

Research Article

Child Criminal Justice System in Islamic Law and the Convention on the Rights of the Child: A Comparative Study Between Indonesia, Iran, and Pakistan

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Abstract.

This study examines the dynamic interaction between Islamic law principles and the Convention on the Rights of the Child (CRC) in the juvenile criminal justice system, with a comparative study focusing on Indonesia, Iran, and Pakistan. Islamic law, through the concepts of bulugh and Ta'zir, aims at the correction and improvement (ishlah) of minors. The CRC, on the other hand, sets a standard age of 18 years, prohibits the death penalty/life imprisonment, and encourages rehabilitation, diversion, and non-custodial treatment. Using descriptive-comparative and analytical-normative legal methods, the study analyzes the laws and practices of the three countries. The results show significant variations: Indonesia has been relatively successful in integrating the values of the CRC and Islamic Law in the 2012 Juvenile Justice Act, prioritizing diversion and training. In contrast, Iran faces serious conflict because the Shia interpretation allows hudud and qisas punishments for children under 18, leading to executions in contravention of the CRC. Pakistan, despite having progressive legislation (JJSA 2018) in line with the CRC, has shown poor implementation, characterized by inconsistent definitions of children, inhumane treatment by authorities, minimal diversion, and poor conditions of excluded facilities. The discussion underlines that harmonization of these two legal frameworks is highly dependent on flexible interpretation and effective implementation. As a suggestion, Indonesia needs to continue to improve the SPPA Law. Iran should reform its laws to abolish the death penalty for children and align the age of responsibility. Pakistan urgently needs drastic improvements in standardizing the definition of children, improving remote conditions, and training law enforcement officers to realize comprehensive child rights protection.

Keywords: child, convention, Islamic law, juvenile

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1. Introduction

Child protection is a fundamental issue in the context of national and international law. Children, as individuals who are still in the process of physical and mental development, need special attention and protection to ensure their rights are fulfilled and protected (Wahyudi, 2020). In this context, child protection is not only the responsibility of the family, but also of society and the state (Gani, 2019). Law, as the main instrument in regulating social life, has a crucial role in ensuring that children's rights are protected from all forms of violence, exploitation and discrimination (Darmini., 2020).

Children involved in criminal acts require a different approach than adults, given their vulnerability, immature reasoning capacities, and higher potential for rehabilitation and reintegration. Historically, different civilizations and legal systems have developed their own approaches to juvenile justice. In the modern context, this narrative is further complicated by the intersection of religious values, particularly Islamic law (Shariah), and international legal principles embodied in instruments such as the United Nations Convention on the Rights of the Child (UNCRC).

Islamic Law (Sharia) and Child Protection: Islamic law, as a comprehensive legal system derived from the Qur'an and the Sunnah of the Prophet Muhammad SAW, pays great attention to the protection and care of children. The concept of *hifz al-nasl* (care of offspring) is one of the fundamental *maqasid sharia* (objectives of sharia), emphasizing the importance of protecting the younger generation. In the criminal context, Islamic law recognizes the concept of *bulugh* (adulthood) as a prerequisite for being subject to full *taklif* (legal obligations), including criminal liability. Children who have not reached *bulugh* (called *ghairu mukallaf*) are generally not subject to full criminal sanctions as adults, but rather are given priority in terms of training, education, and moral correction. However, there are variations in interpretation and application regarding the age of *bulugh* and the types of sanctions that can be applied to children who commit violations, especially in criminal acts that have a *hudud* sanction limit that has been determined by sharia.

Internationally, the Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1989, is the main foundation for the protection of children's rights. The Convention sets out a range of basic rights that must be guaranteed to every child without discrimination, including the right to education, health, protection from violence and exploitation, and the right to be heard in all matters affecting their interests (Articles 1-54 CRC) (United Nations, 1989). According to Dr. Najat Maalla M'jid,

UN Special Rapporteur on the Sale and Sexual Exploitation of Children, “Child protection is a universal responsibility that requires commitment from all levels of society and government (M’jid, 2016).

The central principles of the UNCRC include the best interests of the child as a primary consideration, the right of the child to be heard, the right to justice without discrimination, and the need for special and non-discriminatory treatment for children suspected or proven to have violated the criminal law. The UNCRC encourages the establishment of a comprehensive juvenile justice system, emphasizing rehabilitation, reintegration, the use of non-custodial measures, and removal as a last resort and in the shortest possible time.

The struggle between Islamic legal principles and UNCRC norms in dealing with children in conflict with the law creates a complex legal landscape. While both have the noble goal of protecting and nurturing children, there are potential points of contact and disruption, especially in terms of the definition of the age of criminal adulthood, the types of sanctions (e.g., corporal punishment or the death penalty for children), and legal procedures. How Muslim-majority countries adapt the UNCRC while maintaining sharia values is a core question that needs to be answered.

