



International Legal Framework for Children's Rights in Juvenile Criminal Justice in Indonesia

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ABSTRACT

Children involved in the criminal justice system face complex challenges. Protecting the human rights of children in the criminal justice process is crucial to prevent abuse of power and ensure genuine justice. In this context, the implementation of children's human rights in the criminal justice system has a significant impact on how these children are treated and the final outcomes of the legal process. In Indonesia, the juvenile justice system was initially introduced through Law Number 3 of 1997 concerning Juvenile Courts. After several changes, the Indonesian government realized that the existing Juvenile Court Law and other regulations were inadequate, leading to the recent effort of enacting Law Number 11 of 2012 concerning the Juvenile Criminal Justice. This study employs normative legal research, a research method aimed at understanding, explaining, and evaluating applicable legal norms. The purpose of this writing is to understand the International Legal Framework Related to Juvenile Criminal Justice and Children's Rights in the current Criminal Justice System. The discussion revealed that the Regulation of Children's Rights within the international legal framework includes the Convention on the Rights of the Child (CRC), UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), UN Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN Rules for the Protection of Children Deprived of their Liberty, UN Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Resolution 1997/30, Criminal Justice Administration, Vienna Guidelines, General Comment No. 10 of the Committee on the Rights of the Child, UN Guidelines for Action on Children in the Criminal Justice System. Currently, children's rights in the juvenile criminal justice process are regulated under Article 3 of the Juvenile Justice System Law.

Keywords: children's rights, juvenile justice, international regulations.

1. INTRODUCTION

Children involved in the criminal justice system face complex challenges. The protection of children's human rights in the criminal justice process is crucial to prevent abuse of power and ensure true justice[1]. In this context, the implementation of children's human rights in the criminal justice system has a significant impact on the treatment of children and the final outcome of the legal process[2].

Children as vulnerable members of society need special protection in the criminal justice system, in accordance with internationally recognized human rights standards[3]. The implications of human rights protection for children in the criminal justice context include the right to fair treatment, the right to freedom from discrimination, the right to be actively involved in the legal process, and the right to rehabilitation and reintegration into society[4].

By paying attention to the protection of children's human rights in the criminal justice system, it is hoped that children involved in the legal process can be treated with full respect for their dignity and rights as individuals who are still developing[5]. In addition, a humanist and human rights-based approach can also help create a fairer and more sustainable justice system for children in the future[4].

In Indonesia, the juvenile criminal justice system was initially introduced through Law Number 3 of 1997 concerning Juvenile Courts (Juvenile Court Law). The considerations of the Juvenile Court Law state that the purpose of implementing the juvenile criminal justice system in Indonesia is to provide guidance and protection for children, so that children are guaranteed complete, harmonious and balanced physical, mental and social growth and development[6].

General Explanation of the Juvenile Court Law explains that the differentiation of treatment and threats in the law is intended to better protect and nurture children, so that they can face their long future[7]. In addition, the differentiation is intended to provide opportunities for children to gain their identity to become independent, responsible, and useful human beings for themselves, their families, society, nation and state[3].

After the reform, efforts to ensure that children are processed and treated according to their rights and to realize the best conditions for children in conflict with the law as mandated by the Juvenile Court Law were strengthened through Law Number 23 of 2002 concerning Child Protection (Child Protection Law)[8]. This strengthening is contained in 64 articles that emphasize special forms of protection for children in conflict with the law (ABH). Previously, there was also Law Number 39 of 1999 concerning Human Rights (HAM Law) which generally contains the basic rights of children that must be protected, including when faced with the legal process[4].

After going through many changes, the Indonesian government realized that the existing Juvenile Court Law and other laws and regulations were not appropriate, thus giving birth to the latest efforts that have been made, namely the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA)[9]. The existence of regulations in the form of this law cannot be separated from the efforts of the Indonesian government to respect human rights through the adoption or ratification of international regulations which will be further discussed in this article.

