



Legal Uncertainty Due to Differences in Children's Age Limits in Legislation and Harmonization Efforts to Prevent Child Discrimination

Gultom Rosmaida Feriana¹, Evita Isretno Israhadi²

¹⁻² Universitas Borobudur

Email: ferianagultom@gmail.com¹, evita_isretno@borobudur.ac.id²

Abstract. *The differences in the age limits of children as stipulated in several Indonesian laws and regulations—such as the Juvenile Criminal Justice System Law (UU Sistem Peradilan Pidana Anak/SPPA), the Child Protection Law (UU Perlindungan Anak), and the Human Rights Law (UU HAM)—have created significant legal uncertainty. These inconsistencies pose serious implications for the protection of children's rights, particularly for those who are entangled in legal conflicts. One of the most critical impacts is the potential for injustice in the application of restorative justice and diversion programs, which should be guided by the principle of the best interests of the child. Discrepancies in age definitions may also result in unequal treatment in legal proceedings and hinder access to appropriate legal remedies and rehabilitation services. For instance, a child considered underage by one law may be treated as an adult under another, leading to inconsistent judicial decisions, discrimination, and psychological harm. Furthermore, this lack of regulatory harmony undermines the credibility and consistency of the justice system in handling cases involving children. The principle of legal certainty, which is fundamental in any just legal system, cannot be upheld if such foundational definitions remain fragmented. Therefore, there is an urgent need for harmonization and alignment of all regulations related to the legal age definition of a child within the Indonesian national legal framework. Establishing a uniform age standard is essential to ensure fair treatment, protect children's rights comprehensively, prevent discriminatory practices, and improve the effectiveness of restorative justice, rehabilitation, and child protection mechanisms in Indonesia.*

Keywords: *Age Limits, Child Discrimination, Harmonization, Legal Uncertainty, Legislation.*

1. INTRODUCTION

Children are an important part of social, national, and state life that must receive protection for optimal growth and development (Fitriani, 2016). The community's expectation for children is that they can live in a decent, prosperous, happy environment, and be protected from various threats, including exploitation, violence, and involvement in unlawful acts (Arliman, 2017). In the social environment, families and the environment have an important role in forming kids' morals to prevent them from engaging in abnormal conduct. Yet, the field's reality reveals that many youngsters continue to run afoul of the law, both as offenders and victims, necessitating extra care in the criminal justice system.

safeguarding children, especially those who are in legal trouble, has been regulated by various national and international legal instruments (Haling et al., 2018). The Indonesian Constitution in Article 28B, every child has the right to life, growth, and development as well as protection from discrimination and violence, paragraph (2) of the 1945 Constitution. In addition, various laws such as the Child Protection Act and In order to ensure that minors receive particular care during the judicial process, the Juvenile Criminal Justice System Act (commonly known as the SPPA Act) has also given them legal guarantees. The primary

strategies used in the criminal justice system to guarantee that children who are in legal trouble do not forfeit their rights and can reintegrate into society are restorative justice and diversion without negative stigma (Maulana & Widjajanti, 2024).

The phenomenon of children in conflict with the law is a problem that continues to grow in various countries, including Indonesia (Lewoleba & Fahrozi, 2020). In reality, many children are involved in criminal acts, both as perpetrators and victims, due to various factors such as an unfavorable family environment, negative social influences, and economic conditions that force them to commit unlawful acts (H. H. Setiawan et al., 2020). Children who are caught in the criminal justice system often face social stigma, which can hurt their psychological development and future. Therefore, a special approach in For kids who are in trouble with the law, the juvenile criminal justice system is crucial still receive their rights as individuals who are in the development stage.

In law, unlawful acts committed by children are often referred to as juvenile delinquency (Harefa & Ndruru, 2022). This term is used to distinguish unlawful crimes perpetrated by adults versus crimes committed by children. The difference lies in the legal approach applied, where in cases of juvenile delinquency, the law emphasizes aspects of protection, guidance, and rehabilitation compared to repressive punishment. It is in line with the principles of restorative justice and diversion which aim to prevent children from the judicial process that can have a negative impact on their future (Arsawati & Gorda, 2020). Thus, the juvenile criminal justice system must pay attention to the special needs of children and provide different treatment compared to adult criminals.

