

Qualification Of Age Limits For Criminal Responcibility According To The Child Criminal Justice System And Indonesia Criminal Code

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ABSTRACT

The age limit for children is very important in juvenile criminal cases, because it is used to find out whether a person suspected of committing a crime is included in the category of a child or not. Limitation of the age of children, there is also diversity in various countries that regulate the age of children who can be punished. Some countries also provide a definition of a person being said to be a child or an adult in terms of age and activity or ability to think. The approach method in this study uses an approach to legislation (statue approach), fact approach, case approach and analysis of legal concepts. The results in this study are the non-uniformity of the qualifications for the age limit of children between one law and another, giving rise to various existing legal conflicts regarding the limits of children's responsibility. According to the Criminal Code Number 1 of 2023 in article 40, it states that criminal liability cannot be imposed on children who are not yet 12 (twelve) years old at the time of committing the crime, while in Law Number 11 of 2012 it states that children who are 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 crime.

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PRELIMINARY

Children are an important matter to discuss because children are the next generation and determinants of the nation's future as well as a reflection of the attitude of life in the future. Child protection is to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally following human nature and dignity, and receive protection from violence and discrimination for the realization of quality, noble, and prosperous Indonesian children. Development in children includes physical functions, as well as intellectual development that takes place very intensively to bring changes in

attitudes and actions in a more aggressive direction, this causes the susceptibility of delinquent behavior in children. Juvenile delinquency comes from a foreign term, namely Juvenile Delinquency, which means that an act violates norms, which include legal norms and social norms committed by children.¹

Children in dealing with their problems are sometimes found to commit deviations or even act in violation of the law. Limitations in understanding and protecting oneself from various influences of the existing system are also the causes of deviations or violations of the law committed by children, therefore when children become perpetrators of crimes, the state must protect them. The International Convention on the Rights of the Child has formulated the principles of children's rights aimed at protecting children's rights, including the arrest, detention, or imprisonment of a child must following the law and only as a last resort and for the shortest possible period..²

Legislation Number 11 of 2012 Concerning the Juvenile Criminal Justice System, states that children in Article 1 Paragraph 3, Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years suspected of committing a crime.

The Criminal Code Number 1 of 2023 in article 40, states that criminal liability cannot be imposed on children who are not yet 12 (twelve) years old when they commit a crime. Then the 1945 Constitution Article 27 paragraph (1) states that all citizens have the same position before the law and the government and are obliged to uphold the law and the government and there are no exceptions. However, special protection applies to a child as a perpetrator of a crime to protect the child's interests and the child's future. Then explained in Law Number 35 of 2014 concerning Children in Article 1 number 1, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

According to the Civil Code, Article 330 of the Civil Code states that minors are those who have not reached the age of 21 and have not been married before. So a child is everyone who is not yet 21 years old and not yet married. If a child is married before he is 21 years old and then divorced or his husband dies before he turns 21 years old, then he is still considered an adult, not a child.

According to the Convention on the Rights of the Child, a child is every human being under the age of 18, unless based on what applies to the child it is determined that the age of adulthood is reached earlier. According to Law Number 39 of 1999 concerning Human Rights Article 1 point 5 "Children are every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests."

The age limit for children is very important in juvenile criminal cases because it is used to find out whether a person suspected of committing a crime is included in the category of a child or not. Limitation of the age of children, there is also diversity in various countries that regulate the age of children who can be punished. Some countries also define a person as being said to be a child or an adult in terms of age and activity or ability to think. The definition of a child is also contained in Article 1 of the convention on the rights of the child, a child is defined as anyone under the age of 18, unless under the law that applies to children, maturity has been obtained before.

The phenomenon of children who commit violations and the application of criminal sanctions to perpetrators of crimes, especially children, can provide prevention to perpetrators and the public not to commit crimes again. This goal sometimes fails because the perpetrators of crimes become recidivists and society acts by imitating crimes. This is because the application of criminal sanctions cannot see the root of the problem that is the

¹ Ni Ketut Ayu Suwandewi, Made Nurmawati. 2018. Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum. Kertha Wicara, 7(4), 3.

