

The Legal Analysis of Age Limitations of Child Victims on Criminal Actions in Justice Perspective

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Abstract.

The purpose of this study was to determine and analyze the impact of changes in the age limit of child victims, provisions for the age limit of child victims in Islamic law and age limits for victims of crimes of decency with justice. The approach method in this study uses a doctrinal research method (juridical normative) and a legal psychological approach method, with a descriptive analytical research specification. In collecting data used literature study method with qualitative data analysis. From the results of the study, it was concluded that the change in the age limit of child victims in positive law in Indonesia in 2002 from 15 (fifteen) to 18 (eighteen) years had an impact on increasing the number of cases of decency crimes. Even criminal acts of decency are dominated on the basis of reports from the parents of the victim's child who do not approve of the courtship (consensual) relationship between the victim's child and the perpetrator of the crime of decency. This has implications for the conscience of justice for law enforcement officers to demand or make decisions against the perpetrators, there is a sense of injustice, there is a sense of inadequacy when they have to demand or impose punishment, because actually the crime was also desired by the victim. So for the sake of realizing justice, the age of the child victim of 18 (eighteen) years needs to be reconsidered for revision or change.

Keywords: Age; Child; Limit; Justice.

1. Introduction

Crimes or criminal acts can basically happen to anyone and can also be committed by anyone, be it men, women, or children. They are the young generation is one of the human resources who have the potential and successor to the ideals of the nation's struggle, children have a strategic role and have special characteristics and characteristics, and need guidance and protection in an effort to guarantee growth and physical, psychological and social development as a whole, in harmony, harmonious and balanced.¹ Children are very vulnerable or prone to become victims of criminal acts of decency. Based on the applicable laws and regulations, there are certain age limits, both regarding the age of children as victims and children as perpetrators of criminal acts.

The study in this paper will be limited in terms of the age limit of Child Victims in criminal acts of morality as regulated in Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection.

Justice is basically a relative concept, everyone is not equal, fair according to one is not necessarily fair to the other, when someone asserts that he is doing a

¹ Dwi Mahrany, Friana. "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pencabulan" (2021). Url: <http://repository.unissula.ac.id/21238/>

justice, it must be relevant to public order where a scale of justice is recognized. The scale of justice varies greatly from one place to another, each scale is defined and fully determined by the community according to the public order of the community.²

Based on such facts or facts, the author examines the age limit of Child Victims in criminal acts of decency based on the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, which was subsequently amended by Act No. 35 of 2014 concerning Amendments to the Law. Act No. 23 of 2002 concerning Child Protection. The purpose of this study is to find out and analyze the impact of changing the age limit of Child Victims with the enactment of the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection which was subsequently amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection in law enforcement;

2. Research Methods

The research method in this study is a doctrinal approach (juridical-normative) and a legal psychological approach. The research specification is descriptive analytical, data collection method using literature study with qualitative data analysis methods.

3. Results and Discussion

3.1. Impact of Changes in the Age Limit of Child Victims With the Enactment of the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and Its Changes in Law Enforcement

3.1.1. Provisions on the Age Limit for Child Victims before Act No. 23 of 2002 concerning Protection comes into effect

Based on the provisions regarding decency crimes regulated in the Criminal Code, it turns out that the age limit of the victim's child is 15 (fifteen) years as stipulated in Article 287 and Article 290 of the Criminal Code. While the criteria for "not yet mature" as stipulated in the provisions regarding crimes or criminal acts of decency Article 292,293,294,295, and 297 of the Criminal Code, based on Article 45 of the Criminal Code the definition of "not yet an adult" is as follows:³In the case of a criminal prosecution of a minor for committing an act before the age of sixteen, the judge may order that the guilty be returned to his parents, guardians or guardians without any punishment or order that the guilty be handed over to the government without any punishment. , if the act is a crime or one of the offenses based on articles 489, 490, 492, 496, 497, 503 – 505, 514, 517 – 519, 526, 531, 532, 536, and 540 and two years have not passed since it was declared guilty of committing a crime or one of the offenses mentioned above, and the verdict has become final; or impose a sentence on the guilty.

Thus, it can be concluded that the age of the victim of a crime of decency as regulated in the Criminal Code is 15 (fifteen) years or 16 (sixteen) years.

²M. Agus, Santoso. (2014). *Hukum, Moral & Keadilan Sebuah Kajian Filsafat Hukum*. Jakarta: Kencana, p. 85.

³Article 45 of the Criminal Code, p.23.

The child's age limit of 15 (fifteen) years or 16 (sixteen) years has an impact on law enforcement. During the time when a crime or decency was applied using the Criminal Code, there was not a single case of a crime of decency which was committed on the basis of consensual or decency crimes committed by 2 (two) people who were dating. As a result, in law enforcement against defendants, perpetrators of criminal acts of decency tend to be high, both demands and decisions.

3.1.2. Provisions on the Age Limit for Child Victims after Act No. 23 of 2002 concerning Child Protection is enacted which is further amended by Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection 35 of 2014 concerning Child Protection.

