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THE CONCEPT OF WAIVER IN JUVENILE JUSTICE: A SUBSTANTIVE JUSTICE PERSPECTIVE

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Abstract

Indonesia's juvenile justice system faces a fundamental dilemma when confronting serious crimes committed by children. On one hand, Law Number 11 of 2012 on the Juvenile Justice System emphasizes child protection through restorative justice and diversion mechanisms. On the other hand, cases such as the brutal murder of Eno Farihah and the massacre of a family in Penajam demonstrate that an overly rigid approach may undermine the sense of justice for victims and society. This article examines the concept of waiver, or transfer of jurisdiction, as a solution to balance child protection interests with substantive justice demands. Using normative juridical research methods and a conceptual approach, this study formulates a conditional waiver model that can be selectively applied to serious crime cases with strict criteria based on the child's psychological maturity level. The research findings indicate that conditional waiver can serve as a proportional legal instrument to achieve justice that is not only procedural but also substantive, while still respecting children's rights and the principle of the best interests of the child.

A. INTRODUCTION

Discussing children is inherently about considering the future. Children are not only individuals who have not reached adulthood; they are valuable assets who will shape the nation's future. They require protection and guidance to become contributors to society, as stated in Article 1 paragraph (1) of Law Number 35 of 2014 on the Amendment to Law Number 23 of 2002 concerning Child Protection. However, childhood is complex, and children often encounter challenges that may place them in difficult situations.

Children are naturally curious and readily absorb information and experiences, often without the ability to reflect critically. When guided effectively, this curiosity can drive positive development. For instance, Indonesian students brought honor to the nation at the 66th International Mathematical Olympiad (IMO) 2025 in Queensland, Australia, earning four medals and two honorable mentions as a contribution to the country.[1] However, without proper guidance, this same curiosity may lead to unlawful behavior. This concern grows as we see more criminal cases involving children as perpetrators, sometimes with alarming levels of violence.

One case that once drew significant public attention was the brutal murder of Eno Farihah in 2016. Eno, a factory worker in Tangerang Regency, Banten, was found lifeless in the employee dormitory room where she worked, located in Kosambi District.[2] Shockingly, one of the main perpetrators of this murder was a 15-year-old teenager who, together with two friends aged 16 and 17, planned and carried out the act. This 15-year-old perpetrator displayed structured thinking, the ability to plan the act in detail, including preparing the murder weapon, and active involvement in the violence that resulted in the victim's death. This case prompts a fundamental inquiry regarding whether an individual capable of planning and executing a heinous crime should be treated equivalently to a typical child who lacks comprehension of the consequences of their actions.

Another equally shocking example occurred in Penajam Paser Utara, East Kalimantan, where an underage teenager was proven to have murdered four members of a victim's family in a brutal and premeditated manner. The Penajam District Court sentenced the perpetrator

[1] Stephanus Aranditio, "Pelajar Indonesia Panen Prestasi Hingga Raih Beasiswa ke Luar Negeri," Kompas.id, 1 August 2025, accessed 10 February 2026, https://www.kompas.id/artikel/pelajar-indonesia-panen-prestasi-hingga-raih-beasiswa-ke-luar-negeri.

[2] Ihsanuddin, "Eno Farihah Tewas dengan Tubuh Tertancap Pacul, Inisiator Pemerkosaan Lolos dari Hukuman Mati," Kompas.com, 20 May 2022, accessed 10 February 2026, https://megapolitan.kompas.com/read/2022/05/20/05391371/eno-farihah-tewas-dengan-tubuh-tertancap-pacul-inisiator-pemerkosaan.

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to 20 years in prison.[3] However, this verdict sparked controversy because it exceeded the maximum criminal penalty for children stipulated in Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System ("Juvenile Justice Law"), namely 10 years in prison. This verdict, which exceeded statutory provisions, shows that the judge stood at a crossroads: on one hand having to respect child-protection provisions, and on the other facing public pressure and demands for justice for a very serious crime.

