



Child Punishment Versus the Principle of Non-Discrimination in the Perspective of Human Rights: A Legal Comparison Between Indonesia and Vietnam

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Abstract

Criminalization of children is a phenomenon that occurs in almost every country in the world and is relevant to the existence of children's rights as part of human rights. This research aims to analyze the criminalization of children in relation to the principle of non-discrimination in the 1989 Convention on the Rights of the Child, while also making a legal comparison with Indonesia and Vietnam regarding the regulation of child criminalization policies. This research is a juridical-normative legal study using a comparative, conceptual, and legislative approach. The research findings affirm that the criminalization of children fundamentally contradicts the principles of human rights, particularly the principle of non-discrimination in the 1989 Convention on the Rights of the Child. Therefore, the juvenile justice system must be designed as a form of special treatment that emphasizes rehabilitation and the protection of children's rights, rather than mere punishment. Child sentencing policies in Indonesia and Vietnam essentially share similarities in prioritizing the principle of the best interests of the child and the application of diversion as an alternative to sentencing. However, differences are evident in the legal structure and its implementation, where Indonesia has a specific law that comprehensively regulates the juvenile justice system, while Vietnam is still in the stage of legal reform through a draft law that emphasizes sentence reduction and the application of community-based diversion. The suggestions and recommendations from this study are that the government and policy makers in countries, especially Indonesia and Vietnam, are advised to continue to develop and strengthen the juvenile criminal justice system that is oriented towards rehabilitation, not punishment, in accordance with the principle of non-discrimination in the 1989 Convention on the Rights of the Child.

Keywords: *Children's Rights, Human Rights, Juvenile Justice.*

A. INTRODUCTION

Children from the perspective of human rights, hold an important position because they are part of the next generation of civilization that must be protected, nurtured, and ensured access to proper education so that they can grow and develop as good individuals and become the successors of a nation (Razmetaeva & Sydorenko, 2021). In relation to human rights aspects, children are affirmed to have special rights that must be guaranteed, protected, and fulfilled by the state, society, family, and parents as mandated by the United Nations Convention on the Rights of the Child (UN-CRC) of 1989 (Convention on the Rights of the Child 1989) (Hamam, 2021). The Convention on the Rights of the Child 1989, adopted by the UN General Assembly in 1989, serves as the main foundation for the recognition and protection of children's rights internationally.

The global perspective of human rights places children as subjects of rights who must receive special protection and the fulfillment of their rights as part of human rights (Lahaling et al., 2022). The Convention on the Rights of the Child 1989 serves as the main instrument binding countries to guarantee the rights to life, development, protection, and participation of children without discrimination (Goldhagen et al., 2020). This protection aims to create a decent standard of living and respect the dignity of children as whole human beings.

The Convention on the Rights of the Child 1989 is an international agreement adopted by the United Nations General Assembly on November 20, 1989, and came into force on September 2, 1990 (Buchanan et al., 2025). This convention regulates the civil, political, economic, social, and cultural rights of children worldwide, with the aim of ensuring the protection and fulfillment of children's basic rights without any

discrimination (Mulinge, 2002). One of the important substances in the 1989 Convention on the Rights of the Child, particularly in Articles 37 and 40, is the emphasis on several key principles related to the criminalization of children, which include special treatment for children when they come into contact with the law, as well as the affirmation regarding the prohibition for the state to impose the death penalty or life imprisonment on children who commit a crime (Aprilianda & Krisna, 2023). This also emphasizes that various legal measures for children, such as arrest, detention, or imprisonment, must be the last resort and carried out for the shortest possible duration (Agus & Susanto, 2021). This is also emphasized in the Convention on the Rights of the Child 1989, which states that all countries that have ratified the Convention on the Rights of the Child 1989 need to establish a special juvenile justice system so that children undergoing legal processes can be treated more humanely while accommodating their rights.

Regarding children's rights, the existence of children in conflict with the law is one of the realities faced by various countries around the world, including developing countries. In developing countries, also known as the Global South, children in conflict with the law are a common societal phenomenon due to various factors, such as poverty, low levels of education, and widespread criminality in the community (Sebastian Haug, Jacqueline Braveboy-Wagner, 2021)(Volz, 2022). However, the existence of children in conflict with the law also poses a challenge for every country, especially developing countries, to provide a criminal justice system mechanism that can accommodate and facilitate the rights of children in cases of children in conflict with the law (Malvaso et al., 2024).

The challenges related to children in conflict with the law also become one of the important orientations for Indonesia, which is one of the developing countries in Southeast Asia and has ratified the 1989 Convention on the Rights of the Child. Indonesia has indeed ratified the Convention on the Rights of the Child 1989 on September 30, 1990, through Presidential Decree No. 36 of 1990 and has adapted it into national laws, such as Law No. 23 of 2002 on Child Protection, which was later revised in 2014, and various other regulations (Nugroho Adhi et al., 2021). Besides Indonesia, in Southeast Asia, Vietnam became the first country in Asia and the second country in the world to ratify the Convention on the Rights of the Child 1989 in 1990 (Nguyen-Phung, 2023). Since then, Vietnam has shown significant progress in the implementation of children's rights, including a reduction in infant mortality rates and increased access to basic education and child healthcare services. The Vietnamese government also continues to strengthen the legislative system and national policies in accordance with the principles of the Convention, such as the best interests of the child and non-discrimination, through various national programs and action plans for child protection.

From these two developing countries in Southeast Asia, it can be understood that there are efforts and orientations to realize the fulfillment of children's rights, especially in the effort to meet the substance outlined in the Convention on the Rights of the Child 1989. However, in practice, there is still debate regarding the criminalization of children, which is considered inconsistent with the principle of non-discrimination as mandated by the Convention on the Rights of the Child 1989. This research aims to address two legal issues, including: first, the nature of juvenile punishment and its relevance to the principle of non-discrimination in the 1989

Convention on the Rights of the Child, and second, a comparison of juvenile punishment policies in Indonesia and Vietnam in accommodating the principles of the 1989 Convention on the Rights of the Child.

