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## Legal Analysis of the Determination of the Age Limit of Children Related to Sexual Crimes Committed by Children (ABH) in the Perspective of Law Enforcement in Indonesia and International Law

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### Abstract

The development of sexual crimes against children, both children as perpetrators or children as victims lately is very concerning. Sexual crimes are greatly influenced by time and place. The high level of human civilization and the phenomenon of globalization that increasingly knows no boundaries, in this case, is the negative impact of the influence of globalization also contributes to the emergence of various crimes of sexual harassment. Often crimes or criminality occur around our lives, including on the streets or public spaces. From the presentation, the formulation of the problem will arise, namely how is the Status and Position of Children in the positive legal system of Indonesia and International Law? What is the form of legal protection for children who have committed criminal acts in Indonesia's positive law? How is the concept of legal reform on the determination of children's age limits so that they can make a positive contribution to law enforcement?

The methodology used in the study uses a normative legal research method (doctrinal research) which mainly analyzes primary legal materials and secondary legal materials, in this case the researcher also complements the method of interviewing sources that is autorotac, because its nature is more focused on conceptualizing ideas in the form of models, so that the expected results can be applied by policy makers. Violations of the law that have been committed by a child, of course, in terms of law enforcement, are treated differently (diversion) from the procedures applied by adults. Therefore, researchers argue that there is a shift in understanding related to the age of children and people who are considered adults at this time, remembering the fact that some children are not yet 18 years old, but they are physically and psychologically mature. Based on the above explanation, according to the author, it is important to be able to conduct a study on the age limit of children so that they are limited legal subjects because this can be a measure for law enforcement and can provide legal protection for children who are facing the law.

**Keywords:** Sexual Crimes, Children Facing the Law, Renewal of Children's Age Limit.

### 1. Introduction

Children according to the Great Dictionary of Indonesian (KBBI) are young human beings. However, in general terms, it can be said that a child is a person born from a marriage between a woman and a man who is bound by the institution of marriage or who is not bound by the institution of marriage. Children are a mandate as well as a gift of Allah SWT that must be maintained because in them are inherent dignity, dignity and rights as human beings (Suprihartini, 2018).

Children who have committed a crime can be said from a legal perspective as children who are in conflict with the law. Then if we look at the provisions of Article 1 paragraph (3) of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) which states that a child who is faced with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old who is suspected of committing a criminal act. The deviation of the child's behavior, nowadays, has crossed the reasonable limit. Many of them

began to know free sex, drugs, violence, thuggery, and many other actions that can be categorized as unlawful.

Childhood is where children are in the process of growing and developing. Therefore, children must be protected from all possibilities of violence against children, especially sexual violence. Every child has the right to protection. Efforts to protect children must be given in a whole, comprehensive and comprehensive manner, not in favor of a group or group of children. During this period, it is necessary to take preventive steps to protect children's lives from all forms of crime, one of which is sexual violence.

The phenomenon of sexual violence against children is increasingly frequent and has become global in almost various countries. Cases of sexual violence against children continue to increase from time to time. The increase is not only in terms of quantity or number of cases that occur, but also in terms of quality. And what is even more tragic is that most of the family environment or the environment around the child is located, including in their own homes, schools, educational institutions, and also in the child's social environment (Noviana, 2015). On the other hand, children are considered a group that is very vulnerable to sexual violence because children are always positioned as weak or helpless and have a high dependence on the adults around them (Noviana, 2015). However, nowadays, along with the development of information technology, it has changed the stigma or view that many children are also perpetrators of sexual crimes. According to the data obtained, children who are in conflict with the law (perpetrators) of crimes are increasing from year to year. Cases of children in conflict with the law, according to data from Direktorat Jenderal Pemasyarakatan Kementerian Hukum dan Hak Asasi Manusia, shows an increasing trend in the period 2020 to 2023. As of August 26, 2023, nearly 2,000 people were recorded. A total of 1,467 children are prisoners and are still undergoing judicial proceedings, while 526 children are serving sentences as prisoners (Krisnadamarjati, 2023).