Both cases above reveal a real gap between the norm (das sollen) and the actual phenomenon occurring in the field (das sein). Normatively, the Juvenile Justice Law requires that every child in conflict with the law be treated through a restorative approach and kept away from sanctions resembling adult punishment. In reality, however, judges in the field have handed down sentences exceeding the maximum limit permitted by law to accommodate the victims' and society's sense of justice. This gap between the ideal of law and judicial practice is precisely the core legal issue this research seeks to answer. The Penajam Paser Utara verdict, which exceeded the statutory maximum, actually represents a collision between formal legality and substantive justice. Judges, as anchors of law enforcement, are often confronted with situations where rigidly following the text of the law would instead injure a greater humanitarian value. In legal discourse, such judicial action can be categorized as judicial activism, in which judges create legal breakthroughs to fill normative gaps that are no longer relevant to the sociological development of crime. However, doctrinally, judicial activism carried out without a clear regulatory basis risks creating legal uncertainty and delegitimizing statutory authority. This is precisely where the urgency of the conditional waiver concept arises, as a constitutional exit plan. With a waiver mechanism, judges would have the legal authority to impose proportional sanctions in extraordinary cases of juvenile crime without having to breach the formal rules of the Juvenile Justice Law. This would ensure that court decisions carry not only executory force but also moral legitimacy in the eyes of the public and victims.

The cases above highlight a core dilemma in Indonesia's juvenile criminal justice system. The Juvenile Justice Law emphasizes child protection through restorative justice and diversion, shielding children from punitive measures that could harm their future.[4] However, serious crimes committed by psychologically mature children require more proportional accountability. The current system has yet to balance child protection with justice for victims

[3] Riani Rahayu, "Vonis 20 Tahun Bui Pembunuh Sekeluarga di Kaltim Dua Kali Lipat dari Tuntutan," Detik News, 18 March 2024, accessed 10 February 2026, https://news.detik.com/berita/d-7247210/vonis-20-tahun-bui-pembunuh-sekeluarga-di-kaltim-dua-kali-lipat-dari-tuntutan.

[4] Anik Iftitah, Eko Yuliastuti, Desy Okta Mawarni, and Rila Puspita Wardani, "Pertanggungjawaban Hukum Anak dalam Pelaku Tindak Pidana Berat: Pendekatan, Dampak, dan Implikasi dalam Sistem Peradilan Anak," Birokrasi: Jurnal Ilmu Hukum dan Tata Negara 1, no. 2 (2023).

and society. Comparative legal systems, such as in the United States, address similar challenges through the juvenile waiver or transfer of jurisdiction. A waiver is a legal mechanism that allows certain cases to move from juvenile to adult court under strict criteria.[5] This approach responds to serious crimes committed by children whose psychological maturity is comparable to adults.

This research addresses the conceptual gap concerning the boundary between child protection and criminal accountability within Indonesia's juvenile justice system. Academically, it advances the study of juvenile criminal law by introducing a conditional waiver model that remains underexplored in Indonesian legal literature, and by bridging the debate between the restorative justice paradigm and the requirements of substantive justice. In practical terms, the findings are intended to inform policymakers in revising Law Number 11 of 2012 on the Juvenile Justice System, particularly in establishing objective criteria for transferring jurisdiction over children accused of serious crimes.

Building upon this phenomenon, the present article addresses two fundamental questions. The first concerns the ideal concept and model of conditional waiver suitable for implementation within Indonesia's legal system as a mechanism to balance the principle of child protection with the principle of criminal accountability. The second examines how the application of substantive justice through the conditional waiver model can ensure the accountability of children who commit serious crimes while simultaneously restoring the sense of justice for victims and society.

B. RESEARCH METHODS

This research uses the normative juridical method, namely legal research that examines norms as a coherent system, placing positive law as the primary object of study.[6] This research employs three approaches simultaneously. First, the statute approach, used to examine Law Number 11 of 2012 concerning the Juvenile Justice System along with its implementing regulations. Second, the conceptual approach, used to build the concept of conditional waiver from relevant doctrines and theories of justice. Third, the comparative approach, used to examine the practice of juvenile jurisdiction transfer in the United States, Canada, and the Netherlands as comparative material for the Indonesian context.

Legal materials were collected through library research[7], tracing primary legal materials in the form of laws and regulations related to the juvenile justice system and court decisions, as well as secondary legal materials in the form of books, scientific journals, prior

[5] N. Christiansen and H. S. Bakhtiar, "The Application of Trial as an Adult Concept in Indonesia: Justice for Victims in Juvenile Murder Cases," Journal of Law, Politic and Humanities 5, no. 5 (2025): 3496.

[6] Agus Satory et al., Metode Penelitian Hukum (Sukoharjo: Tahta Media Group, 2024), p. 73.