The need for law enforcement on child protection is inseparable from the importance of the continuity of the existence of the nation and state in the future. Children are buds, potentials, and the younger generation to succeed the ideals of the nation's struggle. Therefore, every child needs to have the widest opportunity to grow and develop optimally, physically, mentally, socially, and with noble character.⁴

As for what is meant by "Children" in Article 81 and Article 82 of Act No. 23 of 2002 concerning Child Protection, Children are victims of criminal acts of decency. Thus, the age limit for children who are victims of criminal acts of decency since the enactment of Act No. 23 of 2002 concerning Child Protection is 18 (eighteen) years.

Based on the discussion regarding the age limit for children as regulated in Act No. 23 of 2002 and its amendments, it can be concluded that since the enactment of Act No. 23 of 2002 concerning Child Protection, until now the provisions regarding the age limit of children are 18 (eighteen) years. , then related to the criminal provisions for criminal acts of decency referred to as "children" in Article 81 and Article 82 of Act No. 23 of 2002 concerning Child Protection and its amendments, children are victims of criminal acts of decency.

Based on the discussion regarding the age limit of child victims of moral crimes before and after the enactment of Act No. 23 of 2002 concerning Child Protection and its amendments, there is a change in the age limit of child victims, namely before the enactment of Act No. 23 of 2002 concerning Child Protection and the change in the age limit of the child victim to 15 (fifteen) years or 16 (sixteen) years, while after the enactment of Act No. 23 of 2002 concerning Child Protection and the change in the age limit of the child victim to 18 (eighteen) years.

3.1.3. Impact of Changes in Child Victim's Age Limit

As discussed in the previous sub-chapter, it turns out that the provisions regarding the age limit for children who are victims of criminal acts of decency based on positive law in Indonesia have changed according to the times. The milestone of changing the age limit for children who are victims of moral crimes occurred on October 22, 2002 when Act No. 23 of 2002 concerning Child Protection was enacted

⁴ Arief Ardiansyah, Jawade Hafidz. "Penegakan Hukum Pemidanaan Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur (Studi Putusan Nomor: 36/Pid.Sus/2017/PN.Pwd)". October. Url: <http://jurnal.unissula.ac.id/index.php/kimuh/article/view/8863>

and the amendment was 15 (fifteen) years or 16 (sixteen) years. Meanwhile, the age limit for children who are victims of moral crimes after the promulgation of Act No. 23 of 2002 concerning Child Protection on October 22, 2002 is 18 (eighteen) years.

Reflecting on the psychology of girls aged 15 (fifteen) years and 18 (eighteen) years, of course children affect the behavior of children who have the potential to commit decency crimes which of course lead to law enforcement of decency crimes, it can be ascertained by the existence of the change in the age of the victim's child from 15 (fifteen) years to 18 (eighteen) years will have an impact on law enforcement for criminal acts of decency.

The impact of sexual violence on children includes not wanting to go to school and feeling low self-esteem, withdrawing from relationships, being irritable, and aggressive. After the subject and his family underwent therapy for 6 months, the behavior progressivity in the form of children returning to school, being able to do basic math problems, smiling and laughing easily, wanted to go back to playing with friends, even though the intensity was not as good as before.⁵

The impact of changing the age limit of child victims on law enforcement for criminal acts of decency, among others, is as follows:

- The increasing number of cases of criminal acts of decency because the age range of Child Victims is longer, namely from the age limit of 15 years to 18 years.
- The increasing number of cases of criminal acts of decency on the basis of reports from the parents of the victim's child because the parents of the victim's child do not approve of the courtship relationship between the victim's child and the perpetrator of the crime of decency.

Thus, it can be concluded that with the change in the age limit of child victims after the promulgation of Act No. 23 of 2002 concerning Child Protection from 15 (fifteen) years to 18 (eighteen) years, more and more cases of decency crimes began with sexual relations like or dating. This is usually due to the disapproval of the courtship relationship between the victim's child and the perpetrator, then the victim's child's parents report it to the police.

Whereas in the author's opinion, cases of criminal acts of decency based on consensual/dating relationships should not need to be criminalized. This is due to mere considerations of justice, it seems unfair to demand or punish people who commit acts of sexual intercourse based on a courtship/consensual relationship. This criminalization occurred because of the change in the age limit of the victim's child from 15 (fifteen) years to 18 (eighteen) years since the enactment of Act No. 23 of 2002 concerning Child Protection and its amendments.

3.2. Provisions on Child Age Limits in Islamic Law

Baligh is a term in Islamic law that indicates a person has reached maturity. *Baligh* is taken from Arabic which means "until" which means that a person's age has reached the stage of maturity. The basis for *taklif* (legal imposition) on a *mukallaf* is reason and understanding. A *mukallaf* can be burdened by law if someone has reason and can understand *taklif* well which is addressed to him.

