

Reassessing *Doli Incapax* in the Digital Age: Implications for Juvenile Victims

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Abstract

Advances in digital technology have fundamentally transformed the nature of crimes involving children, while Indonesia's juvenile criminal justice system continues to rely on the doctrine of *doli incapax*, a concept developed long before the emergence of the digital age. This article examines the contemporary relevance of the *doli incapax* doctrine, evaluates the inconsistency of age-based criminal responsibility under Law No. 11 of 2012 on the Juvenile Criminal Justice System, and proposes a normative framework that balances the protection of juvenile offenders with substantive justice for victims. This study employs normative legal research using statutory, comparative, and conceptual approaches. The findings demonstrate that intensive exposure to digital environments has generated a cognitive–moral gap, in which children's digital literacy and cognitive capabilities often exceed age-based assumptions underlying the *doli incapax* doctrine, while their moral

judgment and emotional maturity remain underdeveloped. Consequently, the doctrine's traditional presumption regarding children's incapacity to understand the consequences of their actions becomes increasingly problematic in the digital context. Furthermore, the uniform age threshold adopted by the Juvenile Criminal Justice System Law may systematically contribute to secondary victimization by limiting accountability mechanisms in cases involving serious harm. This article argues that reform is required through the adoption of a tiered accountability model based on rebuttable presumptions, the enhancement of victim restitution mechanisms, the establishment of special diversion rules for juvenile recidivists, the harmonization of juvenile justice regulations with digital governance frameworks, and the development of child forensic psychology infrastructure as a prerequisite for effective implementation. These reforms are necessary to ensure that juvenile justice remains responsive to technological developments while maintaining a fair balance between child protection and victims' rights.

KEYWORDS

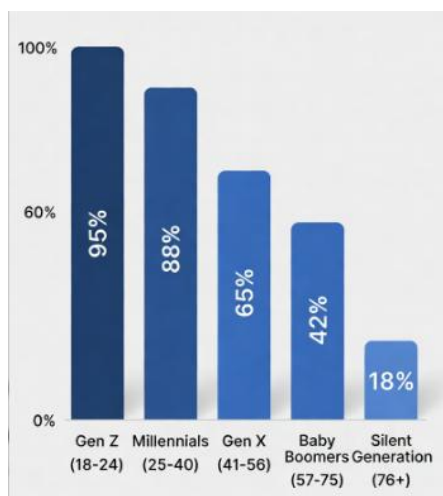
Age of Criminal Responsibility, Cognitive-Moral Gap, Doli Incapax, Restorative Justice, Victimology.

Introduction

Over the past 20 years, information and communication technology has advanced rapidly and brought about significant changes in every aspect of human life, including patterns of crime involving children. In addition to opening new channels for social interaction, the digital age marked by the widespread use of social media, the internet, and smart devices has made it easier for criminals to commit crimes that are increasingly complex, sophisticated, and premeditated. According to a 2025 survey by the Indonesian Internet Service Providers Association (APJII), the number of internet users in Indonesia has reached 229,428,417, with an internet penetration rate of 80.66 percent. Generation Z, aged 12–27, accounts for 87.8 percent of total users,

while children under the age of 12 account for 79.73 percent of the total national internet user base.¹

Figure 1. Internet Penetration in Indonesia by Generation (2025)



Source: Research findings compiled based on APJII & Good Stats, 2026

This phenomenon poses a rather serious legal dilemma. On the one hand, children are highly vulnerable due to the widespread availability of digital access, both as victims and as perpetrators of various types of technology-based crimes. According to data from the Indonesian Child Protection Commission (KPAI), over the past five years, cases of online child pornography have surged from 986,000 to 1.45 million cases.² Indonesia now ranks third in the world. According to a 2024 report from the National Center for Missing and Exploited Children (NCMEC), cases involving child pornography and cybercrimes affecting Indonesian children reached 5,566,015 between 2021 and 2024.³ Meanwhile, the Indonesian Child Protection

¹ Izzul Wafa, “Penetrasi Internet Indonesia Menurut Generasi 2025, Milenial Dan Gen Z Terdepan,” Good Stats, 2026.

² “Indonesia Darurat Pornografi Anak Online,” Deputi 1 PMK, 2026.

³ “Menkomdigi: PP TUNAS Bukti Keseriusan Pemerintah Lindungi Anak Di Ruang Digital,” Komdigi.go.id, 2025.

Commission (KPAI) reported that as of early 2026, cases of children as victims of cybercrime have continued to rise, including online sexual violence, pornography, digital exploitation, cyberbullying, and online gambling.⁴

Indonesia's criminal law response to this phenomenon remains tied to the doctrine of *doli incapax*, a principle rooted in the common law tradition that holds that children inherently lack the mental capacity to understand the criminal nature of their actions (*mens rea*).⁵ In the Indonesian legal system, this doctrine is implemented through Article 1, Paragraph 3 of Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law), which sets the minimum age of criminal responsibility at 12 years based on Constitutional Court Decision No. 1/PUU-VIII/2010. The establishment of 12 years of age as this threshold is based on psychological, sociological, and pedagogical considerations that were relevant at the time the law was drafted. However, is this normative framework still relevant and adequate in the context of the digital age, which is vastly different from the conditions that existed when the UU SPPA was enacted?