[7] B. Subagiya, "Penelitian Kepustakaan (Library Research) dalam Penelitian PAI," Jurnal Pendidikan Islam 12 (2023): 2.

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research results, and official state institution documents. Tertiary legal materials in the form of legal dictionaries and encyclopedias were used as supporting material to clarify technical terms used in this research. All collected legal materials were then inventoried and classified according to discussion themes to facilitate the analysis process.

Data analysis was conducted qualitatively using the analytical-descriptive method, namely systematically describing norms and facts to be then analyzed using relevant legal theories and doctrines.[8] The analysis was conducted using deductive reasoning, namely drawing specific conclusions regarding the feasibility of the conditional waiver model from general premises in the form of Juvenile Justice Law norms, substantive justice theory, and comparative law results. This approach is prescriptive in nature, meaning it does not stop at describing the problem, but is directed toward formulating a concept and criteria for conditional waiver appropriate to the Indonesian legal context.

C. RESULT AND DISCUSSION

1. Challenges of Using Diversion to Address Crimes Committed by Children

Indonesia's juvenile justice system is built upon a noble philosophical foundation: protecting children from stigmatization and giving them a second chance to reform. The Juvenile Justice Law adopts a restorative justice paradigm.[9] This approach is highly ideal, because the purpose of achieving restorative justice is fulfilled, namely restoring the situation to what it was before the crime occurred.[10] This means the Juvenile Justice Law emphasizes restoration rather than retribution.[11] The diversion mechanism regulated in Articles 5 through 15 of the Juvenile Justice Law serves as the primary instrument for redirecting the resolution of children's cases from the formal court process to resolution outside the courts, to avoid the negative effects of the criminal justice system on children's psychological development and future.[12]

[8] S. Sepriano and R. S. Yani, Metodologi Penelitian Bidang Hukum (Jambi: PT. Sonpedia Publishing Indonesia, 2025), p. 9.

[9] Fitriyah Ingratubun, J. A. Ingratubun, and M. H. Ingsaputro, Sistem Peradilan Pidana Anak Di Indonesia (Dunia Penerbitan Buku, 2025), p. 32.

[10] Anita Zulfiani, "Restorative Justice dan Penjatuhan Pidana pada Anak," RRJ: Riset Reformasi Hukum 5, no. 4 (September 2023): p. 297, https://doi.org/10.38035/rrj.v5i4.

[11] Howard Zehr, The Little Book of Restorative Justice (Intercourse, PA: Good Books, 2002), pp. 18-19. Compare with recent research showing the effectiveness of restorative justice programs for children: Catherine S. Kimbrell, David B. Wilson, and Ajima Olaghere, "Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness," Criminology & Public Policy 22, no. 1 (2023): pp. 161-195.

[12] J. T. Febrianto and D. Iryani, "Model Diversi terhadap Anak Pelaku Tindak Pidana Pencurian dengan Pemberatan dalam Sistem Peradilan Pidana Anak untuk Mewujudkan Kepastian Hukum," Jurnal Hukum Lex Generalis 6, no. 12 (2025): 12.

In practice, the implementation of diversion encounters substantial challenges when addressing atypical criminal cases. Diversion is limited in its capacity to manage offenses characterized by complex evidentiary requirements. Article 7, paragraph (2) of the Juvenile Justice Law restricts diversion to cases punishable by less than seven years' imprisonment and excludes repeat offenses. This provision results in a normative gap, particularly in situations where a child commits an offense punishable by more than seven years but exhibits circumstances distinct from those of typical juvenile offenders.

Data from the Indonesian Child Protection Commission (KPAI) shows that throughout 2024, 3,924 complaints of child-rights violations were recorded, with the category of children as perpetrators of violence reaching 28 percent of the total cases.[13] This figure shows a significant increase and illustrates that an overly protective approach, without considering a child's level of psychological maturity, can create loopholes for impunity. The current system risks protecting perpetrators who in fact already have the capacity to understand the consequences of their actions.

John Rawls's theory of justice asserts that justice requires more than procedural equality; it must also ensure fair outcomes, particularly for the least advantaged.[14] In *A Theory of Justice*, Rawls introduces the difference principle, which states that social and legal structures should provide the greatest benefit to the most disadvantaged group.[15] In the context of juvenile criminal justice, the vulnerable are not only the child perpetrators, but also child victims and the society affected by the crime. When a child is capable of planning a brutal murder with a level of cruelty beyond reasonable bounds, the question is no longer merely about protection, but about balanced justice.