Research on juvenile sentencing has indeed been conducted by several previous researchers, including Surachman, et al. (2024), who analyzed crimes committed by minors through the application of restorative justice with a legal comparison between Indonesia and Malaysia (Surachman et al., 2024). Another study was conducted by Khmelevska and Muravyeva (2024) which discusses the legal comparison of juvenile justice implementation in Finland and Ukraine (Khmelevska & Muravyeva, 2024). Further research was conducted by Granja et al. (2025) who analyzed the potential implementation of electronic monitoring for all parties in the juvenile justice system (Granja et al., 2025). Of the three previous studies mentioned above, this research, which focuses on the aspect of juvenile punishment and its relevance to the principle of non-discrimination in the 1989 Convention on the Rights of the Child, including a comparison of juvenile punishment policies in Indonesia and Vietnam, is original because it has not been discussed by the three previous researchers.

This research, which focuses on the analysis related to juvenile sentencing and its relevance to the principle of non-discrimination in the 1989 Convention on the Rights of the Child, including a comparison of juvenile sentencing policies in Indonesia and Vietnam, is a normative-juridical legal study. The characteristic of normative-juridical legal research based on library and doctrinal research emphasizes the use of legal concepts and theories as a starting point in analyzing a legal product in the form of legislation (Negara, 2023). The legal concepts and theories used in this

research include the theory of child protection, children's rights, and the juvenile justice system. The primary legal materials in this research are the Convention on the Rights of the Child 1989 and the regulations governing the juvenile justice system in Indonesia and Vietnam. Secondary legal materials include journal articles, books, and other library sources that discuss child protection, children's rights, and juvenile justice systems. The non-legal material used is a legal dictionary. The analysis of legal materials is conducted qualitatively-prescriptively, where after all legal materials are analyzed, a prescription or legal solution is determined, oriented to address the legal issues that have been presented (Suteki & Taufani, 2020). The approach used in this research is the conceptual, legislative, and comparative legal approaches.

B. RESULT AND DISCUSSION

1. The Nature of Juvenile Punishment and Its Relevance to the Principle of Non-Discrimination in the 1989 Convention on the Rights of the Child

The punishment of children is one of the important phenomena occurring in various countries around the world. As with the general process of criminal sentencing, juvenile sentencing focuses solely on the fact that the convicted individual is a child (Montiel et al., 2025). The punishment of children essentially occurs because the child is considered to have committed a criminal act that violates the criminal law provisions of a country (Hathout, 2025). The criminalization of children has become a focus for countries around the world because children inherently possess specific rights that are part of the derivation of human rights (Ernawati et al., 2023). Human rights as natural rights that originate from God, therefore human rights cannot be limited or reduced by the state or by certain individuals (Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto

Nugroho, Denial Ikram, 2024). The state, in this case, has the authority to facilitate, accommodate, and guarantee the implementation of human rights, including ensuring the realization of children's rights, which must be a priority for various countries around the world (Alfani & Sunarno, 2024)(Setiawan & Haryadi, 2022).

The criminalization of children is essentially related to children as legal subjects. Children as legal subjects essentially have different definitions and age limitations between one country and another. The Convention on the Rights of the Child 1989 asserts that, in general, a child is defined as any individual under the age of 18 or as otherwise determined by national law in a given country (Pålsson et al., 2025). The provisions regarding children in Indonesia, for example, refer to Law No. 23 of 2002 on Child Protection, which stipulates that a child is an individual under the age of 18. This provision in Indonesia differs from the formulation in the Civil Code, which states that the age of a child is under 21 years, associated with the capacity to perform a civil legal act (Tri, 2023). Moreover, in Indonesian civil law itself, there has been a development in court rulings (jurisprudence) where there has been a shift in legal interpretation, in which Indonesian judges also agree that the age of a child is considered to be under 18 years old (Manggin & Khutub, 2024). This development shows that the definition of a child as a legal subject under the age of 18 is relevant in the evolution of law in Indonesia.

The assertion regarding the age limit for children under 18 years is fundamentally based on the consideration that children, in this case, those under 18 years, are considered individuals who are not yet legally competent, and therefore, their actions or deeds are not based on consideration or awareness of the consequences

that will arise. This essentially serves as the basis that for children or those under the age of 18, efforts and measures are needed in the form of a juvenile justice system that differentiates their legal processes from the general criminal justice system. The juvenile justice system, which differs from the general justice system, is very important because children have physical, mental, and emotional characteristics that are different from adults, thus requiring special treatment that prioritizes protection, guidance, and rehabilitation rather than mere punishment. In this context, the aspect of restorative justice is emphasized in the juvenile justice system (Irhammudin & Edrisy, 2022).

Restorative justice in the juvenile criminal justice system is an approach to case resolution that emphasizes restoration and reconciliation between the offender, victim, family, and other related parties, rather than mere punishment or retribution. This approach aims to restore the original social conditions and prevent children from negative stigma and the adverse effects of the formal judicial process (Madu et al., 2020). One important aspect of the restorative justice-based juvenile criminal justice system is the implementation of diversion practices (Warijan, Anis Mashduroatun, 2022). Diversion is a mechanism for transferring the resolution of juvenile cases from the formal judicial process to out-of-court resolution through deliberation and mutual agreement between the offender, victim, family, and community (Hadi Tuasikal & Asmuruf, 2024). Diversion is a tangible manifestation of restorative justice to prevent children from imprisonment and stigmatization. This is intended so that children who come into contact with the law can return to their social environment fairly without the label of a criminal, reduce psychological pressure, and support healthy social reintegration (Gunawan et al., 2024).

Restorative justice in the juvenile criminal justice system is a humanistic and constructive approach that prioritizes the rehabilitation and development of children, in line with children's rights and Indonesian cultural values (Pranadita, 2024). This approach also reduces the burden on the formal justice system and supports the creation of a harmonious society (Singla, 2024). The juvenile justice system is designed to prioritize the best interests of the child, including their survival, development, and protection from discrimination and violence (Van Wyk, 2023). The main focus is on the rehabilitation and social reintegration of the child, not retribution (Vooren et al., 2022). This system prioritizes restorative justice and diversion to avoid formal judicial processes that can lead to stigmatization and long-term negative impacts on children. Overall, the juvenile justice system, which differs from the general justice system, aims to provide legal protection in accordance with children's rights, minimize the negative impacts of the judicial process, and facilitate the rehabilitation and recovery of children so they can become productive and responsible members of society.

