

Integration of The Concept of Judicial Waiver Into The Indonesian Criminal Justice System as an Effort to Overcome Serious Juvenile Offenders

Andrew Bresnev Kombong

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: andrewbresnevkombong.std@unissula.ac.id

Abstract. *The state guarantees the survival, growth and development of children as well as protection from violence and discrimination, as stated in Article 28 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. So, to guarantee legal certainty for children, the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System was formulated as an answer and solution to fulfill the sense of justice in society, even to protect the interests of children. However, there are limited provisions in the Criminal Threats given to Children who are in conflict with the law, so that in some cases handling which is considered a serious crime still does not answer the sense of justice of society, so it is necessary Integration of the Judicial Waiver Concept into the Juvenile Criminal Justice System as an Effort to Address Serious Juvenile Offenders. Using normative legal research methods, the approach method uses a legislative, conceptual and comparative approach, the research specifications are descriptive analysis and the research is analyzed qualitatively with Justice Theory, Legal System Theory, and Progressive Legal Theory. The current Juvenile Criminal Justice System has not fulfilled the sense of justice in society, in addition to the interaction of the Legal Structure, Legal Substance and Legal Culture is not balanced so that it can disrupt law enforcement, so that progressive critical thinking is needed to answer the sense of justice that exists in society with the Transition of Juvenile Criminal Justice to Adult Justice. However, there is a weakness when implemented in the Juvenile Criminal Justice System in Indonesia because there is a normative vacuum, so there is no legal umbrella for its implementation. Therefore, it is necessary to formulate the integration of the concept of judicial waiver qualifications of serious juvenile offenders in the juvenile criminal justice system as a legal umbrella for the concept. The qualifications of Serious Juvenile Offenders can be stated in the Subjective category originating from the Child and Objective which is the Child's actions. Judicial Waiver can be divided into two Procedural*

Systems, namely the Juvenile Justice Transfer System to General Court based on the Public Prosecutor's Application (Direct File Waiver) and the Judicial Justice Transfer System to General Court based on the Judge's Determination (Judicial Waiver).

Keywords: *Judicial Waiver; Juvenile Criminal Justice System; Serious Juvenile Waiver.*

1. Introduction

The 1945 Constitution of the Republic of Indonesia, or UUD RI 1945, is the basic law that constitutes the general agreement (consensus) of citizens regarding the basic norms (grundnorm) and fundamental rules (grundgesetze) in national life. This agreement embodies the shared goals and ideals, or rule of law, as the foundation for state administration, including the form of state institutions and procedures.¹ among other things, the state guarantees the survival, growth and development of children as well as protection from violence and discrimination, as stated in Article 28 B Paragraph (2) of the 1945 Republic of Indonesia Constitution.

This spirit was then embodied in regulations. Indonesia has had a juvenile justice system for approximately 29 years, as seen in Law Number 3 of 1997 concerning Juvenile Courts. This justice system serves as a means for children in conflict with the law, also known as ABH.², to uncover the veil of justice and facts by taking into account the rights inherent in children.

Problems regarding children are not only on a national scale, but have become an international problem marked by the existence of the Convention on the Rights of the Child (CRC). This is what underlies the birth of Presidential Decree Number 36 of 1990 concerning the ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child). Then Law Number 3 of 1997 concerning Juvenile Courts was issued, the rules regarding the child trial process are still regulated in several separate regulations from the Supreme Court, but over time the Law has been updated with Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection as amended several times, most recently by Law of the Republic of Indonesia Number 17 of 2016 as a material basis and Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System as a formal basis.

¹MPR Leadership and the MPR RI Socialization Agency for the 2014-2019 Period, Socialization Material for the Four Pillars of the MPR RI, 2020, Secretariat General of the MPR RI, Jakarta. p. 5.

²Article 1 Number 2 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, explains that Children in Conflict with the Law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts.

This means that the law was created as a response and solution to fulfill society's sense of justice, even to protect children's interests. As long as this legal basis is in effect, there will undoubtedly be numerous processes and dynamics in the practice of handling children's cases. According to data from the Indonesian Child Protection Commission (KPAI), in 2024, the KPAI received 2,057 complaints, and 954 cases were followed up to the termination stage.³ and not to mention the cases handled by Law Enforcement Officers (APH). In addition, there are also several cases that have shocked Indonesia, including the case of the premeditated murder of a family in Penajam Paser Utara, East Kalimantan, which was carried out by a 16-year-old teenager with the initials J and still in grade 3 of Vocational High School (SMK), where after partying with his friends, at 12 midnight the perpetrator went to the victim's house with a machete, then turned off the electricity to the victim's house, entered the house to kill 5 (five) family members consisting of the initials W aged 35 years (head of the family), SW aged 34 years (wife), RJS aged 15 years (first child), VDS aged 11 years (second child) and ZAA aged 3 years (third child), even some female victims were also raped after being killed.⁴As a result of the perpetrator J's actions, the defendant was sentenced to 10 (ten) years in prison during the trial, and the judge subsequently sentenced him to 20 (twenty) years in prison. However, this did not address the sense of justice felt by most of the community, especially the victims' families. Many blamed the public prosecutor and judge for their perceived disregard for the community's sense of justice.

