

## THE IMPLEMENTATION OF LAW ON CRIMINAL ACTS COMMITTED BY MINORS FROM THE PERSPECTIVE OF POSITIVE LAW (JUVENILE CRIMINAL JUSTICE SYSTEM LAW NO. 11 OF 2012) AND ISLAMIC CRIMINAL LAW.

Muhammad Rayhan Naufal<sup>1</sup>, Muhammad Isa Mustafa<sup>2</sup>  
[rayhannaufal2201@gmail.com](mailto:rayhannaufal2201@gmail.com)<sup>1</sup>  
Universitas Tazkia

### ABSTRACT

*This study aims to analyze the implementation of legal measures in response to criminal acts committed by minors, viewed from the perspectives of both positive law and Islamic criminal law. Children who commit criminal offenses require a distinct legal approach, considering their status as individuals who are not yet mature, both psychologically and legally. Under Indonesia's positive legal system, particularly based on Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA Law), the handling of juvenile offenders emphasizes restorative justice and diversion efforts. Conversely, Islamic criminal law emphasizes moral responsibility and education, using the concepts of *tamyiz* (discernment) and *baligh* (puberty) as benchmarks for legal accountability. This research employs a qualitative approach using normative and empirical juridical methods. Data were collected through literature review and interviews with legal experts and practitioners in the juvenile justice system. The findings indicate that under positive law, the implementation of diversion at the stages of investigation, prosecution, and trial serves as a preventive measure to protect the rights of the child and prevent social stigma. In Islamic law, the principles of *maslahah* (public interest) and *tarbiyah* (education) form the core foundations for rehabilitating juvenile offenders. The study concludes that although there are differences in approach between positive law and Islamic criminal law, both share a common goal: to safeguard the best interests of the child while promoting rehabilitation and social reintegration. This study recommends strengthening the synergy between positive law and Islamic legal values in addressing juvenile delinquency in order to establish a just and humanistic legal system.*

**Keywords:** Juvenile Crime, Positive Law, Islamic Law, Diversion, Restorative Justice.

### INTRODUCTION

Criminal offenses committed by minors are a pressing issue that requires special attention within both national and international legal frameworks. Children, as the future generation, necessitate distinct treatment in the justice system due to their immature physical, psychological, and social development. This recognition has led various countries, including Indonesia, to develop a criminal justice system that emphasizes rehabilitation and the protection of children's rights rather than mere punishment. According to the Indonesian Child Protection Commission (KPAI), the number of criminal cases involving children as both perpetrators and victims has been steadily increasing, highlighting the need for a humane and appropriate legal approach.

In Indonesia, Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law) serves as the primary legal framework for addressing juvenile criminal cases. This law prioritizes restorative justice, aiming to protect children's rights and provide opportunities for self-improvement. A key mechanism within the SPPA Law is diversion, which allows for the resolution of children's cases outside the formal judicial process, thereby mitigating the negative stigma associated with the juvenile criminal justice system. Diversion is implemented at various stages, including investigation, prosecution, and trial, involving families, victims, and the community in a comprehensive solution.

The enactment of the SPPA Law marks a significant milestone in reforming juvenile

criminal law in Indonesia, moving away from a conventional system that often treats children as mere objects of law without considering their best interests. The law specifically outlines the legal processes for children in conflict with the law, emphasizing diversion, restorative justice, and the protection of children's rights. This approach seeks to prevent children from undergoing the full judicial process, particularly imprisonment.

Despite its progressive framework, the implementation of the SPPA Law faces numerous challenges. These include a lack of public understanding regarding restorative justice, limited human resources in juvenile criminal justice, and uneven access to rehabilitation facilities across regions. Additionally, social stigma often attached to juvenile offenders can hinder their reintegration into society. Addressing these challenges necessitates strengthening the implementation of laws that accommodate the needs of children.

The rising number of criminal cases involving minors raises serious concerns among various stakeholders. Children, who should be receiving education and protection, often find themselves entangled in a criminal justice system that does not adequately support their psychological and moral development. This situation poses risks of negative long-term effects on their growth and future prospects.

In contrast, Islamic law offers a unique perspective on the treatment of children who commit criminal offenses. It views children as individuals not fully responsible for their actions until they reach puberty, the age at which they can distinguish right from wrong (*tamyiz*) and assume legal responsibility. The fundamental principles of Islamic law emphasize the protection of children through the concepts of *maslahah* (public interest) and *tarbiyah* (education). Punishment in Islam is primarily focused on moral and spiritual development, aiming to improve behavior and prevent future offenses.

