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Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia

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Abstract

This study explores the intersection balance between legal frameworks and customary obligations in the imposition of additional punishment by judges, particularly in the context of juvenile justice in Indonesia. As a normative-legal research, this study employs philosophical, theoretical, and conceptual approaches to examine how juvenile criminal justice systems of Indonesia and Australia, with focus on the Provinces of Bali and West Papua, where indigenous and local knowledge play a significant role in shaping judicial decisions. The findings reveal that Indonesian judges incorporate theological, sociological, and legal considerations when determining juvenile criminal responsibility. By blending community norms with legal principles, they aim to ensure justice that aligns with societal values.

This approach underscores the significance of harmonizing legal decisions with local cultural expectations, fostering a restorative justice model that prioritizes rehabilitation over punishment. In contrast, Australia's juvenile justice system emphasizes formal legal procedures and rehabilitation but does not integrate local cultural norms as extensively as Indonesia. By comparing these two systems, the study provides valuable insights into how legal frameworks can adapt to diverse cultural contexts while upholding universal principles of justice. This research enriches the global discourse on juvenile justice, highlighting Indonesia's experience as a compelling example of a legal system striving for justice through a culturally sensitive and restorative approach.

Keywords: Children; Juvenile Justice; Legal Pluralism; Legal Hermeneutics; Living Law

A. Introduction

Law, as a fundamental social institution, is a construct designed by humans to establish and maintain societal order. This order, arising from a collective need, naturally forms through the consensus of human groups. The institutionalization of this order is evident in the creation of legal frameworks, encompassing the substance, structure, and culture of law. These frameworks are not static; they evolve to reflect the shifting dynamics of society, culture, and justice.[1]

On the global stage, the protection of children's rights has been recognized as a critical priority, embodied in the Convention on the Rights of the Child. This comprehensive legal and human rights instrument has been pivotal in shaping national policies and laws aimed at safeguarding children's rights worldwide.[2] Indonesia, as a member of the United Nations, has demonstrated its commitment by ratifying this Convention through Presidential Decree Number 36

1 Michael Freeman, "The Best Interests of the Child? Is the Best Interests of the Child in the Convention on the Rights of the Child and Human Rights Law?" *International Journal of Law, Policy and the Family* 11, no. 3 (1997): 360-388.

2 Zaituni, Riza Nizarli, and M. Yakub Aiyub Kadir, "Non-Penal Policy of Syariah Institutions in Preventing Juveniles from Narcotics Abuse in Aceh Province, Indonesia," *Jambe Law Journal* 4, no. 1 (2021): 21-41.

of 1990, thereby integrating international standards into its national legal framework.

Indonesia's commitment to child protection is further reflected in its national legislation concerning the criminal responsibility of children, including:

1. Article 1, the Law No. 17 of 2016, which defines a child as any person under 18 years of age, including those still in the womb.
2. Article 69, Paragraph (2), the Law No. 11 of 2012 on the Juvenile Criminal Justice System, which stipulates that children under 14 years old may only be subject to protective measures.

However, the integration of global legal norms with local traditions and customs presents unique challenges, particularly in diverse societies such as Indonesia. The country's legal landscape is characterized by a coexistence of formal legal provisions and customary law, the latter being a reflection of the deep-rooted traditions and values of indigenous communities. Customary criminal law, in particular, functions as a living law—a set of rules that has been continuously followed and upheld across generations, ensuring social harmony and justice.[3]

The interaction between these global and local legal systems is especially pronounced in the context of juvenile justice. While international conventions and national laws provide a framework for the protection and rehabilitation of young offenders, customary law introduces an additional dimension that emphasizes restorative justice through the fulfillment of customary obligations.[4] This practice, though deeply embedded in local cultures, raises questions about its compatibility with international human rights standards and its effectiveness in achieving just outcomes for all parties involved.

Judges, as the intermediaries between these overlapping legal systems, play a crucial role in navigating these complexities. They are tasked with the responsibility of interpreting and applying the

3 Daniel S. Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (The Hague: Kluwer Law International, 2000), 32.

4 John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

law in a way that respects both the formal legal frameworks and the customary values of the communities they serve. This interpretative process, particularly through a teleological (sociological) approach, enables judges to bridge the gap between the rigidity of positive law and the dynamic realities of legal practice. Their decisions must not only adhere to legal principles but also resonate with the community's sense of justice and fairness.

In this context, the role of judges extends beyond mere legal interpretation. They are called upon to actively seek out and formulate customary law values that persist within society, ensuring that the law adapts to societal needs while upholding justice, utility, and legal certainty. However, the application of additional penalties, such as the fulfillment of customary obligations, presents unique challenges within this framework, particularly in the juvenile justice system.

