

## Determination of Age of Majority In Liability Juvenile Crime in Indonesian Criminal Law

Umar Dinata<sup>1\*</sup>, Sukamto Satoto<sup>2</sup>, Usman<sup>3</sup>, Erdianto<sup>4</sup>

<sup>1,2,3</sup>Universitas Jambi

<sup>4</sup>Universitas Riau

**Corresponding Author:** Umar Dinata [Umar.dinata999@gmail.com](mailto:Umar.dinata999@gmail.com)

### ARTICLE INFO

*Keywords:* Age Determination, Liability, Juvenile Crime

*Received :* 20 October

*Revised :* 19 November

*Accepted:* 17 December

©2023 Dinata, Satoto, Usman, Erdianto: This is an open-access article distributed under the terms of the [Creative Commons Atribusi 4.0 Internasional](https://creativecommons.org/licenses/by/4.0/).



### ABSTRACT

In juvenile criminal cases, the age limit of children is of great importance, since this obligation to determine whether a suspect belongs to the category of children or not is related to the criminal liability of children. In discussing the extent to which a person can meaningfully be prosecuted as a child, it appears that many laws are inconsistent in their boundaries because they are motivated by the goals of each law. itself. In order to examine the purpose of this study, the purpose of this study is to examine the regulations for determining the age of consent for criminal responsibility of children in the current Indonesian criminal law. This research method uses normative legal research methods, a legal approach, a conceptual approach, a comparative approach and a case approach. The results of this study show that from the minimum age at which children can become important as adults, any legal act of a legal entity can become possible once they reach this legal capacity of adulthood. Aspects of legal protection in determining the age of consent in Indonesian criminal law are related to the criminal liability of children. The measure of a species' ability to assume responsibility can be derived from several factors, ranging from the age to the psychology of the perpetrator. After examining the facts, one can come to the conclusion that the age limit for adulthood, which is pluralism, may lead to ambiguity in determining when a person is declared of adulthood and held responsible for the crimes committed by him becomes

## **INTRODUCTION**

Indonesia is a constitutional state within the meaning of Article 1 Paragraph 3 of the Constitution of the Republic of Indonesia 1945 (UUD NRI 1945). The article clearly states that Indonesia is a state based on law and not on power (power state). The idea of rule of law is based on Pancasila and the NRI Constitution of 1945, which is based on the values of divinity, humanity, unity, deliberation and social justice. With the establishment of Indonesia as a constitutional state, Indonesia is obliged to supplement and implement the elements of justice, expediency and legal certainty from the manual of legal objectives formulated by Gustav Radbruch. The author used the theory of legal certainty to develop the maturity regime for children's criminal responsibility in Indonesian criminal law. Gustav Radbruch in his book "Introduction to Law". Radbruch wrote that there are three (three) fundamental values in law, namely: (1) justice (justice); (2) opportunities (opportunism); and (3) legal certainty.

The laws in force in Indonesia that affect the definition of children do not only have positive effects. The negative impact is that it is difficult for law enforcement authorities to take legal action when children of different age groups are affected, as provided for in the relevant legislation. Harmonization of laws on children's rights, responsibilities and protection must take place as quickly as possible because the problems children face are increasing. The juvenile justice system is a court that tries criminal cases involving children in a system known in society as criminal justice to solve child crimes. But they are also expected to protect children who violate the wet conditions. Conflict and child abuse are crimes. Speaking of criminal liability, this cannot be solved with crimes, because a new crime means that there is criminal liability.

Criminal liability is the making of objective, criminal and subjective accusations against someone who can be convicted for their actions. The basis for the existence of a crime is the principle of legality, and the basis for convicting the perpetrator is the principle of guilt. This means that the perpetrator of a crime can only be convicted if he or she is guilty of committing the crime. If someone has made a mistake, there is criminal liability. Feelings of guilt arise when a person's actions in committing a crime may be socially justified.