Legal ambiguity is caused by Indonesia's inconsistent age limits for children under different laws, particularly for kids who are in legal trouble. The Human Rights Law Number 39 of 1999 (henceforth referred to as the Human Rights Law) in Article 1 number 5 states that Any person under the age of eighteen who is not married is considered a child, even unborn children provided it serves their best interests. The Child Criminal Justice System Law (UU SPPA) Number 11 of 2012 states in Article 1 Number 3 that children who are 12 to 18 years old are deemed to be in violation of the law. However, a child is defined as an individual under the age of 18 under Article 1 Number 1 of the Child Protection Law (henceforth referred to as the Child Protection Law) Number 35 of 2014, which changes Law Number 23 of 2002 without additional requirements regarding marital status.

The difference in the age limits of children in the three laws gives rise to different legal treatment of children in conflict with the law. In the Human Rights Law, someone who marries before 18 is no longer categorized as a child, so they can lose certain protections. Meanwhile,

the SPPA Law limits the age of children in criminal justice between 12 and 18 years, which means that children under 12 who commit crimes cannot be processed criminally, but must receive social protection and special guidance. On the other hand, the Child Protection Law does not include the requirement of "not married" as in Human Rights Law, so that all individuals under 18 years of age are still considered children and have the right to protection, including if they are married (Setiawan & Fatmawati, 2024).

This inconsistency in the rules has the potential to create uncertainty in the implementation of legal protection for children. For example, in the case of a child under 18 who is married, their treatment in the justice system may differ depending on the law used as a reference. If referring to the Human Rights Law, the child is no longer considered a child because he is married, but in the Child Protection Law, his status as a child still applies. In addition, the minimum age limit of 12 years in the SPPA Law also raises questions about the protection mechanism for children under that age who are involved in criminal acts. Therefore, harmonization of regulations is needed so that a more consistent age limit for kids can offer legal stability and guarantee the best possible protection for kids who are in legal trouble.

Legal confusion arises when evaluating the status of children who are in dispute with the law due to inconsistent age limits for children in different legislation. The criminal court system may treat people differently as a result of the definitional discrepancies between the Human Rights Law and the Child Protection Law, where children of the same age can receive different legal treatment depending on the regulation used as the basis. It can have an impact on injustice in law enforcement, particularly for married children under the age of 18, who may occasionally lose their legal protections since they are no longer regarded as children under the Human Rights Law. Furthermore, the 12-year-old minimum age limit in the Child Protection Law poses a risk that children under that age who commit crimes do not receive adequate legal protection, because there is no clear mechanism regarding guidance or intervention for them. Therefore, this regulatory inconsistency is not only confusing for law enforcement officers but can also harm the rights of children who should receive consistent and comprehensive legal protection.

So from the explanation above, this study has a high urgency considering the importance of harmonizing regulations regarding the age limit of children. Established laws and rules to establish legal clarity and equitable treatment for kids who are in legal trouble. Differences in how children are defined in various regulations not only cause confusion in the application of the law but also risk hindering optimal legal protection for children. By examining and offering solutions to this disharmony, this study can strengthen legal protection for children facing the

criminal justice system to guarantee that the SPPA Law's diversionary measures and restorative justice principles are followed can be implemented effectively. In addition, the results of this study are expected to be used as recommendations for policymakers in drafting regulations that are more aligned and in favor of the best interests of children.

2. RESEARCH METHODOLOGY

This study employs a normative legal technique, which is a type of research that focuses on establishing legal concepts and legal norms found in laws and regulations. The approach used includes a statute approach to identify and analyze differences in the age limits of children in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 39 of 1999 concerning Human Rights, and Law Number 35 of 2014 regarding Amendments to Law Number 23 of 2002 concerning Child Protection. Furthermore, this study employs a conceptual method to comprehend the appropriate application of legal protection for children who are in confrontation with the law. This study's data sources include relevant legislation and regulations, relevant legal doctrines, and the results of previous research on the juvenile justice system so that the resulting analysis can provide a comprehensive picture and appropriate solutions to the problems studied.