A significant research gap emerges when considering the global implications of these practices. The absence of clear guidelines in Indonesia's Juvenile Criminal Justice System and the New Criminal Code creates a vacuum, leaving judges to exercise considerable discretion in their application of customary obligations. This study aims to address this gap by examining how judges in Indonesia navigate this intersection of global legal norms and local customs in juvenile criminal cases. The findings of this study have broader implications for the international community, as they offer insights into the challenges and opportunities of integrating customary law into formal legal systems in a way that aligns with global human rights standards.

For example, in Bali, the case of 138/Pid.Sus-Anak/2019/PN Denpasar, which is a judgment from the Denpasar District Court, gained attention due to the application of restorative justice principles, which is common in Bali's customary practices (*adat law*), alongside formal legal frameworks. This decision illustrates how judges have integrated customary practices with state law to address juvenile offenders by allowing for restorative justice measures aligned with Balinese traditions. Similarly, in Papua, the Decision Number 2/Pid.Sus-Anak/2022/PN Mnk, Manokwari District Court demonstrates how the application of customary law in the juvenile

justice system reflects the local community's values, highlighting both the opportunities and challenges of blending legal systems. In Australia, offers a contrasting perspective, where juvenile justice is governed primarily by formal legal principles, without the incorporation of indigenous customary law, providing a point of comparison to Indonesia's more pluralistic approach.

In a world where legal systems are increasingly influenced by global norms, the Indonesian experience provides a valuable case study of how local traditions can be harmonized with international legal standards to create a more inclusive and just legal system.[5] This study aspires to contribute to the global discourse on juvenile justice by highlighting the importance of context-sensitive approaches that respect both universal human rights and the unique cultural landscapes in which they are applied.

The coexistence of global legal norms with local customary practices presents a complex challenge, particularly in pluralistic societies like Indonesia. Customary law, deeply embedded in the social fabric of Indonesian communities, functions as a living law that continuously evolves and adapts to societal changes. In the realm of juvenile justice, this dual legal framework creates a unique tension between the formalized structures of state law and the restorative justice practices rooted in customary obligations.

The urgency of this issue is heightened by the need for a legal framework that not only adheres to international standards but also resonates with local cultural contexts. The lack of clear guidelines within Indonesia's Juvenile Criminal Justice System and the New Criminal Code concerning the incorporation of customary obligations into formal legal proceedings has created a legal vacuum. This gap leaves judges with significant discretion, raising concerns about consistency, fairness, and alignment with international human rights standards.

From an international perspective, the issue is not merely a local or regional concern but one with broader implications. As legal

5 Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).

systems worldwide grapple with the challenges of integrating traditional practices into modern legal frameworks, the Indonesian experience offers critical insights. This study contributes to the global discourse on the reconciliation of customary law with formal legal systems, particularly in the context of juvenile justice—a field that demands sensitive and context-specific approaches to protect vulnerable populations.

Moreover, the research addresses a pressing gap in existing literature, which often overlooks the nuanced interplay between global legal standards and local practices in juvenile justice systems. By exploring how Indonesian judges navigate these complexities, this study provides valuable lessons for other jurisdictions facing similar challenges. The findings have the potential to inform international legal policy, promote best practices, and support the development of more inclusive and culturally sensitive legal systems worldwide.

The global urgency of this issue lies in the growing recognition that legal systems must be flexible and adaptive to the cultural and social realities of the communities they serve.[6] The Indonesian case exemplifies the delicate balance required to achieve justice, utility, and legal certainty in a pluralistic society.[7] Therefore, the insights garnered from this research are not only significant for Indonesia but also hold relevance for international legal scholarship, making this study a critical contribution to the ongoing global conversation on law, culture, and justice.

B. Research Method

This study employs a normative legal research methodology, aimed at generating arguments, theories, or concepts that serve as prescriptive solutions to legal problems. The research is conducted using a qualitative-normative approach, incorporating philosophical, theo-

6 Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: Oxford University Press, 2001).

7 Ahsan Yunus, "Multilayered democracy in Papua: A comparison of "Noken" system and Electoral College system in the United States," *Hasanuddin Law Review* 6, no. 3 (2020): 232-239.

retical, and conceptual perspectives.[8] This approach allows for an in-depth exploration of legal principles and their application in real-world contexts.

The research was conducted in the Provinces of Bali and West Papua, Indonesia, with a comparative analysis of the criminal responsibility of children in Indonesia and Australia. The study focuses on understanding the judicial tendencies in juvenile justice, particularly by examining the legal reasoning and law-finding methods employed by judges in their decisions.[9] This comparative analysis provides a broader context for assessing the integration of customary law and international legal standards in juvenile justice systems.