II. METHOD

This study uses normative legal research, a research method that aims to understand, explain, and evaluate applicable legal norms. This method focuses on the analysis of laws and regulations, legal doctrines, legal principles, and court decisions. Normative legal research aims to provide an accurate interpretation of legal texts and evaluate the consistency and fairness of these norms in practice. The laws and regulations that are focused on are Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition to laws and regulations, ratifications that discuss children's rights will be the source of existing analysis.

III. DISCUSSION

Before the adoption of legal unification that specifically regulates criminal acts committed by children and the law enforcement process, in theory and practice, related provisions were still scattered across several regulations such as the Supreme Court Circular (SEMA), the Decree of the Minister of Justice, and other regulations. Provisions regarding the juvenile court process have been regulated since Indonesia's independence, including in articles 45, 46, and 47 of the Criminal Code. The Criminal Code itself is the result of harmonization of the WvSNI (Wetboek van Strafrecht voor Nederlandsch Indie) which came into effect based on the *Koninklijk Besluit* (King's Decree) on October 15, 1915 and was effective since January 1, 1918. Furthermore, with the ratification of Law Number 73 of 1958, it was explained that Law Number 1 of 1946 concerning Criminal Law Regulations applies throughout the territory of the Republic of Indonesia and amends the Criminal Code[10].

After going through developments, in 1997 there was the ratification of Law Number 3 of 1997 concerning Juvenile Courts (Juvenile Court Law) in State Gazette Number 1668 and after the ratification of this law, finally the Indonesian state had its own regulations that specifically regulate law enforcement for children in conflict with the law[9].

Long before the enactment of the Juvenile Court Law, the Convention on the Rights of the Child was previously adopted by the United Nations (UN) General Assembly. Through UN General Assembly Resolution No. 44/25 dated November 20, 1989 and officially enforced on September 2, 1990, efforts to protect children's rights have become increasingly consolidated and systematic. In general, this Convention covers 4 important rights for children, namely[10]:

- a. Survival rights, namely the rights of children in the Convention on the Rights of the Child which include the rights to preserve and maintain life (the rights of life) and the right to the highest standard of health and medical care attainable;
- b. Protection rights, namely the rights of children in the Convention on the Rights of the Child which include the right to protection from discrimination, protection from child exploitation, violence and neglect for children who do not have families for refugee children;
- c. Development rights, namely the rights of children in the Convention on the Rights of the Child which include all forms of education (formal and non-formal) and the right to achieve a standard of living that is adequate for the physical, mental, spiritual, moral and social development of children; and
- d. The Right to Participate (participation rights), namely the rights of children in the Convention on the Rights of the Child which include the rights of a child to express her/his views in all matters affecting that child.

The creation of the Convention on the Rights of the Child also finally encouraged Indonesia to ratify it on August 25, 1990 through *Keputusan Presiden Republik Indonesia (Keppres)* No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child. After the ratification of the Convention on the Rights of the Child, Indonesia then

issued Law No. 3 of 1997 concerning Juvenile Courts as the main source for the development of a juvenile criminal justice system[6].

Post-Reformation, strengthening children's rights gained momentum. Indonesia then passed Law No. 23 of 2002 concerning Child Protection which emphasized special forms of protection for children in conflict with the law (*ABH*). Previously, there was also Law No. 39 of 1999 concerning Human Rights (*UU HAM*) which generally contained basic children's rights that must be protected, including when faced with legal proceedings. Law No. 3 of 1997 concerning Juvenile Courts must also be replaced to comply with the development of national legal needs, especially to emphasize Indonesia's position as one of the States Parties to the Convention on the Rights of the Child. In 2012, the Government and the *Dewan Perwakilan Rakyat Indonesia* finally agreed to the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System[11].