This normative concern is not merely an academic debate confined to an ivory tower. Since September 1, 2024, Indonesia has been shaken by an incident that has massively shaken the public's sense of justice. And why not? A middle school student identified as AA (13 years old) in Palembang, South Sumatra, was raped and murdered by four perpetrators. The four suspects, who were apprehended within 48 hours, are IS (16 years old), MZ (13 years old), NS (12 years old), and AS (12 years old).⁶ What sparked national controversy among various segments of society and even on social media was the fact that three perpetrators, identified by the initials MZ, NS, and AS, who were under the age of 14, could not be detained or subject to criminal penalties in

⁴ "Laporan Tahunan KPAI, Jalan Terjal Perlindungan Anak: Ancaman Serius Generasi Emas Indonesia," 2025.

⁵ Umi Rozah Arifin, Imam Subaweh, "Konsep Doli in Capax Terhadap Anak Yang Berhadapan Dengan Hukum Di Masa Depan," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 1–17.

⁶ "Proses Hukum Terhadap 3 Anak Bawah Umur Dalam Kasus Pembunuhan Dan Pemerkosaan Terus Berjalan," Polres Ogan Komering Ulu, 2024.

accordance with Article 69(2) of the Child Protection Act (SPPA), but were instead placed in the Technical Implementation Unit of the Social Rehabilitation Center for Children in Conflict with the Law (UPTD PSRABH) Dharmapala, Ogan Ilir.⁷ Although one of the main perpetrators, IS (16), was subsequently charged with the death penalty by the Public Prosecutor's Office of Palembang, the Alliance for the Elimination of Violence Against Children (PKTA) deemed the charge to be in violation of the law because it contradicts Article 3(f) of the Child Protection Act.⁸ This case starkly highlights the tension between protecting the rights of child offenders and ensuring justice for victims.

That same year, the public was once again shocked by a tragic incident at an Islamic boarding school in Sukoharjo, where a 15-year-old middle school student brutally beat and kicked a younger student to death simply because he was denied a cigarette. Although the perpetrator was above the minimum age threshold under the Child and Adolescent Protection Act (SPPA), this case reveals that the capacity to commit premeditated and brutal violence does not always correlate with the uniform age limits set forth in the law.⁹

One year after the two cases mentioned above, in March 2025, a theft occurred in Gresik Regency, East Java, committed by three elementary school students identified as FN (12 years old), HZ (9 years old), and HN (10 years old), who were caught red-handed stealing motorcycles at four different locations. What is shocking is not merely their very young age, but the fact that the three perpetrators had carried out a structured plan: gathering to devise a strategy, surveying the locations, and acting in the early morning when the area was quiet, even bringing 18 ignition keys as tools for the theft. Most concerning of all, FN had been caught just three days earlier in a similar theft case at the Pondok Permata Suci Housing Complex; however, his case was resolved through restorative justice, and three days later he repeated the same

⁷ Lisye Sri Rahayu, "Kementerian PPPA Minta 4 Pelajar Bunuh-Perkosa Siswi SMP Dihukum Sesuai UU," 2024.

⁸ Ervana Trikarinaputri, "Anak Pelaku Pembunuhan Siswi SMP Di Palembang Dituntut Hukuman Mati Dinilai Langgar Undang-Undang," TEMPO, 2024.

⁹ Trawati Prihatsari, "Gegara Rokok, Santri Di Sukoharjo Tewas Dianiaya Senior," MetroTVNews.com, 2024.

offense by recruiting two of his younger neighbors. Since all the perpetrators were minors, the case was handled by the Women and Children Protection Unit (PPA) of the Gresik Police Department using a humanistic approach, without imposing criminal penalties.¹⁰

In addition to the three criminal cases mentioned above, in the realm of cybercrime, data from the National Cyber and Cryptography Agency (BSSN) shows that Indonesia recorded 3.64 billion cyberattack anomalies from January through July 2025 a figure that nearly matches the total number of attacks over the previous five years and that children were involved both as victims and perpetrators.¹¹ This case serves as clear evidence of the failure of the *doli incapax* doctrine when applied rigidly, particularly when the restorative justice mechanisms implemented fail to provide a sufficient deterrent effect, while the victim's right to a sense of security and compensation for losses receives almost no equivalent attention within the existing legal protection framework.

This issue has a very fundamental dimension from the perspective of criminal liability theory. Criminal liability rests on two essential elements: *actus reus* (the criminal act) and *mens rea* (criminal intent or will).¹² The doctrine of *doli incapax* is essentially a legal presumption that a child under a certain age cannot possess sufficient *mens rea* to bear criminal responsibility. This assumption is rooted in developmental psychology, which posits that a child's cognitive and moral maturity develops gradually.¹³

¹⁰ Khanif Rosyidin, "3 Anak SD Di Gresik Lakukan Pencurian Motor, Miris Salah Satunya Baru 3 Hari Lalu Tertangkap Mencuri," *Info Gersik*, 2025.

¹¹ Kumala, Hardian, et al. "Analisis Fenomena Anak Sebagai Pelaku Kejahatan Penipuan Online Di Kabupaten Wajo Dari Perspektif Kriminologis," *Legal Journal Of Law* 3, no. 2 (2024): 41-49.

¹² Shulhan Iqbal Nasution, "Mens Rea: Fondasi Pertanggungjawaban Pidana Dalam Sistem Peradilan Pidana Di Indonesia," *Iqtishaduna: Jurnal Ilmiah Mahasiswa Hukum Ekonomi Syariah* 7, no. 1 (2025): 800.