² Gilang Ramadhan Suharto. 2015. *Restoratif Justice* Peradilan Pidana Anak Di Indonesia. Jurnal Lex Crime, IV(1), 35.

cause of criminal acts. Therefore, it takes some thought to take a social approach in addition to the application of criminal sanctions.³

Every child has the right to freedom according to the law. Arrest, detention, or punishment of imprisonment for children is only carried out if, following applicable law, it can only be carried out as a last resort. Child legal protection is an effort to protect the law against various freedoms and children's human rights. Forms of legal protection for children, for example, assistance from community officers, shorter detention periods compared to adults, facilities by special law enforcement officers for children, and the separation of child custody from adult custody are all forms of legal protection for children.⁴

The issue of legal responsibility for children who commit delinquency was discussed at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Caracas, Venezuela, in 1980. One of the discussion agendas was regarding the legal resolution of children's problems, such as standardizing age ranges and classifications for children's actions that can be legally accounted for, specific procedures for settling cases, promoting diversion as an alternative to solving child cases and determining appropriate and effective coaching programs for each age category of children, including promoting coaching outside the prison environment to prevent children from the negative effects of imprisonment. The sixth congress also recommended drafting minimum standards related to juvenile justice processes, which could later be used as a reference for member states to set in their respective countries.⁵

This Congress produced a resolution regarding the development of minimum standards of juvenile justice, which laid down the basic principles for administering juvenile justice to protect the human rights of children involved in legal matters. Furthermore, the PPB Committee on Crime Prevention and Control developed the Standard Minimum Rules for the Administration of Juvenile Justice. This concept was approved in 1985 at the seventh UN Congress in Milan and became known as the Beijing Rules. Refer to Rule 11.1. The Beijing Rules state that the authority of law enforcement officials is authorized to deal with minors who commit crimes without going through a formal trial. Furthermore, Rule 5.1 also emphasizes that the Juvenile Criminal Justice System must emphasize the welfare of children and ensure that the actions given to minors who commit crimes are carried out proportionally according to their mental state and the crimes committed.⁶

Crimes committed by children always draw criticism from law enforcers, who are considered by many to not pay attention to the procedures for dealing with children who have problems with the law, and there is an impression that they are often treated as adults in "minor forms" who commit crimes. The penal system, which until now sometimes still treated children who were involved as perpetrators of crimes, is like that for perpetrators of crimes committed by adults. Children are placed in the same position as criminals who deserve to get the same punishment as adults, which applies in Indonesia.

Based on the elucidation of Article 21 of the Law on the Juvenile Criminal Justice System, it is emphasized that the age of a child who can be brought to trial is someone who is 12 years old or older but not yet 18 years old. The determination of the age of 12 years is based on Constitutional Court Decision Number 1/PUU-VIII/2010, which in its consideration stated that it is necessary to set an age limit for children to protect children's constitutional rights, especially the right to protection and the right to grow and develop. This age limit needs to be regulated because there are basic considerations from a sociological,

³ Lafri Prasetyono. 2022. Masalah Diversi pada Anak Pelaku Pelanggaran Lalu Lintas di Indonesia. *Jalrev (Jambura Law Review)*, 4(1), 41.

⁴ Guntarto Widodo. 2016. Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012. *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, 6(1), 61.

⁵ Dani Krisnawati dan Niken Subekti Budi Utami. 2020. Penanganan Terhadap Anak Belum Berumur 12 (Dua Belas) Tahun Yang Melakukan Tindak Pidana Berdasarkan Sistem Peradilan Pidana Anak. *Jurnal: Mimbar Hukum*, 32(3), 408.

⁶ *Ibid*, Hal. 408.

psychological, and pedagogical perspective. Children under the age of 12 are seen as unable to be held accountable for their actions.

When discussing criminal responsibility, the age limit becomes an important factor in determining the age of criminal responsibility for a person. According to Roeslan Saleh, quoting Alf Ross's opinion, being responsible for a criminal act means that the person concerned can legally be subject to punishment for that action. A sentence that can be legally imposed means that for the act, there are already rules in a certain legal system and that legal system applies to the act.

The basis for the existence of a crime is the principle of legality, while the basis for the punishment of the maker is the principle of error. This means that the perpetrator of a crime will only be punished if he made a mistake in committing the crime. Children within a certain age range are seen as having no faults. This is intended for very young children because the child has not yet been able to realize the value or consequences of his actions, nor has he realized the reprehensible ness of his actions, so there is no fault (will) in him. Constitutionally, it has been regulated that the minimum age limit for criminal responsibility is 12 years. Therefore, children who are not yet 12 years old cannot be held accountable for their actions because they are seen as too young. Moeljatno added that such a child does not yet understand or realize the meaning of the actions he is taking because his organs are not growing fully enough so his inner function is also not perfect.