⁵ Dinie Ratri Desiningrum, Nailul Fauziah. "Psikologi Islami Dalam Penanganan Anak Korban Kekerasan Seksual". (2018). Url: <http://jurnal.unissula.ac.id/index.php/psnpu/article/view/3787>

Therefore, people who do not or have no sense are not subject to taklif because they are considered unable to understand the taklif of al-Syar'i.

Legal Proficiency Criteria (*Aqil Baligh*) *Madzhabul Arba'ah* Perspective Legal competence or in Islam called *Aqil Baligh* is a term that is widely used by fiqh experts because it is a term that is closely related to a person's age. The age of puberty in the perspective of *ulama' fiqh* which is used as a standardization of the child's age to become a *mukallaf*, of course, it will not be out of the context of the definition of age of puberty raised by Hadith scholars in the book of Hadith itself.

Therefore, the difference between the ulama' regarding the limits of a person being said to be legally capable (*Baligh*) must be addressed properly to consider the benefit. A child will not be subject to a *hadd* punishment for the crime he has committed, as there is no legal liability on a child at any age until he reaches puberty, the *qadhi* will only have the right to rebuke his mistake or set some restrictions on him which will help correct him and stop him from make mistakes in the future.⁶

3.3. The Age Limit for Children Victims of Criminal Crimes with justice

Comparing the age limit of child victims of decency crimes in law enforcement in Indonesia, namely when the age limit of child victims is 15 (fifteen) years, the criminal disparity is not too high, while when the age limit of child victims changes to 18 (eighteen) years, criminal disparity occurs be very high. This certainly needs to be watched out so as not to cause conflict between criminals in prisons.

The problem of sexual crimes against children arising from the enforcement of criminal law is oriented to the protection of victims, especially justice, but rather to the application of sanctions against the perpetrators. As a result, people are not afraid to commit decency crimes, even more perpetrators of rape and sexual abuse of children.⁷

Seeing the impact of law enforcement with the change in the provisions on the age limit of child victims from 15 (fifteen) years or 16 (sixteen) years to 18 (eighteen) years, it turns out that more cases of decency crimes are reported because of the disapproval of courtship between the perpetrator and the victim's child by the parents of the victim's child compared to cases of criminal acts of decency without consensual relationships. This law seems to be unfair when it comes to prosecuting and imposing punishment for the perpetrator of a crime because the act is actually also desired by the child of the victim.

Justice for children as victims of criminal acts is transformed from a restorative change into a substantive justice format. That's how the victims and their families really feel fair. A sense of justice that meets the needs of victims such as future compensation for victims and the alienation of perpetrators from the environment

⁶Abdurrahman, Doi. (1992). *Tindak Pidana dalam Syari'at Islam, alih bahasa Sulaiman Rasjid*. Jakarta: Rineka Cipta, p. 16.

⁷Sri Endah Wahyuningsih. "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kesusilaan Dalam Hukum Pidana Positif Saat Ini". Vol 3, No.2 (2016). Url: <http://jurnal.unissula.ac.id/index.php/PH/article/view/1407>

of victims of violence. Legal protection is the fulfillment of a sense of justice for children in the social, emotional and psychological dimensions of children.⁸

In addition, it also refers to the age of 15 (fifteen) years of age for a girl based on the holy book of Islam, namely the Qur'an, according to the author's opinion, the age limit of the child victim is 18 (eighteen) years as regulated in the Law. -Act No. 23 of 2002 concerning Child Protection and its amendments are no longer relevant to the times. This is due to the fact that the law enforcement of criminal acts of decency with the age limit of the victim's child being 18 (eighteen) years is mostly based on a consensual/dating relationship. So it becomes unfair when law enforcement officers have to process their cases and demand and impose penalties on perpetrators of criminal acts.

This opinion of the author is certainly not without reason, there are several considerations so that the author argues that the age limit of the child victim of 18 (eighteen) years is no longer relevant to the development of the era in the law enforcement process, namely as follows:

- The emergence of a very striking criminal disparity for fellow perpetrators of criminal acts of decency, this raises concerns that undesirable things will happen in the Correctional Institution.
- Leading to overcapacity in Correctional Institutions, this of course results in the swelling of the State Expenditure Budget for food costs for prisoners and convicts.

Based on these considerations, it is only natural that the provisions on the age limit of child victims in the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection are revised by lawmakers in order to realize a sense of community justice.

4. Conclusion

Based on the results of the discussion in this paper, it is only natural that the provisions on the age limit for children who are victims of decency crimes in the Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Legislations of the Republic of Indonesia of 2016 concerning the Second Amendment to Act No. 23 of 2002 concerning Child Protection became a law, which was revised by lawmakers in order to realize a sense of community justice.

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⁸Kismanto Kismanto, Anis Mashdurohatun. "Keadilan Hukum Anak Korban Tindak Pidana Kekerasan Seksual Di Kabupaten Kendal". Vol 12, No.1 (2017). Url: <http://jurnal.unissula.ac.id/index.php/jhku/article/view/1833>

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