

The Interpretation of Age of Criminal Responsibility for Juvenile Offenders from the Perspectives of Islamic Jurisprudence (Fiqh) and Malaysian Law

Dr. Siti Aisyah Samudin^{1*}, Dr. Hanira Hanafi², Siti Hajar Mohd Afendi³

¹Senior Lecturer, Department of Shariah and Law, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.

²Senior Lecturer, Department of Shariah and Law, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.

³Masters Candidate, Department of Shariah and Law, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.

Abstract: Criminal offences still exist in Malaysia, whether minor or severe, including offences under Sharia law such as khalwat (close proximity) and civil offenses like causing harm to others. The issue of crime becomes even more concerning for society when it involves offenders among children. Therefore, the provisions for punishment of these offenses constitute one of the government's efforts to reduce the crime rate. Consequently, the minimum age of criminal responsibility needs to be thoroughly examined to ensure the well-being of these juvenile offenders is preserved in accordance with the age limits stipulated by the United Nations. In addition to reviewing the age limit of juvenile offenders from the perspective of Malaysian law, the determination of age limits from the standpoint of Islamic Sharia law (fiqh) is also examined. To this end, a qualitative method using documentary analysis will be employed. Data analysis will be conducted descriptively and thematically. The study's findings indicate various opinions regarding determining the age limit for child offenders. Inconsistencies in this age limit occur between Sharia and civil courts in Malaysia. Differences in assessing the age of children can also be observed when compared with fiqh provisions, namely the views of the four primary schools of thought. Therefore, it is crucial to ensure that the age limit for children, which lacks harmonisation, does not lead to any injustice within the legal framework.

Keywords: Age of Criminal Responsibility, Crime, Fiqh, Malaysian Law.

1. Introduction

Criminal cases continue to occur worldwide, including in Malaysia, encompassing both minor and severe offenses. The act of committing a crime becomes more concerning when the perpetrators involve children, and it is exacerbated with the advancement of technology. According to the Kamus Dewan Bahasa dan Pustaka, a crime is defined as an evil act and a violation of the law. From the fiqh perspective, crime is any prohibited action against the body, property, and so forth that can cause harm. Offences committed can be punished with penalties prescribed by Islamic law, namely hudud, qisas, or takzir (Yusof, 2013). Based on this definition of crime, it can be concluded that crimes that have occurred indirectly may violate the concept of maqasid daruriyyah, which is the objective of Islamic law in ensuring the preservation of life. This concept is divided

into five parts: safeguarding religion, life, intellect, property, and lineage (Abd Majid et al., 2012). An individual's fundamental rights are related to preserving these five core matters in Islam (Auda, 2014). For example, someone who takes another person's life has disregarded the religious legal basis for safeguarding life. Similarly, someone involved in sinful acts like khalwat, which can harm their lineage, also falls under this category. Therefore, factors contributing to crimes among children include negative environmental factors such as broken family institutions, economic resources, and one's educational level. Parents must provide sufficient love and attention to their children (Zakaria, 2015). Additionally, a child's lack of religious education can cause them to engage in criminal activities. Similarly, a desire to try something new due to physical and emotional changes within them can also be a contributing factor (Astro Awani, 2022). As reported in the newspaper (Harian Metro, 2020), Datuk Ayob Khan Mydin Pitchay, the Chief of Police in Johor, expressed concern over the statistics of crimes involving children as offenders in Malaysia. Alarming, nearly 99 per cent of these cases involve school students aged between 13 and 18 years. What is even more worrisome is that reported cases of rape in Penang from July 2021 to November 2022 amounted to 96 cases, with 77 of them involving juvenile or underage offenders (Astro Awani, 2022). Among the crimes that often involve child offenders are theft and robbery, causing harm to others, burglary, and rape. The following is the statistics of crimes involving young offenders, namely children, in Malaysia:

Table 1: Statistics of Crimes Involving Juvenile Offenders in Malaysia from 2018 to 2020

Type of Cases / Year	2018	2019	2020
Involved Property	1403	1035	744
Involved Person	692	600	547
Minor Offenses Act	97	40	82
Violation of Supervision Conditions	5	1	8
Drugs	1744	1965	1568
Gambling	69	84	71
Weapons / Firearms	35	19	21
Traffic	598	498	621
Approved School Absconding	7	0	4
Others	644	591	1676

"Others" offences refer to uncontrolled application errors, wandering without identification cards, entering restricted areas, possession of obscene materials, and offences under the Fisheries Act 1985, Road Transport Act 1987, Malaysian Anti-Corruption Commission Act 2009, Telecommunications Act, Poison Act 1952, and violation of the Movement Control Order (MCO) in 2020.