Case Studies: Indonesia, Iran, and Pakistan: Selecting Indonesia, Iran, and Pakistan as case studies offers rich and diverse perspectives in understanding the interaction between Islamic law and the Convention on the Rights of the Child:

1. Indonesia: The country with the largest Muslim population in the world and has ratified the UNCRC. Its legal system adheres to the principle of legal pluralism (customary law, Islamic law, and national law), but has progressively integrated the principles of restorative justice and child protection in accordance with the UNCRC in the Juvenile Criminal Justice System Law (UU SPPA) of 2012. However, challenges in implementation and alignment with certain interpretations of Islamic law still underlie it.

2. Iran: As an Islamic Republic, Iran applies Sharia law as its primary source of national law and has ratified the UNCRC (with some interpretations/reservations). The treatment of children in conflict with the law is heavily influenced by Twelver Shia interpretations, particularly regarding the lower age of consent for girls and certain punishments that can be imposed on children. This has often drawn criticism from the international community regarding its conformity with UNCRC standards.

3. Pakistan: Also an Islamic Republic, Pakistan has ratified the UNCRC and has a legal system that combines the colonial common law legacy with elements of Sharia law that

began gradually through the Federal Shariat Court and the Judicial System Reforms. The application of juvenile criminal law in Pakistan, including issues regarding the death penalty for children and special treatment, is also an area that requires in-depth analysis of how the two legal frameworks (Islamic and UNCRC) interact with each other.

This study aims to comparatively analyze how the juvenile criminal justice systems in Indonesia, Iran, and Pakistan manage and implement the principles of child protection, both from the perspective of Islamic law and the Convention on the Rights of the Child. The analysis will cover aspects such as the definition of the age of criminal responsibility of children, the types of sanctions imposed, juvenile justice procedures, and rehabilitation and reintegration mechanisms. By comparing these three countries, this study will identify similarities, differences, challenges, and best practices in balancing religious legal traditions with international commitments to children's rights.

2. Methods

This study uses normative (doctrinal) legal methods with a descriptive-comparative and analytical approach. The main data sources include Islamic Law texts (Al-Qur'an, Hadith, fiqh) and the Convention on the Rights of the Child (CRC) as a basis. For national law, the study analyzes laws related to child criminal law from Indonesia (UU SPPA 2012, Law on Child Protection 2002), Iran (Islamic Criminal Code 2013, Criminal Procedure Code 2014), and Pakistan (JJSA 2018, PPC, and various additional laws related to children). All of this legal data will be analyzed qualitatively and comparatively to examine the consistency, inconsistency, and points of harmonization or evolution between the three legal frameworks in the context of their implementation in each country.

3. Research and Discussion

3.1. Islamic Law and the Convention on the Rights of the Child (CRC) in the accountability of children in the juvenile criminal justice system

Children are a very valuable family asset. They are the ones who will be the next generation for the family concerned. In the Islamic view, not only in this world, but children will also be an investment in the afterlife. A hadith narrated by Muslim states that pious/pious children are the main legacy of charity for parents, because when their

parents die, pious children will pray for and send rewards to their parents in the grave (Nurwahidah., 2015).

Children's human rights are part of human rights contained in the 1945 Constitution and the United Nations (UN) Convention on the Rights of the Child which was ratified on 20 November 1989. Article 16 paragraph (2) of the Convention states that: "Children have the right to legal protection against such interference or attacks." Furthermore, Article 37 letters (a and b) of the Convention states that no child may be subjected to abuse, or other cruel, inhuman or degrading treatment. Neither the death penalty nor life imprisonment without the possibility of release may be imposed for violations committed by persons under the age of eighteen" (Article 37 letter a).

Types of Children's Rights (KHA) (Child Rights Convention) children have four categories as follows (R. Wiyono, 2016):

1. The Right to Survival, namely the rights of children in the convention of children's rights which include the rights to preserve and maintain life and the right to obtain the highest standard of health and the best possible care. For example, the right to get a name and citizenship, the right to be with parents, the right to abuse, the right to the disabled, etc.
2. The right to protection (Protection Rights) is the rights of children in the child convention which includes the right to protection from discrimination, violence and neglect for children who do not have families for refugee children. With an example of the prohibition of child discrimination, namely non-discrimination against children's rights and the prohibition of child exploitation, for example gathering with their families and protection for orphans.
3. The right to grow and develop, (Development Rights) are the rights of children in the child's convection which include all forms of education (formal and non-formal) and the right to achieve a decent standard of living for the physical, mental, spiritual, moral and social development of children. Examples of the right to obtain information, education, play and be creative etc.
4. The right to participate, (Participation Rights) is the rights of children in the child convention which includes the rights to express opinions in all matters affecting children. Examples of the right to express opinions and receive consideration for their opinions, the right to obtain and know information and express themselves, the right to associate and establish relationships to join, and the right to obtain appropriate information and be protected from unhealthy information.

