

Juvenile Justice in Comparative Perspective: A Study of Indonesian State Law and Islamic Law

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Abstract

This study examines juvenile justice systems through a comparative analysis between Indonesian State Law and Islamic Law, focusing on the treatment and legal protection of juvenile offenders. The Indonesian legal framework, which follows a secular approach, offers specific regulations for juvenile justice under the Juvenile Justice System Law (No. 11 of 2012). This law emphasizes rehabilitation and diversion, ensuring that juvenile offenders are treated differently from adults, with a focus on reintegration into society. In contrast, Islamic law, rooted in the principles of Sharia, offers a distinct approach to juvenile justice. While Islamic law does not have a unified legal code for juvenile offenders, its application emphasizes the protection of minors from harsh punishments and prioritizes their rehabilitation. Islamic legal scholars agree on the importance of age and maturity in determining the level of responsibility for a juvenile's actions. The concept of “*ta'zir*” (discretionary punishment)



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plays a significant role in ensuring that juvenile offenders are treated with fairness, aiming at their moral and social reform. This comparative study highlights the similarities and differences between the two legal systems in addressing juvenile crime, considering the broader cultural and legal contexts that shape juvenile justice policies in Indonesia and Islamic law. The paper explores how these legal frameworks balance punishment with rehabilitation and the role of community involvement in reforming juvenile offenders. The study contributes to understanding the potential for cross-jurisdictional insights in improving juvenile justice practices, emphasizing the need for a more unified and human-centric approach in dealing with young offenders.

KEYWORDS *Juvenile Criminal, Indonesian Law, Islamic Law, Rehabilitation, Moral Responsibility*

Introduction

The juvenile justice system is a crucial part of any legal framework, serving to guide young offenders toward rehabilitation rather than punishment.¹ Indonesia's legal landscape is unique due to its combination of state law, derived from civil law traditions, and Islamic law, which influences many aspects of life, especially in areas where Sharia law is more strictly enforced.² This dual system creates a complex environment for understanding how juveniles in conflict with the law are treated.³ This

¹ Steinberg, Laurence. "Adolescent development and juvenile justice." *Annual Review of Clinical Psychology* 5.1 (2009): 459-485; Smith, David J. "The effectiveness of the juvenile justice system." *Criminal Justice* 5.2 (2005): 181-195.

² Karimullah, Suud Sarim. "From Tradition to Mainstream: Understanding the Integration of Islamic Law in Various Global Settings." *Justicia Islamica* 20.2 (2023): 214-240; Buehler, Michael, and Dani Muhtada. "Democratization and the diffusion of shari'a law: Comparative insights from Indonesia." *South East Asia Research* 24.2 (2016): 261-282.

³ Davies, Sharyn Graham, and Jazz Robson. "Juvenile (in) justice: children in conflict with the law in Indonesia." *Asia-Pacific Journal on Human Rights and the Law* 17.1 (2016): 119-147; Butt, Simon. "Religious conservatism, Islamic criminal law and

study explores the intersections of Indonesian state law and Islamic law within the juvenile justice system, focusing on the legal and social gaps that arise, and how both frameworks address the protection and rehabilitation of children in conflict with the law.

In 2012, Indonesia enacted Law No. 11 of 2012 on the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak*, hereinafter as SPPA Law), which emphasizes that the approach to children in conflict with the law must be based on the principle of restorative justice.⁴ The goal of juvenile justice, as outlined in SPPA, is not to punish but to restore, rehabilitate, and reintegrate children into society. The law stresses the importance of providing a child-friendly justice system, with a focus on diversion and out-of-court settlements to prevent children from experiencing the trauma of harsh legal procedures. This legal approach aligns with international child protection norms and aims to ensure that children's rights are prioritized throughout the justice process.⁵

In parallel, Islamic law also places a strong emphasis on the protection of children. In Islamic teachings, children are regarded as a mandate from God and must be cared for and protected. Islamic criminal law recognizes that children may commit offenses but underscores the importance of different treatment for children compared to adults. This distinction is based on the principle that children, due to their immature age and mental development, are not fully capable of distinguishing right from wrong. Islamic law, much like Indonesian state law, recognizes the necessity of applying a more lenient and rehabilitative approach to

the judiciary in Indonesia: a tale of three courts." *The Journal of Legal Pluralism and Unofficial Law* 50.3 (2018): 402-434.