As a country that ratified the Convention on the Rights of the Child in 1990, Indonesia must promote and protect the interests of children's rights as human beings, as stated in the Convention on the Rights of the Child. The age limit for criminal responsibility for children is one of the elements that is very crucial in determining criminal law for children. Guidelines regarding the age limit for criminal responsibility for children themselves have been regulated in criminal law in Indonesia, namely the Criminal Code (KUHP), the Juvenile Court Law, and the Juvenile Criminal Justice System Law. The shift in the age of children in conflict with the law certainly brings ideas that are considered by the government to change the age limit related to delinquent children or children in conflict with the law. The basic idea of the shift regarding the age limit for child criminal responsibility is what underlies this research.⁷

METHODS

This paper, it uses normative legal research methods that result in gaps between regulations and what happened, as well as gaps between regulations and legal facts. The approaches used in this research are the statutory approach, the case approach, and the conceptual approach. The types of legal materials are primary data, secondary data, and tertiary data. The collected legal materials were then analyzed prescriptively.

RESULT AND DISCUSSION

One of the instruments used in protecting children is the law. Legal protection for children can be interpreted as an effort to protect the law against various forms of violence and children's rights, as well as various efforts related to child welfare. The principle of protection is regulated based on the best interests of the child, namely that in all actions involving children carried out by the government, society, and legislative and judicial institutions, the interests of the child must be the main consideration. As with criminal law arrangements for adults, there are also criminal law arrangements for children, namely, arrangements that recognize the position and special needs of children who are perpetrators, witnesses, or victims of a criminal incident.⁸

⁷ Asri Lestari Rahmat, Nurini Aprilianda, Faizin Sulistio. 2014. Batas Usia Pertanggung Jawaban Pidana Anak Dalam Hukum Pidana Di Indonesia. Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya, 4(4), 6.

⁸ Nurini Aprilianda, Liza Agnesta Krisna. 2023. Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warning). Jalrev (Jambura Law Review), 5(1), 1.

Children, as part of the younger generation, play a very important role as the successors of a nation; that's why children are called national assets. In Indonesia, the state is obliged to be present to carry out special law enforcement for children who commit crimes through law enforcement agencies when a child conflicts with the law as a perpetrator of a crime.

Children are human beings, and all respect, appreciation, and protection of children's rights are human rights. Many things must play an important role in the process of growth and development of children towards a better future for Indonesian children, namely the role of the government, community, and family in protecting children's rights to grow and develop and get all their rights as a gift from God the Almighty. Children, as the next generation of the nation and state, continue national development, namely as a generation that is prepared for the implementation of sustainable national development and as the holder of control for the future.

There is no single definition of a child in Indonesia. This is because laws and regulations regarding the interests of each child provide an understanding following the intent of making these laws and regulations. So far, there is no consensus among scientists about the definition of a crime (*strafbare feit*). According to Prof. Moeljatno,⁹ "Criminal actions are actions that are prohibited by a legal regulation, which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition. It can also be said that a criminal act is an act that is prohibited by a rule of law and is punishable by punishment, as long as it is kept in mind that the prohibition is shown on the act (i.e., a condition or event caused by a person's behavior), while the criminal threat is shown to the person who causes it. There is a close relationship between prohibition and punishment because there is also a close relationship between the incident and the person who caused the incident. One cannot be separated from the other. An incident cannot be prohibited if the person who caused it is not a person, and the person cannot be subject to criminal sanctions if not because of the incident caused by it. And it is precisely to express this close relationship that the word deed is used, which is an abstract notion that refers to two concrete conditions: first, there is a certain event, and second, there is a person who did the thing that caused the incident.

The concept of criminal responsibility is the set of conditions needed to impose a sentence on someone who commits a crime. Determination of criminal responsibility is not only carried out by taking into account the interests of the community but also the interests of the maker himself. This process depends on the fulfillment of the conditions and conditions that can be reproached by the perpetrator of the crime, so that it is legal if he is sentenced to a crime.¹⁰

There are three things that need to be considered:¹¹ a. Determine which actions may not be carried out and which are prohibited, accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition. b. Determine when and in what cases those who have violated the prohibitions can be imposed on or sentenced to punishment as has been threatened. c. Determine in what way the imposition of a sentence can be carried out if there is a person who is suspected of having violated the prohibition. Criminal liability leads to punishment for the perpetrator if he commits a crime and fulfills the elements determined by law. Judging from the occurrence of an act that is prohibited, he will be held accountable if the act violates the law. In terms of the ability to take responsibility, only responsible people can be held accountable. A criminal act is an act that is contrary to the applicable laws and regulations and is often used with various terms,

⁹ Abdul Azis, Aan Handriani. 2022. Pertanggung Jawaban Pidana Terhadap Anak Yang Berkonflik Dengan Hukum Menuju Keadilan Restoratif Justice. *Rechtsregel: Jurnal Ilmu Hukum*, 5(1), 25.