In the perspective of fiqh, Islamic scholars have explained through the science of fiqh and *usul fiqh*, where children are classified into two groups, namely *mumayiz* and *ghairu mumayiz*. *Mumayiz* is a child who can distinguish between something good and something bad. Then *ghairu mumayiz* is a child who cannot yet distinguish between good and bad. According to the science of *usul fiqh*, *mumayiz* is the period of *al-tufulah*, namely a small child who is not yet able to distinguish between what can benefit and harm him until approaching puberty (Majma' Al-Lughah Al-'Arabiyah, 1973).

In general, a child who is *mumayiz* has seen the role of his mind, so that he is able to simply distinguish between good and bad actions and can distinguish between those that can provide benefits or harm. At this level, although the child's mind ability has begun to be seen, it is still lacking or not perfect because he does not have a far-reaching view. Basically, the initial limit of the *mumayiz* period is the final limit of the *al-tufulah* period for a child. However, this is difficult to determine precisely and definitely. In addition to its changing and different nature, this is also caused by the impression of the child's psychological development which is different from one another. Seeking a concrete answer about the initial limit of *mumayiz*, scholars have studied and explored this problem through the science of fiqh.

Scholars have different opinions in determining the age of a child who is subject to criminal liability. There are three opinions that are widely taken by scholars on this matter, namely:

1. The Syafi'i and Hambali Schools The scholars of the Shafi'i school and the Hambali scholars are of the same opinion that if a boy and a girl are fully 15 years old, except for boys who have had wet dreams and girls who have menstruated before the age of 15 then both are declared to have reached puberty. They also presented evidence and reasons for the opinion given as it was narrated from Ibn Umar that he was presented to the Prophet on the day of the battle of Uhud while he was 14 years old at that time, then the Prophet did not allow him to take part in the battle. After a year he submitted again on the day of the Khandak war, at that time he was 15 years old and he was allowed by the Prophet to fight the Khandak war.

2. Hanafi School The scholars of the Hanafi school of thought are of the opinion that a man is considered to have reached puberty when he is 18 years old. As narrated from Ibn Abbas, the maturity of a boy is from the age of 18. This is different from girls where the development and improvement of their physical aspects and maturity are faster

than boys. Therefore, the age of maturity is reduced by one year so that girls become adults at the age of 17 (Ismail ibn Kathîr, 2016).

3. *Jumhur Ulama'* Most of the *ulama'* or *jumhur ulama fiqh* in this world have argued about the changes that apply to boys who have reached puberty, namely through the customs that apply after an *ihtilam* or wet dream occurs to him and this often occurs at the age of 15 years. There is also *ihtilam* before or under the age of 15 years. However, most of the *ihtilam* that occurs in boys is when they reach the age of 15 years. This is a strong reason and opinion for a boy who is considered an adult in this life. The explanation above is a strong reason to get a common opinion between *muktabar ulama*, so that the age of 15 years is determined by the age of puberty for boys, which is called the age of *taklif*.

In Indonesia, the age limit of a child is based on criminal law, civil law and Islamic law. Following contemporary national laws in Indonesia, among others, it is explained that a child is someone who has not reached the age of 21 or is not married (Article 1 Paragraph 2 of Law of the Republic of Indonesia No. 4 of 1979 concerning Child Welfare in the editorial team of Sinar Grafik, Law of the Republic of Indonesia No. 3 of 1997 concerning Juvenile Justice, 2007). There are also legal experts who say that a child is someone who is not yet 18 years old. Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection explains that a child is someone who is not yet 18 years old and is even still in the womb. According to the provisions of Article 330 of the Civil Code, the definition of a child or person who is not yet an adult is as follows (Marsaid, 2015):

“A minor is a person who has not reached the full age of 21 (twenty one) years, and has not previously married. If a person who has not reached the full age of 21 (twenty one) years has married, the marriage is dissolved before the age of 21 (twenty one) years, he does not return to the status of a minor. A person who is not an adult and is not under the guardianship or authority of parents on the basis and in the manner as regulated in the third, fourth, fifth, and sixth parts of the chapter before adulthood and guardianship.”

Article 1 of the Convention on the Rights of the Child provides:

“For the purposes of this Convention, a child means every human being below the age of 18 (eighteen) years unless under the law applicable to the child, majority is attained earlier.”