¹³ Kate Fitz-gibbon and Wendy O'Brien, "A Child's Capacity to Commit Crime: Examining the Operation of *Doli Incapax* in Victoria (Australia)," *International Journal for Crime, Justice and Social Democracy* 8, no. 1 (2019): 18-33, <https://doi.org/10.5204/ijcjsd.v8i1.1047>.This.

This assumption is rooted in developmental psychology, which posits that children's cognitive and moral maturity develops gradually within a limited social environment. However, this fundamental assumption was formulated long before the digital age, when children's exposure to information, violent content, and criminal networks could still be controlled both socially and physically. Modern forensic psychologists and criminal law experts have begun to question the validity of this assumption when dealing with "digital natives" children who, despite their young age, are capable of planning, executing, and concealing criminal acts with a very high level of digital intelligence. However, modern forensic psychologists and criminal law experts have begun to question the validity of this assumption when dealing with digital natives children of the digital generation who, despite their young age, are capable of planning, executing, and concealing criminal acts with a very high level of digital intelligence, even surpassing adults in certain technological aspects.¹⁴

This disparity in protection becomes even more critical when analyzed through the lens of victimology theory. Victimology, as pioneered by Hans von Hentig through his typology of victims and by Benjamin Mendelsohn through the concept of victim precipitation, and further emphasized by Arif Gosita in the Indonesian context which underscores victims' rights as an integral part of the criminal justice system positions victims as legal subjects entitled not only to material compensation but also to recognition, protection, and substantive justice.¹⁵ From a modern victimological perspective, a legal system that focuses excessively on protecting perpetrators without giving equal weight to the rights of victims has the potential to create conditions of secondary victimization, in which victims suffer twice over due to the legal system's failure to deliver the justice they feel they deserve.¹⁶

¹⁴ Jeff Kieliszewski, "Forensic Psychology of the Teenage Brain and Criminal Responsibility: The Science and the Law," Dr. Jeff Kieliszewski, Forensic Psychologist, 2024.

¹⁵ Arief Gosita, *Masalah Kejahatan* (Jakarta: Akademi Presindo, 1993), 34.

¹⁶ Tarisha Lingke Lubis and Tarikha Khainursyah Siregar, "Perlindungan Hukum Terhadap Korban Kejahatan Ditinjau Dari

This issue is further complicated by the fact that the SPPA Act itself is grounded in the philosophical framework of restorative justice, which prioritizes the restoration of relationships between the offender, the victim, and the community, rather than mere retribution. This principle aligns with the Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice) and the Convention on the Rights of the Child, which Indonesia ratified through Presidential Decree No. 36 of 1990, and is strongly incorporated into the SPPA Law, which mandates the prioritization of diversion and restorative justice at every stage of the juvenile justice process.¹⁷ Normatively, Article 5 of the SPPA Act stipulates that the resolution of juvenile cases is carried out through dialogue between the offender, the victim, and the community, with the aim of helping the child understand their wrongdoing, apologize, and make amends for the harm caused. Diversion, as the primary mechanism of restorative justice under the SPPA Law, does indeed have a strong scientific basis and humanitarian value. However, is a diversion mechanism designed for milder conventional crimes still relevant when digitally literate children commit premeditated crimes with highly destructive physical, psychological, and social impacts on the victims?¹⁸

Various previous studies have addressed some of these issues, but with a narrower and more limited focus. First, a study titled "The Concept of Doli Incapax Regarding Children in Conflict with the Law in the Future" has analyzed the weaknesses of the doli incapax doctrine in the Criminal Code, Law No. 11 of 2012, and Law No. 35 of 2014 regarding the criminal justice system for children in conflict with the law.¹⁹ However, this study has not taken into account the accelerated

Perspektif Viktimologi," *Causa Jurnal Hukum Dan Kewarganegaraan* 16, no. 6 (2026).

¹⁷ Hasruddin Nur and Sukron Makmun, "Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak : Analisis Undang-Undang Sistem Peradilan Pidana Anak (UU No . 11 Tahun 2012) Sebagai Paradigma Alternatif," *Journal of Law, Ethics, and Multidisciplinary Research* 1, no. 1 (2025): 3.

¹⁸ Yoshua Erickson Nainggolan, "Mencari Titik Temu Antara UU SPPA Dan Keadilan Substantif," *Kumparan*, 2026.

¹⁹ Arifin, Imam Subaweh, and Umi Rozah. "Konsep Doli in Capax Terhadap Anak Yang Berhadapan Dengan Hukum Di Masa Depan," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 1-17.

cognitive maturation of children triggered by exposure to digital content, nor has it integrated a victimology perspective into its analytical framework. Second, a study titled "The Relevance of a Child's Age in the Criminal Justice System: A Critique of the Uniform Age Threshold from a Restorative Justice Perspective" has highlighted that the uniform age threshold approach is no longer considered adequate because it disregards variations in children's psychosocial capacities and risks causing substantive injustice, while proposing a more adaptive alternative model based on individual capacity assessment. However, this study has not yet concretely linked its propositions to the reality of serious crimes committed by children in the digital age.²⁰

Third, the article titled "Criminal Law Policy on Diversion for Juvenile Offenders Who Are Recidivists to Achieve Restorative Justice" discusses the absence of specific provisions regarding diversion for juvenile recidivists in the Child Protection Act and its implications for disparities in judicial rulings, but does not comprehensively examine the relevance of the *doli incapax* doctrine in the digital age or the systemic impact of the absence of such regulations on justice for victims.²¹ Fourth, the victimological study titled "Legal Protection for Child Victims of Sexual Abuse from a Victimological Perspective" offers valuable insights for the protection of child victims, but it focuses on conventional sexual abuse crimes without examining how the systemic construction of age limits in the Child Protection Act impacts substantive justice for victims in the digital age.²²

Fifth, the study titled "Formulating Legally Certain Resolutions for Sexual Violence Cases Involving Child Perpetrators" discusses the importance of formulating legally certain resolutions for sexual violence

²⁰ Robi Assadul Bahri, "The Relevance of Children's Age in the Criminal Justice System: Critique of Uniform Age Threshold from a Restorative Justice Perspective," *JPH Galunggung* 2, no. 1 (2025): 42–54.