Criminal liability leads to the conviction of a criminal if he has committed an impossible crime and meets the requirements of the law. If a prohibited act is repeated, a person will be prosecuted for that act if the act violates the law. Responsibility only considers components that can assume responsibility. Criminal liability aims to hold a suspect or defendant liable for an unlawful crime. In other words, whether the suspect will be convicted or sentenced. If convicted, it must be proven that the unlawful act is illegal and the suspect can be held liable. Legal pluralism regarding the minimum age for children is subject to different laws and regulations, resulting in differences in the minimum age in Indonesia. This legal pluralism leads to a lack of references that could serve as a basis for constructing the maturity limits of a species. Although the age limit for a species is usually set at "Wet", the age limit varies from "Wet" to "Wet". It is important to determine the minimum age from which children can be viewed as adults, whereby any legal act by a legal entity can be possible if it has reached the

legal capacity of adulthood. The inconsistency of the minimum adult age in Indonesia provides reliable weather information and guarantees for citizens. Indonesia is a constitutional state under Article 1(3) of the 1945 Constitution; Everything related to the law must have legal certainty and guarantees for citizens, but so far there is no uniform age limit (association) in this republic, which confuses the public. The pluralism of the age of consent can provide certainty about when someone is considered an adult and can be held responsible for the crimes they commit.

## LITERATURE REVIEW

### Theory of Legal Certainty

Legal certainty is a legal guarantee that brings with it justice. Fair standards should actually function as rules that people follow. For Gustav Radbruch, justice and legal certainty are integral parts of the law. He argued that justice and legal certainty must be taken into account and legal certainty must be maintained for the security and order of a country. "Positive laws must always be obeyed." Based on the theory of legal certainty and the value to be achieved, namely the value of justice and happiness, "is the theory of legal certainty: One of the goals of Law and People can be said to be that legal certainty is part of a difficult legal system. Legal certainty itself has a concrete form, namely the implementation and enforcement of the law in the event of an act that is dangerous for the perpetrator. With legal certainty, everyone can decide for themselves what happens if they take a particular legal step. Legal certainty is also necessary to uphold the principles of equality before the law without discrimination. The word certainty has a meaning closely related to the principle of truth. That is, the word certainty in legal certainty is something that can be strictly syllogized using official legal means. It is legally complex that someone can behave in accordance with the provisions of the relevant legislation and vice versa. Without legal certainty, a person cannot consistently engage in a certain behavior. In line with this goal, Gustav Radbruch also excludes the possibility that legal certainty is one of the goals of the law itself.

Gustav Radbruch points out that in the theory of legal certainty he advocates there are four fundamental questions that are closely linked to the meaning of legal certainty itself, namely:

- a. Law is something positive, that is, positive law is legislation.
- b. Law is fact-based, that is, it is created on the basis of reality.
- c. The facts of the law must be clearly stated so that the meaning of the interpretation is accepted and can be easily understood.
- d. Positive laws cannot simply be changed.

Gustav Radbruch's opinion on legal certainty is based on his view of legal certainty, i.e. "legal certainty itself". Gustav Radbruch argued that legal certainty is a product of law, more precisely a product of legislation. According to Gustav Radbruch's opinion on legal certainty, law is something positive that can influence the interests of every person in society and that must always be observed, even if positive law is perceived as unjust. In addition, legal certainty is a certain condition, decision and statute; Fundamentally, the law must be final

and fair. This means that a particular law is a guideline for behavior and “honest” behavior. is a code of conduct that is to be understood as an interface between order and discretion. Only when it is safe and fair will justice strengthen its function.

### **Theory of Criminal Responsibility**

“Definition of criminal liability in foreign languages. Criminal liability is called “health”, criminal liability. This criminal liability is intended to determine whether a suspect/accused is responsible for a violent crime or not. In other words, the suspect is convicted or acquitted. If convicted, it must be clear that the unlawful act is illegal and the suspect can be held liable. This ability implies culpability for the act in the form of intent or negligence. This means that the crime is reprehensible because the suspect had knowledge of a violent crime. When it comes to criminal liability, the abstract threats of punishment contained in the law are aimed specifically at the perpetrators. A wet criminal threat does not automatically harm a suspect, but conditions must be met before the judge can make it.

Ruslan Saleh said that criminal liability arises when an objective guilt actually exists, persists and becomes subjectively criminally burdensome through its actions. The basis for the existence of a crime is the principle of legality, and the basis for convicting the perpetrator is the principle of guilt. This means that the perpetrator will only be convicted if he made a mistake in committing the crime. When does criminal negligence occur? Criminal liability leads to the conviction of a criminal if he has committed a crime and the conditions established by law are met. The existence of a prohibited (coercive) act makes one liable for these crimes if the act is unlawful and the unlawfulness of the justification is undisputed. Assets can only be held liable if they have sufficient legal authority. Ruslan Saleh said: “There is no point in holding the suspect responsible for his actions if the act itself is not illegal.” One can also say that there must first be certainty about the existence of a crime and then about all the elements of guilt. “There must also be a connection to the violent crime.

