

# IMPLEMENTATION OF THE PRINCIPLE OF DUE PROCESS OF LAW IN THE JUVENILE JUSTICE SYSTEM

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## ABSTRACT

*The objective of this research is to analysis the implementation of the principle of due proces of law in the juvenile justice system. In fact, the principle of due process of law in the juvenile justice system if only normatively understood as the fulfillment of the rights of criminals during the judicial process, it will not always be seen as the fulfillment of the child's best interests. So the principle of due process of law should be carried out with the power of law enforcement officers morality (due process of moral) that is able to keep the best interests of this child. This research used socio-juridical approach. However, research is still based on the normative law (laws) but instead of reviewing the system of norms in the rules and regulations, but observe reactions and interactions occured when the system is working in the society. The result of research show the implementation of the principle of due process of law in the juvenile justice system must be animated by the spirit of building a value system based on Pancasila, the National Law, Local Wisdom and Global Values that protect the dignity of the child.*

**Keywords : Implementation of The Principle of Due Process of Law, Juvenile Justice System**

## A. INTRODUCTION

Various national and international legal standards realistically still adhered to the criminal justice mechanism as one way of dealing with crime, to wit, the mechanism such that the interests of children remains a major concern. The words "best interests of the child" here can be interpreted in a variety of meanings. In the context of the juvenile justice system, the criminal justice mechanisms should be done by law enforcement officers based on the various legal norms and other norms so that the implementation of the juvenile justice system to be more effective because it is able to produce the best decision for the sake of the children. In another sense the best interests of the child can also be interpreted that a child should be protected from the nature of the criminal justice system criminogen. {1} However, in the case of child offenders should be subject to legal action through the criminal justice system, the principle of due process of law must be the foundation framework to think and act not only in the form of normative meaning-fulfillment

of child rights offenders, but also in the sense that more in the due process of moral. So the principle of due process of law and due process of integrative moral basis should serve as guidelines for law enforcement officials in solving child crimes through the criminal justice system. Through such understanding, the child's handling of crime have to do with the advanced aspects of morality, namely by considering human values imbued with the spirit of providing the best interests of the child in order to remain a productive human being in the future. Therefore handling of child crime through the criminal justice system is based on the principle of due process of law must be based on cultural values conducive to the development of the soul and the personality of the child as he remains grounded in the Pancasila as the nation's way of life and national values contained in the law national and global development values as reflected in international instruments that protect the interests of the child. Because that's necessary to build a model of juvenile justice system in line with the principle of due process of law?.

## **B RESEARCH OBJECTIVES**

The purpose of this study is to assess the implementation of the principle of due process of law in the juvenile justice system.

## **C. LITERATURE REVIEW**

### **1. Legal Standards for Child Protection**

Mochtar Kusumaatmadja {2} proposed the concept of law as a means of renewing society, though by his concept is more emphasis on the formation of legislation by the legislature in order to think about the construction of a new society to be established in the future through the implementation of the legislation. Speaking about the law as a means of renewing society, criminal law is a law that children are very important to get attention. Criminal law is an area of law that has the potential concern with regard to the Child Protection {3}. In criminal law there are principles such as the principle of fair trial. This legal principle is inseparable from the principle of equality before the law. The principle of equality before the law is derived from English Law Common system. According to Albert Dicey doctrine of equality before the law was born as a reaction to the treatment tyrant by the Anglo Saxon nobles in England {4}. King John discontinued treatment by issuing Magna Charta which includes the doctrine. In its development, the principles of protection of human rights (Human Rights) through the criminal law continues to receive attention in the international documents of the United Nations (UN) human rights is the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) or the Convention on the Rights of the Child (CRC), Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment. In the UDHR, among others, argued that no one should be abused, arrested, detained or removed arbitrarily. Everyone charged as suspected of committing a criminal offense shall be presumed innocent. In the CRC, which has been ratified by the Government of Indonesia through Presidential Decree (Presidential Decree) No.. 36 In 1990, of which determines that no child shall be deprived of their liberty unlawfully or arbitrarily, been subjected to torture or degrading treatment / other cruel, inhuman or degrading punishment, the death penalty, or imprisonment also in Convention Against Torture And Other Cruel, Inhuman or Degrading