The implementation of this special juvenile justice system is essentially a mandate from the 1989 Convention on the Rights of the Child, which emphasizes the guarantee of several rights for children, such as the right to health, education, protection from violence and exploitation, the right to participate, as well as the right to life, survival, and optimal development of the child. This convention also emphasizes the principles of non-discrimination, the best interests of the child, the right to life and development, as well as respect for the child's opinion (Suhariyati et al., 2020). The principle of the best interests of the child in juvenile justice emphasizes that in all legal actions involving children, including criminal proceedings, the interests

and welfare of the child must be the primary consideration and top priority. This emphasizes that for children who come into contact with the law, the imposition of criminal sanctions should be avoided because efforts to ensure the best interests of the child can only be realized as long as the mischief or wrongdoing committed by the child is met with educational sanctions rather than criminal sanctions.

An important characteristic of the juvenile justice system based on restorative justice and minimizing criminal sanctions for children is essentially an exception or a special form of criminal law in general. Criminal law in general, as viewed by Sutherland and Cessey, places sanctions as an essential element in criminal law (Snow et al., 2022). Frank E. Hagan also emphasizes that sanctions in criminal law occupy an important position to ensure that offenders can reflect on their actions, thereby creating a deterrent effect for society (Magno, 2024). This view is clearly different from the juvenile justice system based on restorative justice, which minimizes criminal sanctions for children because the juvenile justice system in criminal law is a special legal provision that deviates from the general provisions of criminal law (*lex specialis*) (Ab Aziz et al., 2022). The juvenile justice system in the context of criminal law is a special criminal law because the offenders are children, so children need to receive special treatment and legal actions within the juvenile justice system that do not prioritize criminal sanctions for children.

The juvenile justice system does not prioritize punitive measures for children because, philosophically, children are still considered minors, necessitating a more educational approach rather than criminal sanctions (Firanti & Munawaroh, 2022). The orientation to provide a more educational approach for children when they face the law can at least be seen from two perspectives, the first being the sociological perspective.

Sociologically, a child in conflict with the law cannot be understood as a singular phenomenon that "the child has violated the criminal law established by the state." Specifically, children who come into conflict with the law, whether through juvenile delinquency or other actions that violate criminal law, are essentially the result of various factors that accumulate in the form of children in conflict with the law (Titaley et al., 2022). Various factors such as poverty, low parental education, societal factors that do not support the growth and development of children, and other factors like broken homes that impact the child's psyche, which then leads the child to commit a criminal act (Irhammudin & Edrisy, 2022). In this context, rather than being seen as a perpetrator of a crime, the child is more appropriately viewed as a victim of societal realities that do not support their growth and development. Therefore, when a child commits a legal violation, the appropriate approach is a restorative justice-based approach.

Second, from the perspective of human rights, particularly children's rights through the Convention on the Rights of the Child 1989, it is emphasized that there are four basic principles that must be fulfilled by every country in relation to the fulfillment of children's rights, which are: (i) non-discrimination, (ii) the best interests of the child, (iii) the right to life, survival, and development, and (iv) respect for the views of the child. The four principles of legal protection for children in the Convention on the Rights of the Child 1989, although each is distinct, must be understood and interpreted within the same framework. For example, this means that the principle of non-discrimination must be understood as an effort to realize the best interests of the child in their pursuit of the right to life and development, while also striving to respect the child's personal opinions and views. Of the four principles, in

relation to juvenile justice, the principle of non-discrimination holds an important position.

The principle of non-discrimination, according to Paul Sieghart, is fundamentally a principle of human rights where human rights are universal and must be pursued by all parties without exception (Móré, 2023). The principle of non-discrimination as a fundamental principle in human rights also finds its relevance when linked to children's rights because children's rights are essentially part of human rights (Debby Kristin, 2021). The principle of non-discrimination in relation to children's rights is understood as a fundamental principle that directs the fulfillment of children's rights to be carried out for all children without any exceptions or forms of discrimination in various aspects (Shohel, 2023). However, the principle of non-discrimination in the fulfillment of children's rights can actually be deviated from as long as the discrimination is in line with the principles of fulfilling children's rights as stated in the Convention on the Rights of the Child 1989, which includes: (i) non-discrimination, (ii) the best interests of the child, (iii) the right to life, survival, and development, and (iv) respect for the views of the child. Permitting discrimination for legal purposes that have ethical and substantive dimensions is commonly known in legal theory as affirmative action.

Affirmative action is theoretically understood as a form of exception to the principle of non-discrimination as long as it is aimed at reinforcing the substance of human rights (Nelson, 2024). In the context of children's rights, affirmative action can be understood as an effort to treat children specially in order to fulfill their substantive rights. This can be exemplified by the punishment of children, which refers to the fundamental principle in criminal law, namely equality before the law, where all

parties are equal before the law. However, in the context of children who commit legal violations, there needs to be an exception with the existence of a special justice system for children to ensure the fulfillment of children's rights, so that in crimes committed by children, a restorative justice perspective is prioritized.

From the above explanation, child sentencing is essentially contrary to human rights, particularly concerning the fulfillment of children's rights, thus conflicting with the principle of non-discrimination in the Convention on the Rights of the Child 1989. The principle of non-discrimination in the 1989 Convention on the Rights of the Child is essentially intended to optimize the fulfillment of children's rights, particularly for children who violate the law. Children who commit legal violations, in accordance with the principle of non-discrimination, can actually be exempted from legal proceedings through a special juvenile justice system as an affirmative action effort. This emphasizes that sentencing children is fundamentally contrary to the principle of non-discrimination in the Convention on the Rights of the Child 1989, so in order to fulfill children's rights, special efforts are needed for children facing the law in the form of a special juvenile justice system.