The Islamic legal approach also considers the social and psychological backgrounds of children when determining appropriate treatment. For instance, a child who commits an offense due to social pressures or adverse environmental influences is given special attention to guide them toward a better path. In this context, the roles of family, society, and the state are crucial in fostering a conducive environment for children's development.

While positive law and Islamic law adopt different methodologies, they share the common goal of protecting children's best interests and promoting rehabilitation and social reintegration. If managed effectively, these differences can complement each other, creating a fair and humane legal system that minimizes crimes involving children. Collaboration between the values of Islamic law and the principles of positive law can provide an effective solution for addressing juvenile offenses.

In conclusion, the integration of Islamic legal values with positive law principles is essential for enhancing the protection of children in conflict with the law in Indonesia. By focusing on rehabilitation and social reintegration, both legal systems can work together to create a more inclusive and effective juvenile justice framework. Future research should explore practical strategies for implementing this synergy, ensuring that the rights and needs of children are prioritized in the legal process.

## **RESEARCH METHOD**

The type of research used in this study is qualitative research with a case study approach. This research aims to analyze the implementation of the law against crimes committed by children under age in the perspective of positive law and Islamic law, focusing on an in-depth understanding of related cases.

The techniques used in data processing that will be used in this research are various ways of data processing techniques, by means of.

1. Conducting data inspection, in the data inspection stage the researcher will re-examine the data obtained in the form of explanations, material to practice in the field and its relation to the research theme, namely the general criminal offense of minors.
2. Classification, at this stage classifying research data on the formulation of problems that contain information that is needed in research on criminal acts of minors in the review of the law on criminal procedure and juvenile criminal procedure law and in the juridical legal review of child punishment in the law and in the view of Islamic law.
3. Verification, in the verification stage the researcher will re-examine the data that has been written, previously collected regarding general criminal acts on minors to determine the validity, validity and whether it is appropriate.
4. Analysis, data data through the criminal code, laws and Islamic law (contemporary Fiqh regarding children, and related documents regarding problems in the form of journals, papers, articles, internet or media which are then analyzed through data data related to the research title.
5. Conclusion, at the conclusion stage, the researcher will make conclusions from all the data data that has been obtained from the studies that have been analyzed.

## **RESULT AND DISCUSSION**

### **Criminalization of Minors in the Perspective of Islamic Law**

In Islamic criminal law, children are recognized as vulnerable members of society who require protection from harm. Islam encompasses all aspects of human life, including family law, which grants children rights such as access to education, health care, and protection from dangers. The religion emphasizes the preservation of human dignity and the safeguarding of individuals' honor, blood, and soul.

Islamic teachings, as reflected in the Quran, highlight the importance of family and the responsibilities of parents in nurturing and protecting their children. For instance, Surah Yasin (36:36) acknowledges the divine creation of pairs, while Surah AlAraf (7:189) emphasizes the significance of raising righteous children.

In Islamic law, accountability for criminal actions begins at the age of 15, when an individual is considered an adult (*mukallaf*) and capable of understanding the consequences of their actions. Punishments for minors are intended to be educational rather than punitive, focusing on guiding children to understand acceptable behavior.

Children in conflict with the law cannot be subjected to imprisonment; instead, they should receive educational measures that promote their development. Responsibility for a child's actions falls on their guardians, who are expected to guide and educate them to prevent future violations of both religious and state laws.

### **Perspective in Islamic Criminal Law (Fiqh Jinayah)**

Contemporary scholars emphasize a compassionate yet firm approach to children in conflict with the law. Those who are not yet *mumayyiz* (have not reached puberty) cannot face severe punishments such as *hudud* or *qisas*, as they are not fully responsible (*taklif*). Instead, punishments for these children take the form of *takzir* (educational measures) and *ta'dibiyah* (reprimands), rather than retributive justice.

While imprisonment can be considered a form of *ta'zir* punishment, it is not applicable to children who have not reached puberty, as it should focus on education and rehabilitation. This aligns with the *maqāṣid al-syarī'ah*, which aims to protect the soul, mind, property, and offspring.

Scholars like Yusuf al-Qaradawi and Wahbah Zuhaili assert that children should not be subjected to *hudud* or *qisas* laws before puberty. They categorize children into two groups: *ghairu mukallaf* (those who have not reached puberty and lack legal responsibility)

and mukallaf (those who have reached puberty and are of sound mind, thus accountable for their actions).

The emphasis is on rehabilitation rather than punishment, promoting social recovery and positive values. This approach aims to prevent recidivism and ensure adherence to both state and religious principles.