Drawing upon the preceding discussion of norms, empirical data, and theories of justice, this analysis contends that the limitations of diversion stem not from its protective philosophy for children, but from the lack of a measurable exception mechanism for cases that fall outside its rehabilitative scope. This regulatory gap serves as the foundation for proposing a conditional waiver model to complement, rather than replace, the existing diversion system.

2. Philosophical Distinctions between Restorative and Substantive Justice

The significance of this research arises from the critical intersection between the uncompromising application of restorative justice and the requirements of substantive

[13] Komisi Perlindungan Anak Indonesia, "Laporan Tahunan KPAI Tahun 2024" (Jakarta: KPAI, 2025), p. 15.

[14] Y. F. Arianto et al., "Konsep Keadilan Restoratif Dalam Perspektif Teori Keadilan John Rawls," Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora 3, no. 01 (2025): 2.

[15] John Rawls, A Theory of Justice, Revised Edition (Cambridge: Harvard University Press, 1999), pp. 52-54. See also a contextual study of Rawls's theory of justice within the Indonesian legal system: Yuli Suhardin, "Konsep Keadilan dari John Rawls dengan Keadilan Pancasila (Analisis Komparatif)," Fiat Justitia: Jurnal Hukum 3, no. 2 (2023).

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justice in specific cases. Restorative justice, which emphasizes the restoration of relationships among the offender, the victim, and society, operates on the foundational assumption that every offender possesses the capacity for change and is entitled to a second chance.[16] This assumption, however, is called into question when addressing cases involving a psychologically mature child who commits a crime characterized by an extreme degree of cruelty.

The concept of substantive justice, as developed by Ronald Dworkin, emphasizes that justice is not solely about correct procedure, but also about an outcome that can be morally justified.[17] In the context of juvenile criminal justice, substantive justice demands that the sanction imposed be proportional to the degree of culpability, the impact of the crime, and the perpetrator's moral capacity. When a 15-year-old child plans and carries out a brutal murder, applying restorative justice that results in a lenient sanction can be perceived as disregarding the suffering of the victim and their family.

This issue is highlighted by recent empirical data. According to the Indonesian National Police's Criminal Investigation Data Center (Pusiknas Bareskrim Polri), police handled 13,192 cases of crimes against children across Indonesia from January to 21 July 2025, with 9,937 cases, or 75.32 percent, falling under child protection offenses.[18] Notably, there has been a significant rise in serious crimes committed by children using planned and systematic methods. These developments indicate that the juvenile justice system now faces more complex crimes, beyond ordinary juvenile delinquency, and requires a more sophisticated legal response.

Applying restorative justice too rigidly, without considering individual offender characteristics, can cause two major issues. First, it may create a public perception of impunity and undermine confidence in justice. Second, it can encourage child offenders to reoffend if they do not face proportional consequences.[19] Therefore, a mechanism is needed to balance child protection with the requirements of substantive justice.

Within the framework of Islamic law, the principle of *maslahah mursalah*, or public benefit, is particularly pertinent in this context. *Maslahah mursalah* requires that legal provisions be established by prioritizing the greater benefit to society, while ensuring a balance between individual rights and collective interests.[20] In cases involving children who

[16] N. A. Saleh, Restorative Justice (PT. Literasi Indonesia Group, 2025), p. 74.

[17] M. Yarni et al., "Dinamika Keadilan dalam UU Cipta Kerja: Analisis Putusan MK dari Perspektif Pekerja dan Pengusaha," Wajah Hukum 9, no. 1 (2025): 457.

[18] Pusiknas Bareskrim Polri, "Data Kejahatan terhadap Anak Periode Januari-Juli 2025" (Jakarta: Bareskrim Polri, 2025).

[19] D. P. Lestarika, Asas Restoratif Justice dalam Sistem Peradilan Pidana Anak (2026), p. 64.

[20] I. A. F. Ys and A. Fu'ad, "Peran Maslahah Mursalah Dalam Legislasi Islam Kontemporer: Analisis Mazhab Dan Implikasi Kebijakan," Equality: Journal of Islamic Law (EJIL) 3, no. 2 (2025): 33.

commit serious crimes, *maslahah mursalah* necessitates a mechanism that safeguards both the child offender and society from criminal threats, while also upholding the rights of victims. The concept of conditional waiver represents an application of this principle within Indonesia's positive legal system.