The Convention on the Rights of the Child, Resolution Number 109 of 1990 ratified by Presidential Decree of the Republic of Indonesia Number 36 of 1990 was used as one of the considerations for the establishment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 1 of the Convention on the Rights of the Child aims to provide an understanding of children, namely all people under the age of 18 (eighteen) years, unless the law stipulates that adulthood is achieved earlier. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System then elaborates Article 1 of the Convention on the Rights of the Child by determining that a child is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime (Djamil, 2013).

So overall, the concept of “child” in Islamic jurisprudence and Indonesian positive law has fundamental differences but also functional meeting points. Islamic jurisprudence defines a child based on intellectual maturity (*mumayyiz*) and physical maturity (*baligh*), where the individual is not yet fully *mukallaf* so that criminal sanctions are *Ta’zir* (educational and rehabilitative), with the aim of *ishlah* (improvement). In contrast, Indonesian positive law (especially the SPPA Law) defines a child rigidly based on chronological age (12 to <18 years for criminal), protection pressure, diversion, and non-prison sanctions. Although different in the basis of definition (maturity vs. age), both agree on the goal of child rehabilitation and training rather than repayment, making the principle of *Ta’zir* in *fiqh* in line with the spirit of restorative justice in positive law.

Child delinquency can harm themselves and their environment. Self-harming acts can occur if parents do not supervise children, and can even harm others such as murder, abuse, and drug trafficking. Child delinquency is also caused by factors of themselves or the influence of the environment. This situation must of course be anticipated with regulations. For Indonesian society, this has been regulated in Criminal Law. Criminal Law is: Law that regulates acts prohibited by law along with the threat of punishment for those who violate it (Development, 1983).

Islam also regulates crimes committed by children, because children are more vulnerable to mistakes. Therefore, it is very important to know the rules of Islam. Knowing the rules in the Qur’an and hadith. According to Islamic law, children who commit crimes will not be subject to criminal responsibility, either *hudud*, *qishas/diyat* or *Ta’zir*. The punishment for children who are guilty in Islam is borne by their parents, because parents are obliged to educate their children to become good people. If a child becomes a criminal, it means that the parents do not carry out their obligations properly, then the

parents are the ones who bear the consequences, namely being sanctioned for their negligence.

The provisions of Islamic law, there is no legal responsibility for a child until he reaches the age of puberty. The *Qadhi* (judge) is only entitled to reprimand him for his mistakes or set some restrictions for him that will help him correct them and stop him from making mistakes in the future (I., 1992). If a child steals or even kills, he cannot be subject to any punishment. In fact, Wahbah Zuhaili, in his book *al-Fiqh allslamiy*, noted that the status of the child's actions, in the *fiqh* category, does not include criminal acts (*jinayah*).

Criminal sanctions for children in Islamic Criminal Law (*Fiqh Jinayah*) in the form of *diat* or *Ta'zir* which can be applied to children are:

1. Had

Sayid Sabiq defines *diat* as; *Diat* is property that is required due to a criminal act and is given to the victim or his guardian. In this case, Imam Syafi'i's opinion is that the *diyat* that applies to children is borne by their families. what is called *al-'aqilah* is the father's family, namely the 'asabah family, not the *diwan* expert (recipient of permanent assistance from the state). (discussion of 'aqilah will also be explained in the section on participation in *jinayah* or criminal responsibility).

2. Expiation

for children in cases of murder and injury. Fuqoha have different opinions regarding expiation for children, Imam Malik is obligatory, Imam Abu Hanifah (Imam alaudin Abu Bakar bin Masuda k-Kasa'ni al Hanafi, 1996). there is no *kafarat* for children, whereas for Imam Syafi'i²¹ the obligation of *kafarat* continues to be applied as long as the object/property exists.

3. Ta'zir punishment for children

Ta'zir is an educational punishment for sinful acts (immorality) whose punishment has not been determined by the *syara'* (Abu Hasan al-Mawardi, 1966) The main basis for giving *Ta'zir* to children as exemplified by the Prophet in his *hadith* is as follows and then his *Ta'zir* in a simple way:

MGod willing God bless you سَنِينَ

"Pay attention to your children to pray when they are 7 years old. If they are 10 years old, but they are reluctant, beat them" (HR. Abu Daud no. 495. Shaykh Al Albani said this *hadith* is authentic as in *Irwaul Gholil* 298).

Abdul Qadir Audah's opinion was that he had explained that the *Ta'zir* punishment could be caused by three things: Firstly, immoral acts, secondly, disturbing public order

and thirdly, violations. In cases of child crimes (naughty children), he stated that Ta'zir was given to children for reasons of disturbing public benefit/public order. In Islamic law, children are not categorized as committing immoral acts because they have not yet mullaf. So, to teach lessons to children who are already mumaiz, Ta'zir is implemented based on the benefit/public order. Even though prison for children is very severe, if it brings public benefit then it can be justified.