3. RESULT AND DISCUSSION

3.1 Inconsistency of Child Age Limits in Legislation

In the Indonesian legal system, the definition of a child is not uniform, which causes differences in the application of legal regulations related to child protection (Ruzaipah et al., 2021). For example, the Human Rights Law (UU HAM) defines a child as someone who is under 18 years of age and unmarried, while the Child Protection Law does not require marital status in determining a child's age. Meanwhile, in juvenile criminal justice, According to the Juvenile Criminal Justice System Law (UU SPPA), youngsters who are in legal trouble must be between the ages of 12 and 18. This disparity in definition demonstrates that Indonesian law's age restriction for minors is still not clearly universal, necessitating harmonization to avoid creating legal ambiguity.

Inconsistencies in The minimum age at which children can have a direct impact on legal protection for children, especially those in violation of the law. The SPPA Law allows for the lawful processing of 12-year-olds in the criminal justice system, but from a child protection perspective, they are still included in the category that must receive special protection (Ariani, 2014). Besides, in the Human Rights Law, the status of children also depends on the conditions

of marriage, so children who marry before the age of 18 can lose the protection they should receive. This inconsistency has the potential to cause differences in legal treatment for kids who are in legal trouble and contribute to the juvenile criminal justice system's unfairness.

In terms of justice and the defense of children's rights, the inconsistent age restriction for children in different rules makes implementation difficult. Confusion over how to treat children who are in legal trouble is one significant effect whether they should be treated as children who receive special protection or can be processed like adults. In addition, the requirement of "not yet married" in the Human Rights Law can also have an impact on the loss of protection rights for children who marry underage, especially in cases of child marriage which still occur frequently in Indonesia. This inconsistency also has the potential to weaken the effectiveness of the implementation of diversion and restorative justice concepts, which ought to be the primary strategy in the juvenile criminal court system.

In Article 1 number 5 of Law Number 39 of 1999 concerning Human Rights, a child is defined as someone who is under 18 years of age and unmarried (Marzuki & Siroj, 2022). This definition focuses on two important aspects age and marital status. With the requirement of "unmarried," this law seeks to provide protection for children within that age range, as well as avoid exploiting the child's marital status to reduce their protection rights. The implication of this rule is that children who marry before reaching the age of 18, although biologically still included in the category of children, will lose the legal protection rights granted to them (Ilma, 2020). It raises the potential for a void between the rights of unmarried children and children who are forced to marry at an early age, thus requiring further attention to ensure equal protection for all children.

In contrast to Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning Child Protection Article 1 number 1 defines a child as an individual who is not yet 18 years old, without requiring marital status (Marhayani et al., 2024). This definition is more inclusive, covering all individuals within that age range, regardless of whether they are married or not. The consequence of eliminating the "unmarried" requirement is more comprehensive protection for all children, including those who marry under the age of 18. However, this can also pose challenges in practice, because child marriage often occurs due to culture or social pressure, which has the potential to ignore their rights to legal protection (Sukadi, 2024). Therefore, clear regulations and assistance for children who marry at an early age are important so that the legal protection they receive is maintained.

Children in conflict with the law are defined as individuals between the ages of 12 and 18 under Article 1 Number 3 of Law Number 11 of 2012 regarding the Juvenile Criminal

Justice System. This rule states that a minor may be held legally accountable for anything if they are at least 12 years old the crimes they have committed (Oktalisa, 2016). The implication of this minimum age limit is that children under the age of 12 cannot be processed in the criminal justice system, even though they may have committed a crime. This approach aims to differentiate the treatment between children and adults, considering the psychological and developmental conditions of children which are different from those of adults. However, this also raises potential problems in terms of prevention and rehabilitation for younger children involved in crimes, because they are not included in the scope of this regulation.

