



CRIMINAL LIABILITY FOR MARRIED CHILDREN IN RELATION TO CRIMINATION

Hibertus Sujiantoroⁱ,
Galih Setyo Refangga
Wisnuwardhana University,
Indonesia

Abstract:

The goal of this study is to evaluate married children's criminal culpability in light of various rules to show that punishment can occur in accordance with the intended objective of punishment. According to Article 1 Paragraphs (1) and (2) of Law on the Juvenile Criminal Justice System Number 11 of 2012 of the Republic of Indonesia, the juvenile criminal justice system is based on the principles of: protection, justice, non-discrimination, the best interests of the child, respect for children, survival and development of children, proportionality, deprivation of liberty and punishment as a last resort, and avoidance of retaliation. In this approach, being married or single creates a problem. A kid is defined as any anyone who is younger than 18 (eighteen) years old and has not yet entered into a legally binding marriage, including unborn children if doing so is for the child's benefit, according to Law Number 39 of 1999 respecting This implies that a person who is married and under the age of 18 is no longer considered a child. Even in procedural practice, this often applies, where judges decide to prosecute minors with married status who are in conflict with the law not using juvenile justice, but adult justice and some who continue to use juvenile justice. Even in procedural practice, this often applies, where judges decide to prosecute minors with married status who are in conflict with the law not using juvenile justice, but adult justice and some who continue to use juvenile justice. Even in procedural practice, this often applies, where judges decide to prosecute minors with married status who are in conflict with the law not using juvenile justice, but adult justice and some who continue to use juvenile justice.

Keywords: criminal liability, married children, punishment

1. Introduction

The current structure of children's responsibilities stipulates that the responsibilities of all levels of society, from the family, from the community to the state, must be carried out

ⁱ Correspondence: email sujiantoro@wisnuwardhana.ac.id

on an ongoing basis to protect and preserve children's values. All these efforts are carried out by supporting the guaranteed growth and development of children, both physically and spiritually, spiritually and socially, so that they can realize the best ideals for children as the spearhead of a nation that has the potential, is superior and has a spirit of patriotism in carrying out and leading high moral values. contained in the Pancasila. Criminal liability includes the principle of culpability errors) based on a monodualistic balance, that is, the principle of guilt based on the value of rights must be the same as the principle of legality based on the value of certainty.

Criminal liability is something that is criminally accountable to someone who commits a criminal act or a criminal act which is interpreted as an objective reproach that exists in a criminal act and subjectively fulfills the requirements to be punished for that action (Saleh, 1990). The purpose of objective reproach is that the act committed is an activity that is prohibited. The indicator is that the act violates the law in a good sense against formal or substantive law. On the other hand, a subjective reproach is a person who does something that is prohibited. Even if someone commits a prohibited action, that person cannot be blamed because there is nothing wrong with him, so his responsibility is not a crime. It is not sufficient to convict a person if that person has committed an act that is against the law or is against the law, so even though the act fulfills the formulation of delict in the law and is not justified, it does not yet meet the requirements for a criminal imposition (Sudarto, 1988)

Each nation must refer to the standards of treatment established by international law when interacting with children who have broken the law. By creating laws, procedures, authorities, and institutions (institutions), nations are required by international law to provide legal protection and respect for children who are in legal trouble. According to the law, every kid has the right to freedom. Children are only subjected to arrest, custody, or incarceration as a punishment if permitted by relevant law and only as a last resort. Aiming to defend the law against different freedoms and children's human rights, child legal protection (Arif, 1998).

A form of legal protection for children is the separation of child custody from adult custody as well as other measures like assistance from community officers, shorter detention times than for adults, facilities by special law enforcement officers.

The legal system and the objectives of criminal law, which include a basic understanding of criminal law principles such as the territorial principle, the personal active principle, the personal passive principle, the universality principle, the principle *fictie*, and others. Law Number 11 of 2012 is referred to as juvenile criminal law which specifically regulates juvenile justice and also includes juridical phenomena and the priority of legality in dealing with the delinquency of children or children as victims (*victima*) of crimes and or criminal offences. The basic provisions of the criminal procedure law for children in Law Number 11 of 2012 concerning Juvenile Justice, include the principle of immaturity being a condition for determining whether a person can be processed in juvenile justice. This provision is formulated in Article 1 paragraph 1 and Article 4. The principle of immaturity establishes the authority to determine the age limit for a person referred to as a child who can give birth to rights and obligations.