Next is the case of the murder and rape of a junior high school student in Palembang by 4 (four) minors, MZ aged 13 years, NZ 12 years and AS 12 years and IS 16 years as the mastermind behind the crime.⁵The Public Prosecutor's demand at that time was the Death Penalty, but the Judge sentenced him to 10 (ten) years. Once again, the public considered the considerations of law enforcement officers as if they did not answer the public's sense of justice, even though in this case, the Public Prosecutor wanted to demand the maximum possible, but was limited by positive law, as well as the judge who ruled beyond positive law, but made the judge's decision considered wrong in applying the law according to the Criminal Procedure Code.

³KPAI Public Relations, February 11, 2025, KPAI Annual Report, The Steep Road of Child Protection: A Serious Threat to Indonesia's Golden Generation, (<https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>), Accessed January 1, 2026)

⁴BBC NEWS Indonesia, February 11, 2025, What is the chronology and what was the motive of the perpetrator of the murder of a family in North Penajam Paser? (<https://www.bbc.com/indonesia/articles/c9041j1xdzqo>), Accessed January 5, 2026)

⁵TB NEWS, February 11, 2025, Case of murder and rape of a minor, a junior high school student in Palembang(<https://tribrataneews.sumsel.polri.go.id/main/detail/3253/Proses-Hukum-Tiga-Anak-di-Bawang-Umur-Kasus-Pembunuhan-dan-Pemerkosaan-Siswi-SMP-di-Palembang-Terus-Berlanjut>)Accessed January 8, 2026)

This is because the threat in the Indonesian Juvenile Criminal Justice System is very limited in giving punishment to children, especially those who commit serious crimes or *Serious Juvenile Offenders*. This is illustrated in Article 81 paragraph (6) of the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System, which states:

If the crime committed by a child is a crime that is punishable by the death penalty or life imprisonment, the sentence imposed is a maximum of 10 (ten) years imprisonment.

Based on these provisions, law enforcement officials, particularly public prosecutors and judges, are clearly under strict enforcement. Therefore, the above case is not merely a subjective consideration of the public prosecutor and judge, but rather the statutory provisions that serve as guidelines for proceedings and the basis for deciding a criminal offense, particularly against child offenders.

These limitations are perceived as being unable to keep up with the times and unable to address changes occurring in society, relying on the morality of law enforcement personnel themselves. The public's sense of justice demands special treatment for children who commit very serious crimes.

Even after the transformation of Criminal Law, namely Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code as amended by Law Number 1 of 2026 concerning Criminal Adjustments or abbreviated as KUHP and Law Number 20 of 2025 concerning the Criminal Procedure Code or abbreviated as KUHPA, has not provided a specific transformation and removed the limiting provisions in terms of handling serious crimes against children. Even though there is an adage *Justitiae non est neganda, non differenda*, which means that justice cannot be denied or postponed, because it is a basic right that cannot be postponed or must be expedited to guarantee legal certainty and maintain public trust.⁶ This is also stated in Article 28 D Paragraph (1) of the 1945 Republic of Indonesia Constitution, that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law.

Today's situation has even caused a shift in the typology of child crime from ordinary delinquency, minor violations to sadistic or organized crimes.⁷ The increase in cases involving children as perpetrators may also be one of the reasons for the limited punishments given.

In contrast to the juvenile criminal justice system implemented in other countries such as the United States as per the Children's Code, the concept of juvenile criminal justice in the United States recognizes the process of transfer from

⁶Handri Raharjo, Indonesian Legal System, 2017, Pustaka Yustisia, Yogyakarta, p. 45.

⁷Marlina, Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice. 2012, Refika Aditama, Bandung, p. 32.

juvenile justice to the adult or regular justice system, in language known as Judicial Waiver, namely the legal process in which a juvenile court judge decides to transfer a criminal case involving a minor to an adult criminal court.⁸One of the fundamental procedures and jurisprudence that serves as a guideline for the United States Supreme Court for the procedure of transferring juvenile to adult justice is the Kent v. United States (1966) decision, with the age of the child offender changed to adult court at 16 (sixteen) years old. According to the decision, the Juvenile Court may not transfer a child's case to adult court without due process of law, consisting of an adversarial hearing, legal assistance (effective assistance of counsel) and a statement of reasons for the judge's final decision.⁹