C. Legal Definitions and Variability Across Jurisdictions: Global Implications and Future Directions

Determining the appropriate age of criminal responsibility involves complex considerations that extend beyond legal theory into the realms of developmental psychology and ethics. The concept of criminal responsibility is fundamentally tied to the notion of *mens rea*—the ability to understand the nature and wrongfulness of one's actions.[10] However, scientific research consistently shows that children's cognitive and moral reasoning capacities develop at different rates, raising significant ethical concerns about the fairness of subjecting young children to criminal prosecution.[11]

The principle of *mens rea*, or the capacity to comprehend the criminality of one's actions, remains central to determining criminal responsibility. This principle assumes a baseline level of cognitive, moral, and emotional maturity, but contemporary developmental psychology challenges the rigidity of legal thresholds. Studies reveal

8 Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

9 Edgar Bodenheimer, *Jurisprudence: The philosophy and method of the law* (Harvard University Press, 1974).

10 H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press, 1968), 181-182.

11 Laurence Steinberg, *Adolescent Development and Juvenile Justice* (Annual Review of Clinical Psychology, 2009), 459-485.

that even by adolescence, brain regions critical for impulse control and ethical reasoning are not fully developed. Consequently, the uniform setting of minimum ages, such as 10 years in Australia, fails to account for these nuances, creating potential inequities in justice administration. Legal systems could benefit from integrating tiered frameworks that dynamically assess maturity rather than relying solely on rigid age limits.

The age at which a child should be deemed responsible for acts that would otherwise be considered criminal is a longstanding and fundamental issue in human rights law. This topic has received considerable attention from the United Nations, particularly through General Assembly Resolution 40/33, known as the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Rule 4.1 of The Beijing Rules states that in legal systems recognizing the concept of criminal responsibility for juveniles, the starting age should not be set too low, considering the child's emotional, mental, and intellectual maturity.[12]

Similarly, Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) mandates signatory states to establish laws, procedures, and institutions specifically applicable to children who are alleged, accused, or recognized as having infringed the penal law. It emphasizes the importance of setting a minimum age below which children are presumed not to have the capacity to infringe the penal law.[13] The UNCRC and the Beijing Rules highlight the global consensus on prioritizing rehabilitation over punishment for children. Both emphasize a child-specific approach that acknowledges developmental limitations. Yet, domestic laws often lag in aligning with these standards.

The variability in age thresholds across jurisdictions reflects these complexities. While some countries set the age of criminal re-

12 United Nations General Assembly, "Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")," Resolution 40/33, November 29, 1985, Rule 4.1.

13 Gui Huang, "A Paradox of Student Bullying Prevention in China: Between Social Anxiety and the Reaction to it," *Hasanuddin Law Review* 8, no. 3 (2022): 258-287.

sponsibility as low as 7 or 8 years, others, recognizing the ongoing development of children, have established higher thresholds.[14] The Beijing Rules and the UNCRC advocate for caution in setting these thresholds, underscoring the need for laws that are attuned to the emotional, mental, and intellectual maturity of children.[15] This legal caution is particularly relevant in pluralistic societies where cultural norms and values may influence perceptions of childhood and responsibility.

In Australia, the age of criminal responsibility is uniformly set at 10 years across all states and self-governing territories.[16] The legal principle of *doli incapax* applies to children aged between 10 and 14 years, serving as a rebuttable presumption that they are incapable of committing a criminal offense unless it can be proven that the child understood the wrongfulness of their actions. This principle is crucial in balancing the need for accountability with the recognition of a child's developmental stage. For example, Australia's current minimum age of criminal responsibility has drawn criticism for contravening the spirit of the UNCRC, which implicitly encourages higher age thresholds. A thorough legal analysis suggests that Australia could adopt a more progressive approach, as seen in some European nations that set the age at 14 or higher, better reflecting international norms and advancing children's rights.

However, Australia's relatively low age of criminal responsibility has been the subject of intense legal and social debate. Critics argue that the age of 10 is inconsistent with contemporary understandings of child development and the principles of justice.[17] There have been calls, supported by international bodies, to raise the minimum age to better align with the principles set out in the UNCRC and The

14 Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Surrey: Ashgate Publishing, 2009), 12-15.

15 United Nations General Assembly, "The Beijing Rules," Rule 4.1.

16 Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (Report No. 84, 1997).

17 Chris Cunneen, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Current Issues in Criminal Justice, 2020), 26-30.

Beijing Rules.[18]

The global challenge of determining the age of criminal responsibility reflects broader tensions between universal human rights standards and local legal traditions. The prescriptive guidance offered by international instruments like The Beijing Rules and the UNCRC aims to create a baseline for protecting children's rights. However, the practical implementation of these standards varies widely, often influenced by cultural, social, and political factors.