Treatment or Punishment. otherwise known as the Convention Against Torture (UN No.39/46 res. 1948) which was ratified by Law No. 5 of 1998. Among others mentioned in this document that the judicial process will be conducive to the child's best interests and will be conducted in an atmosphere of understanding that will allow the child to participate in it and express themselves freely; has a right to be represented by legal counsel or request legal assistance free of charge. In the United Nations Guidelines on the Prevention of delinquency or who are known by the Riyadh Guidelines and Principles set of Laws for the Protection of All Persons under any form of Detention or Imprisonment (Res.PBB. # 43/173 1988), explained that all those who are under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. All international legal instruments mentioned above, is intended to provide a guarantee of protection of children's rights are more powerful when they are dealing with the law and must undergo criminal justice process. Constitutional protection of the child is covered under the 1945 Constitution, namely Article 27 Paragraph (1) and (2) and Section 28A-J 1945 Constitution, Article 29 of the 1945 Constitution, Article 30 of the 1945 Constitution, Article 31 of the 1945 Constitution, Article 34 of the 1945 Constitution, in addition to the also contained in the legislative product as Act No.4 of 1979 on Child Welfare, Law No.39 of 1999 on Human Rights (UUHAM), Law no. 23 of 2002 on Child Protection , and so on.

### **2. Principles of Due Process of Law in The Criminal Justice System.**

Principle of due process of law is "... a law roomates hears before it condemns, proceeds upon roomates inquiry, and renders judgment only after trial ....". Basically the central point is the protection of human rights of the individual against arbitrary action of the government {5}. Viewed as a criminal justice system, there are many systems and subsystems in the community that may affect human life, including the criminal justice system itself.

LaPatra JW {6} states: "Many different societal systems have an impact on an individual before he has contact with the Criminal Justice System. He is born within certain mental particular is physical abilities and tendencies that may inherited. In the course of his life he comes in contact with various groups, such as family. Which important roles in his life other societal-economic system, educational. Technological and political play among others-have a substantial influence on his life."

In general terms contained in the system are: the system is goal-oriented; whole is more than the sum of its parts; system interact with a larger system, namely the environment; workings of parts of the system creates valuable to created; each piece must fit each other; no unifying force that binds the system (control mechanism) {7}.

According to Fuller, to gauge whether we are at a time when we can talk about the existence of a system, the Principles of Legality {8} namely: a legal system must contain rules, what is meant here is, that he does not may contain decisions are ad hoc rules that have been made should be announced; should not be any retroactive legislation, because if such was not rejected, then the rule can not be used to guide behavior settings allow undermine the integrity retroactive means devoted to the applicable regulations for the time to come; regulations must be drafted in a formulation that can be understood; system should not contain rules that contradict each other; legislation should not contain demands that exceed what can be done ; there should be no habit of frequently changing regulations, causing someone will lose orientation; must be a match between the regulations promulgated by the day-to-day implementation.

By Lawrence M. Friedman, the legal system consists of three components, namely the legal structure, the substance of the law, and legal culture. Then Friedman also added a fourth component called legal ramifications (legal impact): the effect of a judgment which became the object of the study investigators. {9} According Satjipto Rahardjo, law enforcement is a process to realize the wishes come true law . {10} According Soerjono Soekanto {11}, law enforcement is influenced by five factors: legal or regulatory factors and regulations; factors law enforcement officers; factor means or facilities to support the law enforcement community factors, the social environment in which the law is enacted or implemented, relating to legal compliance awareness and reflection in people's behavior, and cultural factors, the results work, inventiveness and flavors that are based on human initiative in the social life. Meanwhile Jerome Frank {12} states that there are various factors that also affect the law enforcement process as political prejudice, economic, moral and personal sympathy and antipathy.