3.2. Implementation of the States of Indonesia, Iran and Pakistan in applying the principles of Islamic Law and the CRC in the juvenile criminal justice system

3.2.1. Juvenile Criminal Justice System in Indonesia

The juvenile criminal justice system is a criminal justice system, so in providing an understanding of the juvenile justice system, first describe the criminal justice system. The Criminal Justice System shows the working mechanism in overcoming crime by using a basic system approach.

Remington and Ohlin stated:

“Criminal justice system can be defined as the use of a systems approach to the mechanism of criminal justice administration. As a system, criminal justice is the result of the interaction between laws and regulations, administrative practices and social attitudes or behavior. The definition of the system itself implies a process of interaction that is prepared rationally and efficiently to provide certain results with all its limitations.”

According to Mardjono Reksodiputro, the definition of the criminal justice system is a crime control system consisting of police, prosecutors, courts and correctional institutions.

Principles of the Juvenile Justice System The Juvenile Criminal Justice System is implemented based on the principles in accordance with Article 2 of the Juvenile Justice and Child Protection Law, namely:

1. Protection includes direct and indirect activities from actions that endanger children physically and/or psychologically.
2. Justice Every resolution of a child's case must reflect a sense of justice for the child.
3. Non-discrimination.

There is no differential treatment based on tribe, religion, race, class, gender, ethnicity, culture and language, legal status of the child, birth order of the child, and physical and/or mental condition.

4. Best Interests of the Child All decision-making must always take into account the survival and development of the child.

5. Respect for Children's Opinions Respect for children's rights to participate and express their opinions in decision-making, especially when it concerns matters that affect the child's life.

6. Child Survival and Development The most basic human rights for children are protected by the State, government, society, family and parents.

7. Guidance and Counseling of Children Guidance is an activity to improve the quality, piety to God Almighty, intellectual, attitude and behavior, skills training, professional, and physical and spiritual health of children both inside and outside the criminal justice process. While guidance is the provision of demands to improve the quality of piety to God Almighty, intellectual, attitude and behavior, training, skills, professional, and physical and spiritual health of correctional clients.

8. Proportional All treatment of children must take into account the needs, age and condition of the child.

9. Deprivation of Liberty and Abduction as a Last Resort Basically, children cannot be deprived of their liberty, unless forced to do so in the interests of resolving a case.

10. Avoidance of Retaliation The principle of avoiding attempts at retaliation in the criminal justice process.

Regulation of the Juvenile Criminal Justice System Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) which came into effect two years after its enactment date, which is a replacement for Law Number 3 of 1997 concerning Juvenile Courts (Juvenile Court Law) which aims to realize a justice system that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered to be no longer in accordance with the legal needs in society and has not comprehensively provided special protection to children in conflict with the law. The following are important matters regulated in the SPPA Law¹⁴:

The SPPA Law defines minors as children who are 12 years old but not yet 18 years old, and distinguishes children involved in a crime into three categories:

a. Children who are perpetrators of criminal acts (Article 1 number 3 of the SPPA Law)

b. Children who are victims of criminal acts (Child Victims) (Article 1 number 4 of the SPPA Law)

c. Children who are witnesses to criminal acts (Child Witnesses) (Article 1 number 5 of the SPPA Law) Previously, the Juvenile Court Law did not differentiate between categories of Child Victims and Child Witnesses. Consequently, Child Victims and Child Witnesses did not receive legal protection. This resulted in many crimes that were not resolved or even not reported because children tended to be afraid of facing the criminal justice system.

Imposition of Sanctions According to the SPPA Law, a perpetrator of a child crime can be subject to two types of sanctions, namely action, for perpetrators of crimes who are under 14 years old (Article 69 paragraph (2) of the SPPA Law) and Criminal, for perpetrators of crimes who are 15 years old and above:

a. **Sanctions Actions** that can be imposed on children include (Article 82 of the SPPA Law): 1) Return to parents/guardians 2) Surrender to someone 3) Treatment in a mental hospital 4) Treatment at LPKS 5) Obligation to attend formal education and/or training held by the government or private bodies 6) Revocation of driving license and/or 7) Improvement due to criminal acts.

b. **Criminal Sanctions** Criminal sanctions that can be imposed on perpetrators of child crimes are divided into Main Criminal Sanctions and Additional Criminal Sanctions (Article 71 of the SPPA Law):

1) The main criminal penalties consist of:

2) Criminal warning

3) Criminal penalties with conditions, consisting of: outside institutional guidance, community service, or supervision

4) Job training

5) Coaching in institutions

6) Prison.

c. **Additional criminal penalties** consist of:

1) Confiscation of profits obtained from criminal acts; or

2) Fulfillment of customary obligations. The SPPA Law also regulates that in the event that a child under 12 (twelve) years of age commits or is suspected of committing a crime, Investigators, Community Guidance Officers, and Professional Social Workers make decisions to:

- (a) Hand it back to the parent/guardian; or
- (b) Involve them in education, coaching and mentoring programs at government agencies or LPKS at agencies that handle social welfare, both at the central and regional levels, for a maximum of 6 (six) months.