As legal systems evolve, there is a growing recognition of the need to harmonize these international standards with local practices in a way that respects both the developmental needs of children and the demands of justice.[19] The debate in Australia over the age of criminal responsibility is indicative of a broader, global reconsideration of how best to protect children within the legal system while ensuring accountability and public safety. The determination of the age of criminal responsibility remains a complex and contested issue, requiring careful balancing of legal principles, human rights standards, and cultural considerations. The ongoing debates in Australia and other jurisdictions highlight the need for continued legal reform and international dialogue to ensure that laws concerning children are both just and humane.

The appropriate age of criminal responsibility indeed necessitates a nuanced approach that takes into account a wide array of factors, from legal principles and human rights standards to cultural, developmental, and psychological considerations. The existing discourse, particularly as reflected in the international instruments like The Beijing Rules[20] and the UNCRC, provides a strong foundation for protecting children's rights, yet it also highlights the complexities

18 Thomas Crofts, *The Criminal Responsibility of Children and Young Persons: A Comparison of English and German Law* (Aldershot: Ashgate, 2002), 55-56.

19 Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global* (Sydney Law Review, 2008), 375-411

20 See United Nations General Assembly, *Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules"), A/RES/40/33, 1985, Rule 4.1.

involved in applying these principles across diverse legal and cultural landscapes.[21]

In multicultural and pluralistic societies like Australia, the age of criminal responsibility also intersects with the recognition of Indigenous customary laws. While the principle of *doli incapax* offers some protection by presuming incapacity in children aged 10 to 14 unless proven otherwise, this principle does not fully address the unique cultural and social contexts of Indigenous children. Indigenous justice mechanisms, which often emphasize restorative and community-centered solutions, can offer invaluable lessons in reconciling legal formalism with cultural sensitivity.[22] Courts increasingly recognize the significance of Indigenous identity in shaping sentencing and rehabilitation, suggesting an evolving legal paradigm that could incorporate customary practices without compromising broader legal standards.

In analyzing the current state of the age of criminal responsibility, particularly in the context of Australia, it becomes evident that the uniform age of 10 years does not adequately reflect contemporary understandings of child development.[23] The principle of *doli incapax* serves as an important safeguard, yet the threshold age itself is increasingly viewed as inconsistent with both developmental psychology and international standards. The debate in Australia underscores a significant tension between adhering to traditional legal frameworks and adapting to evolving societal and scientific knowledge. Moreover, this issue is not isolated to Australia; it is a global concern that raises questions about the universality of human rights standards and their implementation in varied cultural contexts. The challenge lies in creating legal frameworks that are flexible enough to accommodate local customs and values while maintaining a commit-

21 Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Farnham: Ashgate, 2009), 57-60.

22 Tamara Walsh, Robin Fitzgerald, Lucy Cornwell, and Cara Scarpato, "Raise the age-and then what?: Exploring the alternatives of criminalising children under 14 years of age," *James Cook University Law Review* 27 (2021): 37-56.

23 Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (Report No. 84), 1997, Chapter 18.

ment to international human rights principles.

In considering future directions, it is crucial for legal reforms to be informed by interdisciplinary research that incorporates insights from developmental psychology, ethics, and sociology.[24] This research should aim to establish a more informed basis for setting the age of criminal responsibility, one that genuinely reflects the cognitive and moral development of children. Additionally, there must be a concerted effort to engage in international dialogue, sharing best practices and lessons learned from different jurisdictions to create more harmonized and child-centered legal systems.

These cases highlight how Australia's juvenile justice system, particularly for indigenous youth, is increasingly open to incorporating local wisdom and cultural practices. While Australian courts do not explicitly blend indigenous customs with formal law as Indonesia might, they do acknowledge the significance of cultural background in shaping the approach to justice, particularly in sentencing and rehabilitation.

The ongoing debates and the push for reform, as seen in Australia and elsewhere, are a positive step towards ensuring that legal systems evolve in a manner that both protects the rights of children and addresses the need for accountability in a way that is developmentally appropriate.[25] However, for such reforms to be effective, they must be accompanied by broader societal changes that include education, social support systems, and community engagement, all of which play a critical role in shaping the legal and ethical frameworks that govern the treatment of children within the justice system.

