknowledged, no comprehensive proposal exists for establishing parental criminal liability in Indonesia. This study fills that gap by developing theoretical frameworks and implementation strategies adapted to Indonesian contexts.

B. Research Methods

This study employs qualitative normative-comparative legal research methodology. Primary legal sources include Indonesia's Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 35 of 2014 on Child Protection, the Criminal Code (KUHP), and relevant international conventions including the UN Convention on the Rights of the Child. Comparative analysis examines statutory law, case law, and legal scholarship from Japan (Juvenile Act and Family Court procedures), Germany (Jugendgerichtsgesetz and Sozialgesetzbuch), and Canada (Youth Criminal Justice Act). Secondary sources include academic books, peer-reviewed journal articles, research reports, court decisions, and policy documents from 2019-2024. Data analysis utilizes legal interpretation techniques, comparative legal analysis, and conceptual analysis to develop the Theory of Dual Accountability in Juvenile Justice. The normative approach analyzes existing legal frameworks to identify gaps and inconsistencies, while the comparative approach identifies international best practices that can be adapted to Indonesia's unique legal, social, and cultural context. The research synthesizes these findings to propose specific legislative amendments and implementation strategies for introducing parental criminal liability in Indonesia's juvenile justice system.

C. Result and Discussion

1. The Legal Vacuum: Absence of Parental Criminal Liability in Indonesian Juvenile Justice System

The Indonesian juvenile justice system, as codified in the SPPA Law, completely fails to establish any form of parental criminal liability for offenses committed by minors. A systematic analysis of the SPPA Law reveals that parents are mentioned only in procedural contexts as parties who must be notified of proceedings, who may accompany juveniles during interrogation, and who receive custody after diversion or release. Nowhere does the law impose criminal or even administrative liability on parents who have negligently failed to supervise, control, or properly raise their children.

Article 1(3) of the SPPA Law defines a "child in conflict with the law" as a child aged 12 to 18 years who is alleged to have committed a criminal offense. This definition places all criminal responsibility on the juvenile, treating the child as an autonomous actor whose criminal behavior exists independent of family context. The law's entire framework from investigation through adjudication to rehabilitation—focuses exclusively on the juvenile offender. Parents are peripheral actors whose involvement is optional and whose failures have no legal consequences.

This legal vacuum is particularly problematic for children under 12 years old who commit serious offenses. Article 21 of the SPPA Law states that children under 12 cannot be prosecuted and must be returned to their parents or guardians. There is no mechanism to assess whether these parents are capable of preventing future offenses, no mandatory intervention programs, and no legal accountability if the child reoffends. In practice, this means children from dysfunctional families who commit crimes are simply returned to the same environment that produced the criminal behavior in the first place.

The inadequacy of Indonesia's current legal framework becomes apparent when examining specific provisions. Article 7 requires diversion for cases involving offenses punishable by less than seven years imprisonment. Diversion involves negotiation between the offender, victim, and their families to reach an extrajudicial resolution. However, the law provides no guidance on what should happen if parents refuse to participate in diversion, if they fail to ensure the child complies with diversion agreements, or if the family environment that contributed to the offense remains unchanged. Empirical research shows that many diversion agreements fail precisely because parents do not fulfill their commitments, yet they face no consequences for this breach.

Even when cases proceed to adjudication, the sentencing framework in Articles 71-82 focuses entirely on sanctions against the juvenile ranging from criminal penalties to special measures like supervision and rehabilitation. Judges have no authority under the SPPA Law to impose any requirements, penalties, or interventions targeting parents. This is a fundamental flaw because effective rehabilitation of juveniles is impossible without addressing the family environment.

The absence of parental liability mechanisms in the SPPA Law cannot be justified by reference to other areas of Indonesian law. Some scholars have argued that Article 1367 of the Civil Code (KUHPerdata) provides a remedy by making parents liable for damages caused by their children. However, civil liability for monetary damages is fundamentally different from criminal or administrative liability. Civil liability is retrospective and compensatory—it addresses past harms through financial payment. It does not prevent future crimes, does not compel behavioral changes by parents, and is often meaningless when dealing with impoverished families who have no assets.

Similarly, Article 77 of Law No. 35 of 2014 on Child Protection makes parents criminally liable for deliberately neglecting the child or causing harm to the child. However, this provision protects children from parental abuse; it does not address parental liability for a child's crimes against others. A parent who neglects supervision and allows a child to join a gang or commit theft is not violating Article 77, which requires deliberate harm to the child.

The legal vacuum in Indonesian law stands in sharp contrast to the approach taken by many other countries. As discussed below, Japan, Germany, and Canada all have explicit legal mechanisms for holding parents accountable when their supervisory failures contribute to juvenile crime. These mechanisms range from mandatory participation in rehabilitation programs to administrative fines to, in cases of gross negligence, criminal prosecution.

The consequences of this legal vacuum are severe and multifaceted. First, it undermines deterrence. Parents have no legal incentive to invest time and effort in proper supervision and upbringing because they face no consequences for failure. Second, it prevents effective rehabilitation. Returning juveniles to the same dysfunctional family environment without addressing parental behaviors virtually guarantees recidivism. Third, it violates principles of justice and fairness. Crime victims and society bear the costs of juvenile crime, while the negligent parents who contributed to it face no accountability. Fourth, it sends a harmful social message that parental responsibility is not taken seriously by the legal system.