The 12-year-old minimum age set by the Juvenile Justice System Law has significant implications for the juvenile criminal justice system. At this age, a child is considered to have the capacity to understand and be responsible for their actions, even though they are still in the developmental stage. Therefore, children aged between 12 and 18 years who are involved in criminal acts will be processed through a mechanism that focuses more on rehabilitation than punishment alone. The legal process applied is different from adults, which emphasizes criminal punishment. This approach reflects the principle of restorative justice which is expected to provide children with the opportunity to change and avoid the lifelong stigma that is often received by adults involved in crime.

Inconsistencies in the methods used to provide children with legal protection are evident when comparing the age restrictions for children in the Human Rights Law, the Child Protection Law, and the Child Protection and Child Protection Law. The Human Rights Law links age to marital status, while the Child Protection Law provides a broader definition without limiting marital status. On the other hand, the Child Protection and Child Protection Law provides a different age limit, namely setting a minimum age of 12 years to be legally accountable for criminal acts. This inconsistency creates confusion in the application of the law, especially in terms of whether children who are married under 18 years old still receive full protection or not, and how the juvenile criminal justice system manages children involved in criminal acts under the age of 12 years. Therefore, it is important to harmonize these three regulations to ensure that there is harmony in providing maximum safeguarding for children who are in legal trouble.

To overcome the inconsistency of the age limits for children regulated in various laws, it is necessary to harmonize the determination Understanding what constitutes a child, particularly as it relates to juvenile criminal justice. One possible remedy is to modify the age restriction imposed in the Child Protection and Child Protection Law with the definition of a child in the Child Protection Law which does not differentiate based on marital status. Thus,

all children under the age of 18 can receive the same legal protection, both in the social, educational, and legal fields. In addition, there needs to be increased awareness and training for law enforcement officers regarding the protection of children's rights, especially related to age and marital status, so that the application of the law becomes fairer and in accordance with more universal child protection principles.

The inconsistency of the age limits for children in various laws has an impact on legal uncertainty in the defense of kids who are in legal trouble. The Human Rights Law, the Child Protection Law, and the SPPA Law all have different definitions of age, which can lead to misunderstandings in how the laws are applied and possibly lead to uneven treatment of children in the criminal justice system. Children who are between different age limits can face difficulties in obtaining appropriate protection because their legal treatment can differ depending on the law used. It increases the risk of children losing their right to protection, both in the judicial process and other social rights, which in turn can harm their future and hinder their rehabilitation and reintegration into society.

3.2 Impact of Legal Protection on Inconsistency of Child Age Limits and Harmonization Solutions Regarding Child Age Limits

Inconsistency of child age limits in various laws and regulations causes legal uncertainty in the treatment of kids who run afoul of the law. The unclear age distinctions between the Child Protection Law and the Human Rights Law, and the SPPA Law create a gray area in assessing the status of children, which can lead to inconsistent application of the law. It makes the justice system less than optimal in providing appropriate protection, especially for children between unclear age limits. Children in conflict with the law need treatment that is appropriate to their developmental stage (Balla, 2022), but this inconsistency prevents the achievement of maximum protection goals.

The potential for discriminatory treatment is large due to differences in age limits in different regulations. For example, children under the age of 12 according to the SPPA Law cannot be processed through the criminal justice system, but in some cases, children who are older than 12 but have not reached the age of 18 can be treated as if they are adults, depending on the law used. This ambiguity can cause some children to be denied their rights or treated unfairly, based on differences in the age between a law and another.

Obstacles in the implementation of restorative justice and diversion also arise due to the lack of synchronization of the definition of children in various regulations. One of the goals of the juvenile justice system is to prioritize problem-solving through a restorative and diversion

approach, which aims to avoid formal legal processes and provide opportunities for children to improve their behavior without recording a criminal history (Lubis, 2020). However, the disharmony of the age limits for children in various laws can hinder the achievement of restorative justice because not all children who should have the opportunity for diversion or a rehabilitative approach receive this protection due to differences in age criteria in applicable regulations.