Furthermore, the due process is known as the Kent Criteria based on Kent v. United States, supra, 383 US at 566-67, which consists of:¹⁰

- a. *the seriousness of the alleged offense*(level of seriousness of the alleged violation)
- b. *the way in which the offense was committed*(how the violation was committed)
- c. *whether it was a property crime or one involving violence against others*(whether a crime against property or involving violence against another person)

These criteria serve as a benchmark for the Panel of Judges in examining each request to convert juvenile court to adult court based on the factors and criteria above. Although not all factors are used in every case, judges typically focus on those most relevant to the facts. However, given that the United States is a country with a federal system of government,¹¹Each state has different age standards or additional criteria in determining which juvenile cases can be transferred to adult court. As in the decision of Thompson v. Oklahoma, 487 US 815, 837-38 (1988), which decided that the age of a child who can be transferred to adult court is 15 (fifteen) years old or based on the decision of Wis. Stat. § 938.183 which determines that a child aged 12 years can be transferred to adult court, there are even some states that do not specify a minimum age.¹²

⁸Derwyn Bunton, An Open Door to the Criminal Courts: Analyzing the Evolution of Louisiana's System for Juvenile Waivers, Louisiana State University Law Center Vol 71, No 1 Fall 2010, p 8.

⁹Amanda NeMoyer, Kent Revisited: Aligning Judicial Waiver Criteria With More Than Fifty Years Of Social Science Research, Vermont Law Review, Vol 42:441, p 2.

¹⁰Paul Marcus, United States / The juvenile justice system in the united states, Revue internationale de droit penal, eres, 1 Vol. 75, 2004, p. 13.

¹¹ Joanne Banker Hames & Yvonne Ekern, Introduction to Law from an American Perspective, 2021, Nuansa Cendekia, Bandung, p. 30.

¹²Angela M Collins & Maisha Cooper, Juvenile Waivers as a Mechanism in the Erosion of the Juvenile Justice System, Social Sciences MDPI, Vol 13 No 367, 2024, p 7.

Furthermore, in Australia, particularly in Queensland and Victoria, the minimum age for transfer of children to adult justice is 14 years. The Adult Time for Violent Crime Act in the Australian state of Victoria does not specify specific criteria for the subjective side of children committing crimes; the categories assigned tend to be based on the type of crime committed, namely:¹³

- a. Aggravated home invasion
- b. Home invasion
- c. Intentionally causing injury in circumstances of gross violence (includes machete crime)

The next question is whether this concept is implemented and effectively enforced in Indonesian juvenile justice. Speaking of the new Criminal Code and Criminal Procedure Code, the implementation of criminal law is fundamentally humanistic and does not solely emphasize the rights of the accused, as in the previous Criminal Procedure Code. Rather, it requires consideration of the prevailing sense of justice in society and the effectiveness of the laws enforced, optimized based on legal substance, legal structure, and legal culture, as outlined by Lawrence M. Friedman, a modern law enforcement perspective.¹⁴ Furthermore, Prof. Satjipto Rahardjo emphasized that the law was created for humans or pro-people and not the other way around, so the law must be dynamic, responsive and prioritize justice.¹⁵

So, based on the above matters, the author has chosen the title "Integration of the Judicial Waiver Concept into the Juvenile Criminal Justice System as an Effort to Address Serious Juvenile Offenders".

2. Research Methods

This research is a normative legal research, meaning that this research method places law as a system of norms, which focuses on principles, systematics, inventory, comparison and legal history, which refers to library materials or secondary data.¹⁶ In this case, we examine the concept *judicial waiver* in foreign legal systems, then integrated into the Indonesian juvenile criminal justice system to analyze efforts to optimize the handling of serious juvenile offender crimes.

¹³Hon Jacinta Allan MP, *Serious Consequences Early Interventions*, Victoria, 2025, p 2.

¹⁴M. Muhtarom, *The Influence of Legal Culture on Legal Compliance in Society*, *Suhuf Journal*, Vol 27, no. 2, 2015, p. 121.

¹⁵Afrohatul Laili & Anisa Rizki Fadhila, *PROGRESSIVE LEGAL THEORY* (Prof. Dr. Satjipto Rahardjo, SH), *Sinda Comprehensive Journal Of Islamic Social Studies*, Vol. 10, No. 10, 2020, p. 6.

¹⁶Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, 2003, Rajawali, Jakarta, p. 70.