A comprehensive reform of the age of criminal responsibility necessitates an interdisciplinary approach that blends legal principles with insights from psychology, sociology, and human rights law. International case studies demonstrate the efficacy of hybrid models

24 William Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge: Cambridge University Press, 2006), 356-358.

25 Australian Institute of Criminology, "Young People and Crime: An Overview of Current and Future Issues," *Research and Public Policy Series* No. 31, 2003.

that combine fixed minimum age thresholds with individual assessments of maturity. Australia's debate on raising the age aligns with these global trends, representing a pivotal moment for integrating more humane and child-centric practices into its legal system. This would require amendments to existing statutes, the development of specialized juvenile justice institutions, and extensive public and governmental consultations to ensure broad-based support. Moreover, harmonizing these reforms with Indigenous and community-led justice frameworks could serve as a blueprint for other jurisdictions navigating similar challenges.

The determination of the age of criminal responsibility is a complex and evolving issue that requires a careful balance of legal, ethical, and cultural considerations. It is essential for legal systems to continue evolving, informed by both international standards and local realities, to create a more just and humane approach to juvenile justice.

The issue of determining the appropriate age of criminal responsibility remains a complex legal and ethical challenge that balances children's rights with societal expectations of justice. As highlighted, the principle of *mens rea* and *doli incapax* serves as a fundamental safeguard, ensuring that children are not criminalized without regard to their developmental capacity to understand their actions. However, international frameworks such as the UNCRC and The Beijing Rules advocate for higher minimum ages that better align with contemporary psychological insights into child development.

In jurisdictions like Australia, the legal threshold of 10 years has been a source of debate, reflecting a tension between traditional legal practices and evolving scientific understandings of cognitive and moral development. The inclusion of cultural considerations, particularly in Indigenous contexts, introduces additional complexity, calling for a more nuanced approach that respects both legal principles and local customs.

A reformative approach to criminal responsibility should thus integrate interdisciplinary research from psychology, sociology, and human rights law. This would help create a system that adapts to

children's varying developmental stages while also aligning with international standards. Furthermore, the potential for integrating Indigenous justice systems in ways that do not undermine the broader legal framework offers valuable insights for a more holistic approach to juvenile justice. Hence, determining the age of criminal responsibility should not be based solely on a fixed legal threshold but should incorporate flexible, context-sensitive models that recognize the complexities of childhood development, the rights of the child, and cultural variations. Such reforms, driven by international dialogue and informed by scientific research, are essential for creating a more just and equitable juvenile justice system.

D. Juvenile Justice in Indonesia: Integrating Legal Norms with Customary Practices

In Indonesia, the Juvenile Criminal Justice System Law stipulates that a child who commits a crime before reaching the age of 12 cannot be held criminally accountable. Criminal sanctions and actions are applicable only to those between the ages of 12 and 18.[26] This legal framework aligns with international norms, such as those outlined in The Beijing Rules, which emphasize the need for age-appropriate responses to juvenile offenses.[27] However, when comparing Indonesia's system to that of Australia, significant differences emerge in the approach to diversion and the stigmatization of children in conflict with the law.

Rule 11 of The Beijing Rules advocates for the diversion of juvenile cases from formal judicial processes to prevent the stigmatization of young offenders. While Indonesia has incorporated diversion provisions into its juvenile justice system, these measures do not fully reflect the protective intent of The Beijing Rules. Unlike Australia, where the juvenile criminal justice system is largely avoided in fa-

26 Republic of Indonesia, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1.

27 United Nations General Assembly, "Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")," Resolution 40/33, November 29, 1985.

vor of alternative resolutions, Indonesia's diversion practices remain closely tied to the formal judicial system.[28] This connection may inadvertently perpetuate the stigma that diversion is meant to avoid, thus undermining the goals outlined in international standards.

In the Indonesian context, judges play a crucial role in bridging the gap between formal legal provisions and the lived realities of the communities they serve. This is evident in the application of Article 71, paragraph (1) letter b of the Juvenile Criminal Justice System Law, where judges interpret the law through a hermeneutic approach, aligning legal texts with the values and customs prevalent in society. This approach was notably applied in Judgement Number 2/Pid.Sus-Anak/2022/PN Mnk Manokwari District Court, West Papua, where the judge considered the obligation to fulfill customary fines as part of the child's accountability, in line with the local customary agreement.[29]

Judges in Indonesia are tasked with the complex responsibility of integrating theological, moral, and sociological aspects into their legal reasoning.[30] In cases involving children, this often includes considering both formal legal requirements and the customary obligations that resonate with community values. For example, in the aforementioned judgement, the judge took into account mitigating circumstances such as the child's behavior in court and efforts to resolve the matter through the Bintuni Bay District Customary Council.[31] This approach reflects a broader judicial philosophy that seeks to balance legal norms with the pursuit of social justice, ensuring that the child's actions are evaluated not just through the lens of criminal responsibility, but also in the context of the child's environ-

28 Australian Law Reform Commission, Seen and Heard: Priority for Children in the Legal Process (Report No. 84, 1997).

29 Judgement Number 2/Pid.Sus-Anak/2022/PN Mnk. Manokwari District Court, West Papua, Indonesia.

30 Faisal, Sri Rahayu, Derita Prapti Rahayu, Anri Darmawan, and Andri Yanto, "Progressive Consderation of Judges in Deciding Sentencing Under Indonesia New Criminal Code," *Jambe Law Journal* 6, no. 1 (2023): 85-102.