The risk of stigmatization of children is also greater due to differences in legal definitions related to age. Children who conflict with the law are at high risk of being labeled as "criminals" by society, which can affect their psychological and social development in the future (Supeno, 2013). If the rules on age limits are not uniform, children who should receive a rehabilitative approach may end up trapped in a system that treats them as fully criminally responsible individuals, without considering their age and psychological capacity. This can exacerbate stigmatization and hinder their social reintegration after the legal process is complete.

The first solution that needs to be taken is to adjust the age limit in the legislation to be uniform with international standards. According to the UN's Convention on the Rights of the Child (CRC), everyone under the age of eighteen is considered a child (Fadila, 2022). In order to prevent confusion caused by disparities in age restrictions, it is crucial to standardize the definition of a child across Indonesian regulations. It will strengthen the protection of children's rights while giving youngsters in legal trouble legal certainty by international standards that have been recognized by the state.

Strengthening the implementation of restorative justice with a focus on child rehabilitation is also an essential step in the solution to harmonizing regulations. Restorative justice focuses on restoring losses and rehabilitating children involved in criminal acts, not just punishing them (Angelina, 2024). The implementation of restorative justice will be more effective if the rules governing the age of children in conflict with the law are uniform and clear. It will facilitate the implementation of rehabilitation principles that emphasize the reintegration of children into society, with an approach that prioritizes prevention efforts so that children do not repeat mistakes.

Revisions to overlapping regulations also need to be made so that there are no differences in the age limits for children. In this case, laws such as the Child Protection Law, the SPPA Law, and the Human Rights Law must be synchronized in a more integrated manner. This lack of synchronization causes legal uncertainty, so revisions or improvements to conflicting or different articles need to be made to achieve clear uniformity in defining the age of children. It will strengthen the clarity of the protection of children in conflict with the law.

Increasing the role of related institutions in ensuring the implementation of harmonious and consistent regulations is the last step that is no less important. Institutions such as Law enforcement officials, the Ministry of Women's Empowerment and Child Protection, as well as the Indonesian Child Protection Commission (KPAI) must collaborate in order to ensure that changes in regulations governing the age limits for children are conducted effectively. In addition, it is also important to conduct extensive socialization with the community, law enforcement, and related institutions so that the new regulations can run well and provide real benefits for children in conflict with the law.

4. CONCLUSION

There is legal ambiguity around the treatment of children who are in violation of the law as a result of Indonesia's inconsistent age restrictions for children in different laws and regulations. This has the potential for discriminatory treatment, obstacles in the implementation of restorative justice and diversion, and the risk of stigmatization of children. To overcome this problem, it is necessary to adjust the age limits in existing regulations to be consistent with international standards, strengthen the implementation of restorative justice, revise overlapping regulations, and increase the role of related institutions to ensure harmonious and consistent implementation of regulations. With these steps, It is envisaged that children in legal trouble will receive more equitable and ideal legal protection.

The differences in how different Indonesian laws, such as the Human Rights Law, the Child Protection Law, and the SPPA Law, define the age limit for children result in significant inconsistencies in the application of legal protection for children, especially those who are in conflict with the law. This discrepancy creates ambiguity in the law and may disregard the rights of children, such as in the case of children who marry under the age of 18 or children under the age of 12 who are involved in criminal acts. Therefore, harmonization of these three regulations is needed to ensure that there is harmony in the protection of children's rights so that children can receive fair treatment in accordance with more universal protection principles without being constrained by the differences in existing age definitions.