In addition to the above conventions, here are several international legal frameworks related to juvenile criminal justice in Indonesia[9]:

No	Instrument	Information
1	Convention on the Rights of the Child (CRC)	Article 37 of the CRC, specifically this article states: 1) The prohibition of torture, cruel treatment or punishment, the death penalty, life imprisonment without possibility of release, cannot be imposed for violations committed by persons under the age of eighteen; 2) Every child deprived of his/her liberty must be treated humanely and with respect for the inherent dignity of the human person; 3) Every child deprived of his/her liberty must be separated from adults unless such placement is considered in the interests of the child and must have the right to maintain contact with family and receive legal assistance. While Article 40 of the CRC, the issue addressed is related to the issue of juvenile justice administration. This article contains obligations that bind a country to implement the principles of juvenile criminal justice administration, including: 1) Dignity of the child: the right of every child in conflict with the law to be treated with respect and dignity; 2) Age considerations: treatment of children must be adjusted to the child's age; 3) Reintegration: the goal of the juvenile criminal justice system is to promote the reintegration and rehabilitation of children; 4) Diversion: at what point in the criminal justice process and stages, the most appropriate effort is to keep the child away from the judicial process so that the child can enjoy his/her basic rights and receive full legal protection; 5) Minimum guarantees: Article 40 provides minimum guarantees for children's basic rights in the administration of criminal justice, including the presumption of innocence, access to legal aid, confidentiality, and so on.
2	UN Guidelines on the Prevention of Child Crime (Riyadh Guidelines)	The Riyadh Guidelines present a proactive and comprehensive approach to prevention and social integration, detailing social and economic strategies that involve almost every social area, family, school and community, media, social policy, legislation, and the administration of juvenile justice. In particular, countries are recommended to develop community-based interventions to help prevent children from coming into contact with the law. The Riyadh Guidelines also call on countries to decriminalize the status of juvenile offenders. Another recommendation emphasized to each country is the prioritization of prevention programs so that children are protected from the risk of neglect, abandonment, exploitation and abuse.
3	The United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)	The Beijing Rules provide guidelines for states in protecting children's rights and respecting their needs. This can be achieved through efforts to develop a separate and specialized juvenile criminal justice system. The Beijing Rules are the first international instrument to set out detailed and comprehensive norms for the administration of criminal justice with a child rights and development approach. The Beijing Rules encourage the use of diversion so that children are spared the use of formal justice processes and are directed to utilize local community-based mechanisms. The rules also contain procedures for authorities before taking action against children based on the best interests of the child. Furthermore, these rules include considerations based on caution before depriving children of their

		liberty, special training for all staff handling children's cases, considerations for releasing children from detention. According to these rules, the criminal justice system must be fair and friendly by emphasizing the welfare of the child and ensuring that the response of officers is appropriate to the circumstances of the perpetrator. In addition, the Beijing Rules emphasize the importance of rehabilitation for perpetrators and getting educational assistance.
4	The UN Rules for the Protection of Children Deprived of Their Liberty	This instrument is very detailed in setting out the standards that can be applied when a child is confined to an institution or detention facility. With these rules, the risk of children being victims of abuse of authority by order of the court, administration or other public officials can be prevented. In addition, the instrument includes universal principles that describe the specific circumstances of children deprived of their liberty. It emphasizes that deprivation of liberty should be a measure of last resort and detention should be for the shortest possible period. In the context of unavoidable deprivation of liberty, detailed standards regarding the minimum conditions of treatment of children should be introduced. These rules are an internationally accepted framework that is expected to eliminate the adverse effects of deprivation of liberty by ensuring respect for the child's human rights.
5	UN Minimum Rules on Non-Custodial Measures (Tokyo Rules)	These rules are intended to promote greater community involvement in the management of criminal justice, particularly in the treatment of offenders. This involvement is an effort to encourage offenders to have a sense of responsibility towards the community. According to these rules, the Government must try to ensure a balance and compatibility between the individual rights of the offender, the rights of the victim, attention to public safety and security, and prevention of crime. Flexibility in treating child offenders is an effort to provide protection to the community. In addition, flexibility in the treatment of children is also an effort to avoid unnecessary use of imprisonment. Therefore, the criminal justice system needs to provide a wide range of measures because it concerns non-custodial efforts, pre-trial to post-sentence placement. If there is appropriateness and compatibility with the legal system, the police, prosecutors or other law enforcement officers dealing with criminal cases must be empowered. to provide protection to the community, prevent crime, and promote respect for the law and the rights of victims.
6	UN Resolution 1997/30, Administration of Criminal Justice, Vienna Guidelines	This resolution provides an overview of information received by governments on how criminal justice is administered in their countries and in particular their involvement in preparing a programme of action to promote the effective application of international rules and standards on juvenile criminal justice. This document contains an annex to the Guidelines for Action on Children in the Criminal Justice System as elaborated at a meeting of experts held in Vienna in February 1997. This draft programme of action provides a set of measures needed to implement a framework for establishing a functioning administration of juvenile justice in accordance with the CRC, the Riyadh Guidelines, the Beijing Rules and the Rules on Deprivation of Liberty.
7	General Comment No. 10 The Committee on the Rights of the Child	General Comment No. 10 explores several aspects of juvenile criminal justice policy including deterrence of juveniles from committing offences, diversion from the judicial process, minimum age of criminal responsibility, fair trial guarantees, prohibition of the death penalty and life imprisonment, and deprivation of liberty. The purposes of this Comment are: 1) To encourage States to develop and implement a comprehensive juvenile criminal justice policy to deter juveniles from committing offences based on and in accordance with the CRC; 2) To provide guidelines and recommendations to States on developing a comprehensive criminal justice policy, with particular attention to deterrence of juveniles from committing offences, the introduction of alternative measures to respond to juveniles who commit offences without resorting to judicial