Source: Official Report from the Department of Social Welfare from 2018 to 2020

As an example of a case in Malaysia, there was a tragic incident involving a 15-year-old adolescent suspected to have killed her baby by stabbing the baby in the left chest immediately after giving birth. Statistics released by the Royal Malaysia Police show that an average of at least 10 cases of baby dumping-related crimes were reported each month from 2018 to 2021. Among these, 40 cases involved offenders under 18 (Berita Harian, 2022). In addition to cases of baby dumping, severe crimes such as murder have also been committed by children. The case involving PP against Francis, son of Kuin, is an unreported case of murder committed by a

child. The child was 17 years, six months, and five days old at the time of the crime. According to the facts, the accused, along with the victim and their friends, were gathered and consuming alcoholic beverages when a fight broke out, resulting in the victim being fatally struck with a piece of wood. The autopsy results indicated that the victim died from head injuries and a stab wound in the heart caused by a blunt object (Abd Rahim, 2014). For Sharia offences, cases of khalwat are among the most common in Malaysia involving underage individuals. For instance, there is a case involving an underage girl who was caught in close proximity with her partner. The enforcement authorities apprehended this couple during a raid to prevent khalwat in Tawau. The court also believes that children between 16 and 18 are the most frequently involved group in moral vice cases (Hamid et al., 2015). Furthermore, criminal cases in Malaysia are adjudicated by two different types of courts, namely the civil courts and the Sharia courts, as provided by the Federal Constitution under the Second List of the Ninth Schedule (Federal Constitution, 2009). Cases involving the Muslim community, including children, related to Sharia law and personal or family law, will be heard in the Sharia courts (Mohamed Adil, 2000), while most criminal cases, such as rape and murder, will be tried in civil courts.

In this regard, (Kamus Dewan Bahasa Dan Pustaka, 2007) defined children as young boys or girls, usually above seven or eight years old. (A. Martin, 1996) defined children as individuals who are not yet adults and did not specify an age limit for these children. In Islam, a person is still considered a child until they experience ihtilam (emission of seminal fluid), attain baligh (puberty), or reach maturity. The country's laws also specify an age limit for a child in civil and Sharia crimes. However, the determination of this age limit differs among the legal systems in Malaysia. The age limit for children in Sharia courts in Perlis and Kedah differs from other Sharia courts. The civil courts, which use the Child Act 2001 for cases involving child offenders, set a higher age limit than most Sharia courts in Malaysia.

The inconsistency in the age limit for a child at the level of the judiciary institution can have an impact because it may lead to injustice when the court determines relevant punishment for young child offenders. Therefore, the authors will research all forms of provisions related to determining the age limit for child offenders in criminal cases in Malaysia and the determination from the Islamic Sharia law (fiqh) perspective.

2. Research Methodology

The selection and use of the appropriate research methodology are crucial to ensure the study's objectives are met. Therefore, several relevant research methods have been employed for valid data analysis (Samudin, 2019). This research employed a qualitative methodology, precisely the literature review method. Qualitative methodology is a means to comprehensively explain a phenomenon using any methodology underpinned by one's philosophy (Yaakub & Buang, 2019). For the data collection method, the authors utilised the documentary analysis. A literature review was employed to gather information regarding the fundamental concepts related to determining the age limit for a child under the criminal justice system of Islamic Sharia law, as well as the national legal system, whether civil or Sharia law. The authors thoroughly investigated the study's relevant state enactments and acts. Articles from journals, books, and official websites that align with the theme and objectives of the study were also used as references. Furthermore, the authors also incorporated reference materials such as Quranic exegesis and hadith lectures related to special children to acquire data concerning the concept of children from the perspective of Islamic law. The authors also employed several methods in this research study to guide data collection and analysis (Kurniawan & Ab Rahman, 2020). In the data analysis method, both descriptive analysis and content analysis were utilised. Descriptive analysis provides an objective description of the obtained data. Producing precise and relevant analysis to the study's discussion is crucial as deviation may occur in sources such as journal articles (Jasmi, 2012). Additionally, the authors conducted content analysis of Sharia law based on both naqli (textual) and 'aqli (rational) evidence. The authors gathered research data for analysis and subsequently drew conclusions based on the study's findings.