Criminally children who commit crimes will be held accountable after they reach the age of 14. If the child is more than 12 years old but not yet 14 years old, then the sanction that is imposed on the crime is only action (UUSPPA Article 69 paragraph 2). This is in line with *double-track system* juvenile justice, which means that a child who commits a crime may be subject to sanctions in the form of a crime or activity. In Article 45 of the Criminal Code, it can be said that a person may be prosecuted criminally, namely specifically for someone who is not yet 16 years old. Therefore, based on Article 45 of the Criminal Code, the age limit for a child is said to be an adult when he reaches 16 years of age. If one looks at the definition of a child from the perspective of criminal law, that is, if a child is ensnared in a criminal case, the judge may issue an order for the child to be returned to his parents, or guardian to or the State without declaring or imposing a sentence.

In terms of civil law, the definition of a kid derives from the idea of civil law, beginning with the idea of civil characteristics that are inherent in children as yet-unformed legal beings. According to Article 330 of the Civil Code, a kid is "*a minor who has not reached the age of 21 (twenty-one) years and has not been married before.*" Children are defined here to mean both individuals who have not yet reached adulthood and those who have not yet reached the age requirement for becoming a legitimate legal subject under civil law.

When it comes to criminal liability, the onus of responsibility is always put on those who commit crimes that form the legal justification for imposing criminal penalties. A person may have the nature of criminal responsibility if an act they performed violates the law, but they may lose the nature of their responsibility if a factor that renders them incapable of being responsible is discovered about them. The juvenile justice system is the entire procedure for resolving cases involving children who have come into conflict with the law, starting with the investigation stage and ending with the post-trial care stage, based on the following principles: protection, justice, non-discrimination, the best interests of the child, respect for children, child survival and development, proportionality, deprivation of liberty and punishment as a last resort, avoidance of retaliation, in accordance with Article 1 paragraph (1) and (2). The act of punishing is more focused on the perpetrators themselves, or what is usually known as individual or personal responsibility (individual responsibility), when the perpetrator is viewed as a distinct person who is capable of accepting full accountability for the deeds he has perpetrated.

Criminal penalties and action sanctions diverge from one another in terms of their objectives. Criminal penalties are intended to cause the offender "special suffering" (*bijzonder leed*) so that he understands the repercussions of his acts. Criminal sanctions are a means of expressing disapproval of the criminals' behavior in addition to being intended to cause them pain. Therefore, rather than the presence or absence of a suffering element, the primary distinction between criminal sanctions and action sanctions is whether or not components of reproach are present. Action sanctions have a more instructional function. Action sanctions are punishments that don't retaliate, according to sentencing theories. Its sole goal is special prevention, i.e., safeguarding the

neighborhood against dangers that can jeopardize the neighborhood's interests. In summary, criminal sanctions are focused on the idea of punishing an act's perpetrators, whereas action sanctions are focused on the idea of defending society.

With respect to the issues raised in this paper, a study was conducted to determine whether married children's criminal responsibility in relation to punishment is evaluated in various rules to determine whether punishment can occur in line with the objective of punishment.

2. Discussion

Cases of children in conflict with the law that enter into the legal process must always prioritize and pay attention to the principle of upholding the best interests of the child, as well as efforts to retaliate for children through imprisonment is the last step (*Ultimum Remedium*) while still ignoring the dignity and the dignity of a child. The age limit for children is very important in juvenile criminal cases, because it is used to identify people who are suspected of having committed a crime whether a crime is included in the category of children or not. There are legal requirements regarding this which are feared to be wrongly arrested, wrongly prosecuted, wrongly identified, wrongly accused or punished because of a person's rights.