### **METHODOLOGY**

In order to analyze the purpose of this research, this research method applies normative legal research methods and uses a legal approach, a conceptual approach, a comparative approach and a case approach.

### **RESULTS**

#### **Regulation of the Age of Consent in the Criminal Responsibility of Children in Indonesian Criminal Law**

Criminal law has comprehensively regulated public law to protect the public interest. The application of criminal law must be based on the principles of complex criminal law. One of the principles is the principle of legality, namely “No act is punishable under the criminal provisions of the law in force before it was unlawful” (Article 1(1) of the Penal Code). Crimes that can be punished under the Criminal Code are acts that are unlawful in nature. Therefore, it is unlikely that someone will be convicted without having committed a crime. Anyone who meets the illegal criteria will be held criminally responsible for the

double crimes. The Criminal Code regulates criminal liability that cannot be imposed on someone who commits an unlawful act, namely if:

- a. Incapable of responsibility
- b. Has not yet reached the age of 16
- c. The presence of coercion
- d. Intrusive coercive defense
- e. Order of the Nat
- f. Chamfer the section.

The criminal liability of children is regulated by Articles 45, 46 and 47 of the Criminal Code. Article 45 of the Penal Code states that children under 16 who commit crimes will be returned to their parents, guardians or guardians without sanctions. If the arbitrary violation concerns an area covered by Articles 489, 490, 492, 496, 497, 503-505, 514, 517-519, 526, 531, 532, 536 and 540 and occurred less than two years ago. In any case, if a repeated act is a fraudulent act, the unlawful act will actually be reported to the government. The child shall be placed in a state educational home or with a resident of Indonesia, a legal entity, foundation or charitable organization established in Indonesia from the time the child is brought up until the child reaches the age of 18 (Article 1(1)). . . .) of the Criminal Code). . .). Crimes against children can increase with a reduction of 1/3 of the maximum offense of the main offense (Section 47 Paragraph 1 StGB). If the crime results in the death of a person, the maximum sentence is fifteen years. The crime that can be limited to one type is limited to the main crime; There should be no more crimes against children.

Articles 45, 46 and 47 of the Penal Code clearly state that children under 16 years of age are not excluded from committing a crime unless they violate the articles listed in Article 45 of the Penal Code. According to Wirjono Prodjodikoro (2003), judges can impose a sentence ordering that children who commit crimes be returned to their parents or guardians without criminal sanctions and that they will not be held criminally liable because the child is under 16 years old and has not yet committed any criminal offenses. has committed a crime. If you have committed crimes, criminal charges are false. so finished. The regulation of child crime in the Criminal Code is not very limited and is only regulated in three articles. The deficiencies in sentencing children are: (a) There is no age limit for criminal responsibility, while the Beijing Rules use the concept of an age limit for criminal responsibility for minors; (b) there is no recognition of institutions that protect the rights of children, (c) the rules regarding children are so simple that they are no longer linked to the development of Indonesian society. The criminal code, in force since 1946, is simple and adheres to the absolute purpose of punishment, meaning that the purpose of criminal convictions is to achieve retribution. This is not suitable for sanctions that affect children, as children do not have stable emotions and are still developing. Therefore, sanctions should focus more on providing education that supports children's development.

Criminalization is an essential process by which an act becomes a crime from the outset that is not a crime. Barda Nawawi Arief interprets two (two) important things in criminalization, namely:

- a. what acts should be punished;

b. What sanctions should or should be chosen against the perpetrator?

Based on the above two cases, criminalization is the process of determining that an act that was not originally a crime should be prohibited as a crime. The Law on the Children's Court was enacted on the basis of the Public Prosecutor's Circular No. P.1/20 of March 30, 1951, which states that delinquent children are those who have committed as many crimes as prohibited by the criminal law and that the person is not yet 16 years old. The Attorney General also unusually points out that in cases involving children, it is important not to confront children head-on in the courtroom. This is the final step (ultimate remedy).