3. Results and Discussion

3.1. The Concept of Judicial Waiver in The Criminal Justice System for Children as an Effort to Overcome Serious Juvenile Offenders

The 1945 Constitution of the Republic of Indonesia has mandated common goals and ideals or rule of law include the state guaranteeing the survival, growth and development of children as well as protection from violence and discrimination, as stated in Article 28 B Paragraph (2). Furthermore, there is also a convention on the Rights of the Child or Convention on the Rights of the Child (CRC) which underlies the birth of Presidential Decree Number 36 of 1990 concerning the ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child). Then Law Number 3 of 1997 concerning Juvenile Courts was issued, the rules regarding the child trial process are still regulated in several separate regulations from the Supreme Court, but over time the Law has been updated with Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection as amended several times, most recently by Law of the Republic of Indonesia Number 17 of 2016 as a material basis and Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) as a formal basis.

The formulation of a juvenile criminal justice system is the answer to meeting legal needs and societal developments in the context of child protection. This regulation contains legal material specifically derived from formal criminal law, and because of its specificity, it also includes procedural rules that deviate from the general provisions of the Criminal Procedure Code. This aligns with Muladi's view, which acknowledges that special criminal laws in a formal context also include extraordinary measures for redress.¹⁷

The Juvenile Criminal Justice System essentially encompasses the entire process of resolving cases involving children in conflict with the law, from the investigation stage to post-sentence counseling. Therefore, the criminal justice system, simply defined, is the process implemented by the state for individuals who violate criminal law in child protection cases. It naturally employs specific methods at each stage of investigation and execution.

Criminal provisions applicable to children as stipulated in the SPPA Law have specific limitations, particularly on imprisonment which limits the maximum imprisonment for children to ½ of the maximum sentence for adults (Vide Article 79 of the SPPA Law). For example, if a child commits a crime of abuse resulting in death as regulated in Article 466 of the Criminal Code and is threatened with a prison sentence of 7 (seven) years, then for children the threat of this sentence only applies to 3.5 (three point five) years.

¹⁷Ruslan Renggong, Op.cit. p. 4

There are other limiting provisions for criminal acts which are punishable by death or life imprisonment, where the prison sentence is replaced and may only be imposed for a maximum of 10 (ten) years (Vide Article 81 Paragraph (6) of the SPPA Law).

Then, if a child under 12 (twelve) years of age commits a crime, at the investigation level, investigators, community counselors and social workers are required to make a decision to return the child to their parents or guardian or to participate in an education, guidance and mentoring program at a government agency or LPKS at an agency that handles social welfare for a maximum of 6 (six) months (Vide Article 21 of the SPPA Law).

As explained above, the threat of criminal sanctions against children is limited. Whether its implementation has provided a sufficient sense of justice for society remains to be seen. According to data from the Indonesian Child Protection Commission (KPAI), in 2024, the KPAI received 2,057 complaints, and 954 cases were followed up to the termination stage.¹⁸, and not to mention the cases handled by Law Enforcement Officers (APH). In addition, there are also several cases that have shocked Indonesia, including the case of the premeditated murder of a family in Penajam Paser Utara, East Kalimantan, which was carried out by a 16-year-old teenager with the initials J and still in grade 3 of Vocational High School (SMK), where after partying with his friends, at 12 midnight the perpetrator went to the victim's house with a machete, then turned off the electricity to the victim's house, entered the house to kill 5 (five) family members consisting of the initials W aged 35 years (head of the family), SW aged 34 years (wife), RJS aged 15 years (first child), VDS aged 11 years (second child) and ZAA aged 3 years (third child), even some female victims were also raped after being killed.¹⁹As a result of the perpetrator J's actions, the defendant was subsequently sentenced to 10 (ten) years in prison during the trial, and the judge subsequently sentenced the defendant to 20 (twenty) years in prison. However, this did not address the sense of justice that exists in the community, especially the families of the victims. Many blamed the Public Prosecutor and Judge for not paying attention to the community's sense of justice, even though the Public Prosecutor was only following the applicable Juvenile Criminal Justice System.

¹⁸KPAI Public Relations, February 11, 2025, KPAI Annual Report, The Steep Road of Child Protection: A Serious Threat to Indonesia's Golden Generation, (<https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>, Accessed January 1, 2026)

¹⁹BBC NEWS Indonesia, February 11, 2025, What is the chronology and what was the motive of the perpetrator of the murder of a family in North Penajam Paser? (<https://www.bbc.com/indonesia/articles/c9041j1xdzqo>, Accessed January 5, 2026)

The Panel of Judges in Decision Number X/Pid.Sus-Anak/2024/PN Pnj provided legal considerations in aggravating circumstances as follows:²⁰

- 1) The child's age and awareness of thought. Although the child normatively qualifies as a "child" as stipulated in the Child Protection and Child Protection Act, the judge subjectively assesses the child's thought patterns as being similar to those of an adult, as they are deemed capable of considering their actions and their consequences and of openly committing a crime without hesitation and religious beliefs. The child also recognizes the existence of regulations prohibiting the death penalty or life imprisonment.
- 2) The level of seriousness and impact of the action, the judge views the child's actions as the most serious crime followed by indecent acts, because it eliminates the victim's lineage.
- 3) The number of victims that arose was approximately 5 (five) family members and was considered very large for a perpetrator who was not yet an adult, so it was categorized as extraordinary.