The case that is the basis of the researcher is the Decision of the Sampang District Court Decision Number 125/Pid.B/2015/PN Spg in a criminal case with an ordinary first-level examination procedure. When looking at the aspect of protecting someone who is still classified as a child, the prosecution's demands are not justified because these demands are judged by several considerations that are inconsistent with the judge's opinion. The case above it concerns children, namely Ernawatia who is a victim aged 15 years, but at an age that is still classified as a child, she was legally married to the state, then divorced and now the victim is 17 years old and married according to religion/married to the defendant.

Based on the incident records and witnesses the Sampang District Court ruled that violence had occurred against the victim from the suspect. Based on the facts set out in this decision, the judge considered the following: Therefore, the victim Ernawati was not classified as a child, she was under 18 years of age, but she was already married.

The second charge, which was the use of violence against children, was dismissed by the court, and the defendant Ridwan Bin Mujahit was found not guilty. On the other hand, it was conclusively and legally proven that the defendant had committed the crime of "stealing" as charged in the initial indictment. In the juvenile justice system's struggle against young offenders, youngsters act as both witnesses and victims. Being in confrontation with the law is defined as being 12 years old but under the age of 18 and suspected of committing a crime. A kid who becomes a witness is a minor who can contribute information for the legal process, starting with the investigation, prosecution, and court hearings on a criminal matter, through hearing, seeing, or experiencing it.

In the decision above, it can be seen that the judge does not see a victim as a child under the age of 18 (eighteen years) who experiences physical, mental and economic loss

caused by a crime, rather looks at the civil view that a child who is married can be said to be legally responsible. Even though normatively the age category limits children, regardless of being perpetrators, victims or witnesses, in the Juvenile Criminal Justice System Law it is clear that the age limit for being said as a child is someone who has not reached the age of 18 years, without exception whether the status is married or not.

This point of view has really been used in relation to kids who break the law but are actually the offenders. Due to legal regulations that only govern the punishment of children receiving half of the adult term, in practice, children who commit larceny offences receive less punishment than adults. Children are thought to learn enough from this punishment to avoid repeating their wrongdoings and to continue growing in line with their age group. The author considers the Criminal Case Decision Number: 213/Pid.B/2008/PN.Ska case, in which it is established that the defendant committed a crime that satisfies the requirements of Article 363 Paragraph (1) 3, in connection with Article 53 of the Criminal Procedure Code.

Treatment of cases against children should not be the same as adults. But that doesn't mean that the understanding of a child with a clear criminal mind can be pardoned, especially if they are used to theft and extortion. The law must still be obeyed, whoever is guilty of violating human rights, including the human rights of victims must still be respected.

In Article 1 Number 2 of the Juvenile Court Act, the term "naughty child" has two definitions, namely: 1. Children who engage in criminal activity; 2. Children who engage in behavior that is deemed inappropriate for kids.

Children who commit these violations will also be subject to criminal sanctions. Talking about punishing children often creates long and hard polemic discussions because the problem is that the consequences are very broad, both for the perpetrators and for the wider community. Punishment also has negative consequences for those affected. So, when a child is convicted of a crime, the judge must with reasonable judgment explain it in order to be held accountable.

There are several definitions of minors in several laws and regulations, including: (Sambas, 2013).

- a) Human Rights Law of 1999, Number 39. The term "minor" refers to any youngster under the age of 18 (eighteen) who is not married, as well as children who will eventually be born if doing so is in his best interests.
- b) Indonesian citizens who are 17 (seventeen) years of age or older, who are married, or who have been married, are eligible to vote, as stated in Law Number 07 of 2017's Article 1 Point 34.
- c) The juvenile courts section of Article 1 of Section 1 of Law No. 3 of 1997. A person is regarded as a minor if they haven't been married, are older than 8 (eight), but younger than 18 (eighteen). Delinquent children fall under this criterion.
- d) Anyone under the age of 18 (eighteen), including unborn children, is considered a kid according to Article 1 Point 1 of Law Number 23 of 2002 Concerning Kid Protection. The Convention on the Rights of the Child, which Indonesia ratified in

1990 through Republic of Indonesia Presidential Decree Number 36, served as the source for this significantly amended clause.