If one considers the age range of children in Law No. 3 of 1997, which is between 8 and 18 years, the legal regulations already indirectly take into account that children in this age range can commit crimes, which makes it possible to prosecute adults. . . . Obviously, the age of 8 is still considered immature (minor) in human development or not yet capable of being legally responsible for all of our actions. The physical and mental knowledge as well as the knowledge of the causes and consequences of those in power are inadequate among people between the ages of 8 and 18 and therefore must be protected by those in charge. Mistakes and misdeeds, both within the family and in relationships with others in society, should be viewed as child crimes and not as criminal offenses. Article 1, paragraph 1 of the Natnr. 3 of 1997 actually represents a breakthrough in determining the age limit of a person who should be responsible in criminal cases. However, this breakthrough clearly contradicts the principles of criminal law itself, which requires the recognition and protection of the human rights of minors. Apparently the justification of Article 1(1) is followed by Article 1(2)(b) of Law No. 3 of 1997, which states: "A mischievous species is a species that performs a similar act." Picking up children is legal forbidden. and regulations and in accordance with other existing and applicable laws in the community concerned." The basis for determining whether a child is a delinquent child is based not only on the provisions of the criminal law but also on other existing and applicable laws in the country and the society in which the child lives. The application of unwritten law in society brings its own problems in determining the objectivity and legal certainty of prohibited actions. An act may be punishable in one place and time but not in another place in the future.

Particular attention was also paid to the relevant information on punishment of children in Law No. 3 of 1997, which apparently allows the judge to punish delinquent children. Article 22 of Law No. 3 of 1997 gives judges the freedom to choose the type of punishment that can be imposed on delinquent children in the form of a crime or act. The political use of criminal punishment and judicial discretion clearly do their own harm to children. Criminal sanctions, which are in reality an *ultimum remedium*, are completely inappropriate for use against children, although alternative sanctions take the character that criminal sanctions consist in depriving a person of human rights (of this kind) or denying them that takes into account their differences become strong. take into account. In principle, the human rights of children should not be restricted for any reason, including in accordance with the principle of the welfare of the species. It is clear that Law No. 3 of 1997 is no longer intended to protect children who are exposed

to wet conditions Contact comes, or just different treatments to protect. Instead, they will punish children and treat them like adults in court. Hadi Supeno continued: "When analyzing the content of the articles of Law No. Op 3 of 1997 on the Children's Court, it is very clear that this law was not written for the protection of children, but for the purpose of prosecuting children. .', which also means the spirit of criminalizing children."

The problem of children coming into conflict with the law is very worrying. Nat No. 3 of 1997 on the Children's Court is no longer sufficient to find solutions for children in conflict with the law. On this basis, the House of Representatives of the Republic of Indonesia discussed juvenile criminal law together with the Government of the Republic of Indonesia from 2011 to 2012. The Juvenile Justice Act (RUU SPPA) was submitted by the President to the leadership of the House of Representatives. of representatives. of representatives. of representatives. the representative of the Republic of Indonesia by letter No. R-12/Pres/02/2011 dated February 16, 2011. The President announced that the Minister of Law and Human Rights, the Minister of Social Affairs and the Minister of State were responsible for the authorization The Minister of Women's Rights and Child Protection and the Minister of Strengthening the State Apparatus and Bureaucratic Reforms will be the President's representatives when he speaks about the SPPA law. The House of Representatives of the Republic of Indonesia now has additional valuable nat. 2011. The SPPA bill itself was directly adopted at the plenary session of Commission III of the House of Representatives of the Republic of Indonesia on March 28, 2011 and has been discussed at the Panja (Working Committee) level since October 3, 2011. It replaces Nat No. 3 of 1997 on the Children's Court, which aims to create a court that offers real protection to children appearing in court. Any good legislation must contain philosophical, legal and sociological foundations. The academic article on the juvenile justice proposal explains the reasons for its creation, including:

a. Philosophical basis

The philosophical basis is the view of the life of the Indonesian nation in nation and state, namely Pancasila. The elaboration of the Pancasila values as an expression of justice, order and well-being of the Indonesian people. It states that children are the trust and gift of Almighty God, who has dignity and value as a whole person, so children are entitled to special protection to preserve their dignity and value, in particular to legal protection in the event of juvenile delinquency. Wet. This philosophical foundation is based on the values of Pancasila, namely the one true God and just and civilized humanity. As a valuable nation that upholds the values of religiosity, the problems of children should be solved through the law. with the highest priority. for children.