31 H.L.A. Hart, *Punishment and Responsibility*….

ment and the community's expectations.[32]

The Indonesian judicial practice of incorporating customary obligations into juvenile justice decisions underscores the complexities discussed earlier regarding the age of criminal responsibility and the broader challenges of aligning global human rights standards with local customs.[33] While Indonesia's legal framework attempts to protect children from the formalities and potential stigmas of the criminal justice system, the reliance on formal judicial processes, even within diversion, contrasts with the more protective approaches seen in countries like Australia. This difference highlights the ongoing tension between maintaining legal consistency and adapting to cultural specificities, a theme central to the global discourse on juvenile justice. The Indonesian case illustrates the need for continued refinement of legal practices to better align with both international norms and the lived realities of the communities they serve, ensuring that justice for juveniles is both fair and contextually appropriate.

In Indonesia, the conditions for the settlement of juvenile criminal cases often lack sufficient guidance on how to balance a sense of justice in society with the fulfillment of customary obligations. This absence of clear patterns, criteria, and procedures compels judges to actively interpret and find laws that enable them to reach fair decisions for both victims and juvenile offenders. In practice, the settlement of these cases through the imposition of additional punishments typically involves the fulfillment of customary obligations, which are determined by considering various factors such as legislation, customary law, local wisdom, religious values, and the development of legal theories.

Criminal sanctions and actions are applicable only to those between the ages of 12 and 18. This legal framework aligns with international norms, such as those outlined in The Beijing Rules, which

32 United Nations Committee on the Rights of the Child, General Comment No. 24: Children's Rights in Juvenile Justice (2019), para. 22.

33 I Nyoman Sujana and Irma Rachmawati Maruf, "The Constitutionality of Inheritance Rights for Extramarital Children: Assessing the Legal Response under Balinese Customary Law," *Hasanuddin Law Review* 10, no. 1 (2024): 83-93.

emphasize the need for age-appropriate responses to juvenile offenses. However, when comparing Indonesia's system to that of Australia, significant differences emerge in the approach to diversion and the stigmatization of children in conflict with the law.

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In the Indonesian context, judges play a crucial role in bridging the gap between formal legal provisions and the lived realities of the communities they serve.[34] This is evident in the application of Article 71, paragraph (1) letter b of the Juvenile Criminal Justice System Law, where judges interpret the law through a hermeneutic approach, aligning legal texts with the values and customs prevalent in society. This approach was notably applied in a specific judgement where the judge considered the obligation to fulfill customary fines as part of the child's accountability, in line with the local customary agreement.

Judges in Indonesia are tasked with the challenging role of integrating these considerations into their decision-making process. This integration cannot be separated from the underlying legal concepts that guide judicial reasoning, which are rooted in several paradigms:

1. Juridical-Dogmatic Paradigm: This approach processes laws and regulations through logical reasoning alone, often applying legal doctrines without fully considering the realities of justice. This

34 Rudy, Rudi Natamiharja, Jalil Alejandro Magaldi Sernac, and Ahmad Syofyan, "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia," *Hasanuddin Law Review* 8, no. 3 (2022): 299-309.

method can be limiting as it may overlook the practical and moral dimensions of legal interpretation.

2. Causal-Sociological Paradigm: This paradigm emphasizes understanding the causes and effects of laws within the context of social realities. It allows judges to consider the broader societal implications of their decisions, ensuring that legal outcomes align with the social fabric of the community.
3. Philosophical Paradigm: This approach links laws and regulations to broader ideas, ideals, or moral principles. It posits that moral norms are inseparable from the law, serving as a critical benchmark against which positive law must be tested. This paradigm underscores the importance of integrating ethical considerations into legal judgments, ensuring that justice is not just legalistic but also morally sound.

In applying these paradigms, judges aim to balance various aspects of justice. For example, when imposing additional punishments in the form of fulfilling customary obligations, judges often rely on a blend of these paradigms to ensure that the punishments are fair, culturally appropriate, and consistent with both legal and moral standards. The process of legal discovery by judges, particularly through the legal hermeneutic method, requires careful attention to the purposes of punishment. The aim is not to punish children in a way that degrades or harms them, but rather to hold them accountable while fostering their rehabilitation. The ultimate goal is to ensure that, after serving their sentence, children can reintegrate into their families and communities as law-abiding citizens.