²¹ Cahyo, Rico Nur, and Irma Cahyaningtyas. "Kebijakan Hukum Pidana Tentang Diversi Terhadap Anak Pelaku Recidive Guna Mencapai Restorative Justice," *Jurnal Pembangunan Hukum Indonesia* 2, no. 3 (2021): 203–216.

²² Ridha Fahmi Ananda, Edi Yunara, and Edy Ikhsan, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Pelecehan Seksual Dalam Perspektif Viktimologi," *Locus Journal of Academic Literature Review* 2, no. 1 (2023): 52–65.

cases committed by children, taking into account both the protection of children and the fulfillment of a sense of justice for the victims.²³ Although this study addresses the tension between protecting child offenders and protecting the rights of victims, its analysis is limited to the context of conventional sexual violence and does not examine how the rise of the digital age which has accelerated children's access to harmful content and fundamentally altered their cognitive capacities is shifting the relevance of the *doli incapax* doctrine as the philosophical foundation for determining the age of criminal responsibility under the Child Protection Act.

Based on a review of previous research, at least three major limitations have been identified in the existing literature: first, no study has yet comprehensively analyzed the relevance of the *doli incapax* doctrine in the digital age by integrating three theoretical frameworks theories of criminal liability, victimology, and restorative justice. Second, existing research tends to adopt a single perspective, focusing either solely on the protection of child offenders or solely on restorative justice without giving equal weight to the victimological dimension. Third, existing analyses have not adequately considered how the acceleration of children's cognitive maturity due to digital exposure shifts the traditional parameters of the *doli incapax* doctrine.

This article aims to analyze the relevance of the *doli incapax* doctrine in Indonesia's digital age, examine whether the age limits stipulated in the Child Protection Act are still adequate to ensure justice for victims, and propose a normative reorientation that balances the protection of child offenders with the demands for justice for victims. These findings are expected to contribute to the reform of juvenile criminal justice policy in Indonesia and provide comparative insights for jurisdictions facing similar challenges in the digital age.

²³ Sieldy Aprilia Utami, Y.A Triana Ohoiwutun, and Ainul Azizah, "Formulasi Penyelesaian Tindak Pidana Kekerasan Seksual Dengan Pelaku Anak Yang Berkepastian Hukum," *Konsensus: Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunika* 1, no. 4 (2024).

A. The Relevance of the Doli Incapax Doctrine in Indonesia's Juvenile Criminal Justice System in the Digital Age

The doctrine of doli incapax, which literally means incapable of evil, is one of the oldest legacies of the Anglo-Saxon common law tradition. This doctrine stems from the philosophical belief that children under a certain age do not yet possess sufficient mental capacity to form mens rea (criminal intent), and therefore cannot be treated the same as adults in the context of criminal liability.²⁴

Criminal liability in modern criminal law theory rests on two essential and inseparable elements: actus reus (the prohibited act) and mens rea (the intent or will to commit the act). The absence of either element particularly mens rea generally negates the basis for a person's criminal liability.²⁵ The doctrine of doli incapax is essentially a legal presumption that a child under a certain age is incapable of forming the requisite mens rea. This assumption is based on developmental psychology, which holds that a child's moral and cognitive maturity develops gradually as they grow older.²⁶

The concept of doli incapax in the Indonesian legal system is codified in Article 1, paragraph (3) of Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), which sets the minimum age of criminal responsibility at 12 years based on Constitutional Court Decision No. 1/PUU-VIII/2010. This setting of the age at 12 is based on psychological, sociological, and pedagogical considerations relevant at the time the law was drafted namely, the developmental conditions of Indonesian children in the early 2010s, long before internet penetration surged to 80.66 percent of the population and before

²⁴ David Hamer and Thomas Crofts, "The Logic and Value of the Presumption of Doli Incapax (Failing That, an Incapacity Defence)," *Oxford Journal of Legal Studies* 43, no. 3 (2023): 546–73.

²⁵ Nasution, "Mens Rea: Fondasi Pertanggungjawaban Pidana Dalam Sistem Peradilan Pidana Di Indonesia."

²⁶ Arifin, Imam Subaweh, "Konsep Doli in Capax Terhadap Anak Yang Berhadapan Dengan Hukum Di Masa Depan," 2021.

children under the age of 12 became a massive group of digital technology users.