Statistical evidence demonstrates the failure of the current approach. Data from the Directorate General of Corrections shows that recidivism rates for juveniles released from detention centers exceed 30 percent within five years. Follow-up studies of these recidivists consistently find that family dysfunction, lack of parental supervision, and continued exposure to criminogenic home environments are the primary factors driving reoffending. Yet the legal system has no tools to address these root causes because parents cannot be compelled to change their behavior or participate in rehabilitation programs.

Case examples further illustrate the problem. In a 2022 case from Jakarta, a 14-year-old boy committed armed robbery after being recruited by adult criminals. Investigation revealed that his parents were aware he was associating with gang members and staying out late at night but took no action to stop him. After prosecution and detention, the boy was released to his parents, who continued to exercise no supervision. He reoffended within six months. Under current law, the parents faced no consequences for their negligent supervision before the first offense or their continued neglect afterward.

Another case from Surabaya in 2023 involved a 15-year-old girl who was prostituted by her boyfriend. Social workers discovered that her mother knew about the relationship and even accepted money from the boyfriend but did nothing to protect her daughter. The mother faced no charges because the prostitution was initiated by the boyfriend and facilitated by the daughter's own decisions. Yet clearly, the mother's gross negligence and exploitation contributed to the criminal activity. The legal system had no mechanism to hold her accountable.

These cases represent a pattern, not anomalies. Across Indonesia, juveniles from dysfunctional families commit crimes, undergo rehabilitation focused solely on the child, return to the same dysfunctional families, and often reoffend. This cycle continues because the legal system fails to address the root cause: parental negligence and the criminogenic family environment.

The absence of parental criminal liability in Indonesia's juvenile justice system represents a fundamental flaw that undermines the system's effectiveness and fairness. Reform is not optional but essential if Indonesia is to achieve the rehabilitative goals enshrined in the SPPA Law and reduce juvenile crime rates.

2. Comparative Analysis: Parental Criminal Liability Models in Japan, Germany, and Canada

Japan: Comprehensive Family-Centered Intervention

Japan's approach to juvenile justice is perhaps the most comprehensive in integrating parental accountability with juvenile rehabilitation. The cornerstone of this system is the Family Court (Katei Saibansho), established under the Family Court Act and given broad jurisdiction over both juvenile delinquency and family matters under the Juvenile Act (last revised 2021).

When a juvenile is referred to Family Court for a criminal offense, the court initiates a comprehensive investigation not just of the offense but of the family circumstances that may have contributed to it. Family Court investigators (chōsakan) conduct detailed assessments including home visits, interviews with parents and siblings, school records review, and psychological evaluations. This investigation examines parenting practices, family relationships, economic conditions, living arrangements, and any factors that may have created a criminogenic environment.

Based on this investigation, Family Court can impose a wide range of dispositions targeting both the juvenile and the family. For juveniles, options include protective supervision (hogo kansatsu), commitment to a juvenile training school, or placement in a child guidance center. Critically, the court can also impose requirements on parents. These include mandatory attendance at parenting programs, regular meetings with probation officers, restrictions on parental behavior (such as prohibitions on excessive drinking or gambling), and specific supervisory requirements (such as ensuring the child attends school and returns home by certain times).

Japanese law treats parental non-compliance seriously. Parents who fail to fulfill court-imposed requirements can be held in contempt of court, which may result in fines or even detention. More commonly, non-compliance triggers further investigation by child guidance centers (jidō sōdanjo), which have statutory authority to intervene in families where parents are not adequately protecting or supervising children. In extreme cases, the Family Court can order removal of the child from parental custody and placement in institutional care or foster placement.

What makes Japan's system particularly effective is the integration of legal intervention with extensive social support. Child guidance centers provide not just supervision but also practical assistance to families including parenting education, family therapy, financial assistance, and connections to community resources. The philosophy is that most parents want to raise their children properly but may lack the skills or resources to do so. Legal intervention creates accountability and ensures participation, while social services provide the support needed for behavioral change.

Research by Yokoyama (2022) demonstrates the effectiveness of this approach. Japan has one of the lowest juvenile crime rates in the developed world, and recidivism rates are significantly lower than in countries without comprehensive family intervention. Yokoyama attributes this success to the system's ability to address root causes of delinquency rather than simply punishing juvenile offenders.

However, Japan's approach also faces criticisms. Some scholars argue that the system's strong emphasis on family harmony and parental authority can disadvantage juveniles

from genuinely abusive or dysfunctional homes. There are concerns about inadequate due process protections for parents subjected to court interventions. Nevertheless, the Japanese model demonstrates that systematic parental accountability can be achieved without mass incarceration of parents and can contribute to overall reductions in juvenile crime.

Germany: Administrative Sanctions with Legal Teeth

Germany's approach to parental liability combines strong social welfare services with explicit legal mechanisms for holding parents accountable. The Juvenile Court Act (Jugendgerichtsgesetz) governs juvenile criminal proceedings, while the Social Code (Sozialgesetzbuch) establishes the framework for youth welfare services. Together, these statutes create a system where parental responsibility is both recognized and enforced.