### **Fiqh and Child Rights**

In contemporary fiqh, the principles of maqasid al-shariah (the purpose of sharia) emphasize the protection of children's souls and minds, maintaining their honor and future, and providing opportunities for repentance and improvement. The rights of children in Islamic law include:

1. **Right to Life Protection:** Children have the right to life and protection from harm, violence, and unfair treatment. Killing children for reasons such as poverty is considered a grave sin (QS. Al-Isra:31).
2. **Right to Livelihood and Education:** Parents are obligated to provide for their children's basic needs, including food, clothing, shelter, and education, enabling them to grow into useful individuals.
3. **Right to Love and Attention:** Children are entitled to love, care, and gentle treatment from their parents and the surrounding community.
4. **Right to Fair Treatment and Non-Discrimination:** Islam advocates for equal treatment of boys and girls in affection, education, and legal matters.

Classical scholars assert that legal responsibility begins at puberty (baligh) and that minors should not face severe punishments. Instead, they should receive guidance to foster responsible behavior. Criminal law applies fully only to those who are mukallaf (of age and sound mind), while minors are not subject to hudud, qisas, or diyat.

Islamic criminal law includes various punishments: Hudud (fixed punishments for serious offenses), Qisas (retributive justice), and Diyat (compensation). Hudud punishments, such as those for adultery and theft, are strictly defined in the Quran. However, these severe punishments do not apply to children, who instead should be guided and educated to prevent future offenses.

### **Hudud and Qisas**

Hudud: Fixed punishments prescribed by the Qur'an and Sunnah, such as hand cutting, flogging, stoning, etc. Qisas: Retributive punishment for serious crimes such as murder or serious assault.

Classical scholars such as Imam Abu Hanifah, Imam Shafi'i, and Imam Malik agree that children who have not reached puberty cannot be subjected to hudud and qisas punishments, even if they have been involved in committing serious crimes, to deal with children who have not reached puberty, the punishment that can be imposed is to provide guidance, and not punishment (imprisonment).

In the judicial system according to classical scholars: children who violate the law must be fostered, not severely punished. The function of the qadhi (judge) has more of a role as a guide and educator of children and punishment is given as a form of prevention and providing education, not to carry out retaliation in the future, therefore according to the classical Ulama that children who have not reached puberty cannot be subject to Islamic Criminal penalties such as Hudud, Qisas and tazir laws because they are not yet included in the Mukallaf group (puberty, reason and responsibility, but it is the parents who get punished for negligence in supervising and educating).

### **Ushul Fiqh and Islamic Criminal Law**

Ushul Fiqh is a science that discusses the methods and principles of extracting laws from the sources of sharia sources, especially the Quran, Sunnah, Ijma and Qiyas, while

Islamic Criminal Law contains the rules of sharia rules that regulate prohibited acts and can be sanctioned in the form of Hudud punishment, qiyas, diyat and tazir, the law is enforced because it is for the sake of maintaining order, justice, safety and community benefit.

The role of ushul fiqh in Islamic Criminal Law, among others: Ushul Fiqh determines which arguments can be used as the basis for criminal law, acts that are considered crimes, types of relevant punishments based on text or Ijtihad, Ushul Fiqh provides ijtihad space in the form of *maslahah mursalah* and *istihsan*, which allows flexible and contextual legal formulation:

SPPA is a form of contemporary ijtihad that is in line with the principles of *maqashid sharia*. In Islamic criminal law *jinayah*, *ta'zir* punishment can be adjusted based on the child's *maslahah mursalah*.

One of the principles of Ushul Fiqh that plays a role in the juvenile criminal justice system is the Rule of *Taklif* (Principle of Legal Imposition). *Kidah taklif* in Islamic law is a legal provision that stipulates the responsibility of obligations or prohibitions to a *mukallaf*, a *mukallaf* there are 2 conditions, namely when he is *baligh* and someone who has reached the age of adulthood in sharia (able to distinguish between good and bad and good, so from the explanation above regarding a *mukallaf* can be burdened with the law if he is mature and reasonable.

## CONCLUSION

The conclusions in the discussion in chapters 2 and 3 are. In Islamic law and Criminal law, minors are entitled to special protection and attention, in Islamic law children can get proper protection and education by giving punishment in the form of actions that educate children, in criminal law (Law on the juvenile criminal justice system) minors get special attention entitled to protection and legal assistance, in criminal law, children are the successors of the nation who must get special attention and protection when children are related to the law.