⁴ Pradityo, Randy. "Restorative Justice dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum dan Peradilan* 5.3 (2016): 319-330; Witasari, Aryani, and Muhammad Sholikul Arif. "Implementasi Diversi Guna Mewujudkan Restorative Justice Dalam Sistem Peradilan Pidana Anak." *Jurnal Hukum* 35.2 (2019): 165-184.

⁵ Rochaeti, Nur. "Implementasi Keadilan Restoratif Dan Pluralisme Hukum Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Masalah-Masalah Hukum* 44.2 (2015): 150-160; Hasibuan, Lidya Rahmadani, et al. "Restorative Justice Sebagai Pembaharuan Sistem Peradilan Pidana Berdasarkan UU No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." *USU Law Journal* 3.3 (2015): 64-71.

juveniles in conflict with the law, prioritizing their potential for moral redemption over punitive measures.⁶

However, despite these shared principles, the implementation of juvenile justice in Indonesia faces significant challenges. While SPPA Law sets out the framework for a child-friendly justice system, the reality on the ground is often quite different. In many regions of Indonesia, the juvenile justice system is not fully functional. One major obstacle is the lack of child-friendly infrastructure, such as specialized juvenile detention facilities and courts equipped to handle juvenile cases. Additionally, many law enforcement officials lack a comprehensive understanding of the nuances of juvenile justice, which can result in children being treated inappropriately or subjected to overly harsh legal processes. Furthermore, there is often a lack of alternative sentencing programs, such as restorative justice or diversion programs, that are vital for rehabilitating young offenders and preventing them from becoming entrenched in the criminal justice system.⁷

These challenges highlight the social and legal gaps that exist between the ideal framework of juvenile justice and the realities of its implementation in Indonesia. While the legal framework enshrined in SPPA and Islamic law aims to protect children and provide them with the opportunity for rehabilitation, these goals are frequently undermined by practical issues. The lack of resources, inadequate training for legal professionals, and the underdevelopment of alternative sentencing options make it difficult to fully realize the child-friendly justice system envisioned by the law.

⁶ See Hascall, Susan C. "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?." *Berkeley Journal of Middle Eastern & Islamic Law* 4.1 (2011); Sodikin, Ali. "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System." *Ahkam: Jurnal Ilmu Syariah* 21.2 (2021); Absar, Absar Aftab. "Restorative justice in Islam with special reference to the concept of Diyya." *Journal of Victimology and Victim Justice* 3.1 (2020): 38-56.

⁷ Triwati, Ani, and Doddy Kridasaksana. "Pijakan Perlunya Diversi Bagi Anak Dalam Pengulangan Tindak Pidana." *Jurnal USM Law Review* 4.2 (2021): 828-843; Prasetyo, Teguh. "Penerapan Diversi Terhadap Tindak Pidana Anak Dalam Sistem Peradilan Pidana Anak." *Refleksi Hukum: Jurnal Ilmu Hukum* 9.1 (2015): 1-14; Krisnalita, Louisa Yesami. "Diversi Pada Tindak Pidana Yang Dilakukan Oleh Anak." *Binamulia Hukum* 8.1 (2019): 93-106.

Moreover, the tension between state law and Islamic law can exacerbate these gaps. In regions where Islamic law is more strictly applied, there may be a greater emphasis on moral retribution and punishment, which can conflict with the rehabilitative ideals of both SPPA and international human rights standards. For example, while SPPA promotes diversion and alternative dispute resolution, Islamic law in certain areas might prioritize moral correction or even corporal punishment for juvenile offenders, depending on the nature of the offense. This creates a complex legal landscape where the rights and rehabilitation of juveniles may not always be upheld in a consistent manner across different regions of Indonesia.⁸

The social gap is also significant, particularly in rural or underdeveloped areas where access to legal resources and institutions is limited. In such regions, informal justice mechanisms may take precedence over the formal legal system, and traditional practices may override the protections afforded by state and Islamic law. The lack of education and awareness about child rights among local communities and law enforcement can further contribute to the uneven application of juvenile justice.⁹ This disparity underscores the need for a more unified approach to juvenile justice that bridges the gap between urban and rural regions and ensures that all children, regardless of their location or background, receive fair and just treatment.

