

## CRIMINAL JUVENILE LIABILITIES UNDER INDONESIAN LAWS AND THE 1989 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS

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### ABSTRACT

*This study evaluates the alignment between criminal responsibilities imposed on juvenile offenders in Indonesia and the United Nations Convention on the Rights of the Child (UNCRC). Specifically, it focuses on the Indonesian Law Number 11 of 2012 on Juvenile Criminal Justice System, which was enacted in accordance with the UNCRC. Through the use of normative methods, this study reveals that there are existing challenges hindering the effective implementation of the UNCRC provisions. Notably, the issue of long-term juvenile detention arises as a significant concern, as it restricts the autonomy and freedom of these individuals. The UNCRC emphasizes that custody should only be utilized as a last resort for young offenders. Therefore, it is crucial for the Indonesian justice system to establish more efficient and effective laws that discourage the imprisonment of juvenile criminals, thereby upholding the principles enshrined in the UNCRC.*

**Keywords:** *Criminal Juvenile Justice System, Children Court, United Nation Convention on the Right of the Child.*

### INTRODUCTION

Children are projected to comprise the majority of the country's population in the future. In the Indonesian context, a child is defined as the second generation in a lineage, as stated in the Indonesian Dictionary. Additionally, Law Number 23 of 2002 on the Protection of Children considers a fetus to be equivalent to a child. According to Article 1 Number 1 of this law, a minor is an individual below the age of eighteen. In terms of child care, Article 1 Number 2 of Law Number 4 of 1979 states that individuals are considered children if they have not reached the age of twenty-one and have never been married. This article also highlights that when assessing a child's mental maturity at the age of twenty-one, factors such as social welfare efforts, personal maturity, social maturity level, and the age at which the child has reached that stage are taken into consideration. However, there is a discrepancy in the definition of a child under the United Nations Convention on the Rights of the Child. According to Article 1 of the Convention, a person is considered a child if

they are below the age of eighteen, unless they are deemed to have reached adulthood earlier based on the existing laws that safeguard children's welfare.<sup>1</sup>

According to Article 1, Paragraph 2 of Law No. 11 of 2012, it has been declared that any person between the ages of 12 and 18 who is either an alleged perpetrator of criminal conduct, a victim of criminal activity, or a witness to criminal activity is considered a child in conflict with the law, or a child. In addition, a youngster who is in trouble with the law is still considered a child, it has been ruled.<sup>2</sup> Children are a generation that is still vulnerable and needs to be fostered so as not to make deviations and be involved in criminal acts.

Children possess distinct characteristics that set them apart from adults, and it is imperative to handle their involvement in illegal activities differently. This approach must align with established regulations. Notably, the Indonesian government has formally ratified the United Nations Convention on the Rights of the Child, demonstrating its dedication to protecting children's rights and implementing appropriate measures for the well-being of juvenile offenders, as outlined in Articles 37 and 40 of the Convention. This commitment reflects the government's intention to safeguard the interests of those who have engaged in unlawful activities.

Children symbolize the aspirations of the future generation, embodying the ideals of their nation. It is crucial to provide them with the utmost opportunities to thrive and develop effectively. Safeguarding children is a collective responsibility of the community, aimed at creating an environment that enables children to exercise their rights and fulfill their obligations. Child protection can be categorized into two distinct phases. "Legal child protection" encompasses safeguards within both public and private law, while "non-legal child protection" pertains to measures addressing social, health, and educational aspects. By implementing comprehensive safeguards in these areas, we can ensure the well-being and holistic development of children.

The treatment of children should adhere to certain standards that have been established by international law. It also necessitates that states create laws, procedures, agencies, and institutions so that young people who have broken the law can be protected by the law and treated with respect. This protection and respect must comply with the requirements of the law. When dealing with crimes committed by children, the interests and future of children should in fact be taken into

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<sup>1</sup> United Nations Convention on the Right of the Child

<sup>2</sup> Law number 11 of 2012 concerning The Juvenile Criminal Justice System

consideration. This is especially important when taking into consideration the fact that children are the successors of the concept of national struggle.<sup>3</sup>

The guidelines found in UNCRC Articles 37 and 40 should be used when deciding the best course of action for minors involved in criminal activities. It is against the law to subject children to torture, cruel treatment or punishment, the death penalty, life in prison, or any other form of arbitrary deprivation of liberty or restriction on their freedom, according to Article 37 of the United Nations Convention on the Rights of the Child. Children who are alleged to have engaged in criminal behavior or who have been convicted of such behavior possess the entitlement to have their fundamental human rights upheld and respected. In particular, they have the right to profit from any legal processes or other forms of legal aid in order to organise and present their defence. If a child is found guilty of a crime, their human rights must be respected. Article 40 states that legal and institutional principles be violated whenever and whenever it is possible.<sup>4</sup>