Children's human rights are part of human rights contained in the 1945 Constitution and the United Nations (UN) Convention on the Rights of the Child which was ratified on 20 November 1989. Article 16 paragraph (2) of the Convention states that: "Children have the right to legal protection against such interference or attacks." Furthermore, Article 37 letters (a and b) of the Convention states that no child may be subjected to abuse, or other cruel, inhuman or degrading treatment. Neither the death penalty nor life imprisonment without the possibility of release may be imposed for violations committed by persons under the age of eighteen" (Article 37 letter a).

Types of Children's Rights (KHA) (Child Rights Convention) children have four categories as follows: (R. Wiyono, *The Juvenile Criminal Justice System in Indonesia*, 2016)

1. The Right to Survival, namely the rights of children in the convention of children's rights which include the rights to preserve and maintain life and the right to obtain the highest standard of health and the best possible care. For example, the right to get a name and citizenship, the right to be with parents, the right to abuse, the right to the disabled, etc.

2. The right to protection (Protection Rights) is the rights of children in the child convention which includes the right to protection from discrimination, violence and neglect for children who do not have families for refugee children. With an example of the prohibition of child discrimination, namely non-discrimination against children's rights and the prohibition of child exploitation, for example gathering with their families and protection for orphans.

3. The right to grow and develop, (Development Rights) are the rights of children in the child's convection which include all forms of education (formal and non-formal) and the right to achieve a decent standard of living for the physical, mental, spiritual, moral and social development of children. Examples of the right to obtain information, education, play and be creative etc.

4. The right to participate, (Participation Rights) is the rights of children in the child convention which includes the rights to express opinions in all matters affecting children. Examples of the right to express opinions and receive consideration for their opinions, the right to obtain and know information and express themselves, the right to associate

and establish relationships to join, and the right to obtain appropriate information and be protected from unhealthy information.

Overall, the Juvenile Criminal Justice System (JCCS) in Indonesia, as regulated in Law Number 11 of 2012, fundamentally demonstrates high alignment with the principles of the Convention on the Rights of the Child (CRC) and has many philosophical points of intersection with the spirit of Islamic Law in dealing with the criminal responsibility of children. From the perspective of the Convention on the Rights of the Child, the JCCS Law comprehensively adopts crucial elements such as the definition of a child approaching the age of 18, an emphasis on the best interests of the child, a priority on diversion and non-imprisonment as a last resort for deprivation of liberty, and recognition of children's rights to growth and development, rehabilitation, non-discrimination, justice, and participation. The absence of the death penalty or life imprisonment for children in Indonesian regulations further confirms its compliance with this international standard. Meanwhile, in relation to Islamic Law, the Indonesian JCCS has succeeded in capturing the essence of a profound philosophy. Although Islamic Law defines children based on maturity (*mumayyiz/baligh*) rather than purely chronological age, the spirit of SPPA is very much in line with the concept of “*ishlah*” (improvement) and “*Ta’zir*” (educational/non-retributive sanctions) for children. The SPPA Law differentiates accountability and types of sanctions based on age, and prioritizes guidance and re-involves the role of the family, which is similar to the principle of Islamic Law which views children under puberty as not fully *mukallaf* and the responsibility for education lies with parents/guardians. Therefore, the Indonesian SPPA has succeeded in integrating universal child rights protection values with local wisdom derived from religious teachings, creating a humanistic and rehabilitative approach in responding to children in conflict with the law.

3.2.2. Juvenile Criminal Justice System in Iran

After the end of World War II, in 1948 the UN General Assembly adopted the Universal Declaration of Human Rights on December 10. This event, which is then commemorated every year as World Human Rights Day, marked an important development in the history of human rights and several matters concerning the special rights of children are included in this declaration. In 1959 the UN General Assembly adopted the second Declaration of the Rights of the Child. Meanwhile, the UN Commission on Human Rights group began work on the draft Convention on the Rights of the Child (CRC). Then in

1989 the work on the CRC was completed and the Convention was adopted by the UN General Assembly (<https://www.childrensrights.org/>, 2022). The Convention on the Rights of the Child was ratified by the United Nations (UN) General Assembly on 20 November 1989, and entered into force on 2 September 1990. The Convention on the Rights of the Child is an instrument that formulates universal principles and legal norms regarding the status of children. (Prinst, 2003)

The CRC can be grouped into four categories of children's rights, namely:

- 1) The right to survival, namely the child's right to maintain life and the right to obtain the best possible standard of health and care;
- 2) The right to grow and develop, which includes all rights to receive education, and to obtain a standard of living that is adequate for the physical, mental, spiritual, moral and social development of the child;
- 3) The right to protection, which includes protection from discrimination, violence and neglect for children who do not have families and for refugee children;
- 4) The right to participate, including the right to express opinions in all matters affecting the child (Dian Rositawati, 2005).