Age of Criminal Responsibility for Juvenile Offenders from the Perspective of Fiqh

Attaining baligh is one of the signs of a person's intellectual maturity (Yusof, 2018). The religious obligations in Islam, such as prayer and fasting, are only incumbent upon someone with full intellectual capacity. A mukalaf is

a person who has reached the age of baligh, possesses the complete intellectual capacity, and is subject to religious obligations (Az-Zuhaili, 2010). Determining a child's baligh status can occur naturally or through customary practices and establishing a maximum age for reaching baligh. The presence of physiological signs demonstrates that the child has entered the realm of adulthood. It also indicates that the child is mature in independent choices and judgements. The physical signs for boys include experiencing al-ihtilam, the emission of seminal fluid, and while for girls, it is the onset of menstruation (Noor, 2013). Being baligh and possessing mature judgment is among the prerequisites for a person to have ahliyyatu al-ada al-kamilah, which denotes eligibility to perform all religious obligations (Mohamad Al-Bakri, 2022) that can affect the legality, permissibility, prohibition, or validity of a matter (Muhd Adnan, 2022). The other two components are the ability to comprehend and make choices. Some scholars stipulate that being baligh and possessing mature judgment are conditions for considering the committed crime as an offense and imposing a punishment similar to that of an adult offender (Abdul Rahim & Yusof, 2014). Therefore, only baligh individuals, including orphans, can act independently and be held responsible for their choices. If there are no signs of baligh, such as the emission of seminal fluid or the onset of menstruation, then the age of reaching baligh will be applied. Islamic jurists (fuqaha) have differing opinions on determining the age of baligh. Abdul Qader Audah suggested that children typically experience a dream indicating baligh before age 15. However, suppose a child reaches the age of 15 and does not experience such a dream. In that case, they can be categorised as having reached baligh because they are capable of mature thinking and can differentiate between right and wrong. The incident during the time of the Prophet supports it, where Ibn Umar was not allowed to participate in the Battle of Uhud but was granted permission the following year when he reached 15. Imam Nawawi and Umar ibn Abdul Aziz also adhered to age 15 as the age of baligh for an individual, delineating between childhood and adulthood. Next, Imam Abu Hanifah set 18 as the age of baligh for boys and 17 for girls. Meanwhile, Imam Malik designated 18 as the age of baligh for both boys and girls (Abdul Rahim & Yusof, 2014). The age of 18 is supported by only a minority of scholars (Mohamad Al-Bakri, 2022). On the other hand, another viewpoint asserted that all three Hanafi, Shafi'i, and Hanbali schools define the age of baligh for children as 15. Only the Maliki school differed in opinion, setting the age of baligh at 17 (Noor, 2013).