In an international comparative context, the application of the doctrine of *doli incapax* continues to undergo significant scrutiny. In General Comment No. 24 of 2019, the UN Committee on the Rights of the Child explicitly recommended that all countries set the minimum age of criminal responsibility (MACR) at no less than 14 years of age,²⁷ based on evidence from developmental neuroscience showing that the prefrontal cortex the part of the brain responsible for rational decision-making and impulse control is not yet fully developed by that age.²⁸

These recommendations from the Committee on the Rights of the Child have been taken seriously by various countries that have long been recognized as progressive in the field of juvenile justice reform. Australia, for example, is currently undergoing a comprehensive legislative transformation. Victoria, through the Youth Justice Act 2024, has raised the age of criminal responsibility from 10 to 12 years effective in 2025, with plans to further raise it to 14 years, while the Australian Capital Territory (ACT) has passed legislation to raise the age limit to 14 years effective July 2025.²⁹ A comparative study by Moritz and Tuomi (2023), published in the *Alternative Law Journal*, shows that variations in the application of *doli incapax* across Australian jurisdictions reflect an urgent need for more consistent yet context-sensitive assessment standards. Indonesia's position of maintaining the 12-year-old threshold is now technically below current international standards and diverges from the reform trajectory of developed nations,

²⁷ Committee on the Rights of the Child, "Convention on the Rights of the Child: General Comment No. 24 (2019) on Children's Rights in the Child Justice System," United Nations, September 18, 2019, <https://cypcs.org.uk/wp-content/uploads/2021/02/General-Comment-24.pdf>.

²⁸ Damai Alan Saptama, et al. "NEUROLAW AND CHILD AGE LIMIT IN CRIMINAL RESPONSIBILITY," *Equalegum International Law Journal* 2, no. 2 (2024): 69–70.

²⁹ Mac Tuomi and Dominique Moritz, "Criminal Responsibility of Older Children: The Failings of *Doli Incapax* in Australia," *Children & Society* 38, no. 2 (2023): 458–59, <https://doi.org/10.1111/chso.12715>.

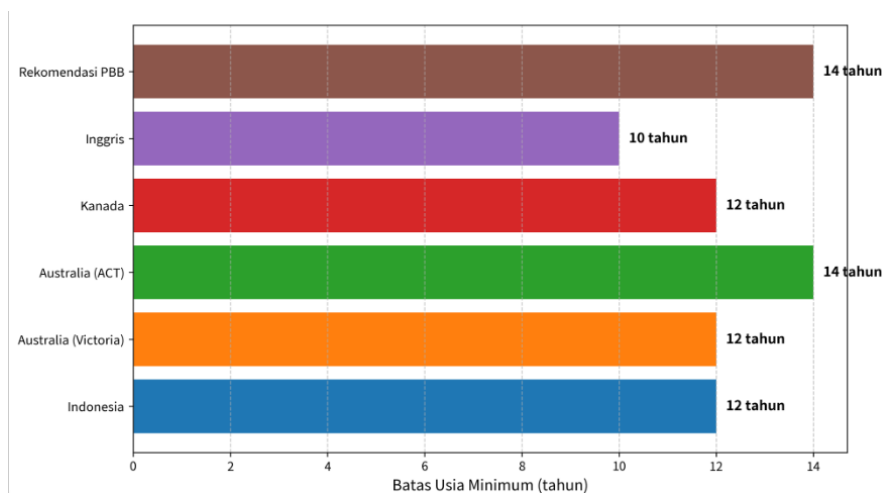
which are actually moving to raise the age limit a paradox that requires serious normative reflection.³⁰

This comparative study places Indonesia's setting of the age limit at 12 years in an ambivalent position that requires honest scrutiny. On the one hand, the age of 12 does indeed meet the international minimum standard previously recommended in General Comment No. 10 of 2007 (minimum 12 years). On the other hand, however, that standard has been updated through General Comment No. 24 of 2019, which recommends a minimum of 14 years, meaning that Indonesia is now technically below the current international standard. Even regarding the age limit for full criminal responsibility, Indonesia's SPPA Law enforces a dual system that creates a normative gap: children aged 12–13 can only be subject to non-criminal measures, while those aged 14–17 can be subject to criminal penalties and/or non-criminal measures.³¹ It is this dualism that lies at the root of the normative tensions that have emerged in various recent controversial cases.

Figure 2. Comparison of the Minimum Age of Criminal Responsibility (MACR)

³⁰ Tuomi and Moritz, "Criminal Responsibility of Older Children : The Failings of Doli Incapax in Australia."

³¹ Lawyer Ahdan Ramdani, "Pasal 113 Ayat (3) KUHP: Pidanaan Terhadap Anak Di Bawah 14 Tahun," Lawyer Ahdan Ramdani, 2026.



Source: Research findings processed based on Adapted from UN General Comment No. 24 (2019), the Australian Youth Justice Act, and related regulations (2025)

One of the premises of the doctrine of *doli incapax* is the assumption that children under a certain age do not yet possess sufficient cognitive maturity to understand the malicious nature of their actions. This premise, which was once built on a foundation of sound developmental psychology, is now increasingly being questioned in the digital age, as a generation raised in a world of constant digital connectivity demonstrates certain cognitive abilities far beyond their years particularly in the areas of technology, strategic planning, and understanding the impact of their actions in the digital space.

The development of certain cognitive skills in children, such as visual-spatial intelligence, multitasking ability, and rapid information processing, can be accelerated through early and intensive exposure to digital devices. However, the ability to concentrate deeply and impulse control may be impaired.³² Data from 231,117 children in nine countries show that intensive exposure to information and communication technology significantly affects children's executive

³² Vicente Javier et al., "Digital Device Usage and Childhood Cognitive Development: Exploring Effects on Cognitive Abilities," *Children* 11, no. 11 (2024): 2&5.

functions, including their ability to plan, make decisions, and control their behavior. Certain cognitive skills, such as visual-spatial intelligence, multitasking ability, and information processing, can be enhanced through early digital exposure.³³

Ironically, this increase in digital literacy has not been accompanied by an equivalent level of moral and ethical maturity. This is an aspect that has not been adequately examined in previous studies, including those by Daryanti (2022) and Fahreza et al. (2023). This creates what can be termed a “cognitive-moral gap” a disparity in which children are capable of planning and executing sophisticated digital crimes, yet lack a mature moral understanding of the long-term impacts and consequences of their actions.³⁴ This gap is clearly evident in the case of three elementary school students in Gresik (ages 9–12) who carried out a premeditated motorcycle theft involving site reconnaissance, strategy formulation, and execution in the early hours of the morning demonstrating a high level of cognitive planning ability that far exceeds conventional expectations for children of their age. This cognitive-moral gap serves as the central argument for why the foundational assumption of *doli incapax* can no longer be accepted dogmatically and absolutely in the digital age.