2. Comparison of Child Punishment Policy Laws in Indonesia and Vietnam to Accommodate the Principles of the 1989 Convention on the Rights of the Child

Child sentencing policies in various countries are indeed mandatory and must take into account the 1989 Convention on the Rights of the Child. Historically, the

formulation of the Convention on the Rights of the Child in 1989 began with international concern for child protection that emerged after World War I due to the suffering of children who became victims of war (Khen, 2023). At that time, the League of Nations was prompted to pay attention to the fate of orphaned and abandoned children. Female activists like Eglantyne Jebb, the founder of Save the Children, developed ten statements on children's rights that were later adopted by the Save the Children Fund International Union in 1923 (Houlihan, 2021). In 1924, the Declaration of the Rights of the Child was first adopted internationally by the League of Nations, known as the Geneva Declaration (Houlihan, 2021). However, the declaration of children's rights in this era was not effective considering that after the declaration of children's rights was proposed, World War II occurred, which also resulted in many orphaned children. After World War II, in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, which included specific rights for children (Ahmad et al., 2025)(Shah & Sivakumaran, 2021). Then in 1959, the UN issued the second Declaration of the Rights of the Child, which was more comprehensive and included ten articles of children's rights.

An important moment occurred in 1979 when the UN declared the International Year of the Child. In this year, the Polish government proposed the drafting of a document that establishes international standards and is legally binding regarding children's rights (Kmak, 2021). This proposal marked the beginning of the formulation of the Convention on the Rights of the Child. After a drafting process involving various countries and international institutions, the draft of the Convention on the Rights of the Child was completed and officially adopted by the UN General Assembly on November 20, 1989, by unanimous vote. The Convention then came into international

force on September 2, 1990. November 20 is then commemorated as Universal Children's Day in honor of the adoption of the convention (Sabu, 2025).

The development of the formulation of the Convention on the Rights of the Child in 1989 was indeed an important milestone because, in its development, children's rights evolved alongside the growing awareness of the global community about the importance of maintaining the existence of human rights. The formulation of the Convention on the Rights of the Child in 1989 also became an important effort, as one of the post-World War II global community development initiatives was to strive for the optimal implementation of children's rights by all countries. In short, the history of the formulation of the 1989 Convention on the Rights of the Child is the result of a long evolution of various declarations and statements on children's rights since the early 20th century, culminating in the adoption of an international convention that is legally and politically binding to protect children's rights worldwide.

The formulation of the Convention on the Rights of the Child in 1989 essentially emphasizes that all countries in the world, especially those that have ratified the Convention on the Rights of the Child in 1989, must implement the substance of the Convention on the Rights of the Child in 1989 optimally. Ratification is essentially a legal effort to implement an international provision so that it can be applicable in a country (Dicky Eko Prasetyo, 2022). This emphasizes that countries in the world that have ratified the 1989 Convention on the Rights of the Child are indeed obliged to implement the 1989 Convention on the Rights of the Child through their positive laws in a country. Regarding the ratification of the 1989 Convention on the Rights of the Child, there are at least two countries in Southeast Asia that have ratified the 1989 Convention on the Rights of the Child, namely Indonesia and Vietnam. In this study,

one of the focuses is a legal comparison regarding juvenile sentencing regulations between Indonesia and Vietnam as an effort to implement the 1989 Convention on the Rights of the Child, which has been ratified by both Indonesia and Vietnam.

The comparison of laws regarding juvenile punishment between Indonesia and Vietnam is based on two arguments, namely: first, Indonesia and Vietnam are both developing countries and also Southeast Asian countries that, in this context, have many similarities in efforts to guarantee children's rights. Second, Indonesia and Vietnam are countries with a civil law system, so in the effort to guarantee children's rights, the role of legislation becomes important (Kiki Kristanto et al., 2023)(Oyuntungalag, 2022). Legal comparison with the existence of a similar legal system, according to Peter De Cruz, is one of the important aspects so that legal comparison can be conducted more precisely in various countries with the same legal system (Peter De Cruz, 2015).

Indonesia is indeed one of the countries that was responsive in ratifying the Convention on the Rights of the Child 1989 through Presidential Decree Number 36 of 1990 and began implementing this convention nationally in the same year, 1990. Because it has ratified the Convention on the Rights of the Child 1989, the policies on juvenile justice in Indonesia fully refer to the Convention on the Rights of the Child 1989, which emphasizes special protection for children in conflict with the law through a juvenile justice system based on international child rights principles. As an effort to accommodate the rights of children as stipulated in the Convention on the Rights of the Child 1989, Indonesia regulates the juvenile justice system in Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA). This system encompasses the entire process of handling children in conflict with the law, from investigation to

post-penal guidance, with principles of protection, justice, non-discrimination, the best interests of the child, respect for the child, and avoidance of punishment as a last resort (principle of *ultimum remedium*) (Nugroho & Pujiyono, 2022). In Indonesia, a child in conflict with the law is one who is aged 12 to 18 years, while a child under 12 years suspected of committing a crime is not subject to punishment but receives special handling in the form of guidance and assistance (Elja & Universitas, 2022). This age division is intended to ensure that children who violate the law are oriented towards receiving penal actions rather than criminal sanctions. In Indonesia, one of the important characteristics of the SPPA Law is the regulation concerning diversion or the transfer of case resolution outside the judicial process. Diversion in the SPPA Law is a mandatory effort for children in conflict with the law, especially for crimes with a prison sentence of under 7 years and not a repeat offense, using a restorative justice approach that involves the child, family, victim, and community (Dwi Wasis, Susilowardani, 2022). In addition, the SPPA Law also emphasizes that the detention of children is highly restricted and can only be carried out under certain conditions, such as a minimum age of 14 years and allegations of crimes with a prison sentence of 7 years or more, and must consider humane treatment according to the child's age (Kiswanto et al., 2021). Child sentencing can include primary and additional penalties, as well as special measures such as return to parents, care in social institutions, mandatory education or training, and restorative actions due to the crime.

The regulation of juvenile sentencing in Indonesia, as previously described, is indeed in line with the 1989 Convention on the Rights of the Child, which mandates member states to protect children from harmful treatment and prioritize the best interests of the child in every action concerning children, including in the criminal

justice system. Indonesia adopts this principle by emphasizing that in the juvenile justice system, there is a focus on avoiding punishment as a last resort, the use of diversion and restorative justice to prioritize the rehabilitation and social reintegration of children, special treatment appropriate to the age and developmental needs of the child, and detention of children as a last resort and with humane treatment. This reinforces that the policy of juvenile justice in Indonesia has undergone significant reforms in line with the 1989 Convention on the Rights of the Child. The juvenile justice system in Indonesia focuses on the protection of children's rights, prioritizes diversion and restorative justice, limits the use of imprisonment, and considers the best interests of the child to grow and develop optimally without experiencing negative effects from the penal process.