### **3.Comparative Study on Children in the Criminal Justice Model Countries**

In the literature several models known criminal handling children, namely {13} : The first, models of

informal mediation. Models was carried out by criminal justice personnel in their normal duties, such as public prosecutor to invite the parties to the settlement informal with the aim not to continue prosecution if an agreement is reached, as well as police officers called family disputes that might defuse the situation without creating a criminal prosecution. Judges can also choose the effort out of court settlement and release case. Secondly, is the traditional model of village or tribal moots. According to this model, the whole community met to resolve conflicts between citizens crime. these models exist in some countries which are less developed and rural / remote. prefer this model for the public benefit. these models predate Western law and has inspired for most modern mediation programs.

Third, as stated by Barda Nawawi Arief is victim-Offender mediation models with characteristics that this model involves various parties met in the presence of a mediator appointed. Mediator can be derived from formal authorities, an independent mediator, or a combination. Mediation can be conducted at any stage of the process, both at the stage of prosecution refracted, police discretion stage, sentencing stage or after sentencing. Fourth, is a model of negotiation Programmes reparation. In this model, criminals may be working with such programs can save money to pay damages / compensation. Fifth, is the model of Community panels or courts. This model is a program to divert cases from the criminal prosecution or justice is more flexible and informal and often involve an element of mediation or negotiation. The sixth is a model of family and community group conferences. According to this model there is the involvement of community participation in the criminal justice system. Not only involves victims and perpetrators of crime, but also the perpetrator's family and other community members, certain officials (such as police and judge the child) and victim advocates. Perpetrators and their families are expected to produce a comprehensive agreement and satisfy victims and can help to keep perpetrator out of the next issue.

Meanwhile, models of legal regulation in some countries by Barda Nawawi Arief {14} stated: In Austria, through the Code of Criminal Procedure Amendments of 1999 regulations were originally versioned prosecution only for children, but then that rule also applies to adults. Prosecutor may divert from the criminal trial, if the defendant wants to admit his actions, the defendant ready to make restitution, and agreed to perform any duty required, punishable by not more than 5 years in prison or 10 years in the case of children, can also for cases of violence very severe (extremely severe violence), with a record of diversion

should not be, if there were any casualties die. In France by the Act January 4, 1993 to amend Article 41 of Criminal Procedure (CCP-Code of Criminal Procedure) :Prosecutor can mediate between the perpetrator and the victim, before making a decision whether or not a person is required.

#### **4. Value Approach In Handling Child Crime**

Criminal justice process in Indonesia has reflected the values contained in the due process of law. However, in reality generally still show only a formal procedure. Consequently still appear classical problems such examination in the trial generally last long, convoluted, tend to be complicated and not simple as that mentioned in the formal rules (Code of Criminal Procedure in Indonesia). {15} Handling of child crime through the criminal justice system is oriented to the protection of human dignity and must integrate the approach that takes into account the various interests. In relation to the protection of the dignity of humanity, for Indonesia, the Pancasila which aspires to build a complete Indonesian man should animate all the legislation in the field of juvenile justice, and also must not leave the local values are referred to the local wisdom, and as part of the nations of the world, then it should also pay attention to the various international documents relating to child protection. Based on the integrative thinking on human values and norms derived from the above four components have to be a set way of thinking and acting for all parties involved in the implementation of the principle of due process of law in the juvenile justice system.

### **C. RESEARCH METHODS**

#### **1. Research Approach**

The study used socio-juridical approach is to learn about the "what's on the contrary appears from the application of the legislation" (something behind the law).{16} This study remains based on normative jurisprudence, but instead examines the system of norms in the rules and regulations, but observe how reactions and interactions that occur when the system is working in the community norm. Following Soetandyo Wignyosubroto view, the law in this regard is also conceptualized as empirically as law what it is (functioning) in society.{17} It is also equipped with a comparative approach, and the approach to the case. With the approach of the legal materials collected both primary materials and secondary legal materials and other relevant empirical data.