Thus, the doctrine of *doli incapax* which, from a comparative law perspective, is in fact a rebuttable presumption rather than an absolute prohibition has provided room for exceptions based on individual assessment since its inception. Its relevance in the digital age does not mean that this doctrine must be abandoned entirely, but rather that its implementation through a rigid single age limit in the Child Protection Act is no longer sufficient to address the increasingly complex and digitally orchestrated reality of child crime.³⁵

³³ Reinaldo Maeneja and Joana Rato, “How Is the Digital Age Shaping Young Minds? A Rapid Systematic Review of Executive Functions in Children and Adolescents with Exposure to ICT,” *Children* 12, no. 555 (2025): 10.

³⁴ Sizka Amelia Febrianti, Dinie Anggraeni Dewi, and Muhammad Irfan Adriansyah, “Luntarnya Nilai Moral Dan Karakter Anak Bangsa Sebagai Dampak Dari Kemajuan Teknologi,” *PRIMER: Jurnal Ilmiah Multidisiplin* 2, no. 1 (2024): 1.

³⁵ Hamer and Crofts, “The Logic and Value of the Presumption of *Doli Incapax* (Failing That, an Incapacity Defence).”

B. The Discrepancy in the Age Limits Under the SPPA Law and Its Implications for Victim Justice

The Juvenile Criminal Justice System Act has established three tiers of age limits for criminal responsibility that appear structured, yet harbor significant normative conflicts when dealing with serious, premeditated, and destructive crimes. In the first tier, children under the age of 12 who commit criminal offenses can only be placed in social welfare institutions or returned to their parents without any formal legal accountability mechanism. In the second tier, children aged 12–13 can only be subject to non-criminal measures. In the third tier, children aged 14–17 can be subject to criminal penalties and/or measures.³⁶ Although this system was designed to protect children from the effects of early criminalization, it faces challenges when dealing with cases where children commit serious and intentional crimes. The Palembang case in September 2024, in which three perpetrators aged 12 to 13 were found to have been involved in the rape and murder of a junior high school student but could not be detained or subject to criminal sanctions, starkly illustrates the structural weaknesses of this rigid uniform age threshold approach.

Every child's cognitive and moral abilities develop differently, regardless of their chronological age. A uniform age-based approach has proven incapable of accommodating variations in children's psychosocial abilities and has the potential to result in substantial injustice.³⁷ In other words, two 12-year-old children who are both exempt from criminal liability under the SPPA Act may have vastly different moral and cognitive capacities: one may not yet understand the malicious nature of their actions, while the other may have

³⁶ Nur and Makmun, "Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak : Analisis Undang-Undang Sistem Peradilan Pidana Anak (UU No . 11 Tahun 2012) Sebagai Paradigma Alternatif."

³⁷ Bahri, "The Relevance of Children's Age in the Criminal Justice System: Critique of Uniform Age Threshold from a Restorative Justice Perspective."

systematically planned the crime using digital technology and fully understood its implications. The SPPA treats both of them identically, a one-size-fits-all approach that is substantively unfair, particularly to the victims who bear the consequences of such a premeditated crime.

The Child Protection Act also has other shortcomings that exacerbate the issue of the age threshold. The application of this philosophy is sometimes inconsistent and discriminatory due to the lack of standardized and systematic capacity assessment methods.³⁸ However, the infrastructure of Special Juvenile Correctional Institutions (LPKA) in Indonesia is currently insufficient to serve all regions and meet the rehabilitation needs of children in conflict with the law.

The disparities in protection under the SPPA Law become even more apparent when analyzed from a victimological perspective. Within the framework of modern victimology, crime victims are legal subjects who possess substantive rights to recognition, protection, restitution, and justice, rather than merely passive objects.³⁹

The age limit provisions of the SPPA Law, when applied systematically, have the potential to violate the substantive rights of these victims. When perpetrators proven to have committed serious and premeditated crimes are exempted from criminal liability solely due to their chronological age, victims lose three things at once: recognition of their suffering, appropriate restitution, and a sense of justice that upholds their dignity. This is what is referred to in victimology as “secondary victimization” (double suffering), which does not stem from the crime itself, but rather from the failure of the legal system to provide a proportional response.⁴⁰

The term “secondary victimization” refers to a type of victimization that arises from an inadequate response by institutions and

³⁸ Fitz-gibbon and Brien, “A Child ’ s Capacity to Commit Crime : Examining the Operation of Doli Incapax in Victoria (Australia).”

³⁹ Arif Gosita, *Masalah Korban Kejahatan* (Jakarta: Akademi Presindo, 1993), 34.