3. Conditional Waiver as a Justice-Balancing Mechanism

A *waiver*, or transfer of jurisdiction, is a legal process that lets some juvenile cases move from the juvenile justice system to the adult justice system. This is not just an administrative step. It is a legal decision that takes many factors into account. In the United States, there are several types of waivers. The first is discretionary waiver, where a judge decides whether to transfer a case after reviewing its details. The second is mandatory waiver, which happens automatically if certain conditions, like age or type of crime, are met. The third is presumptive waiver, where the case is usually transferred unless there is strong evidence to keep it in juvenile court.[21]

In the Indonesian context, a conditional waiver model that incorporates the principle of ultimum remedium is most appropriate. This approach is applied only as a last resort when all other interventions have proven insufficient. The criteria for its application are as follows: first, the offense must be of exceptional gravity, involving a criminal penalty exceeding ten years and resulting in loss of life or permanent serious injury. Second, a psychological assessment must demonstrate that the individual possesses cognitive, emotional, and moral maturity comparable to that of an adult. Third, professional evaluation must confirm that rehabilitation through the juvenile justice system is not feasible. Fourth, the best interests of the child must remain the primary consideration throughout every stage of the process.[22]

From the perspective of substantive justice, the conditional waiver model can reconcile interests that may initially seem contradictory but are, in fact, complementary. The principle of child protection is maintained through rigorous procedures and sufficient safeguards. Simultaneously, the rights of victims and the interests of society are addressed through a mechanism that ensures proportional accountability.[23]

Based on the preceding analysis of norms and theory, conditional waiver should not be interpreted as a disregard for children's rights. Instead, it serves to correct the general

[21] Virginia Scott Freeman, "Juvenile Transfer to Adult Court: Sentencing Outcomes and the Juvenile Penalty" (PsyD diss., Pacific University, 2026), p. 63.

[22] Ahmad Wildan Rofrofil Akmal, "Eksistensi Penerapan Keadilan Restoratif Melalui Mediasi Penal Perspektif Maslahah Mursalah di Indonesia," Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang 7, no. 2 (2024): pp. 200-222.

[23] P. Priya Raghavendra, "The Effectiveness of Restorative Justice on Juvenile Justice System: An Analysis," International Journal of Law Management & Humanities 7, no. 1 (2024): 1695.

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assumption that all children possess the same level of maturity. This argument underpins the formulation of the objective criteria presented in the following section.

4. Comparative Analysis of Jurisdiction Transfer Implementation Across Different Countries

Indonesia can look to jurisdictions that have already implemented waiver mechanisms, adapting them to fit its legal culture. In the United States, *Kent v. United States* (1966) established that transferring a child's case to adult court requires a hearing that meets due process standards. In Canada, the *Youth Criminal Justice Act* (YCJA) does not use the term "waiver," but allows prosecutors to seek adult sentences for youths aged 14 and older who commit serious crimes such as murder or brutal sexual assault.[24] The Netherlands recognizes *adolescent strafrecht* (adolescent criminal law), which gives judges flexibility to apply juvenile law to individuals up to age 22, or adult law to those aged 16–17, depending on mental state and crime severity.[25] This comparison highlights a global trend: chronological age is no longer the only factor in determining criminal accountability. For Indonesia, adopting waiver aligns with global standards for handling serious juvenile offenders while maintaining a commitment to child protection.

A framework for implementing conditional waiver in Indonesia requires six interrelated elements within the legal system:

First, from a normative perspective, the Juvenile Justice Law should establish objective criteria for transferring jurisdiction, rather than relying solely on judicial discretion. These criteria should include a minimum age of 14 years, a restricted list of offenses such as premeditated murder or crimes against humanity, and the results of a standardized psychological assessment. The selection of age 14 is grounded in Article 69 of the Juvenile Justice Law, which sets this age as the threshold distinguishing children subject only to measures ("tindakan") from those eligible for criminal sanctions ("pidana"). Conditional waiver cannot logically be applied below this threshold, as the sentencing regime does not apply to children under 14.