3.2. Next is the case of the murder and rape of a junior high school student in Palembang by 4 (four) minors, MZ aged 13 years, NZ 12 years and AS 12 years and IS 16 years as the mastermind behind the crime.

The Public Prosecutor's demand at that time was the Death Penalty, but the Judge sentenced him to 10 (ten) years. Once again, the public considered the considerations of law enforcement officers as if they did not answer the public's sense of justice, even though from this case, the Public Prosecutor wanted to demand the maximum possible sentence because it was considered a serious crime, but was limited by positive law, as well as the judge who decided after the maximum limit of the Juvenile Criminal Justice System, but made the judge's decision considered wrong in applying the law according to the Criminal Procedure Code.

Public prosecutors are naturally faced with a dilemma between upholding the principle of child protection and upholding the public's sense of justice. Public prosecutors naturally have the following considerations when imposing the death penalty:²¹

- 1) The gap between the perpetrator's premeditation and thorough planning demonstrates the full awareness and intent of the perpetrator, who in this case

²⁰Decision of the Penajam Paser District Court Number X/Pid.Sus-Anak/2024/PN Pnj, dated March 8, 2024, page 185

²¹Muhammad Imam Nopriyansah, et al., Legal Considerations of Public Prosecutors in Demanding the Death Penalty for Children Perpetrating Premeditated Murder, Semarang Law Review, Vol. 7 Issue 1 (2026) 159-200, p. 15.

is a child. Therefore, the child's cognitive capacity is deemed sufficient to distinguish between right and wrong.

2) Level of Cruelty and Social Impact, the actions of the perpetrator, in this case a child, were carried out in a cruel, brutal manner and caused unrest in society, so that it is considered an aggravating factor.

3) Lack of remorse or potential for rehabilitation, during the legal process the child did not show any remorse and the results of the psychological examination were too low to be effectively rehabilitated.

4) Public pressure and preventive aspects, the death penalty is a symbolic form that the state does not tolerate serious crimes.

The threat of criminal penalties against children is limited and acts as a restraint for law enforcement officials in upholding justice. The authority of prosecutors and judges in determining criminal penalties is bound by the Juvenile Criminal Justice System, which is closely related to the principle of *nullum delictum nulla poena sine lege* better known as the Principle of Legality, meaning that there is no criminal act without a preceding rule.²² So, to guarantee legal certainty in enforcing criminal law, its implementation must remain based on written law.

It is a question whether the current justice system has answered the sense of justice that exists in society. Justice (*iustitia*) comes from the word "fair" which means: not biased, impartial, siding with what is right, appropriate, not arbitrary. From several definitions it can be understood that the meaning of justice is all things related to attitudes and actions in human relations, justice contains a demand that people treat each other according to their rights and obligations, this treatment is not indiscriminate or favoritism; rather, everyone is treated equally according to their rights and obligations.²³

Justice, according to Aristotle, is the appropriateness of human actions. Appropriateness is defined as the middle ground between the two extremes of too much and too little. These two extremes concern two people or objects. If the two people have the same amount of something in a predetermined measure, then each person should receive the same object or result. If they are not equal, then there is a violation of this proportion, meaning injustice. According to Aristotle, the distribution of justice is as follows:²⁴

1) Corrective justice is a philosophy that focuses on correcting wrongs. If a violation or mistake is committed, corrective justice provides compensation to

²²Andi Hamzah, 2020, Principles of Criminal Law, Jakarta: Rajawali Pers, p. 43.

²³Riky Sembiring, Op.cit.

²⁴Ibid. p. 144

the injured party and appropriate punishment to the perpetrator. Because if injustice occurs, the established equality is disrupted.

2) Distributive justice is a form of justice that tends toward public law, focusing on the distribution of wealth and other acquired goods. The context of this justice is the principle of equitable economic justice for all citizens.