#### **2. Data and Data Sources**

This study uses primary and secondary data. Secondary data consists of various laws governing or relating to the legal protection of children such as Law No. 23 of 2002 on Child Protection; Law. No. 39 Year 1999 on Human Rights and so on. In addition, various international documents relating to children such as the Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment; The Convention on the Rights of the Child; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (res. No.. 40/33 in 1985) and so on. Other legal materials is a crime the judge's decision about the child and the child's resume criminal investigations. In addition, tertiary legal materials, such as the Big Indonesian Dictionary, Dictionary of Indonesian Law, Black Law Dictionary, Oxford English Dictionary, the Law Magazine as Varia Justice, Journal of Research and other relevant sources, as well as non-legal materials, namely the writings in cultural sciences.

Primary data obtained through interviews and observations and questionnaires. Respondents were purposively determined research consists of investigators, prosecutors, judges, lawyers, officials BAPAS, child actors, including family and community offenders and victims. The amount of respondents are not overly important question that has obtained data supporting the depth and breadth of analysis conducted. Data were collected for children in court proceedings Klaten District Court and the District Court Boyolali.

#### **3. Data Collection Method**

The data was collected through a literature study, document studies, interviews and observation. Observation can be defined as the systematic observation and recording of phenomena to be studied. In a broad sense, the observations are not just limited to observations made either directly or indirectly, observations indirectly through questionnaires and tests. {18} In this case the human senses (sight and hearing) is required to capture the observed symptoms. What is captured is recorded and the record further analyzed. {19}

#### **4. Data Analysis Methods**

Secondary data will be reviewed and analyzed by juridical theoretical, historical, comparative and critical. The primary data in this study was analyzed qualitatively. Qualitative analysis is done to obtain a clear description of the implementation of the principle of due process of law in a juvenile justice system. Data subsequently performed classification and processed using the method of interpretation and

construction of laws is commonly used in the science of law and further analyzed qualitatively juridical.

#### **D. IMPLEMENTATION OF DUE PROCESS OF LAW IN THE CRIMINAL JUSTICE SYSTEM CHILDREN.**

Principle of due process of law is a very important principle in the juvenile justice system. In principle, this principle requires that the law enforcement is not done by breaking the law. In the context of the juvenile justice system, implementation of this principle should pay attention to the best interests of the child. Implementation of the principle of due process of law in the juvenile justice system is based on the results obtained the following understanding:

##### **1. At the level of investigation**

In connection with the examination of the child suspects that the information obtained in the investigation process always involves parties such as a parent or guardian of the child, officials from BAPAS, advocate. However, there are some difficulties experienced investigator and an obstacle such as in the case of criminal parental child does not have a great concern for the child, then it is an obstacle in implementing legislation which parents should attend the examination. Similarly, coordination with local legal aid organizations have not done individual institutions but still means it is still relying on the good relations between the personnel handling the case is concerned with individual lawyers. In connection with the suspected child under the age of 8 years still remains the examination. During this happens to child crime average age of 13 years.

Examination of witnesses and evidence is still important for the investigator in the investigation process that children under 8 years old. By examination as usual besides being a complete case file, also facilitate objective investigation itself. Case brat who has not reached the age of 8 years old will not be transferred to the prosecution / prosecutor.

In handling cases into scope of the investigation findings are not always passed on to the public prosecutor, for example in the case of the revocation complaint offense there can be said to be complete. Whereas in cases where the complaint does not include the offense depends on the agreement between the complainant and reported agreement between them could even be done outside intervention from the investigator. The agreement form casuistry nature, for example in the case of persecution can be a statement of forgiveness, do not repeat his actions, agreed

amicably resolved for the future of children. In criminal cases the agreement can be moral willingness to marry and if the kids still wait until old enough. There is also still in its early stages as obscene acts that have not been fatal to the victim then it could also be given their agreement for compensation in such cases where the position of Women and Child Protection Unit (PPA) as the only mediator. Agreement between the complainant and reported occasionally carried outside and after the completion of the new cases concerned shall be lifted. This is especially the case has not been made about Notice of Commencement of Investigation (SPDP). SPDP in a new practice shipped after the suspect checked, but it also depends on the sit his case, for example, because it was reported to be concerned only deterrent.