b. Psychological basis

The implementation of juvenile justice can benefit or harm children mentally, physically, and socially. Child crime is now increasing both quantitatively and qualitatively compared to other crimes; Almost all crimes that are similar to crimes committed by adults are also similar to crimes committed by children. Contributing factors typically include deteriorating economic socio-economic conditions, the impact of globalization on communications and

information, entertainment, scientific developments and changes in lifestyle. In addition, this problem is also caused by internal family factors such as lack of attention, affection and supervision from parents, guardians or foster parents towards children, making them easily influenced by negative associations in the community. Law No. 3 of 1997 on Juvenile Justice aims to protect and protect children from contact with the law, so that children have a long future and give children the opportunity to realize their identity. Coaching Become an independent, responsible and useful person. Beings for self, family, society, nation and state. However, its implementation portrays children as objects and the treatment of children in conflict with the law tends to harm children. In addition, the deferment law no longer applies! There is no right to legal values in society and no comprehensive special protection for children in contact with the law. Therefore, a paradigm shift in dealing with children who die in violation of the law is required based on the roles and responsibilities of the community, government and other state institutions that have the duty and responsibility to improve and ensure the welfare of children. to protect. Equipment with special protection for children. Children die when they come into contact with moisture.

c. Legal basis

According to the theory, wet people should develop according to their nature: maintain the nobility of human dignity, be justified, equality and freedom justified, the common good and the common good meaningful. Article 28 paragraph (2) of the 1945 Constitution states: "Every species has the right to survival, growth and development and the right to protection and discrimination." This is stated in Law No. 39 of 1999 on Human Rights and Law No 23 of 2002 on child protection. The principle of legal protection of children must be in accordance with the Convention on the Rights of the Child, as firmly established by the Government of the Republic of Indonesia through Presidential Decree No. 36 of 1990. This is enshrined in Law No. 1997 that there are many invisible points and that this is not in line with the principles of the Convention on the Rights of Species of Species that Indonesia has ratified.

d. The psychopolitical basis of society

Community psychopolitics is a state of social recovery in terms of the level of acceptance of resistance to laws and regulations. Crimes invisible to children are directly or indirectly the result of actions and deeds of adults who come into contact with children, or are part of the process of interaction of children with their environment, in which children cannot influence adults. This paradigm needs to be communicated to the community and law enforcement when it comes to children suspected of crimes.

The problem of children coming into conflict with the law, both as victims and children as perpetrators (subjects) of crimes, is a problem that almost all countries face on a regular basis. Juvenile justice is a form of justice that specifically deals with juvenile crime cases that are part of a system called juvenile justice, whose goal is to keep children out of wet trouble and to protect children who come into contact with wet trouble. The Juvenile Justice System Act (SPPA Act), which replaced the Juvenile Justice Act, defines an offending species as a species who is twelve but not yet eighteen years old and is suspected of child

abuse. a crime. This definition shows that the legislator has said that eight-year-old children cannot yet be held responsible for arbitrary acts, while an eight-year-old child does not yet understand what he is doing. Do. In the meantime, children who are 12 but not yet 18 and who are suspected of having committed a crime can still be referred to juvenile court. Specifically, Article 20 of the Juvenile Justice Act provides as follows: "If an offense committed by a child is committed before the child has reached the age of 18 and the child in question has reached that age, the case shall be referred to the Children's Court. Court for trial." Is that correct? If a child is 18 but not yet 21, the child can be brought before the juvenile court. It is not permitted to divide the age of children responsible under the juvenile criminal law into three categories: children under 12 years old, children between 12 and 14 years old and children between 14 and 18 years old. Children under 12 years of age suspected of a crime cannot be held responsible and will be returned to their parents or guardians. Article 21 of the Juvenile Justice Law provides that an investigator, a community counselor and a professional social worker must make the decision whether to return the transfer to a parent/guardian or to participate in educational, counseling and support programs in government agencies or social services Services. Charities should do this. . . . Work in social security institutions at central and regional levels for a maximum of six months. Children between the ages of 12 and 14 who commit violence may be prosecuted. Only measures can be taken against children in this category in accordance with Section 69 of the Youth Criminal Justice Act, namely H. Children under the age of 14 can only be prosecuted under criminal law. It is believed that children between the ages of 14 and 18 can be held accountable for the crimes they commit. Children who fall into this category can already be wrongfully convicted.