If we relate it to the two previous cases, then Aristotle's Theory of Corrective Justice is the most appropriate indicator for measuring this justice, because corrective justice is the area of justice.²⁵ Aristotle's Corrective Justice Viewpoint distinguishes between verdicts that base justice on the nature of the case and those based on common and common human nature, and verdicts based on the views of a particular legal community. These two distinctions are generally seen as positive law established in statutes and customary law. However, the two cannot be confused, because the two judgments have different sources of consideration, where the Decision is realized through legislation while customary law is obtained through general human nature and can disrupt the established equality.²⁶

Based on the decision in the case explained previously, there is a dualism that is formed, namely the view that must provide punishment based on the applicable Juvenile Criminal Justice System and the view that provides punishment according to the level of seriousness of the act. The case of the premeditated murder of a family in Penajam Paser Utara, East Kalimantan shows that the Public Prosecutor's Demands are implemented based on Article 81 Paragraph (6) of the Juvenile Criminal Justice System Law, where the maximum penalty is only 10 (ten) years, even if the threat of imprisonment at the adult level is 20 (twenty) years, for children it also only applies half as Article 79 of the Juvenile Criminal Justice System, namely 10 (ten) years. Meanwhile, in the Judge's Decision, deciding on a prison sentence of 20 (twenty) years for the Child (perpetrator), by considering the objective and subjective aspects of the Child as the level of seriousness of the crime committed. This view does come from the Panel of Judges, but in the context of determining the threat of punishment, the panel of judges took a decision that was outside the provisions of the Juvenile Criminal Justice System and the view of the panel of judges is a general human nature that has not been measured through the applicable positive law.

Furthermore, based on the case of the murder and rape of a junior high school student in Palembang, the Public Prosecutor demanded the death penalty for the perpetrator, considering the objective and subjective aspects of the child as the level of seriousness of the crime committed. Once again, in the context of

²⁵Bonnarty Steven Silalahi, et al., 2023, The Perspective of Justice According to Aristotle and Its Implications in Business Ethics, In Journal of Social Science Research, Pelita Harapan University, Medan Campus, Volume 3 Number 4, Page 6.

²⁶Ibid. p. 7

determining the criminal threat, the public prosecutor made a decision that was outside the provisions of the Juvenile Criminal Justice System and the public prosecutor's view was a general human nature that has not been measured through applicable positive law. Meanwhile, the judge's decision only referred to the applicable Juvenile Criminal Justice System, namely the maximum threat of 10 (ten) years.

Both prosecutors and judges uphold a sense of justice, but in practice, these principles sometimes fail to meet the public's sense of justice or are even considered contradictory due to a lack of a foundation for regulation. Conflating legislation and human nature can disrupt the equality established in the current Juvenile Criminal Justice System, thus undermining the justice envisioned from Aristotle's perspective.

The description of law enforcement through the Juvenile Criminal Justice System needs to be re-examined using Lawrence M. Friedman's Legal System Theory. He explains that the legal system consists of the structure of law, the substance of the law, and the legal culture.²⁷, where in actual operation it is a complex interacting organism.

The legal structure is described as a judicial system, where the aspects or measures are law enforcers such as judges, prosecutors, legal counsel and the police, so that the legal structure describes legal institutions including their apparatus in a more general context as actors in implementing regulations. Legal substance is related to all forms of legal products that are formed and produced, then becomes a guideline for the Structure to apply its Substance. Legal Culture is more about the patterns of habits and ways of thinking of humans in a particular community which is often described as society.²⁸

The interaction of these three organisms can form output as a response to social demands, forming the overall function of the law regarding what society expects according to Lawrence M. Friedman, legal culture becomes the main element in a legal system, because the realization of law in a country fundamentally places the cultural dimension in a more important position compared to other elements, because it contains an abstract idea which becomes a value for measuring the good and bad of humans.²⁹ The birth of these values also serves as a foundation for policy formation and law enforcement. The hope is that all forms of legal products will be a manifestation of society's noble values.

²⁷ Friedman, M. Lawrence, *American Law An Introduction Second Edition*, Translator Wishnu Basuki, 2001, Tetanusa, Jakarta, p.8.

²⁸ Marzuki Lubis, *The Role of Legal Culture in the Perspective of National Legal Development*, *Law Enforcement* 1, No. 1, 2014, pp. 16–37.

²⁹ Izzy Al Kautsar and Danang Wahyu Muhammad, *Lawrence M. Friedman's Modern Legal System: Legal Culture and Social Change in Society from Industrial to Digital*, *Jurnal Sapientia et Virtus*, Vol 7, No 2, 2022, p. 10.

So if we measure from the two previous cases, we can give a clear measure of the view. Lawrence M. Friedman. First Legal structure, in carrying out their duties, Public Prosecutors and Judges are based on the Criminal Code (KUHP) and the Criminal Procedure Code (KUHPA), not to mention in practice Public Prosecutors refer to Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. While Judges refer to Law Number 48 of 2009 concerning Judicial Power. Secondly, Legal Substance, where Public Prosecutors and Judges handle cases other than based on the applicable General Prosecutorial Law and those related to their authority, in terms of handling Child cases is carried out based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In practice, both Public Prosecutors and Judges have different views in imposing prison sentences, some are based on the Juvenile Criminal Justice System and some are based on subjective and objective views that are not even included in the applicable regulations. This difference of opinion has become a polemic, as it relates to the legal certainty of adhering to the applicable substance. When the legal structure no longer refers to the existing legal substance, it means that law enforcement is no longer consistent. To further confirm this, we need to examine the legal culture.