- e) Law No. 21 of 2007 Concerning the Elimination of the Crime of Person Trafficking (e). The Law on the Eradication of the Crime of Trafficking in Persons specifies the minimum age that is acceptable for children. This is stated in Article 1 Point 5 in the following manner: Every person under the age of 18 (eighteen), including unborn children, is referred to as a child in Article 1. i. Law No. 40 of 2008, which addresses the age range that falls under the purview of Article 1 Paragraph 4 of the Child Law. According to Article 1(4), a kid is a person who is under the age of 18 (eighteen).
- f) Circular Letter No. 7 of 2012 Concerning the Use of Legal Formulations of Supreme Court Plenary Meetings as Standards for the Performance of Court Duties. The regulations concerning the maturity limit of a person have been explained in the Supreme Court Circular Letter. A person who has achieved the age of 18 or has been married is considered an adult and is capable of acting in accordance with the law, according to the conclusions of the Civil Chamber Meeting held on March 14–16, 2012. The maturity of a person is mentioned in the results of the Criminal Chamber meeting of the Supreme Court of the Republic of Indonesia in addition to being indicated in the results of the Civil Chamber meeting. The outcomes of the Criminal Chamber of the Special Crimes section meeting revealed that a person's level of maturity depended on the circumstances (casuistic). Nothing more but establishing a unified legal system and making case handling simpler is the goal of this chamber meeting system. The Civil Chamber meeting's outcomes indicated that a person must be 18 years old or legally wed to be considered an adult and capable. The majority of rules and regulations, which provide that the minimum age for adulthood is 18, influenced the judge in making this decision. The Supreme Court's Circular Letter No. 7 of 2012 is intended to ensure legal equality in the application of statutory requirements, notably those that specify an individual's age restriction. Therefore, applying these provisions is clear-cut. The majority of rules and regulations, which provide that the minimum age for adulthood is 18, influenced the judge in making this decision. The Supreme Court's Circular Letter No. 7 of 2012 is intended to ensure legal equality in the application of statutory requirements, notably those that specify an individual's age restriction. Therefore, applying these provisions is clear-cut. The majority of rules and regulations, which provide that the minimum age for adulthood is 18, influenced the judge in making this decision. The Supreme Court's Circular Letter No. 7 of 2012 is intended to ensure legal equality in the application of statutory requirements, notably those that specify an individual's age restriction. Therefore, applying these provisions is clear-cut.

Based on the description of some of the provisions above, the age limit categories for children or adults vary from one law to another, some say 16 years, 17 years, 18 years and even 21 years. There is no one understanding and one formula that clearly states the age limit for children and adults. To highlight the issue of the age of children, especially

the clause that regulates never married, it should be clear that although the age limit for children is almost the same as that for adults, let's take a closer look, they have different regulatory goals.

The substantive differences between these two terms must be noted carefully because they have different meanings and legal consequences in practice. An explanation of the difference between the terms "child" and "underage", namely the use of the word "child", is used to discuss legal protection in the context of public law, including criminal law, while "underage" is used when dealing with civil law issues. Matters included in the realm of material law and statutory engagement.

For example, the consequence of the difference in these terms is that in discussing children in relation to criminal matters of minors, the status of children in marriage or single is not a problem. As long as the person is not yet 18 years old, it must be considered as a child. On the other hand, in discussing a person's ability to act and act from the perspective of civil law, even if that person has not reached the age of 18 if he was previously married, his maturity in action is considered and recognized.

Punishment is the most important part of criminal law because it is the culmination of the whole process of accountability for someone who has been guilty of committing a crime. Criminal law without any definite consequences for the mistake (Huda, 2006).

Condemnation and condemnation are equivalent terms. Since the word "punishment" is derived from the word "legal basis," it can be understood to mean creating the legal framework for determining the punishment (berechten). Choosing the appropriate legal framework for a situation involves civil law as well as criminal law. The term must be defined more specifically because this essay is about criminal law and punishment in criminal cases is sometimes associated with sentencing or the awarding or imposition of a sentence by a court (Lamintang, 2007).

Based on the definition of crime above, it can be concluded that punishment contains elements and characteristics:

- 1) The essence of the punishment is the infliction of pain, sorrow, or other unpleasant outcomes.
- 2) A person or entity with authority (an authorized person) purposefully meted out the penalty.
- 3) The punishment is meted out to a person who broke the law by committing the offense.
- 4) The crime is an expression of the state's rebuke against the lawbreaker (Ali, 2011).