¹⁰ Chairul Bariah, Mohd. Din, Mujibussalim. 2017. Perluasan Petanggung Jawaban Terhadap Tindak Pidana Yang Dilakukan Oleh Anak. *Law Journal*, 1(3), 7.

¹¹ *Ibid*, Hal. 25.

namely criminal acts, criminal events, criminal acts, and offenses. These words have different meanings, but the meanings contained in them lead to the same goal.

Being accountable to the maker in this case means fulfilling the requirements to be accounted for. "Given the principle of no criminal responsibility without mistakes, the maker can be held accountable if he has a mistake." The state of mind can discriminate between what is permissible and what cannot be done, or being able to take responsibility is something that is beyond the notion of wrongdoing. Being able to take responsibility is a condition of error, so it is not part of the error itself. to human legal subjects who are capable of being responsible is an element of criminal responsibility, as a condition of error. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which replaced Law Number 3 of 1997 concerning Juvenile Courts, which stated that "a child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old, it is clear here that the legislators have agreed that the age of 8 (eight) years is indeed an age that still cannot be held accountable for the actions they have committed, because children at that age still do not understand what they are doing, If a child who is not yet 12 (twelve) years old commits or is suspected of committing a crime, or in other words, if the child is not yet 18 (eighteen) years old, then the child will still be tried at the juvenile court". It is clearer in Article 20 that: "In the event that a crime is committed by a child before the age of 18 (eighteen) years and is submitted to a juvenile court hearing after the child in question has exceeded the age limit of 18 (eighteen) years but has not yet reached the age of 21 (twenty-one) years, the child is still submitted to the juvenile trial".¹²

One of the law enforcement efforts is through juvenile justice, which is an effort to protect children, educate them without ignoring children's rights as subjects of crime, and improve children's attitudes and behavior so that they don't do bad things as they did before. In child protection, efforts are made to provide guidance or education in the form of rehabilitation and resocialization, which become the foundation of juvenile justice.

Article 1 point 1 of Law Number 4 of 1979 states: "Children's welfare is a system of life and livelihood for children that can guarantee their growth and development naturally both spiritually, physically, and socially." The court is not allowed to impose a sentence without regard to the future of the child because that is the goal to be achieved by the Juvenile Criminal Court. Realizing child welfare is a philosophy of juvenile justice is what causes the close relationship between juvenile justice and the Child Welfare Law (UU No. 4 of 1979).

Criminal liability can be imposed on children if the child has reached the age of 14. A child will be held criminally liable with a criminal threat given for a maximum of 1/2 (half) of an adult's criminal term if the child is over 12 years of age when committing a crime but has not yet reached 14 years of age. Imprisonment can be imposed for a maximum of 10 years if the child is threatened with the death penalty or life imprisonment.¹³

The non-uniformity of the qualifications for the age limit of a child between one law and another has given rise to various existing legal conflicts regarding the limits of children's responsibilities. According to the Criminal Code Number 1 of 2023, Article 40, it states that criminal responsibility cannot be imposed on children who are not yet 12 (twelve) years old at the time of committing the crime, while Law Number 11 of 2012, it states that children who conflict with The law hereinafter referred to as a child are a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime.

The penal system that until now sometimes still treats children involved as perpetrators of criminal acts like perpetrators of criminal acts committed by adults. Children are placed in a position as perpetrators of crimes that deserve the same punishment as adults and apply in Indonesia, so it becomes controversial when determining the age limit for children in criminal responsibility and which laws should be used. Cases of decency against minors can be seen in the table below:

¹² *Ibid*, Hal. 29.

¹³ Mahayati, Ni Made Ayu Dewi, dan Putu Tuni Cakabawa Landra. 2019. "Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Pelecehan Seksual." *Jurnal Preferensi Hukum*, 8(02), 12.

Table 1
Criminal acts of decency committed by children
At the Bone Bolango State Prosecutor's Office
Year 2019 to 2021

Year	2019	2020	2021
Case Occurs	2	1	3

(Source: Primary Data processed, 2023).