In the further, while both Indonesian state law and Islamic law share the common goal of protecting children and rehabilitating young offenders, there remain significant gaps in their practical implementation.

⁸ Aji, Wikan Sinatrio. "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *Journal of Indonesian Legal Studies* 4.1 (2019): 73-88; Wangi, Yosefin Dika Tyas. "Policy of Development for Juvenile Delinquency in the Perspective of Indonesian Criminal Justice System Reform (Study on Institute for Special Development Children LPKA Kutoarjo, Central Java, Indonesia)." *Journal of Indonesian Legal Studies* 2.2 (2017): 85-100.

⁹ National Research Council. *Reforming juvenile justice: A developmental approach*. National Academies Press, 2013. See also Bishop, Donna M. "The role of race and ethnicity in juvenile justice processing." *Our children, their children: Confronting racial and ethnic differences in American juvenile justice* (2005): 23-82; Krisberg, Barry. *Juvenile justice: Redeeming our children*. Sage, 2005.

These gaps—social, legal, and infrastructural—highlight the need for a more cohesive and child-centered approach to juvenile justice in Indonesia. The challenge lies in harmonizing these two legal frameworks and addressing the obstacles that hinder the effective treatment of juveniles in conflict with the law. To achieve this, it is essential that both state and religious authorities collaborate to ensure that the rights of children are fully protected and that they are given the opportunity to reintegrate into society as productive, law-abiding citizens. By bridging these gaps, Indonesia can create a juvenile justice system that reflects both its legal principles and its cultural and religious values.

Concept of Juvenile Justice

A. Definition & Characteristics of Children in Law

The legal definition of children is a foundational aspect of juvenile justice systems worldwide, as it influences the framework and treatment of minors in conflict with the law. According to Law Number 23 of 2022 on Child Protection (hereinafter as UU 23/2022), children are regarded as a trust and a gift from God, possessing inherent dignity and vital potential to contribute to the nation's future. In Part C of the Act, children are described as the next generation who must be protected and nurtured to ensure the nation's continuity.¹⁰ The Indonesian legal system defines children as individuals who have not yet reached the age of 18, including those in the womb, as stipulated in Law Number 35 of 2014. However (hereinafter as UU 35/2014), the Criminal Code adopts a broader definition, recognizing individuals up to the age of 21 as minors, and the differentiation of age is crucial in determining the extent of a child's criminal liability and legal responsibility.¹¹

¹⁰ Mayasari, Dian Ety. "Perlindungan hak anak kategori juvenile delinquency." *Kanun Jurnal Ilmu Hukum* 20.3 (2018): 385-400; Iman, Candra Hayatul. "Kebijakan Hukum Pidana Perlindungan Anak dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum dan Peradilan* 2.3 (2013): 358-378.

¹¹ For further discussion, *also see* Putri, Nadiyah Meyliana, et al. "Juvenile Delinquency in Semarang City: Aspects of Protection and Law Enforcement in Socio-Legal Approach." *Unnes Law Journal* 8.2 (2022): 263-278; Rasdi, Rasdi, et

This distinction is particularly important when examining how children are treated within the juvenile justice system. Children are often seen as a vulnerable group that requires special protection, and their ability to fully comprehend the consequences of their actions is a key factor in determining the legal measures applied. This emphasis on protection aligns with Indonesia's commitment to international conventions such as the UN Convention on the Rights of the Child (CRC), which stresses the rights of children to special care, education, and legal safeguards to promote their rehabilitation and social reintegration.¹²