In the settlement of cases as described above, also involving the community leaders such as RT, RW both the perpetrators and victims. According to testimony from several investigators who handle criminal child obtained a similar picture to that described above, namely the child suspects who commit certain crimes can be done without any prosecution settlement with certain considerations such as the quality of the acts alleged, the public perception of the suspect actions, losses that happens, the desire to resolve the matter peacefully from both sides. However there are some offenses which can not be amicably settlement if the act alleged dealing drugs, crime murder, rape crime.

During an investigation of suspected child first notified of their rights, the parents or immediate family was asked to accompany the suspect, who was detained children housed separately from adult detainees, suspects child detention should not be accompanied by family or companion taulannya, in fulfilling the rights of suspects to legal aid have been carried out in cooperation with the institutional organization of legal aid and assistance in order to meet the needs of the child during the investigation process has been undertaken in collaboration with the social institutions that care for the interests of the child.

Based on the above, it appears that the mechanism of handling offenses with child actors at this level of investigation, the fulfillment of children's rights in line with the normative provisions of the law. Besides this, local knowledge also proved to be one of the considerations in the process of criminal child completion, as evidenced by the involvement of community leaders in the participating children solve crimes.

Based on the data resumes children studied criminal offense it can be argued that the actions of the

investigator in such efforts call, arrest, detention and confiscation in general has been done with a written warrant, so the de jure what was done by the investigator has complied with the procedural law apply. However, based on the case files examined, calling procedures, arrest, detention, are not reflected on investigator judgment relating to the interests of the child. This means that in practice the use of the authority of the investigator related to the rights of suspects in the investigation level is still the absolute authority of the investigating authorities. In other words that the investigator who had a role in providing interpretation on behalf of the "best interests of the child suspects". In some file an arrest warrant or detention official report, found no specific consideration of the reasons for the nuances in the best interests of the child. Differences in the implementation of the containment problem when compared to incarceration for adults only lies in the maximum period of detention that is half of the period of detention is applicable to adults. Based on the description of the suspect data on children in the level of investigation in the cases described above, it appears that in general the information unearthed by investigators include the state of health of the suspect, a willingness to be examined and testifying to the truth, the willingness to be accompanied by legal counsel or not, knowledge in terms of what he suspects examined as well as on how the suspect committing the presupposed against him.

Based on the data presented in the above case, also found the fact that there is a suspect, who was accompanied by legal counsel and some are not accompanied by legal counsel. Based on the above explanation, if it is associated with the principles set out in the Beijing Rules or the United Nations Standard Minimum Rules Concerning the Administration of Justice For Children (Res.No.40/33 1985) can be explained that the document was stated inter alia justice system for children children prioritize the welfare of children, because they are given the freedom to make decisions at all stages of the judicial process and the different stages of the administration of justice for children, including investigation, prosecution, decision-making and subsequent arrangements. Police, prosecution or other agencies dealing with matters the child will be given the power to decide cases according to their discretion, without using the initial tests were formal.

So according to one of the contents of the Rules Beijing, then the child settlement mechanism through which no formal examinations are also possible. Thus the informal resolution mechanisms at each stage of the process of criminal justice for children was also

received international recognition. Also raised regarding the presumption of innocence, the right to be notified claims against him, the right to remain silent, the right to have a lawyer, the right to the presence of a parent, guardian, the right to confront and examine witnesses and the right to appeal to the authorities which higher will be guaranteed at all stages of the judicial process. At the time of the arrest of a child, parents must be notified immediately. Detention before trial shall be used only as a last option and for the shortest time possible. Officials or other competent authority shall without delay, consider the issue of liberation. Contacts between the law enforcement agencies with child offenders can be arranged in such a way that respects the child's legal status and promoting the welfare of children.

## **2. Level Prosecution**

Based on the letter from the Attorney General No.B-363/E/EJP/02/2010 dated February 25, 2010 regarding: Technical Guidelines for Handling Children Who are dealing with the law, addressed to the Chief Prosecutor's Office in Indonesia, among others, emphasized that tackling child dealing with the law covering one of them is as a child actor. The scope of these prosecutions include the pre-prosecution which includes: Admission Notice of Commencement of Investigation (SPDP); After receiving SPDP Warrant issued immediately Prosecutor Appointment to keep abreast of the investigation case (P-16); For Public Prosecutor appointed pay attention to the age of the suspect and ensure to investigators to look for evidence of such authentic birth certificate or birth certificate known, the data in schools, villages and others; Reporting hierarchically about the suspect's identity, position cases, violated provisions and other things that deemed necessary; actively Following any investigation progress and intensify coordination with both the investigator and the relevant parties in an effort to create an integrated settlement handling of children in conflict with the law.