The explanation of Table 1 above is that criminal cases committed by children from year to year change (erratic), in 2019 as many as 2 cases, then decreased in 2020 to 1 case, and increased again in 2021 by 3 cases. Criminal cases committed by children are due to several factors: 1. Education Factors. Education is the main means or container for a child, so that it can shape the child's character well, in this case children often skip school, then between 2020 to 2021 the learning process mostly uses online learning media, so that children's accessibility to cyberspace is very fast; 2. Family factors. Family is the smallest environment in shaping the character of a child, children born from broken homes, parents with office jobs, children born from *homeless families*, so the lack of approach processes that occur between children and parents can result in a child easily falling into things that are not good; 3. Environmental factors. Such a small environment facilitates outside influences, such as globalization access that can easily enter the small environment, making it easier for children to access porn videos easily.

According to Mr. Santo Musa, he said that immoral cases that occur among adolescents, at first caused by recognition (dating) that exceeds the limits by children, then there are several factors, 1. educational factors; 2. Family factors; 3. Environmental factors, then access to mass media that enters, with the influence of mass media also causes great curiosity by children, such as porn videos, porn stories, television viewing that has pornographic elements, and so on. Thus, resulting in immoral crimes committed by children.¹⁴

The application of imprisonment sanctions against children is only imposed on children who commit criminal acts, in addition to children who repeat criminal acts (recidivists), in accordance with the provisions in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which explains that children who are recidivists cannot be sought diversion. In Article 81, paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that the imprisonment that can be imposed on children is no longer than 1/2 (one half) of the maximum threat of imprisonment for adults. It is also explained in article 81 paragraph (6) which states that if the crime committed by the child is a crime that is threatened with the death penalty or life imprisonment, then the crime imposed is a maximum imprisonment of 10 (ten) years. Based on this, criminal acts committed by children are a form of crime so that children who commit crimes can be sanctioned in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System applies the principle of *lex specialis derogate legi generalis* to the Criminal Code, which specifically relates to criminal acts committed by children.

The emergence of the Law on the Juvenile Criminal Justice System¹⁵ presents new formulas in the juvenile justice system, one of which is related to the handling of children. The formula in this handling puts forward the principle of "win – win solution" or called diversion. Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Justice

¹⁴ An interview with Mr. Santo Musa as Head of the General Crime Section at the Bone Bolango State Prosecutor's Office, on August 7, 2023, will be processed in 2023.

¹⁵ Article 1 Number 1, Juvenile Criminal Justice System is the entire process of solving child cases facing the law, starting from the investigation stage to the guidance stage after undergoing a crime. See Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

System states that Diversion is a transfer of the settlement of children's cases from the criminal justice process to processes outside criminal justice. The purpose of the diversion is to achieve peace between the victim and the child; resolve Children's cases outside the judicial process; prevent the Child from deprivation of liberty; encourage the public to participate; and instilling a sense of responsibility to the Child (Article 6 of Law Number 11 of 2012 concerning the Juvenile Justice System).¹⁶

The handling of children's cases in conflict with the law that prioritizes the best interests of children is far from expected. The government has issued special regulations regulating the protection of children's rights in the face of the law, such as Law No. 3 of 1997 concerning Juvenile Court then amended to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or Law Number 35 of 2014 concerning Child Protection which was amended to Law Number 17 of 2016, even the government has ratified the Convention on the Rights of the Child (CRC) by issuing Presidential Decree Number 36 Date August 25, 1990, and signed the Beijing Rules agreement, but it turned out that the provisions in the regulation were not the best solution to solve children's cases facing the law.¹⁷

Table 2
Criminal Sanctions for Children Who Commit Immoral Crimes
Law Number 17 of 2016.

Year	Article	Criminal Sanctions	Fine
2019	82 paragraph (1)	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)
	81 paragraph (2)	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)
2020	81 paragraph (2)	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)
2021	82 sub. (1) jo. 76E	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)
	81 paragraph (1)	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)
	81 paragraph (1)	5 Years and at most 15 Years	IDR 5,000,000,000 (five billion rupiah)

(Source: Primary Data processed, 2023).

Table 2, there are several criminal sanctions according to Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law, that the criminal sanctions imposed on victims of perpetrators of immoral crimes against children are articles 81 paragraph (1) and 82 paragraph (1) jo. 76E is a maximum of 5 years and a maximum of 15 years imprisonment, with a fine of Rp. 5,000,000,000 (five billion rupiah), against criminal sanctions at the Bone Bolango District Attorney's Office, there are several obstacles faced in the field in terms of handling immoral cases of child perpetrators. related to the case of detention of child perpetrators. There is no common perception between investigators, Public Prosecutors, Judges and Bapas if children are

¹⁶ Betania Fransiska Sitanggang, Irma Cahyaningtyas, Handling Child Cases in the Perspective of the Public Prosecutor, Indonesian Journal of Legal Development, Volume 2, Number 1, 2020, p. 67.