REFERENCES

- Angelina, D. (2024). Penerapan konsep keadilan restorative justice pada korban tindak pidana ringan. *Innovative: Journal of Social Science Research*, 9, 9191–9201.
- Ariani, N. V. (2014). Implementasi Undang-Undang Nomor 11 Tahun 2012 tentang sistem peradilan pidana anak dalam upaya melindungi kepentingan anak. *Jurnal Media Hukum*.
- Arliman, L. (2017). Reformasi penegakan hukum kekerasan seksual terhadap anak sebagai bentuk perlindungan anak berkelanjutan. *Kanun: Jurnal Ilmu Hukum*, 19(2), 305–326.
- Arsawati, N. N. (2020). Legal reform dalam penjatuhan sanksi terhadap anak pelaku kejahatan. *Jurnal Analisis Hukum*, 3(2), 114–134.
- Balla, H. (2022). Diversi: Anak yang berhadapan dengan hukum. *Jurnal Litigasi Amsir*, 1(2), 202–206.
- Fadila, Y. A. (2022). Tinjauan yuridis perlindungan pekerja anak di Indonesia dalam perspektif Konvensi Hak Anak. *Yustitiabelen*, 2(3), 143–166.
- Fitriani, R. (2016). Peranan penyelenggara perlindungan anak dalam melindungi dan memenuhi hak-hak anak. *Jurnal Hukum Samudra Keadilan*, 11(2), 250–358.
- Haling, S. (2018). Perlindungan hak asasi anak jalanan dalam bidang pendidikan menurut hukum nasional dan konvensi internasional. *Jurnal Hukum & Pembangunan*, 48(3), 361–378.
- Harefa, A., & Ndruru, A. (2022). Perspektif psikologi kriminal terhadap penyebab terjadinya juvenile delinquency ditinjau dari aspek kriminologi. *Jurnal Panah Keadilan*, 1(1), 55–69.
- Ilma, M. (2020). Regulasi dispensasi dalam penguatan aturan batas usia kawin bagi anak pasca lahirnya UU No. 16 Tahun 2019. *AL-MANHAIJ: Jurnal Hukum dan Pranata Sosial Islam*, 2(1), 133–166.
- Lewoleba, K. K. (2020). Studi faktor-faktor terjadinya tindak kekerasan seksual pada anak-anak. *Jurnal Esensi Hukum*, 4(1), 27–48.
- Lubis, M. A. (2020). Restorative justice sebagai model perlindungan terhadap anak yang berhadapan dengan hukum. *PKM Maju UDA*, 2(1), 8–24.
- Marhayani, C. (2024). Analisa yuridis tentang definisi anak dalam hukum positif di Indonesia. *Jurnal Legalitas (JLE)*.
- Marzuki, I. (2022). Pemaksaan perkawinan dalam konteks kajian hak asasi manusia dan Undang-Undang Tindak Pidana Kekerasan Seksual. *REUSAM: Jurnal Ilmu Hukum*, 10(2), 215–226.
- Maulana, W., & Widjajanti, E. (2024). Analisis kebijakan diversi terhadap perlindungan hak anak dalam sistem peradilan pidana. *Hukum Dinamika Ekselensia*.

- Oktalisa, Y. (2016). Analisis yuridis konsep pertanggungjawaban pidana terhadap pembunuhan berencana yang dilakukan anak di bawah umur. *Justicia Sains: Jurnal Ilmu Hukum*, 2(1), 61–70.
- Ruzaipah, Manan, A., & A'yun, Q. (2021). Penetapan usia kedewasaan dalam sistem hukum di Indonesia. *Mitsaqan Ghalizan*, 1(1), 1–20.
- Setiawan, & Fatmawati, N. (2024). Politik hukum batas usia anak dalam peraturan perundang-undangan di Indonesia. *AKADEMIK: Jurnal Mahasiswa Humanis*, 6(1), 806–821.
- Setiawan, H. H. (2020). Anak sebagai pelaku terorisme dalam perspektif ekologi sosial. *Sosio Informa*, 6(2), 252–263.
- Sukadi, I. (2024). Perlindungan hukum terhadap perempuan di bawah umur akibat perkawinan dini perspektif maqashid syariah. *EGALITA: Jurnal Kesetaraan dan Keadilan Gender*, 6(1), 97–114.
- Supeno, H. (2013). *Kriminalisasi anak*. Jakarta: Gramedia Pustaka Utama.