The results of interviews with prosecutors who were respondents in this study, obtained the understanding that the prosecutor is basically the prosecution agencies so that each child criminal assault upon the principle of legality if enough evidence is always going to be forwarded the case to the trial court. Most operators are also subject to detention State Prison (RUTAN). The involvement of other parties is required in order to implement the prosecution of criminal offenses such as child psychologists and psychiatrists tailored to the principles or purposes. But certainly the prosecutor will always pay attention to the results of social research conducted by BAPAS. From the research results are also obtained by the fact

that the settlement has not been made criminal cases children through termination lawsuit.

In general, the trial court should have resolved the child when the maximum period of detention carried out by the district court judge has ended. If the period of detention beyond that feed all by the judge, the defendant must be removed first practical from custody, although examination of the case has not been completed. The state according to the results of interviews with a number of attorneys who handle criminal child perceived as something burdensome for prosecutors concerned because he still had to bring the defendant in subsequent sessions until the court verdict. Settlement period relating to the authority of the judge in the arrest of a suspect in reality it will be a period of "very short" especially for criminal cases where many child witnesses should be examined. Not to mention the presence of the parties to the proceedings in this court are sometimes not the same or another wait, so the hearings in the district court in this regard should be done until the afternoon. Based on the description of the criminal cases committed by children of the jurisdiction under study can be explained that most of the cases handled by the prosecution as an institution of prosecution, the accused children are generally subject to the type of detention is detention detention center detention. It can not be separated from the fact that the public prosecutor is the legal party legally responsible for presenting the defendant in the trial court.

### 3. At the District Court Level

The parties involved in the hearing children are judges, prosecutors, attorneys, clerks, officers from Bapas, actor parents, guardians of victims, co-victims. In the case of criminal proceedings observed child, the court hears criminal sexual abuse committed by perpetrators of child against two girls aged masing each five (5) years. Offender was charged with Article 82 of the Child Protection Act. This case is interesting because both the perpetrator and the victim is legally classified as children. Explanations obtained through interviews with judges, prosecutors, public prosecutors, lawyers, social workers from BAPAS supervisor, defendant, and direct observation of the trial court indicated that the child stage juvenile court proceedings have been conducted in accordance with the provisions of the Juvenile Justice Act. Observing the phenomenon of the trial court observed that interesting is the view of the parties to the proceedings in that action issues and other matters related to the defendant is a very important thing to dig more deeply, in order to determine the best attitude is to be decided Information it is in the case of children was gathered from the Society of BAPAS Supervisor.

### CONCLUSION

Based on this research, the conclusion that can be stated is that the implementation of the principle of due process of law in the juvenile justice system can be done well if animated by the spirit of the law enforcement agencies in establishing a value system derived from the values of Pancasila, local wisdom, values national law, as well as global values in the practice of criminal child's completion.

### REFERENCES

- [1] vide Muladi, 1995, *Kapita Selektta Sistem peradilan Pidana*, Badan Penerbit UNDIP, Semarang, p. 25
- [2] Mochtar Kusumaatmadja 1978 *Fungsi Hukum Dalam Masyarakat Yang Sedang Membangun*, Jakarta : BPHN-Binacipta p. 11
- [3] Agus Riyanto, editor, 2006 . *Perlindungan Anak, Sebuah Panduan Bagi Anggota Dewan Perwakilan Rakyat (Child Protection, a handbook for Parliamentarians.)*, Jakarta. p 23
- [4] Bhardwaj, HR in OC Kaligis, 2006. *Pengawasan Terhadap Jaksa Selaku Penyidik Tindak Pidana Khusus Dalam Pemberantasan Korupsi*, Jakarta : O.C. Kaligis dan Associates. p. 106).
- [5] Yesmil Anwar and Adang, 2009. *Sistem Peradilan Pidana (Konsep, Komponen dan Pelaksanaannya di Indonesia)*, Bandung : Widya Padjadjaran.p 114
- [6] LaPatra JW 1978. *Analyzing of Criminal Justice System*, Toronto : Lexington Books. P. 85
- [7] Satjipto Raharjo, 2000. *Ilmu Hukum*, Bandung : PT Citra Aditya Bakti, p. 48
- [8] Satjipto Raharjo, *ibid.* p. 51