In general, the definition of sexual violence against children is the involvement of a child in any form of sexual activity that occurs before the child reaches a certain age limit set by the law of the country concerned where an adult or another child who is older or a person who is considered to have more knowledge than the child uses it for sexual pleasure or sexual activity (CASAT Programme, Child Development Institute; Boy Scouts of America; Komnas PA). On the other hand, Lyness explained that sexual violence against children includes the act of touching or kissing the child's sexual organs, sexual acts or rape of children, showing pornographic media/objects, showing genitals to children and so on (Maslihah, 2006).

Violations of the law that have been committed by a child, of course, in terms of law enforcement, are treated differently (diversion) from the procedures applied by adults. Therefore, the author argues that there is a shift in understanding regarding the age of children and people who are considered adults at this time, remembering from the fact that there are some children who, although not yet 18 years old, are physically and psychologically mature. However, the author tries to analyze this from two different sides, namely the perspective of positive Indonesian law and international law.

While the protection of children from all forms of violence and insecure efforts to fulfill children's rights have also been explored in various international conventions, one of which is the Convention on the Rights of the Child, which among other things explains that "Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Furthermore, the fulfillment of the child's rights has become a state obligation affirmed in the convention which also explains "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

A very important thing and the basis of this alternative thinking is that in fact, the determination of the age limit for children still varies in various legal rules in Indonesia which can cause obstacles to law enforcement and the principle of justice and certainty in the law itself. The qualification of the child's age limit should be reviewed considering that children at this time are influenced by various factors that can affect, especially the information and technology aspects, so that they experience maturity early both from physical and psychological and sexual aspects. Thus, it is hoped that the change in the determination of the age limit for children will be able to make a positive contribution to law enforcement, especially from the aspects of justice and legal certainty.

Based on this description, according to the researcher, it is important to be able to conduct a study on the age limit of children so that as a limited legal subject can be determined adequately or proportionately, because this can be a measure for law enforcement and can provide legal protection for children who are facing the law.

## 2. Method

The methodology that will be used in achieving this goal is by using the normative legal research method (doctrinal research) which mainly analyzes primary legal materials and secondary legal materials equipped with interviews because of its nature which focuses more on conceptualizing ideas in the form of models, so that the expected results can be applied by policy makers. The legal materials/data used are primary legal materials in the form of laws and regulations and secondary legal materials in the form of legal literature, scientific works related to strategic issues from the research to be carried out.

## 3. Results and Discussion

### Result

What is the Status and Position of Children in the positive legal system of Indonesia and International Law? The establishment of the state of law is the basis for explaining the purpose of law itself that the law is never only binding on a certain subject, a certain raster, a certain social status, but as a whole regulates all elements, both ordinary people, officials, the government, the rich and the poor, and all must obey it without exception (Basri, 2021). The state of law wants the law to always be enforced, respected and obeyed by anyone without any exceptions. This aims to create security, order, and welfare in the life of society, nation, and state (Husen, 2020).

The law is not autonomous or not independent means that the law is inseparable from the mutual influence of all aspects that exist in society. As a benchmark, the law can create order and peace in community life. But in reality, there are still many people who violate the law (Djamali, 2005). In community associations, every day there is a relationship between members of the community and each other. The association gives rise to various events or events that can move legal events (Jufri, 2015).

Members of society, in this case adults and children. Maturity is always a measure in every action and responsibility carried, so maturity is a very important factor in every social interaction, both those that cause legal consequences and those that are only limited to the scope of public relations. Responsible attitudes are closely related to the level of maturity in the development of human life. From the perspective of legal science, the level of maturity is interpreted as a parameter that can state that a person is legally competent or able to perform

legal acts. On the other hand, children are the potential and successors of the ideas of the nation's struggle which has a strategic role. Children have special characteristics and traits that require protection to ensure complete physical, mental and social growth and development. The future of the nation is in the hands of today's children. The better the quality of nutrition, health, coaching, education and child protection, the better the future life of the nation because it is in their hands that the nation's ideals will be continued.