Furthermore, internationally, the concept of child protection has been crystallized through documents such as the Universal Declaration of Human Rights (UDHR)¹³, the International Covenant on Civil and Political Rights (ICCPR)¹⁴, the International Covenant on Economic,

al. "Reformulation of the Criminal Justice System for Children in Conflict Based on Pancasila Justice." *Lex Scientia Law Review* 6.2 (2022): 479-518; Anwar, Syaiful, and Mardella Galih. "Juvenile, Prisons, and Justice: How Do Correctional Agencies Provide Legal Assistance for Children in Conflict with The Law?." *The Indonesian Journal of International Clinical Legal Education* 3.2 (2021): 197-208; Fikrie, Muhammad Ridho Iksanul, and Indah Sri Utari. "Legal Protection for Child Victims of Sexual Violence in Semarang: Analysis of Decision No. 431/Pid. Sus/2023/PN. Smg." *Law Research Review Quarterly* 10.1 (2024); Erdianti, Ratri Novita, Wasis Wasis, and Sholahuddin Al-Fatih. "Child Friendly Villages as an Effort to Prevent a Child as Victims and as Perpetrator Crimes." *Jurnal Pengabdian Hukum Indonesia* 5.2 (2022): 284-300; Setiawan, Sarno, et al. "Community empowerment on establishment of friendly-village for women and children." *Indonesian Journal of Advocacy and Legal Services* 1.1 (2019): 5-22.

¹² Robinson, J. A. "The right of child victims of armed conflict to reintegration and recovery." *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 15.1 (2012); Nguyễn, Khắc Hải, and Dandurand Yvon. "The social reintegration of offenders." *VNU Journal of Science: Legal Studies* 29.3 (2013); Gianelli, Alessandra. "The Place of Rehabilitation of the Offender among the Purposes of Penalties according to International Law." *International Law and the Protection of Humanity*. Brill Nijhoff, 2017. 397-412.

¹³ See also Şener, Mustafa Burak. "A review of the meaning and importance of the Universal Declaration of Human Rights." *Uluslararası Politik Araştırmalar Dergisi* 7.3 (2021): 15-25.

¹⁴ Keith, Linda Camp. "The United Nations International Covenant on Civil and Political Rights: Does it make a difference in human rights behavior?." *Journal of Peace Research* 36.1 (1999): 95-118.

Social, and Cultural Rights (ICESCR)¹⁵, and most notably the Convention on the Rights of the Child (CRC).¹⁶ These documents outline the fundamental principles of child protection, emphasizing that no child shall be subjected to unlawful detention or harsh punishments. Indonesia ratified the CRC through Presidential Decree No. 36 of 1990, which reinforces the country's commitment to upholding children's rights in line with international standards.¹⁷ One critical aspect of this commitment is the prohibition of practices such as arbitrary detention, torture, or life imprisonment for children, which are strictly prohibited under international law.

Indonesia's compliance with these international norms is reflected in the evolution of its juvenile justice system, which increasingly focuses on rehabilitation and restorative justice rather than punitive measures. For instance, Law No. 11 of 2012 on the Juvenile Justice System introduces various child-centric measures, including diversion and rehabilitation, aligning the national system with global principles that prioritize the protection of children's rights in legal proceedings.¹⁸

¹⁵ Chapman, Audrey R. "A" violations approach" for monitoring the international covenant on economic, social and cultural rights." *Human Rights Quarterly* 18.1 (1996): 23-66.

¹⁶ Lundy, Laura. "Voice's not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child." *British Educational Research Journal* 33.6 (2007): 927-942.

¹⁷ Wismayanti, Yanuar Farida, et al. "Child sexual abuse in Indonesia: A systematic review of literature, law and policy." *Child Abuse & Neglect* 95 (2019): 104034; Musofiana, Ida, Aji Sudarmaji, and Ira Alia Maerani. "Aspects of legal protection for children from cybercrime." *Jurnal Pembaharuan Hukum* 7.3 (2020); Tibaka, Leli, and Rosdian Rosdian. "The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11.3 (2017): 266-288. Also see Mulyani, Leni Widi, and Desiree David. "Civil Society's Inclusivity in Providing Access to Justice Through the Witness and Victims' Community-Based Program." *Jurnal Litigasi* 24.1 (2023): 110-129; Anindia, Islamia Ayu. "Perlindungan hukum terhadap perdagangan anak dengan modus pernikahan dalam perspektif viktimologis." *Jurnal Litigasi* 19.1 (2018).

¹⁸ Erdianti, Ratri Novita, and Sholahuddin Al-Fatih. "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia." *Journal of Indonesian Legal Studies* 4.1 (2019): 119-128.