¹⁷ Azwad Rachmat Hambali. 2019. Application of Diversion to Children Facing the Law in the Criminal Justice System. Journal: Scientific Policy Law, 13 (1), 20.

entrusted in LPKS. Whether the period of custody is reduced by the period of detention terminated.¹⁸

in this case there is something different in the application of sanctions against children and the law used, in that case using Law No. 16 of 2017 on the second amendment of Law Number 35 of 2014 concerning Child Protection. Meanwhile, in the case of children, they should use the following principles as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely: best interests of the child; respect for the opinion of the Child; survival and development of the child; child development and guidance; deprivation of liberty and punishment as a last resort; and evasion of retaliation. So that it will be clear the difference between the responsibility of children and adult perpetrators, how can children involved in cases in law up to a maximum limit of 15 years in prison and a fine of Rp. 5,000,000,000 (five billion rupiah), while the criminal responsibility of children is very different from adults.

However, different things are shown in the field of Constitutional Law, the right to vote in elections, for example, a person is considered to have been able to be responsible for the legal actions he committed when he has reached the age of 17 (seventeen) years. Looking at these things, it can be concluded that the determination of the age limit of children is relatively dependent on their importance.

Children have rights that are specifically different from the rights of adults. This is because children are very vulnerable to violence, abuse, and exploitation. Various criminal cases involving children having to deal with the law are actual and factual problems as social and criminal phenomena that have caused concern among parents in particular and society in general as well as law enforcers. In Article 1 Number 2 of the Republic of Indonesia Law Number 35 of 2014 concerning Child Protection, it is formulated that "Child Protection is all activities to guarantee children and their rights so that they can live, grow, develop, and participate optimally following human dignity and receive protection from violence and discrimination". Children are a group that is vulnerable to the occurrence of a criminal act in conflict with the law, both as a perpetrator of a crime as well as a victim of a crime and a child who is a witness to a crime, as formulated in Article 1 numbers 2, 3, 4, and 5 of the Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.¹⁹

The juvenile criminal justice system that currently applies refers to Law Number 11 of 2012, but in the process mechanism, it still has to go through a formal process like adults by going through a process of investigation and investigation by the police, prosecution by the prosecutor, and trials in court. This long formal process gave birth to several thoughts from both scientists and law enforcement officials about finding the best alternative treatment for children by keeping them as far away from the formal justice system as possible.

The problem of resolving children's problems in conflict with the law is still an interesting matter to study today. The need for proper settlement of cases as stipulated in the applicable legislation, namely the Law on the Juvenile Criminal Justice System (No. 11 of 2012), and the implementation of solving the problems of children in conflict with the law by applying restorative justice through the diversion system are both interesting.

CLOSING

The non-uniformity of the qualifications for the age limit of a child between one law and another has given rise to various existing legal conflicts regarding the limits of children's responsibilities. According to the Criminal Code Number 1 of 2023, Article 40, it states that criminal responsibility cannot be imposed on children who are not yet 12 (twelve) years old at the time of committing the crime, while Law Number 11 of 2012, states that children who conflict with The law hereinafter referred to as a child are a child who is 12 (twelve) years

¹⁸ Interview with Mr. Santo Musa, Head of the General Crime Section of the Bone Bolango State Prosecutor's Office, on June 1, 2022.

¹⁹ Azwad Rachmat Hambali. 2019. Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana. Jurnal: Ilmiah Kebijakan Hukum, 13(1), 17.

old but not yet 18 (eighteen) years old who is suspected of committing a crime. However, different things are shown in the field of Constitutional Law, the right to vote in elections, for example, a person is considered to have been able to be responsible for the legal actions he committed when he has reached the age of 17 (seventeen) years. Looking at these things, it can be concluded that the determination of the age limit of children is relatively dependent on their importance. One of the law enforcement efforts is through juvenile justice, which is an effort to protect children, educate them without ignoring children's rights as subjects of crime, and improve children's attitudes and behavior so that they don't do bad things as they did before. In child protection, efforts are made to provide guidance or education in the form of rehabilitation and resocialization, which become the foundation of juvenile justice.

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