#### **Determination of the Age of Consent for Juvenile Delinquency in Indonesian Criminal Law**

When analyzing the findings on determining the age of consent for criminal responsibility of juveniles in Indonesian criminal law, the author draws on the theory of criminal responsibility. Ruslan Saleh said that criminal liability arises from this: as a continuation of the objective accusations consisting of crimes, and subjectively they have the right to be convicted for their actions. The basis for the existence of a crime is the principle of legality, and the basis for convicting the perpetrator is the principle of guilt. This means that the perpetrator will only be convicted if he made a mistake in committing the crime. When does criminal negligence occur?

Criminal liability leads to the conviction of a criminal if he has committed a crime and the conditions established by law are met. The existence of a prohibited (obligatory) act makes one liable for these crimes if the act is unlawful and the unlawfulness of the justification is undisputed. Liability for assets is only possible if there is sufficient legal capacity.

Based on the research conducted by researchers, it can be said that there are ideas to shift the age limit for criminal responsibility of children from the Criminal Code to the Juvenile Justice Act, and the last is the Juvenile Justice Act. The changing ideas include philosophical, legal and historical ideas. The provisions of the Criminal Code regarding the age limit of criminal responsibility

for children are constantly changing. First, the Criminal Code does not contain a minimum age for criminal responsibility of children, while the Beijing Rules recognize the concept of an age limit for criminal responsibility of minors. Second, there is no explanation for institutions that provide legal support for child protection other than the Criminal Code. And in ten thirds of cases, the juvenile justice provisions in the penal code are too simple and do not reflect the development of Indonesian society. Since the Criminal Code is historically quite long and overly simple and gives priority to the retributive theory in the reproduction of juvenile law, the provisions of the Criminal Code that specifically regulate juvenile justice, in particular Articles 45, 46 and 47, have been deleted and replaced. . by a more specific law, namely Law No. 3 of 1997 on the Children's Court. The Children's Court Act stipulates that children can be punished from the age of 8 but have not yet reached the age of 18 and have never been married.

In criminal law, the balancing of interests is primarily concerned with the question of the age limit for criminal liability. The Children's Court Act sets the age limit for criminal responsibility at 8 to 18 years. The presence of an age limit in the Children's Court Act is seen as an improvement over the provisions of the Criminal Code, which do not regulate the minimum age at all. Looking at the provisions of international instruments, the establishment of a limit between 8 and 18 years is consistent with the provisions of the Standard Minimum Rule for the Application of Juvenile Justice (the Beijing Rules). The difference in determining the minimum and maximum age of criminal responsibility for children is actually not impossible. The various of these criteria are adapted to the situation, circumstances and historical and cultural background of the respective country. Rule 4 of the Beijing Rules states that in a legal system that recognizes the age of responsibility, the general age of responsibility shall not be set too low, taking into account factors of emotional, mental and intellectual maturity. from children.

The philosophical considerations for setting the age limit for criminal responsibility in the Children's Court Act include: The setting of the age limit for criminal responsibility is based on the idea that children at this age already have a psychological sense of responsibility. There is a reason for forgiveness for children who have committed crimes but are not yet 8 years old. Increase legal protection for children. In normal juvenile justice systems, an 8-year-old child could take responsibility for his actions sociologically, psychologically, and educationally. Philosophical ideas can also be found in the text of Law No. 3 of 1997 on the Children's Court in the explanatory part, which explains that it is necessary to take into account the position of children with all their peculiarities and characteristics, so there is a need for differences between Treatment and harm. to provide the right direction for the development and protection of children. and the 1957 suspicion that the government had sent several experts from various foreign ministries to negotiate a practical agreement between prosecutors, police and judiciary to give special treatment to children who initiate crimes. When the idea became a historical idea in the minutes of the working session of the Commission on Juvenile Justice with the Minister of

Justice of the Republic of Indonesia, the age limit for criminal responsibility of children was moved from the age limit established in the Juvenile Justice Act. Action. Juvenile Justice Act. Criminal law.