As in Indonesia, child sentencing policies in Vietnam are also being adjusted to align with the mandate of the 1989 Convention on the Rights of the Child, leading Vietnam to undertake legal reforms that align the treatment of children in conflict with the law with international child protection principles. The policy of juvenile justice in Vietnam's legislation demonstrates reform efforts that prioritize the protection of children's rights in accordance with the principles of the 1989 Convention on the Rights of the Child (Tuan et al., 2024). The law regarding children in Vietnam is primarily regulated by the Law on Protection, Care, and Education of Children of 2004, which serves as the main legal foundation to comprehensively guarantee children's rights in accordance with the principle of "the best interests of the child" and international legal standards. In addition, Vietnam enacted the Children's Law in 2016, which came into effect on May 1, 2017 (Thi My Nguyen et al., 2023). This law contains important provisions such as the protection of children's rights regarding

images and personal information, the right of children to express their opinions in policy-making, and the protection against child abuse and violence.

Regarding juvenile justice, Vietnam is striving to reform its legal system by proposing the Draft Law on Juvenile Justice, which regulates the reduction of maximum prison sentences for children in conflict with the law, the limitation of temporary detention, and the prioritization of diversion and rehabilitation measures. This bill is part of legal reforms aligned with the 1989 Convention on the Rights of the Child and aims to provide more humane and age-appropriate treatment for child offenders. In addition, regarding child adoption, Vietnam specifically regulates it in Law No. 52/2010/QH12 on Adoption, which governs the principles, procedures, and rights and obligations related to child adoption (Huyen, 2024). This emphasizes that in its efforts to accommodate the 1989 Convention on the Rights of the Child, Vietnam strives to formulate legal products that accommodate children's rights.

Regarding the Draft Law on Juvenile Justice, it has indeed received support from various state institutions in Vietnam, particularly the Supreme Court, which emphasized that one of the important substances of the Draft Law on Juvenile Justice is to reduce the maximum prison sentence for juvenile offenders (Huyen, 2024). For example, the maximum sentence for offenders aged 16-18 was reduced from 18 years to 15 years, and for those aged 14-16, it was reduced from 12 years to 9 years. In addition, the Draft Law on Juvenile Justice also emphasizes that temporary detention for children is only applied to very serious crimes and within certain age ranges, namely children aged 14-16 who commit very serious crimes, and children aged 16-18 who intentionally commit very serious crimes. The Draft Law on Juvenile Justice also emphasizes the application of diversion measures for children who commit

offenses without going through the criminal accountability process. Diversion actions include reprimands, community-level education, and community-based reconciliation such as apologies to victims and compensation for damages. The various descriptions above actually demonstrate Vietnam's seriousness, which has ratified the 1989 Convention on the Rights of the Child since 1990, in building a legal system that seeks to harmonize national regulations with the principles of the convention, such as the best interests of the child, special treatment for children in conflict with the law, and the use of diversion and rehabilitation instead of heavy punishment. In addition, Vietnam also integrates child protection into the national program for the prevention and eradication of human trafficking, which also supports the protection of children from exploitation and crime.

From the description above, it can be seen that the juvenile justice policy in Vietnam is indeed in line with the principles of the 1989 Convention on the Rights of the Child, which emphasizes special treatment for children in conflict with the law, prioritizes the best interests of the child, avoids harsh penalties, and prioritizes diversion and rehabilitation. Vietnam has also ratified several optional protocols of the Convention on the Rights of the Child related to the protection of children from involvement in armed conflict and sexual exploitation. Additionally, Vietnam has a national program for the prevention and eradication of human trafficking, including special protection for children who are victims of exploitation, which is part of broader efforts to protect children's rights in accordance with international standards.

The similarity in juvenile justice policies between Indonesia and Vietnam is that both countries have ratified the Convention on the Rights of the Child 1989 and have made it the main reference in the formulation of juvenile justice policies. Both

countries prioritize the principle of protecting children in conflict with the law by emphasizing a rehabilitative approach rather than a repressive one. The principle of the best interests of the child serves as the main foundation in the juvenile justice system, where punishment is positioned as a last resort (*ultimum remedium*) and is replaced as much as possible with diversion efforts or the transfer of case resolution outside the formal judicial process. Both Indonesia and Vietnam also strictly limit the detention of children and only for certain crimes and specific ages, and prioritize a restorative justice approach that involves the child, family, victim, and community. In addition, both countries are aligning their legal systems with international standards to ensure humane and age-appropriate treatment for children in conflict with the law.

The difference in juvenile justice policies between Indonesia and Vietnam is that, despite having similar basic principles, there are several differences in the implementation of juvenile justice policies between Indonesia and Vietnam. In Indonesia, the juvenile justice system is specifically regulated by Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA), which stipulates that children who can be held criminally responsible are those aged between 12 and 18 years, while children under the age of 12 cannot be criminally charged and only receive guidance. On the other hand, Vietnam applies a maximum reduction of criminal sentences based on age categories, such as a reduction from 18 years to 15 years for children aged 16–18 years, and from 12 years to 9 years for children aged 14–16 years. Additionally, if in Indonesia diversion is mandatory for cases with a threat of punishment under seven years and not involving recidivists, in Vietnam, diversion measures can be applied even without a criminal responsibility examination, and it places more emphasis on admonition, community education, and reconciliation.

Another difference lies in the legal structure, where Vietnam regulates this system through several regulations such as the 2004 Law on Protection, Care, and Education of Children, the 2016 Child Law, and the Draft Law on Juvenile Justice which is still under discussion, while Indonesia has a comprehensive law specifically for the juvenile criminal justice system.

C. CONCLUSION

The criminalization of children is fundamentally a practice that contradicts the principles of human rights, particularly in the context of fulfilling children's rights as stipulated in the Convention on the Rights of the Child 1989. The principle of non-discrimination contained in the convention emphasizes the importance of equal and fair treatment for every child, including those who commit legal violations. Therefore, in order to optimize the fulfillment of children's rights, a punitive approach should not be the primary choice. On the contrary, children who come into conflict with the law need to receive different and special treatment through a juvenile justice system designed as a form of affirmative action. This system not only aims to protect children's rights but also reflects the concrete implementation of the principle of non-discrimination in the law enforcement process. Thus, the criminalization of children, without considering a special approach based on protection and rehabilitation, constitutes a violation of the principle of non-discrimination and has the potential to hinder the comprehensive fulfillment of children's rights.