Regarding the purpose of imposing a sentence or sentencing, it is generally associated with two major views (Huda, 2006).

- a) *Retributivism*, this understanding is very influential in criminal law, especially in determining the purpose of sentencing. This understanding determines that the purpose of imposing a sentence or sentencing is to repay the perpetrator's actions.
- b) *Utilitarianism*, punishment has a purpose based on certain benefits, and not just to repay the actions of the maker. Prevent makers from repeating and the public from committing these crimes

Viewed from child psychology, if a child is sentenced to death or life imprisonment, then the child may become depressed because he continues to think about the status of the prisoner he is serving. Even if there are waivers, a reduced sentence or release from prison can weigh heavily on the mind of the convict, and it can be embarrassing for his future as well as the moral burden in society on the child offender. From this age group, Children in Conflict with the Law (hereinafter referred to as ABH) are already able to commit crimes that are considered serious by society, such as murder, rape, physical destruction and fraud, as these do not deserve special treatment such as diversion or halving the law of persons mature. This causes the judge to have an internal conflict in applying the sentence. The actions mentioned above do not include "child delinquency" as the concept that wants to be attached to the term ABH. Child delinquency is a form of violation that can still be tolerated by society, not disturbing crimes such as rape and premeditated murder.

The judges seem to believe that perpetrators under the age of 18 should be given leniency. The indication can be seen from the fact that very often there are decisions where the age factor is considered as mitigating punishment. Therefore, it can be stated that the age of ABH is also taken into account in terms of granting leniency, which according to the provisions of the law, can be given half of the threat of an adult. These waivers and reductions are "enjoyed" again after the person concerned has served his criminal term. Article 4 of the Juvenile Criminal Law also stipulates that a child who is serving a sentence has the right to a reduced sentence. In criminological thinking and penal policy, it must be based on the existence of a very close relationship between the basics of sentencing philosophy, Criminal theory, and schools of criminal law. Shows that there is a common thread between the determination of legal sanctions with the aim of punishment. Therefore, as a punishment system, the procedure for imposing sanctions, imposing sanctions, and enforcing sanctions cannot be separated.

Problems regarding the sentencing of children can be seen that there are differences in civil and criminal terms, the Civil Code does not provide the meaning of "child", while the notion of maturity can be drawn a contrari from the provisions of Article 330 of the Civil Code which contains the provision that *"a minor is someone who has not reached the age of two twenty-one years old, and have not previously been married. If the marriage is dissolved before they are even twenty-one years old, then they will not return to an immature position"*, and furthermore Article 1330 of the Civil Code stipulates that an immature person is classified as a who are not capable of making agreements. Meanwhile, criminally in Article 1 number 3 of the Republic of Indonesia Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

The meaning of the word ever married/has been married is unbalanced in terms of equal accountability in the eyes of the law, in civil terms, married people are considered to be responsible, then in criminal terms they are considered immature and are positioned as children. From this description, it is clear that there are legal weaknesses that can become an imbalance in the regulation of its relation to the sentencing process. Moreover, it can be seen from the several criminal cases mentioned above, that in practice the criminal law in looking at the status of a child or not yet an adult does not have a

benchmark by the judge. It would be very risky for the state if it did not immediately stipulate or revise existing laws because there had been legal defects in the meaning of the laws and regulations.

The regulations governing juvenile crimes make the difference in a person's legal standing dependent on whether or not they are single at the age of 18 quite obvious. In contrast to the provisions of RI Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated in Article 1 Number 1 of RI Law No. 3 of 1997 concerning Juvenile Court that *"a child is a person in a juvenile delinquent case who has reached the age of 8 but has not yet reached the age of 18 and has never been married"*. However, under RI Law No. 11 of 2012, a married person is still being tried in a juvenile criminal trial. The formulation of the meaning above is also in accordance with the Elucidation of Article 10 of Republic of Indonesia Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which states that a person who is married is still being tried in a juvenile criminal trial even though he is not yet 18 years old. This indicates that Law No. 11/2012 continues to acknowledge a child's (a person under the age of 18) legal capacity to act in civil issues.