The existence and legal position of children in Indonesia's positive law has been accommodated in various laws and regulations such as, Law No. 4 of 1979 concerning Child Welfare as the legal basis for child protection in Indonesia, Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, RI Law No. 11 of 2012 concerning the Child Criminal Justice System, Law No. 3 of 1997 concerning Children's Court and many more regulations that accommodate the interests of children in Indonesian law.

International instruments have also implemented a set of children's rights and obligations of signatory and ratifying States to protect children in the areas of child labour, child adoption, armed conflict, child justice, child refugees, exploitation, health, family education, civil rights, and economic, social and political, and cultural rights. The international documents are clearly a reflection of the international community's awareness and concern about the need for protection against the plight of children around the world. These instruments include: Geneva Declaration of the Rights of the Child 1924. UN General Assembly Declaration on the Rights of the Child 1959. International Covenant on Civil and Rights of the Child 1966. International Covenant on Economic, Social & Cultural Rights 1966. 5. UN Convention on the Rights of the Child 1989. These instruments have implemented a set of children's rights and obligations of signatory and ratified States to protect children in terms of child labour, child adoption, armed conflict, child justice, child refugees, exploitation, health, family education, civil rights, and economic, social and political, and cultural rights (Nandang, 2015).

In Table 1, several concepts related to the age limit of children can be seen both from the perspective of positive Indonesian law and from the perspective of international law.

Table 1.

*Matrix of Comparison of Legislation from National and International Perspective*

No.	Positive Law	International Law
1	Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; in this law it is explained that the <i>age limit of a child is a person under 18 years old and a child who is still in the womb</i>	The UNCRC (United Nations Convention on the Rights of the Child) explains that children <i>are all people under the age of 18.</i>
2	Law No.11 of 2012 Regarding the Children's Criminal Justice System, the law explains: " <i>Children in Conflict with the Law, hereinafter referred to as Children, are children who have reached the age of 12 (twelve) years, but have not yet reached the age of 18</i>	The Geneva Conventions of 1949 and Additional Protocol I of 1977 explain the <i>establishment of a minimum limit on the age of a child, so that they can be said to be minors under the law. It was stipulated that it was forbidden to</i>

	<i>(eighteen) years who are suspected of committing criminal acts”</i>	<i>use children under the age of 15 for the purpose of war.</i>
3	Article 1 number 26 of Law Number 13 of 2003 concerning Manpower is explained "a child is any person under the age of 18." Furthermore, in Article 69 paragraph (1), it is explained that children aged <b>13 to 15 years may work</b> for light work as long as they do not interfere with the child's health, physical, and mental and social development	ILO Minimum Age Convention No. 138 (1973), ILO states that the minimum age of workers is above school age and not less than 15 years old  Or for light work about 13-15 years and for hazardous work 18 years and above.

What is the form of legal protection for children who have committed criminal acts in Indonesian positive law? Talking about children and their protection will never stop throughout the history of life, because children are the next generation of the nation and the successor of development, that is, the generation that is prepared as the subject of implementing sustainable development and the holder of control over the future of a country, including Indonesia. The protection of Indonesian children means protecting the potential of human resources and building Indonesian people as a whole, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution. Child protection efforts must have started as early as possible, so that in the future they can participate optimally for the development of the nation and state (Niashrina, 2011).

The protection of children is an essential part of the protection of humanity. It can even be said that child protection is a real form of human civilization in assessing itself as a noble creature created by God. Recognition of children's rights must also be the main agenda of the Government as a regulator to guarantee children's rights in legal provisions. So far, the protection of children's rights in the applicable legal regulations in Indonesia is regulated in one specific legal provision but is also spread out in special legal provisions. Knowledge to what extent the child has received maximum protection in a legal provision needs to be studied first from the definition of the child that is enforced (Christianto, 2011).