A comparison of the legal regulations on juvenile justice policies between Indonesia and Vietnam, in terms of their similarities, shows that both Indonesia and Vietnam are countries that have ratified the Convention on the Rights of the Child 1989 and have made it the main reference in the formulation of juvenile justice

policies. Both countries prioritize the principle of protecting children in conflict with the law by emphasizing a rehabilitative rather than a repressive approach. The principle of the best interests of the child serves as the main foundation in the juvenile justice system, where punishment is positioned as a last resort (*ultimum remedium*) and is replaced as much as possible with diversion efforts or the transfer of case resolution outside the formal judicial process. Regarding the differences, in Indonesia, the juvenile justice system is specifically regulated by Law Number 11 of 2012 on the Juvenile Justice System (UU SPPA), which stipulates that children who can be held criminally responsible are those aged between 12 and 18 years, while children under the age of 12 cannot be criminally charged and only receive guidance. On the other hand, Vietnam applies a maximum reduction of criminal sentences based on age categories, such as a reduction from 18 years to 15 years for children aged 16–18 years, and from 12 years to 9 years for children aged 14–16 years. In addition, if in Indonesia diversion is mandatory for cases with a threat of punishment under seven years and not a recidivist, then in Vietnam diversion measures can be applied even without a criminal responsibility examination, and it places more emphasis on reprimands, community education, and reconciliation.

The suggestions and recommendations from this study are that the government and policy makers in countries, especially Indonesia and Vietnam, are advised to continue to develop and strengthen the juvenile criminal justice system that is oriented towards rehabilitation, not punishment, in accordance with the principle of non-discrimination in the 1989 Convention on the Rights of the Child.

REFERENCES

- Ab Aziz, N., Mohamed, N. S., Hussin, N., & Samsudin, N. S. (2022). Restorative Justice in The Child Justice System: Implementation in Other Jurisdictions. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 7(6), e001561. <https://doi.org/10.47405/mjssh.v7i6.1561>
- Agus, M. A., & Susanto, A. (2021). The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System. *Jurnal Penelitian Hukum De Jure*, 21(3), 369. <https://doi.org/10.30641/dejure.2021.v21.369-384>
- Ahmad, N., Aqilah Walin Ali, & Mohammad Hilmy Baihaqy bin Yussof. (2025). The Challenges Of Human Rights In The Era Of Artificial Intelligence. *UUM Journal of Legal Studies*, 16(1), 150–169. <https://doi.org/10.32890/uumjls2025.16.1.9>
- Alfani, M. I., & Sunarno, S. (2024). Comparison of Legal Protection of Labor in Indonesia and Pakistan. *Jurnal Suara Hukum*, 6(1), 187–205. <https://doi.org/10.26740/jsh.v6n1.p187-205>
- Aprilianda, N., & Krisna, L. A. (2023). Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warning). *Jambura Law Review*, 5(1), 1–20. <https://doi.org/10.33756/jlr.v5i1.15936>
- Buchanan, E., Woods, K., & Shaw, B. (2025). Linking the United Nations on the convention on the rights of the child (1989) to the needs of children affected by parental imprisonment. *Pastoral Care in Education*, 1(1), 1–17. <https://doi.org/10.1080/02643944.2025.2482982>
- Debby Kristin, F. C. T. I. D. (2021). The Rights of Children Refugee in Transit Country under the CRC, A Case of Indonesia: An Intended Negligence on the Implementation of Non-Discrimination Principle? *Padjadjaran Journal of International Law*, 5(1), 116.
- Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, N. (2024). Discrimination Related to Labour Age Limitation in Indonesia : A Human Rights and Comparative Law Perspective. *Suara Hukum*, 6(2), 228–254.
- Dicky Eko Prasetyo, A. I. (2022). Judicial Activism dalam Pengujian Konstitusionalitas Undang-Undang Ratifikasi. *Negara Hukum*, 13(2), 258.
- Dwi Wasis, Susilowardani, A. P. (2022). Pertanggungjawaban Pidana Terhadap Anak Dalam Kasus Kecelakaan Lalu Lintas Ditinjau Dari Konsep Diversi (Studi Di Polres Ponorogo). *Hukum Dan Kebijakan Sosial*, 6(1), 79.
- Elja, T. A. P., & Universitas. (2022). Teori Keadilan Restoratif (Restorative Justice) Sebagai Upaya Pelindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Penyelesaian Kasus Pidana Anak Di Polres Tanjung Pinang). *Jurnal Equitable*, 7(2), 194.
- Ernawati, E., Abdullah, A. G., & Subhan, Z. (2023). Child Participation in Marriage