In the Convention on the Rights of the Child, a child is defined as "a human being below the age of 18 years unless majority is attained earlier under the law applicable to the child". Children's rights are defined in various ways, covering a broad spectrum of civil, cultural, economic, social and political rights. Synoptically and according to the Child Rights Information Network, rights can also be categorized as, empowerment rights that advocate for children as autonomous human beings under the law; Protection rights, which demand that society and the state protect against risks committed against children due to their dependency; Economic rights, which are social and cultural rights relating to conditions essential to meeting basic human needs, access to education, housing, food, employment, health; environment, culture and development; Rights that include the right to live in a safe and healthy environment; Rights to cultural, political and economic development; Children's rights to have individual rights that enable them to grow up healthy and free (Calkins, 1972).

Iran is one of the last countries still imposing the death penalty on juvenile offenders and executes more juvenile offenders than any other country in the world. In violation of the International Convention on the Rights of the Child (CRC), which Iran has ratified, Iranian authorities executed at least 3 juvenile offenders in 2022. According to the Iran Human Rights Report, at least 68 juvenile offenders were executed between 2010 and

2022 in Iran. International pressure on Iran on this issue increased during the 2000-2010 decade. As a consequence of criticism from the international community and domestic civil society, Iran made changes related to juvenile offenders in the 2013 Islamic Penal Code (KUHP).

	DATE	NAME	AGE	CHARGE	LOCATION	SOURCE	UN/OFFICIAL
1	10 August 2022	Mohammad Hossein Alizadeh	17	Murder	Qom Central Prison, Qom	Iran Human Rights	Unofficial
2	20 August 2022	Omid Alizehi	17	Murder	Zahedan Central Prison, Sistan and Baluchestan	Hal Vash	Official
3	26 December 2022	Yousef Mirzavand	16	Murder	Dezful Prison, Khuzestan	Iran Human Rights	Unofficial

* Age at the time of committing the alleged offence

Figure 1: List of Child Criminal Offenders Executed in 2022.

However, this change did not lead to a decrease in the number of juvenile executions. The 2013 Criminal Code explicitly defines the “age of criminal responsibility” for children as the age of majority according to Sharia law, meaning that girls over 9 lunar years of age and boys over 15 lunar years of age are eligible for execution if found guilty of “crimes against God” (such as apostasy) or “retribution crimes” (such as murder). According to Article 304 of the 2014 Criminal Procedure Code, the Juvenile Court has the authority to try cases involving children under the age of 18. If the defendant reaches the age of 18 during the trial, the Juvenile Court will continue the trial. However, if the defendant reaches the age of 18 before the trial begins, the case will be referred to the competent criminal court. In the latter case, the defendant will still have the privilege of being tried in the Juvenile Court.

In the perspective of law enforcement in Iran, the judge is bound to try every case based on the codified law. In the absence of such a law, he must give his judgment based on authoritative Islamic sources and authentic fatwas, in the author’s opinion, which is the reference of the Wilayatul Faqih Authority. In relation to the application of the death penalty to children, there is no normative evidence in Islamic law regarding criminal sanctions against children who commit crimes, even those that cause the death penalty to be imposed on the child (Adam Sani, 2015).

However, Iran has its own view by justifying the regulation of the death penalty for children. In Article 91 of the Islamic Penal Code of Iran in 2013 to justify the application of the death penalty for crimes committed by children under 18 years of age. Although

in Articles 89-95 suggest corrective measures and alternative punishments for children and adolescents, Article 91 very clearly states that offenses punishable by hudud or qisas are an exception to this rule. It is important to note that almost all juvenile offenders executed in the last 7 years were sentenced to death based on the qisas and hudud verses. Article 91 For crimes punishable by hudud or qisas, adults under the age of 18 are punished with the punishments stipulated in this chapter (Articles 89-95) if they do not understand the nature of the offense committed or its prohibition or if there is doubt about their maturity or the development of their reasoning. The article leaves it to the discretion of the judge to decide whether a juvenile offender has understood the nature of the offence and was mature at the time of committing the offence and accordingly sentence them to death. (Iran, 2022) This article allows judges to assess the mental maturity of a juvenile offender at the time of the crime and, potentially, to impose an alternative sentence to the death penalty based on the verdict. In 2014, Iran's Supreme Court confirmed that all juvenile offenders sentenced to death could apply for a retrial.