According to Indonesian law, adolescents who break the law are held criminally responsible in accordance with the rules laid out in the Criminal Code and Law No. 11 of 2012 regarding the Juvenile Criminal Justice System. Children who commit crimes are still subject to punishment. Under the Criminal Code, the maximum sentence for children who commit crimes is set at half the maximum sentence for adults. Life in prison and the death penalty are not applied to children who commit crimes. According to the Juvenile Crime Act (Law number 11 of 2012), there are two different categories of punishment for kids who break the law: principal penalty and supplemental punishment.

Deprivation of proceeds from crimes or the fulfilment of customary duties constitute additional punishment for children. Customary obligations are punishments or duties that must be carried out in accordance with regional customary laws while still upholding children's rights to dignity and safety.

## **RESEARCH METHODOLOGY**

This research employs the normative legal method to examine the topic of Criminal Juvenile Liabilities under Indonesian Laws and its alignment with the Convention on the Rights of the Child (UNCRC). The research methodology encompasses various aspects, including the type of research

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<sup>3</sup> Andi Syathir Sofyan, "Criminal Justice System of Children in Indonesia" *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 24, Issue 9, Series. 2 (September. 2019)

<sup>4</sup> *Ibid*

to be conducted, the research approach adopted, the data research methodology, the instruments and procedures used for data collection, and the data analysis techniques employed. By utilizing this comprehensive research methodology, a thorough analysis of the subject matter can be conducted, ensuring a robust and reliable investigation into the compatibility between Indonesian laws and the UNCRC.

## **FINDING AND ANALYSIS**

### **1) Definition of Juvenile**

Individuals are classified as children if they have not yet attained the age of eighteen. As per the United Nations Convention on the Rights of the Child, those who have not attained the age of eighteen (18) are classified as children. The significance of children, who represent the subsequent generation of a nation, cannot be overstated in terms of their contribution to the advancement and prosperity of a country. The significance of the state's involvement in reaching this judgement is crucial. It is incumbent upon the state to maintain the preservation of children's rights and obligations, as this serves to foster the economic advancement of the nation. The youth population in Indonesia assumes the role of successors to the ideals and principles that have been ardently pursued by their country. The international community has recognised the vital role played by young people in advocating for a convention that emphasises their status as human beings deserving of protected rights. Respecting and safeguarding the rights of young individuals is of utmost importance, both at the global and national levels. The United Nations General Assembly Resolution No. 44/25, dated November 20, 1989, serves as the governing framework for the rights of children on a global level. The aforementioned document is commonly referred to as the Convention on the Rights of the Child. The participation of the Indonesian government in this agreement was formally acknowledged through the issuance of Presidential Decree No. 36 on August 25th.

In addition to having traits that are obviously different from those of adults, children also have a different set of rights and responsibilities. However, just like adults, kids have the ability to commit or take part in crimes. Juvenile delinquents were once the term used to describe minors who committed crimes. Juvenile delinquency was renamed a kid in dispute with the law once the kid Protection Act was passed.<sup>5</sup> As to Article 1 Point 2 of Law Number 11 of 2012 Concerning

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<sup>5</sup> M. Nasir Djamil, *Anak Bukan untuk Dihukum*, Jakarta : Sinar Grafika, 2013. Hlm. 32  
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Criminal Juvenile Justice System, a minor who engages in unlawful activities may be designated as a child in conflict with the law. The category of juveniles involved in legal issues encompasses individuals who engage in unlawful activities, those who face consequences for their unlawful actions, and those who observe criminal acts. Children who break the law require different treatment than adults. The state takes these actions to ensure that children who are involved in criminal activity are granted their legal rights to live better lives now and in the future without suffering any traumatic events. Juvenile delinquency, in this meaning, is an act or behaviour in which a person under the age of majority knowingly breaches the law while being aware that his conduct could result in sanctions or punishment (crimes).<sup>6</sup>

The same legal rights as adults are granted to adolescents who are suspected of engaging in illegal activity or who are the subject of an inquiry. Safeguarding procedures must be put in place as soon as criminal investigations begin in order to guarantee the efficient protection and preservation of children's rights. A safeguard for the preservation of children's rights when they interact with the legal system is the United Nations Convention on the Rights of the Child. Giving children the opportunity to seek appropriate remedies is vital in cases where their rights are infringed. The accusation indicated above was verified in 2003 by the United Nations Committee on the Rights of the Child. In order to effectively protect children's rights and ensure that appropriate remedies are available when these rights are violated, national courts must be involved. It is a major factor in improving the justice system's accessibility for young people.