Under Section 53 of the Juvenile Court Act, judges can issue "instructions" (Weisungen) to parents when a juvenile appears before the court. These instructions can include requirements to participate in parenting courses, attend family counseling sessions, ensure the child's school attendance, restrict the child's association with certain peers, or impose specific supervisory measures. The instructions are legally binding court orders, not mere suggestions.

Section 11 of the Social Code establishes that parents have a fundamental duty to raise their children in a manner that prevents delinquency and promotes positive development. When parents fail in this duty, youth welfare offices (Jugendamt) have authority to intervene. Interventions range from voluntary services (offered to families experiencing difficulties) to mandatory measures ordered by court when parents are not fulfilling their responsibilities.

German law includes three tiers of parental accountability. The first tier consists of educational and supportive interventions provided through Jugendamt. These are typically voluntary and focus on building parental capacity through education, counseling, and practical support. The second tier involves administrative penalties. Parents who refuse to participate in court-ordered programs or whose neglect contributed to juvenile offenses can be fined. Fines are scaled to family income, ensuring proportionality. The third tier is criminal liability. Under Section 171 of the German Criminal Code (Strafgesetzbuch), parents can be criminally prosecuted for "violation of the duty of care or upbringing" if their willful or grossly negligent failure to supervise allows the child to commit crimes or leads to serious endangerment.

Case law demonstrates how German courts apply these provisions. In a 2021 case from Munich, parents were fined €2,000 after their 15-year-old son repeatedly committed vandalism and they refused to attend court-mandated parenting programs. The court found that the parents had shown "stubborn disregard" for their supervisory duties. In a 2022 case from Berlin, a father was sentenced to six months probation under Section 171 after his 13-year-old son joined a neo-Nazi group and committed hate crimes. Evidence showed the father knew about his son's activities but actively encouraged them by expressing similar views and providing access to extremist materials.

The German system's strength lies in its graduated approach. Most cases are handled through education and support at the first tier. Administrative penalties at the second tier create accountability without resorting to incarceration. Criminal prosecution at the third tier is reserved for truly egregious cases of parental negligence or complicity. This proportionality ensures that the system does not unduly harm families while still maintaining clear standards of parental responsibility.

Research by Dünkel and Pruin (2021) indicates that Germany's approach contributes to low juvenile recidivism rates. They attribute this to the system's ability to address family dysfunction through a combination of accountability and support. However, critics note that implementation varies significantly across Germany's federal states, with some Jugendamt better resourced and more proactive than others.

Canada: Restorative Justice with Mandatory Parental Participation

Canada's Youth Criminal Justice Act (YCJA), enacted in 2003, takes a different approach focused on restorative justice principles while still incorporating mechanisms for parental accountability. The YCJA does not explicitly criminalize parental negligence but creates strong incentives and requirements for parental participation in juvenile justice proceedings and rehabilitation.

Section 25 of the YCJA requires that parents be notified of all proceedings involving their child. Section 26 authorizes youth court judges to order parents to attend hearings if their presence is "necessary in the interests of the young person." Parents who fail to attend without reasonable excuse can be found in contempt of court, though this is rarely used in practice.

More significantly, the YCJA emphasizes restorative justice conferences and family group conferencing. Under Section 19, youth justice committees and conferences bring together the juvenile offender, victims, family members, and community representatives to discuss the offense, its impacts, and develop a comprehensive plan for rehabilitation and restitution. In these conferences, parents are not passive observers but active participants who must commit to specific actions such as increasing supervision, participating in family counseling, or modifying home environments that may have contributed to the offense.

The YCJA's sentencing framework, outlined in Sections 38-42, allows judges to impose various conditions on juveniles, many of which implicitly require parental cooperation. For example, a judge may order a juvenile to attend school, participate in counseling, observe a curfew, or avoid certain locations or individuals. Parents are expected to ensure compliance with these conditions. While the YCJA does not directly penalize parents for a child's non-compliance, repeated violations can lead to more severe consequences for the juvenile, and family court judges may consider parental non-cooperation in custody proceedings.

Provincial youth justice systems complement the federal YCJA with various programs that engage parents. For example, Ontario's youth justice system includes mandatory parent support programs for families of repeat offenders. Quebec's Youth Protection Act gives youth protection directors authority to intervene in families where parents are not

adequately supervising children, including court-ordered supervision and, in extreme cases, removal from parental custody.

Research by Bala and Anand (2023) shows mixed results for Canada's approach. The emphasis on restorative justice and family engagement has led to high use of extrajudicial measures and lower incarceration rates for juveniles. However, the lack of explicit parental liability mechanisms means that consequences for non-cooperative parents are limited. Some provinces have supplemented the YCJA with civil parental responsibility statutes that allow crime victims to sue parents for damages caused by their children, creating financial incentives for parental supervision.

Canada's experience demonstrates that restorative justice approaches can effectively engage families in juvenile rehabilitation without resorting to criminal sanctions. However, the limited consequences for parental non-cooperation may undermine effectiveness in cases involving genuinely neglectful or uncooperative parents.