Forms of violence against children are grouped into for types, namely physical violence, psychological violence, sexual violence, and social violence (including neglect and exploitation). These forms of violence are interrelated, the physical violence experienced by children will affect their souls. It is the same only with children's psychological violence, it will affect their physical development, while sexual violence will cause physical and psychological injuries (Eleanora, 2021).

Information that can be obtained from OCSEA (Online Child Sexual Exploitation and Abuse) is a form of violence against children that is increasingly worrying in today's digital era. Based on data from the Online Information System for the Protection of Women and Children (Simfoni PPA), recorded from January to June 2024, there were 7,842 cases of violence against children with 5,552 female victims and 1,930 male victims, where sexual violence cases ranked first among the highest number of victims from 2019 to 2024. Furthermore, he explained The urgency of child protection in this increasingly complex digital era is very important because children are often exposed to the risk of exploitation and online sexual violence. Improving their digital resilience is crucial, not only in terms of using

technology wisely, but also in their ability to recognize and confront the various threats that may exist in the world maya.

Sexual Violence according to Law No. 12 of 2022 concerning the Crime of Sexual Violence in Article 4 paragraph (1) consists of: a. non-physical sexual harassment; b. physical sexual harassment; forced contraception; d. forced sterilization; e. forced marriage; f. sexual torture; g. sexual exploitation; h. sexual slavery; and i. electronic-based sexual violence. In addition to the Crime of Sexual Violence as referred to in paragraph (1), the Crime of Sexual Violence also includes: a. rape; b. obscene acts; c. sexual intercourse against children, obscene acts against children, and/or sexual exploitation of children; d. acts that violate morality that are contrary to the will of the Victim; e. pornography involving children or pornography that explicitly contains sexual violence and exploitation; f. forced prostitution; g. the crime of trafficking in persons aimed at sexual exploitation; h. sexual violence in the scope of the household; i. the crime of money laundering whose original crime is the Crime of Sexual Violence; and j. other criminal acts that are expressly declared as Sexual Violence Crimes as regulated in the provisions of laws and regulations

Criminal Law basically focuses on regulating the problem of crime that occurs in society. Criminal law is a guardian so that people avoid crime. Criminal law is a guardian so that people avoid crime. If the Constitutional Court is often referred to as The Guardian of Constitution, then the criminal law in relation to crime deserves to be referred to as The Guardian of Security which seeks to provide guarantees so that the public does not become victims of crime (Efendi, 2011).

What is the Concept of Legal Reform Towards the Determination of Children's Age Limits in order to make a positive contribution to law enforcement in Indonesia? According to Moeljatno, it is explained that a criminal act is an act that is prohibited by a prohibition legal rule which is accompanied by a threat (sanction) in the form of a certain criminal penalty for whoever 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 criminally threatened as long as it is remembered that the prohibition is aimed at the act, namely a situation or an event caused by the behavior of another person, while the criminal threat is aimed at the person who caused the incident (Moeljatno, 1993).

Furthermore, it can be understood that criminality or evil acts are problems faced by every country. Based on criminology, the tendency of individuals to commit crimes can be seen from a biological perspective, a sociological perspective, and other perspectives. This science also gives two meanings to the term crime, namely juridically and sociologically. Juridically, Bonger argues that crime means an anti-social act that consciously receives a reaction from the state in the form of inflicting suffering and then as a reaction to legal formulations or legal definitions regarding crime. Sociologically, crime is a human behavior created by society (Rohman, 2016).

However, a good law is a law that is dynamic and meets the needs of the community. This is in line with the theory of the Mochtar Kusumatmadja Development Law which describes that the law must be able to be a means of changing society (Rasjidi, 2003). According to this theory, law and society cannot be separated from the concept of a nation that is building. The concept of development also shows that non-legal sciences play a very important role in the formation of law. Mochtar Kusumatmadja brilliantly changed the understanding of law as a tool from Roscoe Pound to law as a means (instrument) to build society. The main points of thought that underlie this concept are that order and order in development and renewal efforts are desirable, even absolutely necessary, and that law in the sense of norms is expected to direct human activities in the direction desired by development

and renewal. Therefore, in this case, it is necessary to have means in the form of legal regulations in written form that must be in accordance with the laws that live in society (Sidarta, 2013).