## **2) Law Number 11 of 2012 Concerning Juvenile Criminal Justice System**

The modifications of Law Number 3 of 1997, which deals with Juvenile Courts, to Law Number 11 of 2012, which focuses on the Juvenile Criminal Justice System, was driven by the necessity to rectify its antiquated characteristics and lack of congruence with the changing sociological and judicial context surrounding juvenile courts. The earlier legislation has been replaced by new legal provisions that are more in line with the current legal duties of the wider community. Law No. 11 of 2012 was enacted on July 30, 2012 and became effective on July 31, 2014, following a two-year period subsequent to its proclamation.

Following the guidelines set forth in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a person who has turned twelve (12) but is under eighteen (18) years old is considered a "child in conflict with the law." It is evident from this that legislators have

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<sup>6</sup> Guntarto Widodo, Sistem Pemidanaan Anak Sebagai Pelaku Tindak Pidana Perspektif Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, *Jurnal Hukum* : Universitas Negeri Pamulang, Pamulang, 2016

determined that children under the age of eight do not possess the mental ability to completely comprehend the ramifications of their actions, and as a result, they cannot be expected to answer for their actions. When a child is under the age of eighteen (18) and has been charged or accused of engaging in illicit actions, the juvenile court will still have jurisdiction over them. Alternatively, if the child is under the age of twelve (12) only.

Due to its status as a developing country, Indonesia plays a significant role in initiatives designed to raise the standard of the nation's future leaders. Aware of the critical role that children play in determining the destiny of their country, Indonesia has legally ratified the United Nations Convention on the Rights of the Child (UNCRC) in an effort to protect the welfare of minors under its authority. To control the procedural features of juvenile justice in Indonesia, Law Number 11 of 2012, also known as "The Juvenile Criminal Justice System," is the governing law. In order to secure the provision of state-supported activities aimed at protecting children's rights, a legislative framework has been established by implementing this legislation.

By virtue of the 1945 Constitution's Article 27(1), it is established that all citizens are considered to be of equal standing with reference to the governing body and the legal system. Furthermore, everyone in a society has an obligation to respect and support the legal system and the ruling class, period. Still, minors engaged in illicit activities need special protection in order to guarantee their absolute well-being and a bright future.<sup>7</sup>

Regarding the handling of minors involved in criminal behavior, the most recent legal framework that governs this practice is the Juvenile Criminal Justice System Law No. 11 of 2012, officially known as the SPPA Law. As stipulated in the Closing Provisions (Article 108 SPPA Law), the law was enacted on July 30, 2012, after two years of publication. On July 31, 2014, the SPPA Law went into effect by official decree. Aiming to create a legislative framework that effectively safeguards children's welfare in legal disputes, the SPPA Law supersedes Law Number 3 of 1997 concerning Juvenile Courts. For kids who have gotten involved in the legal system, the Special Child Development Institution (LPKA) is the designated facility, and the SPPA Law establishes strict guidelines for the use of Restorative Justice and Diversionary Strategies.

### **3) United Nation Convention on the Right of the Child (UNCRC)**

A person who is under the age of eighteen is considered a "child" under the United Nations Convention on the Rights of the Child (UNCRC). The convention delineates the fundamental

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<sup>7</sup> The 1945 Constitution



rights that are relevant to this particular group of people. States Parties have an obligation to uphold international law by guaranteeing that all children get specialized protection and assistance, free from discriminatory practices, in compliance with the Convention on the Rights of the Child. This means giving people access to essential services, including healthcare and education, in order to support their total development in terms of their personalities, skills, and aptitudes. It also entails fostering an atmosphere of love, happiness, and understanding as well as making sure that everyone is aware of their rights and actively contributes to their realization in a way that is inclusive and doable. As stipulated in the Convention, States Parties are obliged to fulfill this obligation.