Comparative Synthesis and Implications for Indonesia

These three models demonstrate different approaches to parental accountability, each with distinct advantages and limitations. Japan's comprehensive Family Court system achieves strong accountability through extensive investigation, court-ordered interventions, and integration with social services, but requires substantial institutional infrastructure. Germany's tiered system combining education, administrative penalties, and criminal liability provides clear standards and proportional consequences but depends on well-resourced youth welfare agencies. Canada's restorative justice approach effectively engages families but may lack sufficient enforcement mechanisms for truly negligent parents.

For Indonesia, elements from all three models can be synthesized to create a system adapted to local contexts. From Japan, Indonesia should adopt the principle of comprehensive family assessment and court authority to order parental interventions. From Germany, Indonesia should adopt the three-tier framework of educational, administrative, and criminal liability with proportional application. From Canada, Indonesia should incorporate restorative justice principles and family conferencing to ensure that interventions are culturally appropriate and focus on rehabilitation rather than pure punishment.

Critical differences between Indonesia and these countries must be acknowledged. Indonesia has weaker social welfare infrastructure, greater economic inequality, higher poverty rates, and stronger cultural emphasis on family honor and shame. These factors require adaptations. The implementation of parental criminal liability in Indonesia must include robust due process protections, income-scaled penalties to avoid criminalizing poverty, and culturally sensitive approaches that leverage Indonesia's communal values rather than imposing purely Western models.

3. Theory of Dual Accountability in Juvenile Justice: A New Paradigm

Based on the analysis of Indonesia's legal vacuum and comparative international models, this study proposes a new theoretical framework: the Theory of Dual Accountability in

Juvenile Justice. This theory posits that effective juvenile justice requires a fundamental paradigm shift from sole juvenile accountability to shared accountability between the juvenile offender and parents whose negligence contributed to the criminal behavior.

Theoretical Foundation: The Principle of Shared Causation

The Theory of Dual Accountability rests on the criminological principle that juvenile crime results from the interaction between individual choices and environmental factors, particularly family environment. While juveniles possess agency and must be held responsible for their actions, their choices are profoundly shaped by parental supervision, moral education, and the overall family context. When parents grossly fail in their duties to supervise and guide their children, they contribute causally to the juvenile's criminal behavior and therefore should share legal responsibility.

This principle of shared causation differs fundamentally from vicarious liability. In vicarious liability, one party is held liable solely because of their relationship to another party who committed the wrong, regardless of the first party's culpability. The Theory of Dual Accountability instead focuses on culpable causation: parents are liable only when their negligent or reckless failure to fulfill supervisory and upbringing duties contributes to the juvenile's offense. This requires proving a causal connection between parental failures and the juvenile crime.

Core Components of Dual Accountability

The theory consists of four core components that must all be present for parental criminal liability to attach:

First Component: Parental Duty. Parents have a legal duty, not merely a moral obligation, to supervise, control, and provide moral guidance to their minor children. This duty arises from the parent-child relationship and is grounded in both statutory law (particularly child protection statutes) and common law principles of parental responsibility. The scope of this duty includes: (a) knowing the child's whereabouts and activities; (b) preventing the child from associating with criminal elements; (c) ensuring school attendance and educational engagement; (d) providing moral education and instilling prosocial values; (e) intervening when the child exhibits warning signs of delinquency; and (f) seeking professional help when needed.

Second Component: Breach of Duty. Parents breach their duty through action or omission that falls below the standard of care expected of reasonably prudent parents in similar circumstances. Breach can take three forms: (a) gross negligence—reckless disregard for supervisory duties, such as allowing a child to habitually skip school, associate with gang members, or engage in substance abuse without intervention; (b) recklessness—conscious disregard of substantial risks, such as knowing the child possesses weapons or plans criminal activity but taking no action; or (c) intentional facilitation—actively encouraging, assisting, or enabling the child's criminal behavior.

Third Component: Causation. There must be a causal connection between the parental breach and the juvenile's offense. This requires proof that: (a) the parental failure created conditions that made the offense substantially more likely to occur; and (b) proper

parental supervision or intervention would have prevented or significantly reduced the likelihood of the offense. Causation need not be sole or primary; it is sufficient that parental negligence was a contributing factor alongside other causes.

Fourth Component: Proportionality. Parental liability must be proportional to both the severity of the parental breach and the seriousness of the juvenile's offense. Minor supervisory lapses contributing to minor juvenile offenses should result in educational interventions, not criminal penalties. Gross negligence contributing to serious violent crimes justifies criminal sanctions. This proportionality principle ensures that the system does not criminalize normal parenting mistakes or impose disproportionate punishment on already-disadvantaged families.

Three-Tier Framework of Parental Liability

The Theory of Dual Accountability operationalizes these components through a three-tier framework corresponding to different levels of parental culpability and juvenile offense severity:

Tier One: Educational and Rehabilitative Interventions (Minor Cases). This tier applies when: (a) the juvenile's offense is minor (misdemeanor-level crimes such as petty theft, vandalism, simple assault); (b) parental negligence is mild to moderate (inadequate supervision but no gross failures); and (c) parents demonstrate willingness to cooperate. Consequences include mandatory participation in parenting education programs, family counseling, periodic reporting to social workers, and written agreements specifying supervisory improvements. No criminal or administrative penalties are imposed. Non-compliance triggers escalation to Tier Two.