⁴⁰ Muslim Sumardiono and Sugianto, “Perlindungan Korban Kejahatan Dalam Perspektif Viktimologi Dan Sistem Peradilan Pidana,” *FOCUS Journal of Social Studies* 7, no. 1 (2026): 42.

society toward the victim, rather than toward the crime itself.⁴¹ The 2024 Palembang case in which massive public outrage was sparked not merely by the perpetrator's crimes but by the judicial system's inability to impose proportionate sanctions is the most vivid empirical manifestation of secondary victimization structurally produced by the age limit provisions of the Child and Adolescent Protection Act (UU SPPA).⁴²

Restorative justice, which serves as the foundational philosophy of the SPPA Law, is normatively implemented through diversion mechanisms that prioritize the restoration of relationships between the offender, the victim, and the community, rather than mere retribution. However, the effectiveness of diversion and restorative justice has limitations and contextual factors that must not be overlooked. Victim restoration in the restorative justice process is highly dependent on the quality of participation, sincere acknowledgment by the perpetrator, and meaningful reparations elements that are difficult to authentically fulfill when the perpetrator is a 12–13-year-old child who has committed a serious and premeditated crime, yet is legally exempt from mechanisms of commensurate accountability.⁴³

The case of three elementary school children in Gresik provides alarming empirical evidence: diversion applied without adequate rehabilitative capacity does not produce the expected restorative effects, as evidenced by one of the offenders repeating a similar crime just three days after the case was resolved through restorative justice. The lack of specific provisions in the Child Protection Law (SPPA Law) regarding diversion for repeat juvenile offenders constitutes a legal loophole with serious consequences, including inconsistent rulings and injustice in

⁴¹ Indah Sari, Br Barus, and Nia Utami Ritonga, "Victim Blaming Sebagai Bentuk Reviktimisasi Sekunder Dalam Perspektif Viktimologi Di Indonesia," *Pemuliaan Keadilan* 3, no. 2 (2026).

⁴² Jo-anne Wemmers, Isabelle Parent, and Marika Lachance Quirion, "Restoring Victims' Confidence: Victim-Centred Restorative Practices," *International Review of Victimology* 29, no. 3 (2023): 469, <https://doi.org/10.1177/02697580221128830>.

⁴³ Masahiro Suzuki, "Victim Recovery in Restorative Justice," *SAGE Publications* 5, no. 12 (2023): 1900, <https://doi.org/10.1177/00938548231206828>.

case handling.⁴⁴ This imbalance in priorities ultimately results in a system that, rather than harmoniously reconciling these two interests, creates a false dichotomy between the protection of child offenders on the one hand and justice for victims on the other.

C. The Balance Between Justice for Victims and Protection of Juvenile Offenders

The diagnosis of the inconsistency in the age limits under the SPPA Law and its victimological impacts, as outlined in the previous section, raises the question: what kind of normative reform can uphold the spirit of child protection while ensuring substantive justice for victims? Legal scholars and criminologists have long proposed individualized capacity assessment as an alternative to the rigid uniform age threshold approach. This model, in fact, aligns with the original spirit of the *doli incapax* doctrine itself, which is generally a rebuttable presumption not an absolute, unchallengeable verdict.⁴⁵ For example, in Australian legal practice, a defense based on *doli incapax* requires the prosecutor to prove beyond a reasonable doubt that the child was aware that their actions were morally wrong. This standard is essentially individualized because it requires an assessment of each child's unique circumstances, rather than a generalization based on age.⁴⁶ This strategy ensures that child protection is truly in line with a child's moral capacity, rather than merely an age-based privilege unrelated to moral reality.

The first reformulation involves restructuring the age of criminal responsibility from a uniform threshold model to a tiered model based on a rebuttable presumption. This model is not only in line with the recommendations of General Comment No. 24 of 2019 by the UN Committee on the Rights of the Child, but is also supported by

⁴⁴ Cahyo, Rico Nur, "Kebijakan Hukum Pidana Tentang Diversi Terhadap Anak Pelaku Recidive Guna Mencapai Restorative Justice."

⁴⁵ Kharisma Putri Emeraldal and Leni Widi Mulyani, "Perbandingan Hukum Antara Negara Indonesia Dan Australia Di Bidang Batas Usia Minimal Penahanan Anak," *Syntax Literate : Jurnal Ilmiah Indonesia* 10, no. 9 (2025): 7684–87.

⁴⁶ Emeraldal and Mulyani, "Perbandingan Hukum Antara Negara Indonesia Dan Australia Di Bidang Batas Usia Minimal Penahanan Anak."

developmental neuroscience evidence showing that the development of the prefrontal cortex—which governs rational decision-making and understanding of consequences—occurs gradually and varies among individuals. Based on these considerations, the reformulation of the age limit should be implemented in a tiered manner: children under the age of 12 are granted absolute immunity, as consistent scientific evidence indicates limited moral capacity at this age; children aged 12–14 are subject to a rebuttable presumption of *doli incapax*, where prosecution is only possible if individual accountability has been proven through an independent forensic psychological assessment; the age of 14 was chosen because it aligns with current international recommendations and a more consolidated stage of cognitive development, while children aged 14–18 may be held fully criminally liable but with modifications proportional to their level of development.