Thirdly, Legal Culture, society gives a reaction to a case of premeditated murder of a family in North Penajam Paser, East Kalimantan and The murder and rape case of a junior high school student in Palembang. In the first case, the public considered the public prosecutor to be inadequate in imposing a prison sentence, while the judge was considered to have met the public's expectations of justice, even though it was not in accordance with the applicable Juvenile Criminal Justice System. In the second case, the opposite was true. When the public prosecutor was considered to have met the public's expectations of justice, the judge's decision was considered inconsistent with those expectations, even though the judge made the decision based on existing legal principles.

It is clear from the description above that the interaction of the three entities—Legal Substance, Legal Structure, and Legal Culture—is no longer aligned, resulting in responses to social demands that do not align with society's sense of justice. If society's own hopes for justice cannot be fully realized, the manifestation of society's noble values will be lost.

The two theories above, both the Theory of Justice and the Theory of Legal Systems, have proven that the current Juvenile Criminal Justice System has not fulfilled the sense of justice of the community, in addition to the interaction of the Legal Structure, Legal Substance and Legal Culture is not balanced so that it can disrupt law enforcement. Therefore, according to the Author, an idea or concept is needed to facilitate the existing dynamics by reflecting the concept of

Judicial Waiver in the Juvenile Criminal Justice System as an effort to overcome Serious Juvenile Offenders.

This concept is indeed new in Indonesia, because it is generally known in countries that adopt the Common Law system such as the United States and Australia. The concept of juvenile criminal justice in the United States recognizes the process of transfer from juvenile justice to the adult or regular justice system, in language known as Judicial Waiver, namely the legal process in which a juvenile court judge decides to transfer a criminal case involving a minor to an adult criminal court.³⁰ This legal process is not just an administrative process, but is a legal decision that takes several factors into consideration. *Judicial Waiver* There are three types of processes: first, discretionary waiver, where the judge decides whether to transfer the type of sentence from juvenile to adult after reviewing the details of the case. Second, mandatory waiver, which occurs automatically if certain conditions, such as age or type of crime, are met. Third, presumptive waiver, where the transfer to adult court is still carried out unless there is strong evidence to keep the person in juvenile court.³¹

Likewise with Australia, Queensland and Victoria, in particular, have a minimum age limit of 14 years for children to be transferred to adult justice. The term Judicial Waiver in Australia is better known as Adult Crime Adult Time. One of the regulations is contained in the Adult Crime Adult Time Section in Making Queensland Safer Law in the Australian state of Victoria, but it does not explain specific criteria for the subjective side (personality) of children in committing crimes; the categories determined tend to be based on the type of crime committed.³² where this is similar to the Mandatory Waiver system in the United States, which automatically switches juvenile justice to adult justice if the age qualification requirements and type of crime are met as per applicable provisions.

Although the United States and Australia have systems for diversion from juvenile justice to adult justice, their implementation is not exempt from the Children's Code; the transition process is a specific part of the legal process. However, is it possible to implement this within the Indonesian Juvenile Criminal Justice System?

The Juvenile Criminal Justice System in Indonesia has a restorative justice paradigm as its main pillar, because one of the main objectives of juvenile justice is oriented towards recovery.³³ This is an extraordinary measure in the concept of child criminal law because it is outside the court and actively involves the perpetrator, family, victim and community. This paradigm is then realized

³⁰Derwyn Bunton, Op.cit.

³¹Fikrinur Setyansyah, Op.cit.

³²Hon Jacinta Allan MP, Op.cit.

³³Helda Rahmasari, et al., 2026, Juvenile Criminal Justice System, Padang, CV Gita Lentera, p. 16

through the Diversion system at every level of examination. Although the justice system always strives for Diversion, there are still limitations where Children (Perpetrators) cannot be facilitated with Diversion, as in Article 7 Paragraph (2) of the SPPA Law. Diversion cannot be carried out if threatened with imprisonment of 7 (seven) years or more and is not a repeat of the crime. Then the Child Criminal Justice System also emphasizes the concept of punishment even though the sentence imposed is $\frac{1}{2}$ of the maximum prison sentence threatened as in Article 79 paragraph (2) of the SPPA Law.

Although the juvenile criminal justice system has a normative and conceptual foundation, in practice, it faces greater structural, substantial, and cultural challenges, threatening the sense of justice inherent in society. Increasingly complex and serious juvenile crimes require a legalistic and repressive approach, similar to that used in adults. This creates a gap in the juvenile criminal justice system when faced with cases of high severity. The juvenile criminal justice system lacks the qualifications to handle juvenile cases involving crimes of above-average severity, and there is still no procedural concept that can optimize the handling of such cases.