- Dispensation in Southeast Asian Muslim Countries from The Perspective of the Convention on the Rights of the Child. *Journal of World Science*, 2(8), 1137–1148. <https://doi.org/10.58344/jws.v2i8.393>
- Firanti, A. T., & Munawaroh, S. (2022). The Criminal Cases Settlement with Restorative Justice System. *Srawung: Journal of Social Sciences and Humanities*, 1(3), 45.
- Goldhagen, J., Clarke, A., Dixon, P., Guerreiro, A. I., Lansdown, G., & Vaghri, Z. (2020). Thirtieth anniversary of the un Convention on the Rights of the Child: Advancing a child rights-based approach to child health and well-being. *BMJ Paediatrics Open*, 4(1), 1–8. <https://doi.org/10.1136/bmjpo-2019-000589>
- Granja, R., Leote de Carvalho, M. J., & Pimentel, A. (2025). The Projected (Non)-Futures of Electronic Monitoring in the Child Justice System: Professionals' Perspectives in Portugal. *Youth Justice*, 1(1), 1–4. <https://doi.org/10.1177/14732254251316865>
- Gunawan, M. M., Suwadi, P., & Rustamaji, M. (2024). Comparison of Restorative Justice Implementation in Indonesia, Usa, Germany, Poland and Switzerland. *Revista de Gestao Social e Ambiental*, 18(1), 1–15. <https://doi.org/10.24857/rgsa.v18n1-055>
- Hadi Tuasikal, & Asmuruf, J. (2024). Handling Children Who Commit Crimes Under the Criminal Justice System. *Journal of Law Justice (JLJ)*, 2(2), 150–161. <https://doi.org/10.33506/jlj.v2i2.3414>
- Hamam, H. (2021). The Status of Outside Marriage Children (The Study of Constitutional Court Regulation No. 46/PUU-VIII/2010 on February 27th, 2012 Based on the Fuqaha' Perspective). *International Journal of Educational Research & Social Sciences*, 2(3), 574–584. <https://doi.org/10.51601/ijersc.v2i3.85>
- Hathout, H. K. (2025). Punishment for chemical castration for sexual crimes committed against children in modern legislation (A comparative study). *Tasnim International Journal for Human, Social and Legal Sciences*, 4(1), 382–393. <https://doi.org/https://doi.org/10.56924/tasnim.12.2025/20>
- Houlihan, P. J. (2021). Renovating Christian Charity: Global Catholicism, the Save the Children Fund, and Humanitarianism During The First World War*. *Past & Present*, 250(1), 203–241. <https://doi.org/10.1093/pastj/gtaa010>
- Huyen, N. T. Le. (2024). The Vietnam's Law on Marriage and Family 2014 and related documents: Unreasonable points about surrogacy and recommendations. *Ministry of Science and Technology, Vietnam*, 66(3), 106–111. <https://doi.org/10.31276/VMOSTJOSSH.2023.0098>
- Irhammudin, I., & Edrisy, I. F. (2022). Restorative Justice in the Implementation of Diversion Against Child Criminal Victims. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 22(2), 223–238. <https://doi.org/10.19109/nurani.v22i2.11501>

- Khen, H. M.-E. (2023). Restoring Children's Right to Education during and after War: The Case of Ukraine. *International Journal of Children's Rights*, 31(1), 225–267.
- Khmelevska, N., & Muravyeva, M. (2024). Innovative approaches to juvenile justice reform: a Finnish-Ukrainian experience. *Revista Amazonia Investiga*, 13(82), 186–196. <https://doi.org/10.34069/AI/2024.82.10.15>
- Kiki Kristanto, Christio Drakhma Dekapolis, & Isno Pandowo. (2023). Customary Law as Part of the Reform Legal System in Indonesia. *Focus Journal Law Review*, 3(2). <https://doi.org/10.62795/fjl.v3i2.227>
- Kiswanto, H., Noor, H. T., Putra, H. D., & Sonjaya, S. (2021). Rehabilitasi Anak Pengguna Narkotika, Psikotropika, Dan Zat Adiktif Lainnya. *Jurnal Pemuliaan Hukum*, 4(1), 1–20. <https://doi.org/10.30999/jph.v4i1.1444>
- Kmak, M. (2021). Development of Children's Rights In Poland – Selected Aspects. *MEST Journal*, 9(1), 46–53. <https://doi.org/10.12709/mest.09.09.01.06>
- Lahaling, H., Lasori, S. A., Makkulawuzar, K., Yunus, Y., & Salam, S. (2022). Children's Rights In The Context Of Child Marriage In Gorontalo Province. *Sasi*, 28(2), 234. <https://doi.org/10.47268/sasi.v28i2.887>
- Madu, R. H., Wantu, F. M., & Badu, L. W. (2020). The Restitution of Children as Victims of the Crime of Obscenity in the Principles of Restorative Justice. *Estudiante Law Journal*, 2(3), 530–546.
- Magno, C. N. (2024). Criminal populism: crime as political capital in the Philippines and the United States. *International Journal of Comparative and Applied Criminal Justice*, 1(1), 1–19. <https://doi.org/10.1080/01924036.2024.2407535>
- Malvaso, C., Day, A., McLachlan, K., Sarre, R., Lynch, J., & Pilkington, R. (2024). Welfare, justice, child development and human rights: a review of the objects of youth justice legislation in Australia. *Current Issues in Criminal Justice*, 36(4), 451–471. <https://doi.org/10.1080/10345329.2024.2313784>
- Manggin, & Khutub, M. (2024). Analisis Ketidaksesuaian Batas Usia Dewasa dan Konflik Normatif Antara Hukum Pidana Materiil dan Hukum Perdata di Indonesia (Studi Putusan Kasasi Nomor 897 K / PID / 2019). *UNES Law Review*, 6(2), 7439–7449.
- Montiel, I., Greco, A. M., & Pereda, N. (2025). Adaptation and psychometrical assessment of the Juvenile Victimization Questionnaire self-report for Children and Early Adolescents (JVQ-CEA). *Child Abuse & Neglect*, 163(1), 3–9. <https://doi.org/10.1016/j.chiabu.2025.107424>
- Móré, S. (2023). Collective redress mechanisms in minority protection: the case of Hungary. *International Journal of Public Law and Policy*, 9(4), 453–471. <https://doi.org/10.1504/IJPLAP.2023.134298>
- Mulinge, M. M. (2002). Implementing the 1989 United Nations' Convention on the Rights of the Child in sub-Saharan Africa: the overlooked socioeconomic and