Even if it is quite likely that an issue is covered by many laws and regulations, every debate concerning children must take into consideration which laws and regulations cover the subject, even though there hasn't been any renewal or synchronization yet. The Results of the Meeting of the Criminal Chamber of the Supreme Court of the Republic of Indonesia also include a statement about an individual's maturity. The Criminal Chamber's Special Crimes Section Meeting's results stated that *"determination regarding the age limit for a person in carrying out legal actions cannot be determined at the same age, but is determined based on the law or legal provisions governing it in the context of the case"*. Even if it is quite likely that an issue is covered by many laws and regulations, every debate concerning children must take into consideration which laws and regulations cover the subject, even though there hasn't been any renewal or synchronization yet. The Results of the Meeting of the Criminal Chamber of the Supreme Court of the Republic of Indonesia also include a statement about an individual's maturity. The Criminal Chamber's Special Crimes Section Meeting's results stated that *"determination regarding the age limit for a person in carrying out legal actions cannot be determined at the same age, but is determined based on the law or legal provisions governing it in the context of the case"*. In this formulation causes the status of married and unmarried to be a dilemma, Referring to Law Number 39 of 1999 concerning Human Rights, a child is every human being under 18 (eighteen) years old and unmarried, including children who are still in the womb if this is for the sake of interests. This means that someone who is under 18 years old but is married is no longer classified as a child. He's an adult. Even in procedural practice, this often applies, where judges decide to prosecute minors with marital status who face the law not using juvenile justice, but adult justice. In relation to the determination of the process of accountability for an offender who is considered a child or an adult because he is married, this will also affect the determination of his punishment.

Based on the description of some of the provisions above, the age limit categories for children or adults vary from one law to another, some say 16 years, 17 years, 18 years

and even 21 years. The consequence of this age difference is that in discussing children in relation to criminal matters of minors, the status of children in marriage or single is not a problem. As long as the person is not yet 18 years old, it must be considered as a child. On the other hand, in discussing a person's ability to act and act from the perspective of civil law, even if that person has not reached the age of 18 if he was previously married, his maturity in action is considered and recognized. Judging from child psychology, if a child is sentenced to death or life imprisonment, then the child can become depressed because he continues to think about the status of the prisoner he is living in.

Even though there are waivers, reduced sentences or release from prison can weigh on the convict's mind. From this age group, many ABHs are already able to commit crimes that are considered serious by society, such as murder, rape, mutilation and fraud, as these do not deserve special treatment such as diversion or halving of the adult law. This causes the judge to have an internal conflict in applying the sentence. The actions mentioned above do not include "child delinquency" as the concept that wants to be attached to the term ABH. Child delinquency is a form of violation that can still be tolerated by society. not as disturbing crimes as rape and premeditated murder. In criminological thinking and penal policy, it must be based on the existence of a very close relationship between the basics of sentencing philosophy, sentencing theory, and schools of criminal law. Shows that there is a common thread between the determination of legal sanctions with the aim of punishment. Therefore, as a punishment system, the procedure for imposing sanctions, imposing sanctions, and enforcing sanctions cannot be separated. The meaning of the word ever married has been married is unbalanced in terms of equal accountability in the eyes of the law, in civil law, married people are considered responsible, then criminally they are considered immature and are positioned as children. From this description, it is clear that there are legal weaknesses which can lead to imbalances in the regulation relating to the sentencing process. Moreover, it can be seen from the several criminal cases mentioned above, that in practice the criminal law in looking at the status of a child/not yet an adult does not have a benchmark by the judge. It would be very risky for the state if it did not immediately stipulate/revise existing laws because there had been legal defects in the meaning of the laws and regulations.

Conflict of Interest Statement

The authors declare no conflicts of interest.

About the Authors

Hibertus Sujiantoro, Lecturer at the Faculty of Law, University of Wisnuwardhana Malang, Indonesia.

Galih Setyo Refangga, Lecturer at the Faculty of Law, University of Wisnuwardhana Malang, Indonesia.

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