To address this gap, the author invites us to think progressively. Progressive law is a perspective that views law as a means to serve humanity, or exists solely for humanity and not vice versa. This theory began to be known with the introduction of one of the figures, Satjipto Rahardjo, who initiated progressive law. Satjipto Rahardjo initiated this theory based on his concern for the declining state of the legal world, dominated only by a formal legalistic spirit and public dissatisfaction. Law only serves to enforce established regulations, so that law is solely for law, not for humans. As a result, the justice created is only formal procedural because it focuses on the formal text, while substantive justice, the justice expected from the law enforcement process, is neglected.³⁴

This is the reason Satjipto Rahardjo initiated the theory to break through the law dominated by a formal legalistic regime, by reversing the philosophical assumption of the purpose of law that tends to be "law for law" to "law for humans." The assumption is that humans are symbols or emblems for the views that underlie the thoughts, concerns, or tendencies of law to serve society. Law is no longer positioned as something absolute and final, but as law as process, law in the making, with the idea that law will always be open to renewal so as not to be trapped in stagnation and dullness.³⁵

Understanding Satjipto Rahardjo's thinking on progressive law certainly gives us the freedom and sensitivity to respond to the dynamics that occur. Differences in implementation in structure and substance, as explained previously, can harm

³⁴I Gusti Kade Budhi H, Op.cit, p. 3

³⁵Ibid. Page 6

legal certainty and fail to respond to the sense of justice that exists in society as a noble value and culture. Therefore, an idea or concept is needed to fill the legal vacuum. In this case, there are two (2) things that form the main basis of new ideas in the Juvenile Justice System: the Level of Seriousness of the Crime as a benchmark for the actions of the Child (the perpetrator) and the concept of Judicial Waiver as a facilitator to transfer juvenile justice to regular or adult justice.

In principle, the initial basis for measuring the level of seriousness of a criminal act or serious juvenile offender already exists in the Juvenile Criminal Justice System, as long as it does not fulfill the elements or requirements for diversion as Article 7 Paragraph (2) of the SPPA Law, it can be said that the child's actions constitute a serious crime, even though it is not written in *Expressive Verbis*. However, the formulation to be the measure of an act considered serious must be clearly stated. Once a clear benchmark has been established, this corridor will automatically become a trigger to enter the Judicial Waiver process which will also be formulated later.

Furthermore, there is also the question of whether it is possible to apply the common law procedural system in a country with a civil law system. In fact, there is no prohibition on the absorption of procedural systems between the two legal systems, because in principle, we still adhere to balance. Law enforcement, as viewed by Lawrence M. Friedman, consists of legal structure (structure of law), legal substance (substance of the law) and legal culture (legal culture). Furthermore, critical thinking on the current legal dynamics has brought Indonesia into a new chapter in procedural law. Law Number 20 of 2025 concerning the Criminal Procedure Code or commonly referred to as the KUHP, has adopted various procedural concepts in common law that are considered effective in law enforcement, including the concepts of Plea Bargain and Deferred Prosecution Agreement which are well-known for resolving crimes related to the economy and corruption.³⁶

This concept is also known as legal transplantation, the process of adopting legal rules from one legal system into another. This adoption process imports legal concepts, norms, and institutions, resulting in a unification and alignment between the legal systems.³⁷

³⁶Debby Mutiara Nelson, 2019, *Plea Bargaining & Deferred Prosecution Agreement in Corruption Crimes*, Jakarta, Sinar Grafika, p. 300.

³⁷Nandang Kusnadi, et al., 2025, *Legal Transplantation in the Harmonization of Contract Law: A Study of the Influence of Common Law in the Indonesian Legal System*, Pakuan University, Yustisi Journal of Law & Islamic Law, Vol 12 No 2, p. 4.

4. Conclusion

1. The concept of judicial waiver in the juvenile criminal justice system as an effort to overcome serious juvenile offenders, needs to be adopted by legal transplantation, because the current Juvenile Criminal Justice System has not fulfilled the sense of justice in society, in addition to the interaction of the Legal Structure, Legal Substance and Legal Culture is not balanced so that it can disrupt law enforcement, so that progressive critical thinking is needed to answer the sense of justice that exists in society with the Transition of Juvenile Criminal Justice to Adult Justice. 2. Integration formulationThe concept of judicial waiver in the juvenile criminal justice system as an effort to address serious juvenile offenders can be divided into two procedural systems, namely the Direct File Waiver System for Transferring Juvenile Justice to General Court based on the Public Prosecutor's Application (Direct File Waiver) and the Juvenile Justice System for Transferring Juvenile Justice to General Court based on the Judge's Decision (Judicial Waiver).

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