- political dilemmas. *Child Abuse & Neglect*, 26(11), 1117–1130. [https://doi.org/10.1016/S0145-2134\(02\)00388-5](https://doi.org/10.1016/S0145-2134(02)00388-5)
- Negara, T. A. S. (2023). Normative Legal Research In Indonesia: Its Origins And Approaches. *ACLJ*, 4(1), 5.
- Nelson, W. E. (2024). Abortion and Affirmative Action : The Fragility of Supreme Court Political Decision-Making. *Indiana Journal of Law and Social Equality*, 12(1), 73–76.
- Nguyen-Phung, H. T. (2023). The impact of maternal education on child mortality: Evidence from an increase tuition fee policy in Vietnam. *International Journal of Educational Development*, 96(1), 1–7. <https://doi.org/10.1016/j.ijedudev.2022.102704>
- Nugroho Adhi, P., Agung, I. G. P., & Gitareja, B. (2021). Challenge and Opportunity to Implement the Right to Education for Child Refugees in Indonesia. *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 54–62. <https://doi.org/10.2991/assehr.k.210506.009>
- Nugroho, Y., & Pujiyono. (2022). Penegakan Hukum Pelanggaran Lalu Lintas oleh Anak: Analisis Kepastian dan Penghambat. *Jurnal Pembangunan Hukum Indonesia*, 4(1), 52.
- Oyuntungalag, J. (2022). Trust Law Concept Challenging Civil Law System : Mongolian Example. *Beijing Law Review*, 13(1), 1051–1082. <https://doi.org/10.4236/blr.2022.134066>
- Pålsson, D., Leviner, P., & Wiklund, S. (2025). Children’s right to participation in Swedish child welfare – The extent, nature and determinants of child interviews during investigations. *Child Abuse & Neglect*, 162(1), 4–7. <https://doi.org/10.1016/j.chiabu.2024.107000>
- Peter De Cruz. (2015). *Comparative Law in a Changing World*. Taylor & Francis Group.
- Pranadita, N. (2024). As A Result Of The Law, Differences In Restorative Justice Arrangements In Police Regulation Number 8 Of 2021. *International Journal OfAsia Pasific Collaboration*, 2(2), 32–42.
- Razmetaeva, Y. S., & Sydorenko, O. O. (2021). Abortion, Human Rights and Medical Advances in Digital Age. *Wiadomosci Lekarskie (Warsaw, Poland : 1960)*, 74(1), 132–136. <https://doi.org/10.36740/wlek202101126>
- Sabu, M. (2025). Securing our tomorrow by caring for children today: Implementing an attainable universal child care model in the United States. *Family Court Review*, 63(2), 354–367. <https://doi.org/10.1111/fcre.12850>
- Sebastian Haug, Jacqueline Braveboy-Wagner, G. M. (2021). The ‘Global South’ in the study of world politics: examining a meta category. *Third World Quarterly*, 42(9), 1927.

- Setiawan, P., & Haryadi, W. T. (2022). The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision. *Journal of Court and Justice*, 1(3), 1–9. <https://journal.jfpublisher.com/index.php/jcj/article/view/124>
- Shah, S., & Sivakumaran, S. (2021). The Use of International Human Rights Law in the Universal Periodic Review. *Human Rights Law Review*, 21(2), 264–301. <https://doi.org/10.1093/hrlr/ngaa056>
- Shohel, M. M. C. (2023). Lives of the Rohingya children in limbo: Childhood, education, and children's rights in refugee camps in Bangladesh. *Prospects*, 53(1–2), 131–149. <https://doi.org/10.1007/s11125-022-09631-8>
- Singla, S. (2024). Reforming Criminal Justice : Evaluating the Efficacy of Restorative Justice Practices in Reducing Recidivism Rates. *Indian Journal of Law*, 2(2), 32–35.
- Snow, K. J., Petrie, D., Young, J. T., Preen, D. B., Heffernan, E., & Kinner, S. A. (2022). Impact of dual diagnosis on healthcare and criminal justice costs after release from Queensland prisons: a prospective cohort study. *Australian Journal of Primary Health*, 28(3), 264–270. <https://doi.org/10.1071/PY21142>
- Suhariyati, S., Haryanto, J., & Probowati, R. (2020). Trends of Early Marriage in Developing Countries: A Systematic Review. *Jurnal Ners*, 14(3), 277. <https://doi.org/10.20473/jn.v14i3.17019>
- Surachman, V. A., Susanti, R., & Kamarudin, S. (2024). Analisis Perbandingan Penegakan Hukum Tindak Pidana Kecelakaan Lalu Lintas oleh Anak di Indonesia dan Malaysia. *Proceedings Series on Social Sciences & Humanities*, 17(1), 463–468. <https://doi.org/10.30595/pssh.v17i.1176>
- Suteki, & Taufani, G. (2020). *Motodologi Penelitian Hukum (Filsafat, Teori, dan Praktik)* (Cetakan 3). RajaGrafindo Persada.
- Thi My Nguyen, L., Thi Truc Huynh, G., & Khac Tran, Q. (2023). A legal perspective on child support obligation after divorce: The Vietnamese case. *CTU Journal of Innovation and Sustainable Development*, 15(3), 110–124. <https://doi.org/10.22144/ctujoisd.2023.056>
- Titaley, M., Nirahua, S. E. M., Hehanussa, D. J. A., & Toule, E. R. M. (2022). Philosophy Of Criminal Immination In The Child Criminal Justice System In Indonesia. *International Journal of Scientific and Research Publications (IJSRP)*, 12(2), 602. <https://doi.org/10.29322/ijsrp.12.02.2022.p12275>
- Tri, M. (2023). Penetapan Terhadap Batas Usia Dewasa Menurut Peraturan Perundang-Undangan Di Indonesia. *Jurnal Ilmu Hukum*, 11(1), 1–11.
- Tuan, H. M., Chau, H. X., Ngoc, H. Do, & Nguyen, T. T. (2024). Juvenile and Effective Solutions to Prevent Juvenile Recidivism – Perspectives of Judicial Officers of Vietnam. *Journal of Ecohumanism*, 3(7), 4562–4573.

<https://doi.org/10.62754/joe.v3i7.4568>

- Van Wyk, J. A. (2023). ACEs and Angst: Adverse Childhood Experiences, General Strain Theory, and Adolescent Male Suicidal and Violent Behaviors. *SAGE Open*, 13(2), 1–19. <https://doi.org/10.1177/21582440231176710>
- Volz, U. (2022). *Addressing The Debt Crisis In The Global South: Debt Relief For Sustainable Recoveries* (p. 4). Think 7.
- Vooren, M., Rud, I., Cornelisz, I., Van Klaveren, C., Groot, W., & Maassen van den Brink, H. (2022). The effects of a restorative justice programme (Halt) on educational outcomes and recidivism of young people. *Journal of Experimental Criminology*, 1(1), 6. <https://doi.org/10.1007/s11292-022-09502-4>
- Warijan, Anis Mashduroatun, M. H. (2022). Restorative Justice Policy In The Case Of Children Involved In Criminal Acts. *International Journal of Business, Economics and Law*, 26(1), 173–178.