As per the provisions delineated in the Convention, a person is considered a "child" if they have not reached the age of eighteen or if the relevant legal statutes specify a legal adulthood age lower than eighteen. On the other hand, governments are required by the Convention to set exact age restrictions for a number of circumstances, such as the start of employment and the end of compulsory education. It is expressly established in the Convention that individuals under the age of eighteen are not entitled to the death sentence or life in prison without the possibility of release. The 54 articles that make up the United Nations Convention on the Rights of the Child outline children's rights and provide a framework for international cooperation in ensuring that these rights are universally realized, regardless of location. The following articles are part of the convention. Every state that ratifies the UN Convention on the Rights of the Child must be resolute in upholding its international legal obligations if the convention is to be enforced. The Committee on the Rights of the Child is currently in charge of monitoring the progress. Article 45a of the United Nations Convention on the Rights of the Child is the only international human rights treaty that grants non-governmental organizations (NGOs), including Save the Children, the authority to actively oversee the implementation of the convention. This particular clause has significant importance in the context of international human rights agreements.

#### **4) Punishment that can be Imposed Toward Juvenile who are held Criminally Liable By The Court**

Law Number 11 of 2012, which particularly targets the Juvenile illegal Justice System, contains the provisions applicable to the punishments imposed on adolescents involved in illegal behavior. According to Law Number 11 of 2012's Article 1, Section 1 regulations, the juvenile justice system consists of a broad framework intended to handle criminal cases against minors who have engaged in illegal actions. The process indicated above begins with the first stage of

inquiry and continues to the second stage of rehabilitation once the person's sentence is served. A set of guiding principles, delineated in Article 2 of Law Number 11 of 2012, direct the operation of the juvenile criminal justice system. The values listed above include safeguarding children's rights, advancing justice, preventing discrimination, putting children's best interests first, honoring their opinions, fostering their development and well-being, offering guidance and counseling, implementing proportionate measures, depriving children of their freedom and punishing them only in extreme cases, and refraining from taking retaliatory action.<sup>8</sup>

The Juvenile Criminal Justice System Law Number 11 of 2012 states in Article 3 that minors involved in legal disputes have a right to humane treatment and that their unique requirements should be taken into account based on their age. Adults should be kept apart from them, and they should have access to strong legal representation and other forms of support. They should also be permitted to partake in leisure pursuits and shielded from all forms of abuse, including torture and degrading treatment. Their dignity must be respected, and neither the death penalty nor life in prison should be applied to them. Additionally, they should only be detained, arrested, or jailed as a last resort and for the least amount of time. They have the right to request justice from a fair and impartial juvenile court, whose proceedings take place in a private location that is closed to the public. They should also not reveal their name and be accompanied by a parent or guardian to guarantee their safety.

As stipulated in the SPPA Law, individuals who commit offences against children might face two distinct forms of penalties. Specifically, individuals under the age of 14 are subject to action-based sanctions, as outlined in Article 69, paragraph (2) of the SPPA Law. On the other hand, individuals aged 15 and above are subject to criminal sanctions.

##### **5) The Criminal Punishment in Indonesian Laws and Its Accordance with the UNCRC**

At the moment, the UNCRC governs non-judicial conflict settlement remedies. For children who have experienced sexual assault, are involved in legal proceedings, live in challenging situations, or are affected by violent conflicts, the Convention on the Rights of the Child offers protection. For kids who find themselves in difficult circumstances, the Convention also provides protective elements. The use of confinement and other forms of disciplinary action against minors must be regarded as a last resort (*ultimum remedium*) and should only be carried out for the shortest and most appropriate duration of time, according to the guidelines set forth in Article 16

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<sup>8</sup> R. Wiyono, *Sistem Peradilan Pidana Anak di Indonesia : Sistem Peradilan Pidana Anak*, Jakarta : Sinar Grafika, 2016, hlm. 21  
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of Law No. 23 of 2002 on Child Protection and Article 37 of the Convention on the Rights of the Child (CRC).

A number of important ideas stated in the Convention on the Rights of the Child are incorporated into Law No. 11 of 2012, popularly known as the Juvenile Criminal Justice System (UU SPPA), which is generally recognized as a piece of legislation that protects children's rights. There has been a lack of realization of some of the rights granted to children by the SPPA Law, as evidenced by its implementation in 2018.

Call it the right to be kept away from detention and imprisonment as much as possible. From this research, it appears that detention and imprisonment are still very often used against children. From a total of 304 children studied, 93.75% of children were subject to detention. Not only subject to detention, this research also found that there were children who were detained beyond the time allowed in the SPPA Law. While imprisonment is at least imposed on 86% of children in the first degree. At least 80% of the Public Prosecutors in their demands, prosecute children with imprisonment.