Judges, therefore, apply a combination of punishments that do not unduly restrict the child's freedom. Imprisonment is considered a last resort (*ultimum remedium*), with a preference for punishments that are educative, preventive, corrective, repressive, and restorative in nature.[35] This approach reflects the broader view that children represent the future of the nation, and their rehabilitation is of para-

35 Mark R. Fondacaro, Christopher Slobogin, and Tricia Cross, "Reconceptualizing Due Process in Juvenile Justice: Contributions from Law and Social Science," *Hastings Law Journal* 57, no. 5 (2006): 955-1006.

mount importance.

The juvenile justice system in Indonesia, while aligned with international standards such as the Beijing Rules, reveals significant differences in its practical application compared to systems like Australia's. Indonesia's emphasis on integrating customary practices into legal proceedings represents a unique blending of formal law and local values. Judges play a crucial role in this integration, employing a hermeneutic approach that allows them to adapt the law to the cultural and societal context in which it is applied. This approach acknowledges the importance of restorative justice, particularly through mechanisms such as customary fines or reconciliation, and aims to balance punitive measures with rehabilitation. However, the use of diversion in Indonesia, while designed to avoid formal judicial processes, often still operates within the judicial system, thereby perpetuating the stigma it seeks to avoid. This reflects the broader tension between maintaining the integrity of legal norms and accommodating the cultural realities of Indonesian society.

Despite the intention to protect children from the harshness of formal criminal justice processes, the system's reliance on formal judicial actions in diversion programs may hinder its full alignment with international norms. While Australian systems increasingly prioritize alternatives to detention and the avoidance of stigmatization, Indonesia's approach continues to emphasize judicial interpretation and the fulfillment of both legal and customary obligations. As such, the challenge lies in ensuring that juvenile justice in Indonesia evolves to better integrate the rehabilitative ideals of modern juvenile justice with the local cultural context, thus ensuring that children are treated with the dignity and fairness that international human rights standards.

In making decisions, judges consider a wide range of factors, including legal justice, sociological realities, philosophical ideals, and theological principles. The aim is to determine the most appropriate and just punishment for the child, one that fulfills the legal objectives of being educative, preventive, corrective, repressive, and restorative. By integrating these diverse aspects, judges not only apply the law

but also contribute to the development of legal norms that are just, culturally sensitive, and aligned with the broader goals of society.[36] This approach underscores the complex role of judges in the Indonesian legal system, where the need to balance formal legal principles with customary practices and societal values is critical. Through the use of legal hermeneutics, judges strive to balance legal justice with social justice, with the primary goal of rehabilitating and educating children so they can reintegrate into society. Therefore, the integration of formal legal principles with customary practices is essential in delivering comprehensive and restorative justice for children in conflict with the law.

E. Concluding Remarks

The complexities surrounding the age of criminal responsibility and the integration of customary practices within juvenile justice systems highlight the delicate balance between law, cultural norms, and the developmental needs of children. In Indonesia, this balance is navigated through a unique judicial approach that blends formal legal frameworks with deep-seated societal values, such as local customs and religious principles. This approach elevates the judiciary's role, positioning judges as architects of a legal order that is both deeply rooted in cultural context and forward-looking in its pursuit of justice.

The key findings emphasize that providing adequate healthcare in correctional facilities contributes to the rehabilitation and reintegration of inmates into society. Such efforts are not only a legal obligation under human rights frameworks but also a crucial step toward achieving a more equitable justice system. The Indonesian model presents a compelling blueprint for addressing the global challenge of aligning universal human rights with deeply rooted local traditions. By prioritizing the rehabilitation and reintegration of ju-

36 Linda C. Fentiman, "Pursuing the Perfect Mother: Why America's Criminalization of Maternal Substance Abuse Is Not the Answer—A Comparative Legal Analysis," *Michigan Journal of Gender & Law* 15, no. 2 (2009): 389-486.

venile offenders within their communities, this approach showcases how legal systems can embody both justice and compassion. As the global conversation around juvenile justice continues to evolve, Indonesia's experience stands out as a powerful example of how legal frameworks can be sensitively adapted to reflect the diverse cultural landscapes they serve while still upholding core principles of justice and humanity. This confluence of law, culture, and ethics in juvenile justice system not only enriches the discourse but also paves the way for other legal systems to protect and cultivate the next generation with a balance of integrity and empathy.