		procedures and to interpreting and interpreting the provisions of Articles 37 and 40; 3) To promote the integration into national policies of comprehensive juvenile criminal justice and other international standards, in particular the Beijing Rules, the Rules on Deprivation of Liberty and the Riyadh Guidelines.
8	UN Guidelines for the Treatment of Children in the Criminal Justice System	These guidelines recommend that the implementation of these guidelines consider the following: 1) Respect for human dignity, in accordance with the four principles of the CRC; 2) Orientation towards a rights-based approach; 3) A holistic approach to implementing a juvenile criminal justice system by maximizing resources and other measures; 4) Integrating services based on interdisciplinary approaches; 5) Participation of children and emphasizing the role of the community; 6) Empowerment of partners through capacity-building processes; 7) Implementation based on accountability and transparency; 8) Proactive response based on effective prevention and remedial action for children; 9) Sustainability without continuous dependence on external agencies; 10) Submission of an appropriate budget and open accessibility to children's basic needs.

From several international regulations above, then gave birth to children's rights regulated in Article 3 of the SPPA Law which reads[9]:

"Every child in the criminal justice process has the right to: a. be treated humanely by considering needs according to his age; b. be separated from adults; c. receive legal assistance and other assistance effectively; d. engage in recreational activities; e. be free from torture, punishment or other cruel, inhumane, and degrading treatment and dignity; f. not be sentenced to death or life imprisonment; g. not be arrested, detained, or imprisoned, except as a last resort and for the shortest time; h. receive justice before an objective, impartial Juvenile court, and in a trial that is closed to the public; i. not have his identity published; j. receive assistance from parents/guardians and people trusted by the Child; k. receive social advocacy; l. receive a private life; m. obtain accessibility, especially for children with disabilities; n. receive education; p. receive health services; and q. obtain other rights in accordance with the provisions of laws and regulations.

IV. CONCLUSION

In Indonesia, the juvenile criminal justice system was initially introduced through Law Number 3 of 1997 concerning Juvenile Courts. After going through many changes, the Indonesian government realized that the existing Juvenile Court Law and other laws and regulations were not appropriate, thus giving birth to the latest effort that has been made, namely the issuance of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Long before the enactment of the Juvenile Court Law, the Convention on the Rights of the Child was previously adopted by the United Nations (UN) General Assembly. Through UN General Assembly Resolution No. 44/25 dated 20 November 1989. Other international legal frameworks are the Convention on the Rights of the Child (CRC), UN Guidelines on the Prevention of Child Crime (Riyadh Guidelines), UN Minimum Rules for the Administration of Justice for Juveniles (Beijing Rules), UN Rules for the Protection of Children Deprived of Their Liberty, UN Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Resolution 1997/30, Administration of Criminal Justice, Vienna Guidelines, General Comment No. 10 of the Committee on the Rights of the Child, UN Guidelines for the Treatment of Children in the Criminal Justice System.

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