Criminal acts committed by children will not be considered an offence until they reach the age of baligh. According to the legal system, most scholars believe that one of the conditions for prosecuting a juvenile offender is that they must have reached baligh, along with other evidence. Ibn Abidin regarded baligh as the end of childhood. Furthermore, this state of baligh is also considered a determinant that a child has attained mature thinking, according to Al-Amidiy. However, a minority of Shafi'i scholars held a different opinion. A child committing an offence is viewed as having engaged in a criminal act but will not be subject to hudud and qisas punishments as would be imposed on adult offenders. The punishment for a juvenile offender will take the form of ta'dib, which entails education and penalties involving civil responsibilities, such as compensation payments or diyat. Punishment for an offender who has reached baligh can be imposed according to the Maliki and Hanbali schools and some factions of the Shafi'i school (Abdul Rahim & Yusof, 2014). Furthermore, Islamic jurists also categorised children into two stages: 1) pre-mumaiyyiz; and 2) post-mumaiyyiz, to possess the attribute of tamyiz, where children can perform tasks independently without assistance. The pre-mumaiyyiz stage begins from the moment a child is born until almost reaching the age of seven. At this phase, children cannot yet distinguish between right and wrong, let alone make independent choices. Therefore, children at this early age will not be subjected to any punishment as they have not yet acquired the attributes of idrak (understanding) and ikhtiar (ability to make choices) (Abdullah et al., 2017). In contrast, the second stage, post-mumaiyyiz, signifies that children are aware of the consequences of an action, but this ability is still weaker compared to adults. The minimum age for this second stage is seven years old and will continue until the child reaches baligh (Zakaria, 2015). In addition, the term baligh is defined in most Sharia laws in each state in Malaysia as having reached the age of maturity according to Islamic law. However, the states of Kedah, Kelantan, Pahang, and Perlis do not have any specific acts or definitions regarding the concept of baligh or the age at which it is attained. The enactments of the states of Perak and Negeri Sembilan further specify the definition of baligh by setting the age of 12 qamariah years as the limit. In the state of Melaka, an individual

under the age of 15 qamariah years is considered not to have reached baligh, while in Sabah, the age of baligh is deemed to be 12 qamariah years. On the other hand, Terengganu defines a mukalaf as someone who has reached the age of 18 and has full mental capacity (Abdul Rahim & Yusof, 2014). These varying age determinations for baligh can negatively affect Sharia criminal legislation. For instance, if an individual at 14 commits a criminal act in Negeri Sembilan, it is considered an offence. However, if the same act occurs in Melaka, no legal action can be taken against the individual as the age of 14 is deemed not to have reached baligh.

Court Jurisdiction in Criminal Cases in Malaysia

Since the British colonised Malaysia, the country did not fully implement Islamic law. The colonial authorities focused more on the civil courts, repairing and upgrading these institutions. It led to the public's lower regard for Sharia courts, and their services were mainly sought for religious advice (Abu Bakar & Muhammad Hashim, 2019). As a result, Malaysia has two forms of legislation: civil law under federal jurisdiction and Sharia law under state jurisdiction. Offences related to Sharia law and Malay customs are heard in Sharia courts. Each state has its act, enactment, or ordinance that addresses issues stipulated by the government. The government increasingly emphasises the Sharia legal system (Abu Bakar & Muhammad Hashim, 2019). Furthermore, all other crimes, such as rape and murder, are adjudicated in civil courts using the Penal Code and the Child Act 2001 for cases involving child offenders. Referring to Article 75 of the Federal Constitution, if there is a discrepancy between state and federal laws, the state law will be invalid to the extent of the inconsistency. However, civil courts do not imply that Malaysia is a secular country. Islam is the official religion of the country based on Article 3 of the Federal Constitution.

Age of Criminal Responsibility for Juvenile Offenders According To Sharia Criminal Law