The definition of children in Indonesian legal provisions is very diverse. Article 330 BW uses the term "immature" for those who have not reached the age of 21 (twenty-one) years, and have not been married first. Based on the provisions of the law, those who are "immature" who are identified with children have 2 (two) criteria, namely not yet 21 years old and never married. The Criminal Code (KUHP) itself does not clearly regulate the minimum age limit for child liability. According to Didik Endro, the maximum age limit for a child to be called a perpetrator is 16 (sixteen) years old.<sup>2</sup> This opinion is based on the interpretation of Article 45 of the Criminal Code which states that "immature is prosecuted for the acts he commits when he is not yet sixteen years old".

On the other hand, besides the law that is regulated in writing, customary law turns out to have a different concept in looking at children. A person is said to be a child if he is still not working alone, is not capable of doing the things required by society and is not able to manage his wealth independently (Hadikusuma, 1993). Likewise, R. Soepomo when explaining that the measure of a person's maturity in West Java society is measured in terms of (1) being able to work alone (independent), (2) being able to do what is required in community life and being responsible and (3) being able to manage his own wealth.<sup>5</sup> These three conditions are absolute requirements that must be met by a person if they want to escape from the status of a child.

Likewise, in the issue of determining the age limit for children at this time, the law must be able to see the correlation between the age limit of 18 years according to the law and the social context and other aspects that can affect children's thinking and growth. Hamdan (2021) think that the phenomenon that occurs at this time is the number of children who have committed criminal acts under the age of 18. as a material for analysis, several other laws and rules also do not have the same view on the limits of the definition of children as legal subjects, including:

Article 1 number 1 of Law of the Republic of Indonesia 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, explains that "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb";

Article 45 of Law of the Republic of Indonesia Number 1 of 1960 concerning Amendments to the Criminal Code (hereinafter referred to as Law No. 1 of 1960), stipulates that "in the case of criminal prosecution of a minor for committing an act before the age of sixteen ...".

From these two rules, it appears that the limit of children who are accountable to the law is only age, while based on sociological, mental and psychological considerations are not the focus of consideration, even criminological it is still not a problem. However, in its development, based on point 2 of the Decision of the Constitutional Court of the Republic of Indonesia Number 1/PUU-VIII/2010 concerning the Testing of Law Number 3 of 1997 concerning the Children's Court against the Constitution of the Republic of Indonesia in 1945, an explanation has been obtained that the age limit for children, namely the minimum age limit for children who can be asked for legal responsibility is 12 (twelve) because they have relatively intelligence, emotional, mental and intellectual stability. With such conditions, according to researchers, it is important to standardize the determination of children's age limits