Second, from a procedural perspective, forensic assessment should extend beyond IQ testing to evaluate a child's executive brain function. According to the dual-systems model developed by Steinberg, the cognitive capacity to distinguish right from wrong ("cold cognition") matures around age 16, whereas the ability to control impulses in emotionally

[24] Christina Cavanagh et al., "Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions," Child Development Perspectives 16, no. 3 (2022): pp. 141-147.

[25] E. P. Schmidt, S. E. Rap, and T. Liefaard, "Young Adults in the Justice System: The Interplay Between Scientific Insights, Legal Reform and Implementation in Practice in the Netherlands," Youth Justice 21, no. 2 (2021): 180.

charged situations ("hot cognition") does not fully mature until approximately age 25.[26] Consequently, a child may be capable of detailed planning and understanding of a crime, despite immature impulse control. This research contends that the Juvenile Justice Law becomes less relevant at this juncture, as it treats immaturity as a singular concept, whereas neuroscience demonstrates that immaturity comprises two distinct capacities developing at different rates.

This issue directly relates to the doctrine of *mens rea*. Classical criminal law considers children *doli incapax*, or incapable of forming criminal intent.[27] The 2016 murder and rape of Eno Farihah exemplifies this complexity: the child offender who initiated the crime demonstrated the ability to plan and execute a detailed act of violence, challenging the presumption of absolute immaturity embedded in the Juvenile Justice Law. This research asserts that providing absolute protection as an "innocent subject who knows nothing" is morally unjust when the offender's cognitive capacity indicates otherwise. Conditional waiver serves as a mechanism to recognize varying degrees of maturity on a case-by-case basis.

Assessment tools such as the *Risk-Sophistication-Treatment Inventory* can be adapted to evaluate three dimensions: *dangerousness, sophistication-maturity,* and *amenability to treatment*.[28] When assessment results indicate sufficient mental sophistication to plan a violent crime, the judge's decision to transfer jurisdiction is grounded in evidence rather than public sentiment. Operationally, the waiver process occurs at the pre-adjudication stage through a closed Waiver Examination Hearing. The primary focus of this hearing is to assess the forensic evaluation, the seriousness of the offense, and the community research report, rather than to determine guilt. Making a decision at this stage is essential for ensuring legal certainty and preventing procedural overlap.

Third, regarding the protection of children's rights, transferring jurisdiction does not negate a child's right to competent legal counsel, the right to be heard, or the right to humane treatment. Children retain the right to be separated from adult detainees and to receive facilities appropriate to their developmental needs.

Fourth, in terms of oversight, an independent commission should be established, consisting of legal academics, judicial practitioners, forensic psychologists, and child-

[26] P. Tjiptomurti et al., "The Influence of Gender on Puberty-Related Anxiety: A Case Study of Adolescents in Urban School Settings," Devotion: Journal of Research and Community Service 7, no. 1 (2026): 94.

[27] Amirullah Sirajuddin et al., Pengantar Hukum Pidana Indonesia (Yogyakarta: PT. Nawala Gama Education, 2025), p. 49.

[28] Lauren Grove, "An Analysis of the Sophistication–Maturity of Justice and Non-Justice Involved Youth and Young Adults" (PhD diss., Montclair State University, 2023), 38.

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protection advocates. This commission would periodically review waiver cases and recommend policy improvements based on empirical evidence.

Fifth, regarding the purpose of punishment, the rationale for sentencing following a waiver should differ from that applied to adults. Sanctions must be adaptive: while the severity of punishment reflects accountability for serious offenses, its implementation must uphold the child's fundamental rights and future prospects. Accordingly, children should be placed in specialized correctional facilities separate from adults, with rehabilitation programs that include trauma therapy, academic education, vocational training, and victim-reparation initiatives. Social reintegration should encompass not only release from incarceration but also moral and social restitution.