In criminal law In criminal law, children get special protection when children are in conflict with criminal law, because minors in criminal law cannot be imprisoned before they are 17 years old, if children are in conflict with the law then minors cannot be punished because of their age, only subject to action of course the punishment is different from the law adults. In Islamic law, there is no child punishment, but punishment for children can be given in the form of actions (getting guidance, getting rights in the form of education, getting treatment in authorized institutions or institutions, in Islamic law if the child has reached puberty then Positive law through judges can provide decisions / punishments that educate. Islamic Law and Criminal Law complement each other, in Uuspa law, doing Restorative justice, applying diversion, and providing guidance in Lpka is one Islamic criminal law in cases of minors in the child criminal justice protection system.

Between Islamic criminal law and the Law on the Juvenile Criminal Justice System "UUSPPA" children cannot be subject to severe punishment or sanctions for their actions because both laws in the juvenile criminal justice system and in Islamic law protect the rights of children and provide protection and legal assistance.

In the Juvenile Criminal Justice System Law "UUSPA" children are entitled to protection and special assistance while in Islamic Criminal law, children cannot be subjected to hudud punishment or Qisas punishment, both of which have a special and distinctive approach and different applications.

In Islamic law, children can only be subjected to *tazir* punishment which is given by the judge, the judge who considers *Baligh* and reason.

The relationship between Islamic Criminal Law and the Law on the Juvenile Criminal

Justice System "UUSPPA" is to carry out restorative justice and diversion first before giving severe punishment, which both legal systems provide an opportunity for the parties between the victim and the perpetrator to make a reconciliation agreement and find a solution that benefits both parties.

## REFERENCES

- Abdurrahman, Fuad. *Juvenile Criminal Law: A Normative and Practical Review*. Jakarta: Rajawali Press, 2021.
- Aisyah, Shabrina. "Child Protection Arrangements in the Al-Mawardi, Abu Hasan. *Al-Ahkam al-Sultaniyyah (Government and Criminal Law in Islam)*. Jakarta: Al-Kautsar Library, 1995.
- Anggraini, Yulia. "Rehabilitation of Children in Conflict with the Law: Perspective of Positive Law and Islamic Law." *Journal of Criminal Law*, vol. 15, no. 1, 2022, pp. 50-62.
- Arifin, Mukhlis. *Child Protection Law in Criminal and Islamic Perspectives*. Yogyakarta: UII Press, 2020.
- Fathurrahman, Abdurrahman. *Child Protection in the Indonesian Criminal Law System*. Jakarta: Kencana, 2019.
- Gunawan, Purnomo. "Legal Protection of Children Involved in Criminal Offenses: Perspective of Positive Law and Islamic Law." *Journal of Islamic Law and Legislation*, vol. 29, no. 3, 2022, pp. 45-60.
- Hamzah, Mohammad. "Children as Criminal Offenders: Perspective of Positive Law and Islamic Law." *Journal of Human Rights and Law*, vol. 11, no. 3, 2019, pp. 200-212.
- Indonesian Criminal Law System." *Journal of Law & Development*, vol. 50, no. 1, 2020, pp. 1-15.
- Munir, Oemar. *Islamic Law and Child Protection*. Bandung: Citra Aditya Bakti, 2018.
- Putri, Riana. "Criminal Offenses of Minors: A Comparative Analysis Between Positive Law and Islamic Law." *Journal of Law and Society Studies*, vol. 24, no. 4, 2022, pp. 199-214.
- Rifai, Ahmad. "Criminal Sanctions for Children in Positive Law and Islamic Law: A Comparative Study." *Journal of Justice and Law*, vol. 22, no. 1, 2023, pp. 18-30.
- Santoso, Dedi. *Juvenile Criminal Law in Indonesia*. Jakarta: Sinar Grafika, 2021.
- Sari, Devi Nur. "Juvenile Crime: Perspective of Positive Criminal Law and Islamic Law." *Scientific Journal of Law and Justice*, vol. 16, no. 2, 2021, pp. 101-112.
- Sarwono, Bayu. "Restorative Approach in Handling Children in Conflict with the Law in Indonesia." *Journal of Public Policy and Law*, vol. 17, no. 4, 2021, pp. 300-320.
- Sulistiyawati, Dwi. *Juvenile Crime in the Perspective of Islamic Law and Positive Law*. Surabaya: Airlangga University Press, 2020.
- Suryani, Melinda. "Child Protection in Indonesian Criminal Law and Islamic Law: A Comparison." *Journal of Law and Justice*, vol. 20, no. 2, 2021, pp. 80-95.
- Widyanto, Agus. "Restorative Justice as an Alternative to Law Enforcement for Children in Conflict with the Law." *Indonesian Law Journal*, vol. 56, no. 1, 2020, pp. 134-150.