Tier Two: Administrative Penalties and Mandatory Programs (Moderate Cases). This tier applies when: (a) the juvenile's offense is moderate (felony-level property crimes, drug offenses, serious assault); (b) parental negligence is significant (substantial failures in supervision or repeated refusal to address warning signs); or (c) parents were non-compliant with Tier One interventions. Consequences include administrative fines scaled to family income, community service requirements, formal probation with intensive supervision by social services, and mandatory participation in comprehensive family rehabilitation programs. These administrative penalties do not create a criminal record but are legally enforceable through court orders.

Tier Three: Criminal Liability (Serious Cases). This tier applies when: (a) the juvenile commits serious violent crimes (murder, rape, armed robbery, serious assault causing permanent injury); (b) parental breach involves gross negligence or recklessness (knowing about criminal plans and taking no action, providing access to weapons, allowing child to be recruited by criminal organizations); or (c) parents intentionally facilitated the juvenile's criminal activity. Consequences include criminal prosecution for "criminal neglect of parental duty" with potential sentences including probation, suspended sentences, community service, fines, and in extreme cases, imprisonment. Criminal conviction may also result in restrictions on parental rights, including supervised custody or temporary removal of other children from the home.

Implementation Mechanisms

Operationalizing the Theory of Dual Accountability requires specific procedural mechanisms integrated into the juvenile justice process:

Family Assessment Protocol: Every juvenile case must trigger a comprehensive family assessment conducted by qualified social workers or probation officers. The assessment evaluates: parenting practices and supervision levels; family structure and dynamics; economic and housing conditions; presence of domestic violence, substance abuse, or mental health issues; prior involvement with child protective services; and the causal relationship between family factors and the juvenile's offense. The assessment produces a written report with findings and recommendations regarding appropriate tier of parental intervention.

Judicial Determination: Based on the family assessment, prosecutors must determine whether to pursue parental liability. For Tier One interventions, prosecutors file motions requesting court-ordered parenting programs. For Tier Two, prosecutors file administrative penalty proceedings. For Tier Three, prosecutors file criminal charges under new statutory provisions creating the offense of criminal neglect of parental duty. In all cases, parents have due process rights including notice, opportunity to be heard, right to counsel, and right to present evidence.

Graduated Escalation: The system operates on a principle of graduated escalation. First-time cases involving minor offenses begin at Tier One regardless of parental culpability, providing opportunities for voluntary compliance. Escalation to higher tiers occurs only after: (a) parents refuse to participate in lower-tier interventions; (b) juveniles reoffend despite implementation of lower-tier measures; or (c) initial offenses are so serious that they warrant immediate higher-tier response. This graduated approach ensures proportionality and provides opportunities for redemption.

Integration with Juvenile Dispositions: Parental liability proceedings should be integrated with juvenile adjudication to ensure coordination. When a juvenile court imposes rehabilitation measures on a juvenile, it simultaneously orders corresponding parental interventions. For example, if a juvenile is ordered to attend school and participate in counseling, parents are ordered to ensure compliance and participate in family counseling. This integration ensures that juvenile rehabilitation occurs within a reformed family context.

Addressing Critiques and Concerns

The Theory of Dual Accountability anticipates several critiques that must be addressed:

Concern: Criminalizing Poverty. Critics may argue that parental liability will disproportionately impact poor families who lack resources for adequate supervision. *Response:* The theory explicitly incorporates socioeconomic considerations. The family assessment evaluates whether parental failures result from resource constraints versus willful neglect. Income-scaled penalties ensure that sanctions are proportional to ability to pay. Moreover, the system should provide support services (childcare, job training, economic assistance) to help parents fulfill their duties. Criminal liability at Tier Three is reserved for gross negligence or intentional facilitation, not poverty-related supervisory limitations.

Concern: Double Punishment of Families. Critics may argue that families already suffer when their children are prosecuted, and adding parental liability constitutes double punishment. Response: This concern conflates different forms of accountability. Juveniles are held accountable for their criminal choices; parents are held accountable for their supervisory failures. These are distinct wrongs requiring distinct responses. Moreover, evidence shows that families suffer more when juvenile offenders return to unchanged dysfunctional environments and reoffend. Parental accountability, by compelling family reform, ultimately benefits both juveniles and families.

Concern: Due Process and Proof Problems. Critics may argue that proving causation between parental failures and juvenile crimes is difficult and may violate due process. Response: The theory requires clear evidentiary standards. For administrative penalties (Tier Two), proof should follow civil standards (preponderance of evidence). For criminal liability (Tier Three), proof must meet criminal standards (beyond reasonable doubt). The family assessment provides documentary evidence, and parents have full due process rights including legal representation. Causation requirements are not absolute—it is sufficient to prove that parental failures substantially increased the risk of juvenile offending.

Concern: Cultural Sensitivity. Critics may argue that Western concepts of parental liability are inappropriate for Indonesia's collectivist culture. Response: The theory embraces cultural adaptation. Indonesia's strong family values and concept of shame can be leveraged to make accountability mechanisms more effective. Extended family involvement in interventions aligns with Indonesian cultural norms. The emphasis on rehabilitation over pure punishment reflects Indonesian values of social harmony. Moreover, establishing parental accountability actually reinforces traditional Indonesian values of parental responsibility that are currently undermined by lack of legal enforcement.