The Sharia criminal procedure enactments of the states in Malaysia only discuss the term children once in the legislation, and the term for juvenile offenders or young offenders is separately addressed in other acts. Several Sharia criminal enactments of the states in Malaysia also provide definitions for children. The list of acts or enactments that define the term child or young offender includes Section 51 of the Sharia Criminal Offences (Federal Territories) Act, Syariah Criminal Procedure Code Enactment 1997 (State of Johor), Sharia Criminal Offences (State of Penang) Enactment 1996, Section 10 of the Sharia Offences (State of Malacca) Enactment 1991, Sharia Criminal Offences (State of Negeri Sembilan) Enactment 2004, Sharia Criminal Offences Enactment 1995 of Sabah, Section 4 of the Criminal (Sharia) Enactment 1992 (Perak), Section 43 of the Sharia Criminal Offences Enactment 1995 (Selangor), Section 63 of the Criminal Offences (Taazir) (State of Terengganu) Enactment 2001, and Section 48 of the Sharia Criminal Offences Ordinance 2001 of Sarawak. Section 2 of the Enactment 7 Year 1993, Sharia Criminal Procedure Enactment 1991 of Perlis uses the term adolescent and defines a male or female under 18. Meanwhile, the state of Kedah does not provide any provisions regarding the age of young or adolescent offenders, nor the issue of baligh or mukalaf. Furthermore, the Sharia legal system uses the term young offenders to replace children. In most Sharia criminal procedure enactments in Malaysia, young offenders refer to those over ten years but less than 16 years old. According to the Criminal Procedure Code, it differs from the provision for young offenders. The Criminal Procedure Code defines young offenders as individuals aged between 18 years and less than 21 years who have been convicted of an offence and can be punished with a fine or imprisonment. The criminal offenses committed are subject to the provisions of the Malaysian Penal Code, and the offender will receive a sentence similar to that of an adult. Therefore, using different terms to define children may lead to injustice or conflicts in implementing the Sharia criminal legal system in each state (Abdul Rahim & Yusof, 2014). Therefore, as stipulated in Islamic Sharia law, children who have not yet reached baligh and have committed an offense are not considered to have committed a crime. Even if these children confess to the offence, they cannot be subjected to hudud, qisas, and even takzir punishments because they are deemed not yet mukalaf and not mature enough to distinguish right and wrong. Based on this data, questions have arisen due to the discrepancy between the age of baligh and the age limits set in the Sharia criminal enactments of the states. For instance, someone who is 11 years old is considered not yet baligh in most states. However, the provision in the Sharia criminal legislation of Malaysia sets an age of over ten years as the starting point for criminal prosecution. This provision, however, does not apply to the states of

Kedah, Kelantan, Perlis, and Pahang.

Age of Criminal Responsibility for Juvenile Offenders According To Civil Criminal Law

According to the Common Law, a child is defined as someone who has not yet reached the age of 14, even though this age may vary depending on the jurisdiction of the various legal systems today (Garner, 1999). As per (Bird, 1983), a child is someone who is less than 14 years old. The determination of this age is based on English law, specifically the Children and Young Persons Act of 1933. Children are also considered a group incapable of self-management and are deemed to require assistance under the care of their parents or guardians (Azahari & Dimon, 2021). Similarly, in the legal systems of most countries, an age limit for a child has been established to ensure the well-being and welfare of a child. For civil offences, the age limit for children is specified in Section 1 subsection (2) of the Child Act 2001. This act is exclusive to children in Malaysia under civil legislation, consolidating the Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 (Act 106), and the Child Protection Act 1991 (Act 468) (Abd Rahim, 2014). According to the Child Act 2001, a child is defined as someone under 18 years old as follows:

"Child" –

(a) Means a person under the age of eighteen years; and

(b) In relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code.

The same age limit for children, which is 18 years old, is also stipulated in other civil laws, such as the Age of Majority Act 1971 and the Law Reform (Marriage and Divorce) Act 1976 (Noor, 2015). According to the Criminal Procedure Code Act 593 in Section 2, a young offender is a child convicted of an offence and can be punished with a fine or imprisoned. This group is aged over ten years and less than 16 years. Furthermore, the term child in the Child Protection Act 1961 is divided into two categories: 18 years for Muslims and 21 years for children of other religions (Thambapillay, 2002). In addition, the term child in the Penal Code Act 574 provides a slightly different and more detailed definition. Children who commit criminal offences are divided into two categories: 1) children under ten years old and 2) children between 10 and less than 12 years old. Section 82. Act of a child under ten years of age.

Nothing is an offence which is done by a child under ten years of age.

Section 83. Act of a child above ten and under 12 years of age, who has not attained sufficient maturity of understanding.

Nothing is an offence which is done by a child above ten years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

It can be concluded that the term child in civil criminal law also lacks consistency. According to the applicable legislation, the age limit for a child varies, being ten years, 12 years, 16 years, and 18 years. The Malaysian government also defines a child as an individual under 18, as the Child Act 2001 specified. The government provides a separate definition for those aged between 13 and 24 years who are still unmarried, and this group is referred to as adolescents (Family Services Directory, n.d.). Therefore, the court system, in particular, must be proficient in applying legislative acts when handling cases involving children.