Sixth, regarding sentencing limits, Article 81 paragraph (2) of the Juvenile Justice Law establishes that the maximum prison sentence for a child is half the maximum penalty for an adult. However, for offenses punishable by death or life imprisonment, Article 81 paragraph (6) imposes a flat limit of 10 years, regardless of the offense's severity or the offender's level of planning. This provision was applied in the Eno Farihah case, where the child offender who initiated the crime received a 10-year sentence, identical to that for a child who committed murder without premeditation. This research contends that conditional waiver is justified only if it results in a distinct outcome from what is already provided under current law. Accordingly, it is proposed that the waiver mechanism increase the specific limit in Article 81 paragraph (6) from 10 to a maximum of 15 years, applicable only to children meeting waiver criteria through an RSTI assessment and a Waiver Examination Hearing. The general limit in Article 81 paragraph (2) would remain unchanged for other offenses. The 15-year figure was selected to differentiate from the 20-year limit commonly used for adult offenders in Indonesia, aligning with *blended sentencing* practices in several U.S. states, which maintain a distinction between waived juvenile and adult offenders.[29]

5. Sociological Implications: Preserving Public Trust and Deterring Vigilantism

The absence of a waiver mechanism in Indonesia's legal system generates not only juridical challenges but also significant sociological tensions. Laws perceived as inadequate in protecting victims of severe crimes often provoke public distrust toward judicial institutions. Within the sociology of law, this phenomenon is closely linked to *public trust*. *When the disparity* between society's sense of justice and judicial decisions limited by formal rules regarding a child's status becomes pronounced, the public is more likely to pursue justice outside the formal court system.

[29] J. M. Craig, H. Zettler, and C. Trulson, "What Predicts the Use of Blended Sentences Among Eligible Juveniles? A State-Wide Examination," Criminal Justice Policy Review 33, no. 1 (2022): 107.

This tendency is evident in the widespread use of the phrase "No Viral, No Justice" on Indonesian social media, where digital mob trials are conducted against juvenile offenders perceived as "protected" by the Juvenile Justice Law. In the absence of a safety-valve mechanism such as a waiver, there is an increased risk of vigilantism or more extreme forms of street justice. Society may perceive collective violence as the only means to address the victim's suffering, which is not adequately addressed by the maximum sentence of ten years for juvenile offenders.

The implementation of a conditional waiver serves as an instrument for maintaining social stability. This mechanism enables the state to demonstrate its commitment to protecting society from criminal threats, regardless of the offender's age, particularly when acts of cruelty surpass acceptable human boundaries. This approach aligns with Satjipto Rahardjo's theory of progressive law, which asserts that law should remain dynamic and adaptable to the evolving demands of justice within society.[30] Through the waiver mechanism, Indonesia's juvenile justice system becomes not only internally protective of offenders but also externally responsive to public safety concerns.

D. CONCLUSION

Indonesia's juvenile justice system currently faces significant challenges in addressing serious crimes committed by children who possess adult-like psychological maturity. Although the restorative justice approach and diversion mechanisms outlined in the Juvenile Justice Law are well-intentioned, they have not adequately addressed the complexity and severity of cases such as the premeditated murder of Eno Farihah and the massacre in Penajam Paser Utara. The absence of a legal safety-valve has resulted in a gap between legal certainty and substantive justice. The introduction of a conditional waiver mechanism would offer a balanced solution, enabling the state to respond appropriately to the criminal maturity of children while safeguarding their fundamental rights. The selective transfer of jurisdiction could bridge the divide between restorative principles and the imperative for justice for victims, ensuring that the law is not perceived as ineffective when addressing crimes against humanity committed by minors. This approach demonstrates that substantive justice can be achieved without compromising children's rights, thereby aligning criminal responsibility with the offender's mental capacity.

[30] Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia (Yogyakarta: Genta Publishing, 2009), pp. 1-2. See also a recent study on progressive law in Indonesian court decisions: Muhammad Zulfa Aulia, Bimo Fajar Hantoro, Wawan Sanjaya, and Mahrus Ali, "The Use of Progressive Law Phrase in Constitutional Court Decisions: Context, Meaning, and Implication," Jurnal Konstitusi 20, no. 3 (2023): 423-450.

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Policymakers should develop regulations concerning the conditional waiver mechanism in future revisions of the Juvenile Justice Law. Such regulations must clearly define objective criteria for transferring jurisdiction, including a minimum age of 14, a specific list of brutal offenses, and a mandatory comprehensive forensic psychological assessment. The establishment of an accredited, independent institution to conduct these assessments is essential to ensure that decisions are grounded in scientific evidence rather than influenced by public or social media pressure. Furthermore, cross-sector training for law enforcement and social workers is necessary to ensure the effective implementation of the conditional waiver, balancing the best interests of the child, the rights of victims, and public trust in Indonesia's judicial system. These measures will enable the juvenile justice system to adapt to contemporary challenges while preserving its humanitarian values.

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