There are philosophical ideas in setting the age limit for criminal responsibility of children in the SPPA Law. These ideas are as follows:

- a. Although we view adolescence as a critical period for children's growth and development, they are still psychologically very vulnerable to environmental influences.
- b. Restorative and diversion approaches are suitable for use in the juvenile justice system.
- c. Avoid stigmatizing children who come into contact with wet conditions.
- d. After fourteen years, this country could be deprived of its independence. The Twelve will therefore be prosecuted, but their independence cannot be confiscated as a crime.
- e. This marital status should not be a reason to change the status of an individual who actually belongs to a species; Who is called a species should only be limited by time, not marital status.

In addition, the postponement of the age limit for juvenile delinquents also includes legal ideas from the provisions of the following regulations:

- a. The setting of the age of criminal responsibility for children is influenced by the 2007 UN Committee on the Rights of the Child's General Comment No. 10, which recommends that each country raise the minimum age of criminal responsibility from 12 to a higher level.
- b. Convention on the Rights of Species.
- c. The Beijing Rules on Age Limit Provisions for Criminal Responsibility of Children.
- d. Article 28B, paragraph (2), Article 28G and Article 28I of the 1945 Constitution of the Republic of Indonesia relate to the protection of human rights.
- e. The Human Rights Law No. 39 of 1999 is the ultimate solution due to its provisions on the protection of human rights and the provisions on punishment of children.
- f. National No. 23 of 2002 on child protection. Child protection.
- g. The Constitutional Court's solution in the Decision No. I/PUU-VIII/2010 of the Constitutional Court, which exceeds the age limit from 8 years to 12 years.

In addition, the historical ideas regarding the age limit of criminal responsibility for juveniles in the SPPA law are:

- a. The UN committee called for an increase in the age of responsible children.
- b. UNICEF sets the age of liability at more than 14 years; Almost all contracts deviate from international standards that require a minimum age of 14 for children. This is considered customary law.
- c. The marital status debate had become a discussion about setting the boundaries for classifying children as adults. However, it was found that for immature children (under 18 years of age), marital status could not be used as a measure of whether a child was an adult or not.

d. The decision MKNomor I/PUU-VIII/2010 and the debate in the minutes of the SPPA Law are also historical ideas about the origins of the SPPA Law.

The difference in the age limit at which children can be held criminally responsible depends on the history and culture of a country. Responsibility for children can be measured by the moral and psychological maturity of children. Above all, the age of criminal responsibility for children should not be set too low or not set at all, as this makes the idea of criminal responsibility meaningless. Article 21 of the SPPA Law states that children under 12 cannot be held criminally liable. The explanatory memorandum to Article 21 states that children under the age of twelve cannot be held responsible for their actions for sociological, psychological and educational reasons. The Protocol to the SPPA Act sets out several theories or reasons why children under the age of twelve cannot be held criminally responsible, namely: (a) in this age group, children still require the guidance of both parents, (b) the responsibility This The age should be reached at an age sufficient for children to understand the consequences of complex crimes. (c) at this age range of emotional maturity, the nature of mental and intellectual protection is unstable and (d) in the sense of the human rights treaty: humane. the imposition of criminal liability is 14 years. The provisions of Article 21 of the SPPA Law are consistent with the provisions of Article 40(3)(a) of the Convention on the Rights of the Child, which states that the establishment of the minimum age for children is the basis for the creation of the rights under Art . can be prosecuted. Children who have not yet reached the required minimum age are not allowed to move around when it is wet.

Looking at the theory of criminal liability, criminal liability is the responsibility of people for the crimes they commit. So there is criminal liability because someone has committed a violent crime. If the community has agreed to oppose a particular action, this is reflected in an obstacle to the action. In a community referral, the perpetrator is held liable because the perpetrator could actually have done something differently in this incident. Criminal liability is essentially a mechanism created by criminal law to respond to those affected by an agreement to manipulate a particular act. The subject of criminal liability is the subject of a crime. On this basis, it was discussed that the establishment of the new age limit for criminal responsibility of children in Law No. 11 of 2012 on Juvenile Justice has already regularly harmed the interests of children. This is made clear by raising the minimum age of criminal responsibility for children from 8 to 12 years; The "unmarried" rule no longer exists. so it is not discriminatory. The rule that children under 12 may only be heard as a basis for the investigator's decision is not part of the criminal procedure. In addition, youth criminal law also stipulates that new crimes can be attributed to children between the ages of 14 and under 18. Providing restorative justice and diversionary options also increases the likelihood of such a conviction. Therefore, the author argued that the source of the rule for determining the age of consent in the criminal responsibility of children in Indonesian criminal law is consistent with the theory of criminal responsibility.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Conclusion**