The provision of age of criminal responsibility by the United Nations

Determining the age limit for children is crucial in assessing the government's preparedness in dealing with cases involving children in conflict with the country's law (Mustafa, 2018). International law has established guidelines for each country's legislation in setting the minimum age of criminal responsibility. The Convention on the Rights of the Child (CRC) within the United Nations and the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) have endorsed several critical components in setting this age limit. Firstly, Article 4 of the Beijing Rules stipulates that children's age limit should not be too low. Each

member state can establish the age limit for children, considering various historical, political, social, and economic factors. Children accused of committing crimes should be treated with care to preserve their dignity as children. The CRC does not explicitly set an age limit but emphasises that children under 12 are not suitable for punishment. Secondly, every national legislation must harmonise and establish a uniform age limit. No factors should change or compromise the age limit set by the country's law. For instance, the age limit for children may vary depending on the type of crime.

It can lead to much injustice for offenders and the general public. Thirdly, the age of criminal responsibility should be considered when the crime is committed. If a child commits a crime at 13 and is apprehended at 23, the punishment should focus on forms of penalties applicable to a 13-year-old. If the age of 13 is still below the minimum age of criminal responsibility in a particular country, then no punishment will be given to the child offender (Abd Rahim, 2014). In addition to the provisions of age limits by international organisations, some legal scholars also express opinions regarding the age limit. The determination of the minimum age of criminal responsibility must consider the child's ability to control their actions and understand the consequences from the perspective of the country's law (Crofts, 2009). Science and technology have assisted governments in assessing a child's level of development. Based on studies, 11 years is considered the minimum age at which a person can form their hypotheses (Mustaffa, 2018). Furthermore, a child's immunity from prosecution is also one of the references in establishing the age limit (Dalby, 1985). This criterion differs from the previous one regarding a child's abilities, as this immunity is more directed towards a country's legal institutions. A child's maturity will be assessed to determine whether they are mature enough to be held criminally accountable. It indicates that those who exceed the age limit for immunity from prosecution, as defined, will receive criminal penalties similar to those for adult offenders (Abd Rahim, 2014).

3. Conclusion

In conclusion, crimes involving children still occur in Malaysia, as evidenced by the provided data and statistics. The government's efforts to prevent the spread of crimes are underway, with penalties being imposed on offenders, whether they are adults or children. Therefore, establishing a minimum criminal responsibility age is crucial for justice for all parties involved. According to Islam, a person becomes accountable for their actions upon reaching the age of baligh. However, the age of baligh as defined by certain Sharia criminal enactments in states like Perak, Negeri Sembilan, and Sabah conflicts with the stance of the four primary schools of thought, which set the minimum age for baligh at 15 years. Similarly, civil criminal provisions stipulate that children as young as 12 can be held accountable for criminal acts without exceptions, as provided in section 83 of the Penal Code. Moreover, based on the arguments and legal evidence in Sharia, baligh is one of the critical indicators for determining criminal responsibility. The maximum age of baligh in Islam and the age limits in Sharia criminal procedure enactments and the Child Act 2001 lack uniformity, leading to confusion in implementing the nation's legislation in general. The discrepancy in the age limit for children with the opinions of the four primary schools of thought does not contradict Islamic law, as this issue does not fall under qat'i (indisputable) matters. However, the inconsistency in setting the age limit for children's responsibility can lead to injustice in the overall criminal enforcement institutions and Sharia criminal procedures for the respective states. Each state or country should establish an age limit for children, as the Convention on the Rights of the Child (CRC) emphasises. Therefore, harmonising the terminology used in Sharia criminal legislation is also necessary to prevent confusion. It indirectly safeguards the interests and welfare of a child. In addition to the inconsistency in Sharia criminal legislation, the relevance of the maximum age limit for children at 18 years old also needs to be thoroughly examined. This is because the advancements in global technology today are significantly different from previous years. Children are more easily influenced to commit offences due to the increased accessibility of their surroundings. Moreover, establishing the age of 18 differs from the opinion of the Shafi'i school, the central reference school in Malaysia. The legal system in Malaysia for cases involving juveniles or young child offenders has been in place for over 50 years (Samuri & Mohd Awal, 2009). It is hoped that the government can delve deeper into both issues regarding the age limit in Sharia and civil crimes in Malaysia to uphold the country's *siasah syar'iyah* (Islamic policies).

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