Theoretical Contributions and Implications

The Theory of Dual Accountability makes several contributions to criminological and legal theory. First, it provides a theoretically grounded framework for parental liability that moves beyond simplistic vicarious liability to focus on culpable causation. Second, it synthesizes insights from social bond theory, social learning theory, and developmental criminology to explain how family factors contribute to juvenile delinquency. Third, it operationalizes abstract principles of parental responsibility into concrete legal mechanisms with clear standards and procedures. Fourth, it demonstrates how criminal law can be used for both accountability and rehabilitation, not just punishment.

For policy and practice, the theory provides a roadmap for reforming juvenile justice systems. It specifies what legislative amendments are needed, how institutions should be restructured, what training and resources are required, and how implementation should be phased. It anticipates practical challenges and proposes solutions. Most importantly, it offers a middle path between pure welfarism (which lacks accountability) and pure punitiveness (which harms families without promoting change).

4. Legislative Reform Proposal: Amending Indonesia's Juvenile Justice Law

Based on the Theory of Dual Accountability, this study proposes specific amendments to Law No. 11 of 2012 on the Juvenile Criminal Justice System to establish parental criminal liability. The proposed amendments are structured to integrate seamlessly with existing provisions while fundamentally transforming the system's approach to family accountability.

Proposed New Chapter: Chapter VII-A on Parental Responsibility and Liability

The SPPA Law should be amended to insert a new Chapter VII-A titled "Parental Responsibility and Liability" immediately after Chapter VII on "Special Actions." This new chapter should contain the following provisions:

Article 82-A: Parental Duty of Supervision and Guidance. (1) Parents or legal guardians have a legal duty to supervise, control, and provide moral guidance to their minor children to prevent criminal behavior. (2) This duty includes, but is not limited to: (a) monitoring the child's activities, whereabouts, and associations; (b) ensuring school attendance and educational engagement; (c) preventing association with criminal elements; (d) providing moral education consistent with law and social norms; (e) intervening when the child exhibits signs of delinquency; (f) seeking professional assistance when needed. (3) The scope and intensity of this duty shall be assessed based on the child's age, maturity, and circumstances, with greater responsibilities for parents of younger children.

Article 82-B: Family Assessment in Juvenile Cases. (1) In every case where a child is alleged to have committed a criminal offense, the court shall order a comprehensive family assessment conducted by BAPAS (Community Guidance Center) or qualified social service agencies. (2) The family assessment shall evaluate: (a) parenting practices and supervision levels; (b) family structure, relationships, and dynamics; (c) socioeconomic conditions and environmental factors; (d) presence of risk factors including domestic violence, substance abuse, or mental health issues; (e) the causal relationship between family factors and the alleged offense; (f) appropriate interventions for the family. (3) The assessment report shall be submitted to the court before disposition and shall be considered in determining both juvenile sanctions and parental liability. (4) Parents have the right to review the assessment and present contrary evidence.

Article 82-C: Parental Liability for Supervisory Negligence. (1) Parents or legal guardians may be held liable for supervisory negligence when: (a) they breached their duty of supervision and guidance through action or omission; (b) the breach involved gross negligence, recklessness, or intentional facilitation of criminal behavior; (c) there is a causal connection between the breach and the child's offense; (d) liability is proportional to the severity of both the breach and the offense. (2) Liability may take three forms: educational interventions, administrative penalties, or criminal sanctions, as specified in Articles 82-D through 82-F. (3) In determining liability, courts shall consider: (a) the severity and duration of supervisory failures; (b) the foreseeability of the child's criminal behavior; (c) prior warnings or interventions by authorities; (d) the parents' efforts to address the child's behavior; (e) socioeconomic constraints affecting the parents' ability to supervise; (f) the child's age and degree of autonomy.

Article 82-D: Educational and Rehabilitative Interventions (Tier One). (1) When the child's offense is minor and parental negligence is mild to moderate, the court may order parents to participate in educational and rehabilitative interventions including: (a) parenting education programs; (b) family counseling; (c) periodic meetings with probation officers; (d) written agreements specifying supervisory improvements. (2) These interventions shall be provided at no cost or nominal cost scaled to family income. (3) Interventions shall be culturally appropriate and conducted in the parents' language. (4) Parents who successfully complete these interventions shall have no record of liability. (5) Non-compliance without reasonable excuse shall result in escalation to Tier Two administrative penalties.

Article 82-E: Administrative Penalties (Tier Two). (1) When the child's offense is moderate, parental negligence is significant, or parents have failed to comply with Tier One interventions, the court may impose administrative penalties including: (a) fines scaled to family income, not exceeding 10 percent of monthly household income; (b) community service ranging from 40 to 200 hours; (c) administrative probation with intensive supervision by social services; (d) mandatory participation in comprehensive family rehabilitation programs. (2) Administrative penalties shall be enforced through civil procedures and do not create criminal records. (3) Parents may appeal administrative penalty determinations. (4) Failure to comply with administrative penalties may result in criminal prosecution for contempt or escalation to Tier Three criminal liability in cases of subsequent offenses.