- a. Determining the minimum age at which children can be considered adults is important because a legal entity can only bring a lawsuit once they have reached the age of majority. The pluralism of the age of consent can lead to ambiguity in determining when someone is declared of age and can be held responsible for the crimes they commit.
- b. The provisions of the Criminal Code regarding the age limit of criminal responsibility for children are constantly changing. The disadvantages are: First, the Criminal Code does not set a minimum age for juvenile justice, while the Beijing Rules recognize the concept of an age limit for juvenile justice. Second, there is no explanation for institutions that provide legal support for child protection other than the Criminal Code. And in ten thirds of the cases, the juvenile penal provisions in the criminal code are too simple and do not reflect the development of Indonesian society.

### **Recommendations**

- a. In this case, the state is expected to be guided by international legal instruments and national legal instruments in the field of juvenile justice, safe harmony and legal certainty.
- b. Institutions that can treat children professionally so that they can be relieved of their duties, to maximize the implementation of existing legislation, so that child rights policy, who is the perpetrator, becomes an important part of the legal protection of children, as well as measures for systematic Take problem management measures to address the problem of delinquent children.

## REFERENCES

- Ali, M, *Dasar-Dasar Hukum Pidana*, Raja Grafindo, Jakarta, 2011
- Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Universitas Diponegoro, Semarang, 2000, hlm. 38
- Hidaya, B, *Pemidanaan Anak diBawah Umur*, Alumni, Bandung, 2010.
- Lihat Konsideran Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak
- Lihat Penjelasan Pasal 4 Ayat 1 UU Pengadilan Anak
- Lihat Penjelasan Undang-Undang Nomor 3 Tahun 1997 tentang Pengadilan Anak
- Maidin Gultom, *Perlindungan Hukum Terhadap Anak*, Refika Aditama, Bandung, 2006, hal 84.
- Naskah Akademik RUU Sistem Peradilan Pidana Anak, hlm. 7-9
- Pangemanan, J. B. *Pertanggungjawaban Pidana Anak Dalam Sistem Peradilan Pidana Indonesia*, *Lex Et Societatis*, III(1), (2015).
- Rainma Rivardy Remy Runtuwene, *Pertanggungjawaban Pidana Korporasi Sebagai Suatu Perkembangan Tindak Pidana*, *Jurnal Lex et Societatis*, Vol. V/No. 2/Mar-Apr/2017
- Rapat Panja Komisi III DPR RUU tentang Sistem Peradilan Pidana Anak, Kamis 17 November 2011, hal 21.
- Rasetyo, T, *Hukum Pidana*, Raja Grafindo, Jakarta, 2012.
- Risalah Rapat Dengar Pendapat RUU Sistem Peradilan Pidana Anak Selasa 18 Oktober 2011, hal 6.
- Risalah Rapat Dengar Pendapat Umum Panja RUU Sistem Peradilan Pidana Anak dengan Unicef Representative dalam acara menerima masukan terkait dengan RUU tentang Sistem Peradilan Pidana, Selasa 21 Februari 2012, hal 3.
- Risalah Rapat Dengar Pendapat Umum Panja RUU tentang Sistem Peradilan Pidana Anak tanggal Selasa, 21 Februari 2012.
- Risalah Rapat Dengar Pendapat Umum Panja RUU tentang Sistem Peradilan Pidana Anak tanggal Selasa, 21 Februari 2012.
- Risalah Rapat Kerja Pansus Rancangan Undang-Undang Peradilan Anak, 27 September 1996, hal 38.
- Risalah Rapat Kerja Pansus Rancangan Undang-Undang Peradilan Anak, Rabu, 9 Oktober 1996, hal 4.
- Risalah Rapat Panja Komisi III DPR RI tanggal Rabu, 21 Maret 2012
- Risalah Rapat Panja Komisi III DPR RI tanggal Selasa, 14 Februari 2012