Bibliography

Legal Document

Republic of Indonesia. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Republic of Indonesia. Law No. 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection.

Judgement Number 2/Pid.Sus-Anak/2022/PN Mnk, Manokwari District Court, West Papua, Indonesia.

Judgement Number 138/Pid.Sus-Anak/2019/PN Denpasar, Denpasar District Court, Bali, Indonesia.

Books, Reports, and Articles

Australian Institute of Criminology. "Young People and Crime: An Overview of Current and Future Issues." Research and Public Policy Series No. 31, 2003.

Australian Law Reform Commission. *Seen and Heard: Priority for Children in the Legal Process*. Report No. 84, 1997.

Bodenheimer, Edgar. *Jurisprudence: The philosophy and method of the law*. Harvard University Press, 1974.

Bowen, John R. *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*. Cambridge: Cambridge University Press,

2003.

Cipriani, Don. *Children"s Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*. Surrey: Ashgate Publishing, 2009.

Crofts, Thomas. *The Criminal Responsibility of Children and Young Persons: A Comparison of English and German Law*. Aldershot: Ashgate, 2002.

Cunneen, Chris. "Arguments for Raising the Minimum Age of Criminal Responsibility." *Current Issues in Criminal Justice*, 2020.

Don Cipriani. *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*. Farnham: Ashgate, 2009.

Faisal, Faisal, Sri Rahayu, Derita Prapti Rahayu, Anri Darmawan, and Andri Yanto. "Progressive Consideration of Judges in Deciding Sentencing Under Indonesia New Criminal Code." *Jambe Law Journal* 6, no. 1 (2023): 85-102.

Hart, H.L.A. *Punishment and Responsibility: Essays in the Philosophy of Law.* Oxford: Clarendon Press, 1968.

Huang, Gui. "A Paradox of Student Bullying Prevention in China: Between Social Anxiety and the Reaction to it." *Hasanuddin Law Review* 8, no. 3 (2022): 258-287.

Irwansyah. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2020.

Lev, Daniel S. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. The Hague: Kluwer Law International, 2000.

Linda C. Fentiman. "Pursuing the Perfect Mother: Why America"s Criminalization of Maternal Substance Abuse Is Not the Answer—A Comparative Legal Analysis." *Michigan Journal of Gender & Law* 15, no. 2 (2009): 389-486.

Mark R. Fondacaro, Christopher Slobogin, and Tricia Cross. "Reconceptualizing Due Process in Juvenile Justice: Contributions from Law and Social Science." *Hastings Law Journal* 57, no. 5 (2006): 955-1006.

Merry, Sally Engle. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press, 2006.

Michael Freeman, "The Best Interests of the Child? Is the Best Interests of the Child in the Convention on the Rights of the Child and Human Rights Law?" *International Journal of Law, Policy and the Family* 11, no. 3 (1997): 360-388.

Rudy, Rudi Natamiharja, Jalil Alejandro Magaldi Sernac, and Ahmad Syofyan. "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia." *Hasanuddin Law Review* 8, no. 3 (2022): 299-309.

Steinberg, Laurence. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology*, 2009.

Sujana, I Nyoman, and Irma Rachmawati Maruf. "The Constitutionality of Inheritance Rights for Extramarital Children: Assessing the Legal Response under Balinese Customary Law." *Hasanuddin Law Review* 10, no. 1 (2024): 83-93.

Tamanaha, Brian Z. *A. General Jurisprudence of Law and Society*. Oxford: Oxford University Press, 2001.

Tamanaha, Brian Z. "Understanding Legal Pluralism: Past to Present, Local to Global." *Sydney Law Review*, 2008.

United Nations Committee on the Rights of the Child, General Comment No. 24: Children's Rights in Juvenile Justice (2019).

United Nations General Assembly, "Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")," *Resolution* 40/33, November 29, 1985.

Walsh, Tamara, Robin Fitzgerald, Lucy Cornwell, and Cara Scarpato. "Raise the age-and then what?: Exploring the alternatives of criminalising children under 14 years of age." *James Cook University Law Review* 27 (2021): 37-56.

William Schabas. *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone.* Cambridge: Cambridge University Press, 2006.

Yunus, Ahsan. "Multilayered democracy in Papua: A comparison of "Noken" system and Electoral College system in the United States." *Hasanuddin Law Review* 6, no. 3 (2020): 232-239.

Zaituni, Riza Nizarli, and M. Yakub Aiyub Kadir. "Non-Penal Policy of Syariah Institutions in Preventing Juveniles from Narcotics

Abuse in Aceh Province, Indonesia." *Jambe Law Journal* 4, no. 1 (2021): 21-41.