The various positive responses to the birth of the SPPA Law did not reduce sharp criticism of the SPPA Law. The first criticism actually came from the judges. The judges who are members of the Indonesian Judges' Association (IKAHI) not only criticized the SPPA Law through the media, but immediately proposed a constitutional review of the SPPA Law at the Constitutional Court. The criminalization of judges is the main reason why IKAHI is so "inflamed" with the birth of the SPPA Law.

The note that needs to be appreciated is that in general the number of children sentenced to prison after the enactment of the SPPA Law has decreased. However, as of June 2020, the number of children in detention centers/correctional institutions reached 1,397 people. This number does not include children who were deprived of their freedom but placed in LPKS. This figure is still quite high considering the types of crimes committed by children, some of which are victimless crimes or children who are also victims. The state must understand that placing children in detention/correctional detention centers provides its own vulnerabilities, especially given the bad situation of detention centers/correctional institutions in Indonesia. Not only that, in several cities, even though LPKA was mandated to be built separately from adult detention centers/correction centers, due to limitations, LPKA had to be built together with detention centers/correctional prisons. In DKI Jakarta, for example, the Jakarta LPKA is in the same location as the Salemba Lapas. Every day, children do activities with adults or at least witness adult activities in the same

area. Not to mention, the bad conditions for fulfilling the basic rights of children in prison, such as conditions for the provision of food and health services.

According to ICJR study, there has been inadequate implementation of children's rights, particularly those of those who are in legal trouble. In Indonesia, there is still a significant trend toward the incarceration and imprisonment of minors. In reality, Article 37(b) of the Convention on the Rights of the Child underlines that arresting, detaining, and imprisoning children must only be done as a last resort and as much as feasible in the shortest amount of time. Unfortunately, ICJR's research shows that detention is carried out in 93.75% of children. Not only that, in several cases these detentions were also found to exceed the time allowed by the SPPA Law. Unfortunately, it seems that the problem of arbitrary detention will not end yet because the SPPA Law is still based on the Criminal Procedure Code, which in principle still lacks a monitoring and control mechanism from the courts for the authority of law enforcement officials or judicial scrutiny.

The number of prison sentences against children still reaches 86%. In fact, the SPPA Law has provided various alternative forms of non-imprisonment punishment such as warnings and returns to parents. Imprisonment is not only popularly imposed by judges, prosecutors also have a tendency to prosecute children with imprisonment, as evidenced by the finding that 80% of prosecutors' demands are in the form of imprisonment in ICJR's research.

The aforementioned observations indicate that despite the passage of 30 years since the inception of the Declaration of the Rights of the Child, subsequently enshrined in the Convention on the Rights of the Child and ratified by Indonesia, the nation continues to face challenges in ensuring optimal protection and assurance for children, particularly those involved in legal conflicts. Based on the aforementioned analysis, the ICJR strongly advises the Government to promptly conduct a comprehensive assessment of the implementation of Law Number 12 of 2012. Furthermore, it is recommended that quick measures be taken to rectify any deficiencies and address any outstanding issues. Law enforcement personnel have a crucial responsibility to ensure that children involved in criminal activities are recognized as children, and as such, their rights must be upheld and respected, irrespective of the charges leveled against them. It is imperative that these officials handle such cases with adequate consideration for the unique status of these individuals as children.

## CONCLUSION

Despite Indonesia's ratification of the UNCRC as a commitment to safeguarding the rights of children involved in legal conflicts, there remain challenges in its practical implementation. One notable issue is the persistent practice of incarcerating children, which undermines their autonomy. This contradicts the UNCRC's clear guidance that the detention of minors should be a measure of last resort for those who have committed offenses. It is recommended that Indonesia prioritize the protection of children in legal trouble and take proactive measures to prevent the unnecessary imprisonment of juvenile offenders. By doing so, the country can align its practices with the principles outlined in the UNCRC and ensure the well-being and rights of children are upheld.

Indonesia should strengthen its protective measures to ensure the well-being of children involved in legal conflicts, allowing them to exercise their rights and responsibilities while minimizing any hindrance to their autonomy. There is a clear necessity for enhanced measures to safeguard the welfare of children in Indonesia. The primary focus when addressing children engaged in criminal behavior should be on identifying and resolving underlying issues that contribute to their involvement in such activities. Placing the child's best interests at the forefront is crucial for improving the juvenile justice system. It is essential that any response to a child offender aligns with the objective of creating a positive environment for their rehabilitation. Moreover, any limitations on a child's autonomy must comply with existing regulations, and the use of imprisonment should only be considered as a last resort. The duration of imprisonment should be relatively short, adhering to a minimum period, and reserved for exceptional circumstances involving child offenders.

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