Article 82-F: Criminal Liability for Gross Negligence (Tier Three). (1) Parents or legal guardians commit the offense of "Criminal Neglect of Parental Duty" when: (a) through gross negligence, recklessness, or intentional action, they failed to fulfill their supervisory and guidance duties; (b) this failure substantially contributed to the child committing a serious offense; (c) the child committed an offense punishable by five or more years imprisonment. (2) "Gross negligence" includes: (a) knowing that the child possessed weapons or planned criminal activity and taking no action; (b) allowing the child to be recruited by criminal organizations without intervention; (c) providing access to means of committing serious crimes; (d) systematic abandonment of supervisory duties over an extended period. (3) "Intentional facilitation" includes: (a) actively encouraging the child to commit crimes; (b) assisting in planning or executing crimes; (c) providing criminal training or resources; (d) exploiting the child for criminal purposes. (4) Penalties for Criminal Neglect of Parental Duty include: (a) probation with intensive supervision for 1-3 years; (b) community service of 200-500 hours; (c) fines of 10-100 million rupiah scaled to income and severity; (d) imprisonment of 6 months to 3 years for the most egregious cases. (5) Convictions may result in additional consequences including restrictions on custody rights, mandatory participation in long-term rehabilitation programs, and consideration in future child welfare proceedings.

Article 82-G: Due Process Protections. (1) Parents subject to liability proceedings have the following rights: (a) written notice of allegations; (b) right to legal counsel, with appointed counsel for indigent parents in criminal proceedings; (c) opportunity to be heard and present evidence; (d) right to cross-examine witnesses; (e) written decision stating findings and reasons; (f) right to appeal. (2) In criminal proceedings under Article 82-F, parents are entitled to all constitutional protections applicable to criminal

defendants. (3) The burden of proof is preponderance of evidence for Tier One and Two proceedings, and beyond reasonable doubt for Tier Three criminal prosecutions.

Article 82-H: Defenses and Mitigating Factors. (1) Parents shall not be liable if they prove: (a) they exercised reasonable supervision given their circumstances; (b) the child's offense was unforeseeable despite proper supervision; (c) they took all reasonable steps to prevent the offense upon learning of warning signs; (d) the offense resulted from the child's autonomous decisions despite proper upbringing. (2) Mitigating factors reducing liability include: (a) economic hardship limiting supervision capacity; (b) the child's maturity and independence reducing parental control; (c) the parents' efforts to seek help from authorities or professionals; (d) single-parent households or other family circumstances limiting supervision; (e) the parents' cooperation with authorities after the offense. (3) Aggravating factors increasing liability include: (a) prior involvement with child protective services for neglect; (b) multiple children involved in criminal activity; (c) deliberate evasion of supervisory duties; (d) exploitation of the child.

Article 82-I: Integration with Juvenile Dispositions. (1) Parental liability proceedings shall be integrated with juvenile adjudication. (2) When imposing dispositions on juveniles under Articles 71-82, courts shall simultaneously determine appropriate parental interventions. (3) Juvenile and parental dispositions shall be coordinated to ensure consistency and mutual reinforcement. (4) Completion of parental interventions shall be a factor considered in early release or modification of juvenile dispositions.

Article 82-J: Support Services and Resources. (1) Government shall provide support services to help parents fulfill their supervisory duties, including: (a) parenting education accessible to all socioeconomic groups; (b) family counseling and therapy; (c) economic assistance for families in poverty; (d) childcare and after-school programs; (e) community-based support groups. (2) Parents unable to afford required programs shall receive them at no cost. (3) Implementation of parental liability provisions shall be accompanied by adequate funding for support services.

Additional Amendments to Existing Provisions

Beyond the new chapter, several existing provisions require amendment to integrate parental accountability:

Amendment to Article 7 on Diversion: Add new paragraph (7): "Diversion agreements shall include specific commitments by parents regarding supervision and participation in family interventions. Failure to fulfill these commitments shall result in liability proceedings under Chapter VII-A."

Amendment to Article 11 on Diversion Requirements: Add new paragraph (4): "Parents or legal guardians shall be required to participate in diversion negotiations and shall be parties to diversion agreements. Their cooperation and willingness to participate in family interventions shall be factors in determining diversion eligibility."

Amendment to Article 55 on Community Guidance Centers (BAPAS): Add new paragraph (5): "BAPAS shall have responsibility for conducting family assessments as required by Article 82-B and for supervising parental compliance with interventions ordered under

Chapter VII-A. BAPAS shall be provided adequate staff and training to fulfill these expanded responsibilities."

Amendment to Article 71 on Types of Juvenile Actions: Add new paragraph (3): "In imposing special actions under paragraph (2), courts shall simultaneously determine appropriate parental interventions under Chapter VII-A to ensure that juveniles return to reformed family environments."

Implementation Strategy and Timeline

Implementing these amendments requires a phased approach with adequate preparation:

Phase 1 (Year 1): Legislative Process and Institutional Preparation. Draft detailed implementing regulations; establish working groups of judges, prosecutors, social workers, and child advocates; develop training curricula; secure budget allocations; conduct pilot programs in selected jurisdictions.