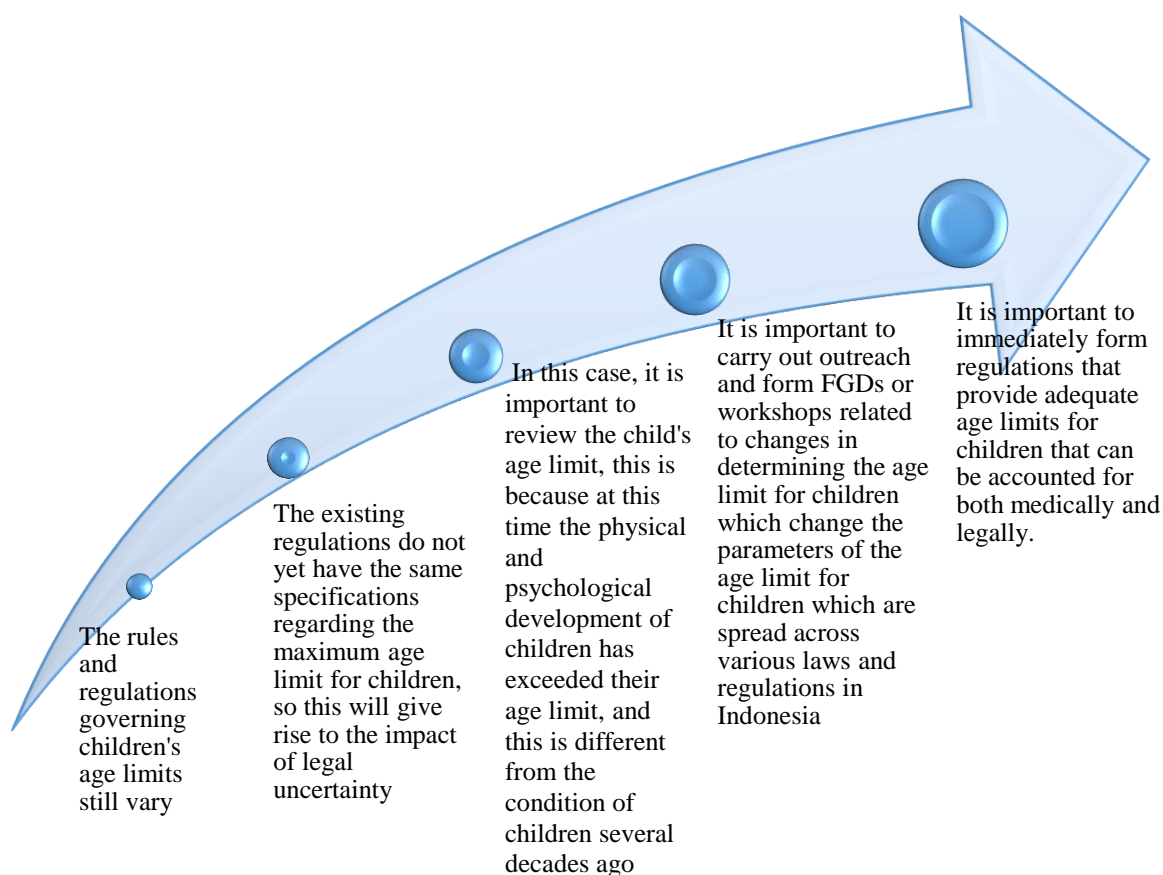


in various regulations in Indonesia related to children so that legal certainty is fulfilled so that it will facilitate the implementation of existing law enforcement.

Furthermore, it can be explained below regarding several efforts that can be made in order to reform the law related to the determination of the age limit for children in a legal perspective. This can be seen through the road map or road map, as follows :

Figure 1.

*Legal Policy Of Determining Age Limits For Children In Conflict With The Law*



#### 4. Conclusion

Children are the potential and successors of the ideals of the nation's struggle which has a strategic role. Children have special characteristics and traits that require protection to ensure complete physical, mental and social growth and development. The future of the nation is in the hands of today's children. The better the quality of nutrition, health, coaching, education and child protection, the better the future life of the nation because it is in their hands that the nation's ideals will be continued. The existence and legal position of children in Indonesia's positive law has been accommodated in various laws and regulations.

The protection of Indonesian children means protecting the potential of human resources and building Indonesian people as a whole, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution. It can even be said that child protection is a real form of human civilization in assessing itself as a noble creature created by God. Recognition of children's rights must also be the main agenda of the Government as a regulator to guarantee

children's rights in legal provisions. So far, the protection of children's rights in the applicable legal regulations in Indonesia is regulated in one specific legal provision but is also spread out in special legal provisions.

In the issue of determining the age limit for children at this time, the law must be able to see the correlation between the age limit of 18 years according to the law and the social context and other aspects that can affect children's thinking and growth. The phenomenon that occurs at this time is the number of children who have committed criminal acts under the age of 18. As a material for analysis, several other laws and rules also do not have the same view on the limitations of the definition of children as legal subjects. With such conditions, according to researchers, it is important to standardize the determination of children's age limits in various regulations in Indonesia related to children in order to meet legal certainty so that it will facilitate the implementation of existing law enforcement.

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