This model substantively goes beyond the proposals of previous studies, which remained at the conceptual level, by providing concrete age parameters, clear evidentiary mechanisms, and measurable scientific justification. Reorienting the age limit in the Child Protection Act does not mean disregarding or undermining the principle of protecting children as offenders. On the contrary, a more balanced reformulation of restorative justice is needed, one that places the rights of victims on an equal footing with the interests of the perpetrator’s rehabilitation, rather than in a subordinate position. If restorative justice is applied in a way that genuinely prioritizes the interests and well-being of victims—rather than merely serving as an adjunct to the perpetrator’s rehabilitation agenda it has the potential to significantly aid in the victims’ recovery.⁴⁷

The second recommendation concerns strengthening the compensation system for victims in all diversion and restorative justice programs. The fact that the perpetrator is protected by their status as a minor does not relieve the state of its obligation to ensure that victims receive meaningful compensation. In this context, it is necessary to consider a state-backed compensation model, as implemented in a

⁴⁷ Hizkia Andhian Pradipta and Dyta Widi Erdianto Rendy Airlangga, “Reformulasi Konsep Diversi Berdasarkan Cita Hukum Non-Diskriminasi,” *Releksi Hukum* 8, no. 1 (2023): 30–31.

number of European jurisdictions, where the state covers part of the victim's compensation when the juvenile perpetrator lacks the financial means to fulfill it.⁴⁸ The specific mechanisms required are as follows: (1) victims' access to transparent and frequent updates on the progress of the case; (2) psychological services and support for victims as an essential component of restorative justice programs; (3) a guarantee of enforceable restitution, not merely a promise that evaporates after the trial; and (4) an evaluation mechanism that measures the level of victim satisfaction and recovery in addition to the effectiveness of the offender's rehabilitation.

Third, the establishment of specific regulations regarding diversion for repeat juvenile offenders has become an urgent priority. In addition to undermining legal certainty, the absence of diversion standards for repeat offenders not only leads to disparities in sentencing but also systematically disregards victims' right to protection from the same perpetrator.⁴⁹ The case of the three elementary school students in Gresik, in which one of the perpetrators committed a similar crime just three days after the case was resolved through restorative justice, is the clearest empirical evidence of the serious consequences of the lack of such regulations.

Fourth, in the context of cybercrime a hallmark of the digital age it is necessary to develop a juvenile justice system that is responsive to the unique characteristics of technology-based crimes. Currently, there is a significant legal gap because the Child Protection Act (UU SPPA) and the Information and Electronic Transactions Act (UU ITE) operate within separate scopes without adequate coordination mechanisms. The required synchronization is not merely the harmonization of provisions but encompasses three aspects: (1) explicit provisions in the Child Protection Act regarding cybercrimes committed by or against children as a distinct category with specific handling protocols; (2) the integration of digital forensic assessment into the procedures for

⁴⁸ Hafrida and Helmi, "Perlindungan Korban Melalui Kompensasi Dalam Peradilan Pidana Anak," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020): 130.

⁴⁹ Boby Pratama Dirja et al., "Kompleksitas Penegakan Hukum Dan Perlindungan Anak Dari Kejahatan Asusila Di Indonesia," *Journal of International Multidisciplinary Research* 1, no. 2 (2024): 1184–88.

assessing the capacity of child perpetrators of cybercrimes, given that advanced digital capabilities can serve as relevant indicators of mens rea; and (3) synchronization with the newly issued TUNAS Regulation as a regulation for child protection in the digital space, thereby creating a coherent and non-overlapping legal ecosystem.

Fifth, a paradigm shift is needed in how the legal system views and applies the doctrine of doli incapax. This reconstruction requires: (1) systematic training for judges, prosecutors, and law enforcement officials on individualized capacity assessment; (2) the development of nationally standardized capacity assessment instruments that remain flexible for local contexts; and (3) the establishment of child forensic psychology units in every District Court as mandatory institutional infrastructure. Without this investment in institutional infrastructure, the reconstruction of the doli incapax doctrine will remain an academic discourse incapable of changing juvenile justice practices on the ground.

Thus, the real challenge for reforming the Child Protection Act is not merely raising or lowering the age threshold, but rather building a child justice system that is intelligent, adaptive, and humane one capable of simultaneously weighing the moral capacity of the child as a perpetrator, the genuine need for rehabilitation, and the victim's right to substantive justice, which must not continue to be sacrificed by legal limitations that no longer align with the realities of the digital age. This reform is not an option, but an urgent normative imperative.

Conclusion

The doctrine of doli incapax, as implemented through a single age limit in the Child Protection Act, is no longer adequate in the digital age. Intensive digital exposure has created a cognitive-moral gap in children cognitive abilities that exceed their age but are not matched by equivalent moral maturity so that the basic assumptions of this doctrine can no longer be accepted dogmatically and absolutely. At the same time, the construction of a uniform age limit has been shown to systematically produce secondary victimization that consistently harms victims.

The necessary reform is not merely a revision of age thresholds, but a paradigm shift toward a tiered model based on a rebuttable presumption: full immunity for those under 12 years of age, a rebuttable presumption of “doli incapax” through independent forensic psychological assessment for those aged 12–14, and full criminal responsibility with proportional modifications for those aged 14–18. This model must be accompanied by the strengthening of victims’ rights through enforceable restitution mechanisms, special diversion regulations for juvenile repeat offenders, and the harmonization of the Child Protection Act (SPPA) with the Information and Transactions Act (ITE) and the Government Regulation (GR) No. 17 of 2025 on the Governance of Electronic Systems in Child Protection (TUNAS) Regulation to address cybercrimes involving children.

Implementing this model requires substantial institutional investment, particularly the establishment of child forensic psychology units in every District Court as an operational prerequisite. Without such institutional infrastructure, all proposed normative reforms will remain mere academic discourse with no impact on the practice of juvenile justice in the field.

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