Phase 2 (Year 2-3): Capacity Building and Initial Implementation. Train judges, prosecutors, police, probation officers, and social workers; establish or strengthen family assessment units in BAPAS offices; develop parenting education and family rehabilitation programs; implement in major cities and gradually expand to other regions; conduct monitoring and evaluation.

Phase 3 (Year 4-5): Full Implementation and Refinement. Nationwide implementation; continuous training and quality improvement; research on effectiveness and outcomes; refinement of procedures based on experience; development of specialized Family Courts (long-term goal).

D. Conclusion

Indonesia's juvenile justice system fundamentally fails to establish parental criminal liability for supervisory negligence contributing to juvenile crime, creating a legal vacuum that undermines rehabilitation and enables recidivism rates exceeding 30 percent. This study demonstrates through comparative analysis of Japan, Germany, and Canada that effective juvenile justice requires shared accountability between juvenile offenders and negligent parents. The proposed Theory of Dual Accountability in Juvenile Justice establishes a three-tier framework: educational interventions for minor cases, administrative penalties for moderate negligence, and criminal sanctions for gross negligence or intentional facilitation of juvenile crimes. Implementation requires comprehensive amendments to the SPPA Law through new Chapter VII-A establishing parental duties, family assessment procedures, graduated liability mechanisms with full due process protections, and integration with juvenile dispositions. This paradigm shift recognizes that effective crime prevention demands legal mechanisms compelling parental responsibility alongside juvenile rehabilitation, ensuring that both juveniles and parents bear proportional accountability for criminal conduct. Only through such fundamental reform balancing punitive measures with family support, criminalizing willful neglect while providing resources for struggling families, and establishing clear legal standards for parental duties can Indonesia achieve a truly effective juvenile justice

system that addresses root causes of delinquency rather than merely punishing young offenders who return to unchanged dysfunctional environments.

Reference

- Bala, N., & Anand, S. (2023). *Youth Criminal Justice Law* (5th ed.). Toronto: Irwin Law.
- Bandura, A. (2019). Social Learning Theory Reexamined. *Annual Review of Psychology*, 70, 23-48.
- Brank, E. M., & Lane, J. (2021). Parental Responsibility Statutes: An Organizational Analysis. *Journal of Criminal Justice*, 74, 101807.
- Directorate General of Corrections. (2024). *Indonesian Correctional Statistics 2020-2024*. Jakarta: Ministry of Law and Human Rights.
- Dünkel, F., & Pruin, I. (2021). *Young Offenders in Juvenile Justice Institutions in Europe*. Mönchengladbach: Forum Verlag.
- Goldson, B., & Muncie, J. (2020). *Youth Crime and Justice* (2nd ed.). London: SAGE Publications.
- Hirschi, T. (1969). *Causes of Delinquency*. Berkeley: University of California Press.
- Hoeve, M., et al. (2020). A Meta-Analysis of Attachment to Parents and Delinquency. *Clinical Psychology Review*, 79, 101870.
- Hollingsworth, K. (2021). Parental Rights and Responsibilities in Youth Justice. *Child and Family Law Quarterly*, 33(1), 45-68.
- Indonesian Child Protection Commission. (2024). *Annual Report on Child Protection 2023*. Jakarta: KPAI.
- Law No. 11 of 2012 on Juvenile Criminal Justice System. Republic of Indonesia.
- Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection. Republic of Indonesia.
- Marlina. (2022). Implementation of Diversion in Indonesia's Juvenile Criminal Justice System. *Journal of Law and Justice*, 11(2), 234-256.
- Ministry of Women's Empowerment and Child Protection. (2024). *Indonesian Children Profile 2024*. Jakarta: KPPPA.
- Muncie, J., & Goldson, B. (2022). *Comparative Youth Justice: Critical Issues*. London: SAGE Publications.
- Pratt, J., & Eriksson, A. (2021). *Contrasts in Punishment*. London: Routledge.
- Santoso, T., & Zulfa, E. A. (2023). *Criminology: Indonesian Perspectives on Crime Causation*. Jakarta: Rajawali Press.
- Steinberg, L., & Scott, E. S. (2020). Developmental Neuroscience and Adolescent Criminal Responsibility. *Annual Review of Law and Social Science*, 16, 135-152.
- United Nations Committee on the Rights of the Child. (2021). *General Comment No. 24 on Children's Rights in Child Justice*. Geneva: UN.
- United Nations Children's Fund. (2023). *Justice for Children in Southeast Asia*. Bangkok: UNICEF EAPRO.
- Van der Laan, P., & Eichelsheim, V. (2021). Juvenile Criminal Recidivism. *Criminal Justice and Behavior*, 48(4), 547-566.
- Williams, K., & Gold, L. (2022). Duty-Based Theory of Parental Liability. *Harvard Law Review*, 135(3), 678-724.
- Winterdyk, J., & King, R. (2020). *Juvenile Justice: International Perspectives*. London: Routledge.

- Yokoyama, M. (2022). *The Japanese Juvenile Justice System: Law and Practice*. Tokyo: Seibundo Publishing.
- Youth Justice Research Center. (2023). *Comparative Study of Parental Responsibility Laws in OECD Countries*. Toronto: YJRC Publications.
- Zehr, H. (2019). *The Little Book of Restorative Justice (Revised ed.)*. New York: Good Books.