- {9} Friedman, Lawrence M. 1984. *American Law: An invaluable guide to the many faces of the law, and how it affects our daily lives*, New York : W.W. Norton & Company. p. 16).
- {10} Satjipto Rahardjo, 1983. *Masalah Penegakan Hukum*, Bandung : Sinar Baru p. 24
- {11} Soerjono Soekanto, 1983. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta : Rajawali p. 15
- {12} Theo Huijbers, 1991. *Filsafat Hukum*, Yogyakarta : Kanisius p. 51
- {13} Barda Nawawi Arief, 2008. *Mediasi Penal : Penyelesaian Perkara Pidana Di Luar Pengadilan*, Semarang: Pustaka Magister Semarang. p. 25-36)
- {14} Ibid. p. 26-35
- {15} Vide Anthon F Susanto, 2007, *Hukum, Dari Consilience Menuju Paradigma Hukum Konstruktif-Transgresif*, Bandung : PT. Refika Aditama. p. 113
- {16} Mukti Fajar ND and Yulianto Achmad, 2010. *Dualisme Penelitian Hukum Normatif dan Empiris*, Yogyakarta : Pustaka Pelajar.p.48
- {17} Sulityowati Irianto & Sidhartha, 2009. *Metode Penelitian Hukum, Konstelasi dan Refleksi*, Jakarta : Yayasan Obor Indonesia. p. 133
- {18} Sutrisno Hadi, 1987. *Metodologi Reseach*. Yogyakarta : Andi Offset p. 36
- {19} Rianto Adi, 2005. *Metodologi Penelitian Sosial Dan Hukum*, Jakarta : Granit. P. 70

#### **PERUNDANG-UNDANGAN/ DOKUMEN INTERNASIONAL**

UUD 45 DAN PERUBAHANNYA

UU No. 8 Tahun 1981 Tentang Hukum Acara Pidana.

UU No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman

UU No. No. 3 Tahun 1997 Tentang Pengadilan Anak

Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak

UU No. No. 39 Tahun 1999 Tentang Hak Asasi Manusia.

Putusan MK No. 1/PUU-VIII/2010 Tanggal 2 Februari 2011

UU No.5 Tahun 1998, Tentang Pengesahan *Convention Against Torture*

Keputusan Presiden Nomor 36 Tahun 1990 Tentang Ratifikasi Konvensi Hak Anak.

Keputusan Bersama Ketua MARI, Jaksa Agung RI, KAPOLRI, Menteri Hukum dan Hak Asasi Manusia RI, Menteri Sosial RI, dan Menteri Pemberdayaan Perempuan dan Perlindungan Anak RI, Nomor: 166 A/KMA/SKB/XII/2009, Nomor : 146A/A/JA/12/2009, Nomor B/45/XII/2009, Nomor : M.HH-08 HM.03.02 Tahun 2009, Nomor: 10/PRS-2/KPTS/2009; Nomor: 02/Men.PP dan PA/XII/2009 Tentang Penanganan Anak yang Berhadapan dengan Hukum.

Resolusi Majelis PBB Nomor 40/33 Tanggal 29 November 1985 tentang Peraturan Standar Minimum PBB Mengenai Administrasi Peradilan Anak (*Beijing Rules*).

Resolusi Majelis PBB Nomor 45/112, Tanggal 14 Desember 1990 Tentang Pedoman PBB tentang Pencegahan Tindak Pidana Anak (*Riyadh Guidelines*).

*The United Nations and Crime Prevention*, 1991 : New York.

*The Universal Declaration of Human Rights*