However, Article 91 is vaguely worded and inconsistently and arbitrarily applied. Between 2016-2022, Iran Human Rights identified 21 cases in which death sentences for juvenile offenders were commuted under Article 91. No commuted sentences under Article 91 were reported or recorded in 2022. In the same period, according to Iran Human Rights reports, at least 29 juvenile offenders were executed and several are still at risk of execution. It appears that Article 91 has not led to a decrease in the number of juvenile executions. Iranian authorities should amend the law, unconditionally abolishing all death sentences for all crimes committed by people under the age of 18.

3.2.3. Juvenile Criminal Justice System in Pakistan

Pakistan adopted most of its colonial laws before Independence in 1947. The colonial rulers gave special institutional treatment to young offenders through laws such as the Reformatory Schools Act 1897 and the Borstal School Act 1926 to rehabilitate young offenders. Despite the existence of many provincial laws, Pakistan did not have a uniform law applicable to the whole of Pakistan until the enactment of the Juvenile Justice System Ordinance 2000. This law was introduced during the Musharraf regime to create an equal, centralized and uniform system for juvenile delinquents. This ordinance is largely in line with international guidelines, especially the Convention on the Rights of the Child (CRC) to which Pakistan is a signatory and has ratified. A new law, the Juvenile Justice Act, which was passed in 2018 and has repealed this Ordinance, is

a comprehensive law to protect juveniles in conflict with the law. Here is a list of international and national legal instruments that provide special attention and protection to Pakistani children.

In International Instruments Pakistan is a signatory to all major international human rights instruments including the CRC which specifically addresses the Protection and Rights of children, including children in conflict with the law. The names of these instruments are as follows:

- a. Universal Declaration of Human Rights (UDHR), 1948;
- b. International Covenant on Civil and Political Rights (ICCPR), 1966;
- c. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;

All international human rights instruments provide broad guidelines for states parties and require all states parties and members to improve the conditions of children's rights in their respective jurisdictions. The CRC is the principal international instrument on children's rights. Pakistan was among the first six countries to sign and ratify the convention in 1990 (Arshad Mahmood, 2014).

3.3. Comparison of the harmonization of Islamic Law and CRC in the juvenile criminal system in Indonesia, Iran, and Pakistan.

A comparative analysis of the juvenile criminal justice systems in Indonesia, Iran, and Pakistan reveals a spectrum of varying harmonization between Islamic Law and the Convention on the Rights of the Child (CRC). Indonesia stands as a model of success, where the SPPA Law intelligently integrates CRC principles, such as the protection of the best interests of the child, diversion, non-imprisonment sanctions, and approval of the death penalty for children, which are philosophically in line with the spirit of *ishlah* and *Ta'zir* in Islamic Law that prioritizes rehabilitation and education. In contrast, Iran shows serious conflict; despite ratifying the CRC, strict interpretations of Islamic Law regarding the age of criminal responsibility and the application of hudud or qishas sanctions often justify the death penalty for children, demonstrating the gap between international commitments and domestic legal practice. Meanwhile, Pakistan occupies a middle ground; legislatively, laws such as the 2018 JJSA have attempted to align with the CRC, but implementation in the field is still very weak. Inconsistencies in the definition of "child", minimal application of diversion, poor selected conditions, and problems with the professionalism of law enforcement officers are the main obstacles to optimally protecting children's rights. In essence, the success of harmonization depends heavily

on the state's ability to flexibly interpret and apply the principles of religious law in line with international human rights standards, particularly regarding the age of criminal responsibility and the legitimacy of the death penalty for children.

4. Conclusion

This discussion analyzes the criminal responsibility of children in the criminal justice system based on Islamic Law and the Convention on the Rights of the Child (CRC), with case studies of Indonesia, Iran, and Pakistan. Islamic law emphasizes the rehabilitation (*Ta'zir*) and improvement (*ishlah*) of children. The CRC emphasizes comprehensive protection, diversion, and the prohibition of the death penalty for children under 18 years of age. Indonesia has successfully integrated the principles of the CRC with the values of Islamic Law in its SPPA, focusing on training. In contrast, Iran has experienced severe conflict because its rigid interpretation of Sharia still allows the death penalty for children, contrary to the CRC. Pakistan has a good legal framework, but its implementation is poor; issues of age definition, lack of diversity, and inhumane treatment by officers hamper child protection. Harmonization of these two legal frameworks depends heavily on flexible interpretation and effective implementation in the field.

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