B. Juvenile Justice in the Perspective of State Law

In the context of Indonesian law, the juvenile justice system is governed by several laws that emphasize the importance of safeguarding the rights of children involved in criminal activities. Notable among these are Law No. 11 of 2012 on the Juvenile Justice System and Law No. 3 of 1997 on Juvenile Justice, which set forth the procedures for handling children who have committed criminal offenses. These laws advocate for the implementation of restorative justice principles, such as diversion, which shifts the focus from punishment to resolution through mediation and reconciliation between the child and the victim.¹⁹

For instance, Article 20 of Law No. 11 of 2012 clarifies that children who commit criminal acts but are above the age of 18 but not yet 21 are still eligible for juvenile proceedings. This provision highlights the state's commitment to treating young offenders differently from adults, recognizing the developmental and psychological differences that influence a child's decision-making and behavior.

Indonesia's juvenile justice system is underpinned by a variety of laws and regulations that collectively ensure the protection of children's rights while holding them accountable for criminal actions. Among the key legal instruments is Law No. 11 of 2012 on the Juvenile Criminal Justice System, which lays down the framework for juvenile justice, including diversion processes, social rehabilitation, and the role of legal representatives. Other important laws include Law No. 23 of 2002 on Child Protection, *Peraturan Pemerintah (PP) No. 65 Tahun 2015*, which provides guidelines on the execution of diversion for children under 12, and *Peraturan MA No. 4 Tahun 2014*, detailing how the judiciary should handle diversion cases. These regulations work together to ensure that the

¹⁹ Syafiuddin, M. Nur, et al. "Understanding Child Support in the Pattern of Child Protection based on the Principle of Child Protection." *International Journal of Multicultural and Multireligious Understanding* 8.1 (2021): 92-99; Adriany, Vina, Hani Yulindrasari, and Marek Tesar. "Satu Desa, Satu PAUD—One village, one centre: Unpacking the meaning of children's participation within ECE policy and provision in Indonesia." *The Routledge International Handbook of Young Children's Rights*. Routledge, 2019. 66-76.

legal processes related to juvenile offenders align with the broader principles of child protection and restorative justice.

C. The Juvenile Criminal Justice Process

1. Judicial Stages

The Indonesian judicial system has made significant strides in protecting juvenile offenders through the application of diversion—a practice that removes children from formal judicial proceedings in favor of reconciliation and restorative justice. Made Sepud's research highlights the positive impact of diversion in providing legal protection to children. It facilitates an alternative dispute resolution model that aims to restore relationships between offenders and victims, thereby reducing the long-term negative effects on the child's future prospects.²⁰

Diversion plays a vital role in alleviating the burden on the court system and providing an opportunity for the child to make amends without undergoing the harsh consequences of the criminal process. This approach helps to mitigate the stigma associated with being labelled as a criminal, fostering a sense of responsibility in the child. While the application of diversion is widely recognized as beneficial, it is not without its critics. Some argue that it may fail to deliver the necessary deterrent effect for crimes involving serious harm. However, the law specifies that diversion should be considered only for offenses with a lower potential for harm and should always include victim consent.

2. Children's Rights in Legal Proceedings

As enshrined in the CRC, children have the right to special protections during legal proceedings. In Indonesia, this is reflected in the laws governing juvenile justice, which prioritize the well-being of children. The rights of children to legal representation, protection from abuse, and the right to a fair trial are guaranteed under both national law and international human rights standards. The importance of ensuring that children are not subjected to trial processes that may be harmful to their

²⁰ Sepud, I. Made. *Perlindungan Hukum Terhadap Pelaku Tindak Pidana Anak Melalui Diversi Dalam Sistem Peradilan Pidana Anak di Indonesia*. Diss. Brawijaya University, 2020.

psychological well-being is a central tenet of Indonesia's juvenile justice approach.

Recent cases, such as the case of a 15-year-old boy convicted for theft in Jakarta, demonstrate how Indonesia's juvenile justice system applies restorative measures like diversion, counseling, and family-based resolutions. Such cases highlight the evolving emphasis on rehabilitation and social reintegration rather than punitive measures.²¹

3. *Sanctions and Rehabilitation*

In Indonesia, the juvenile justice system employs a variety of sanctions designed to rehabilitate rather than punish. Article 2 of Law No. 4 of 1979 on Child Welfare guarantees that children should receive care and protection, including rehabilitation efforts aimed at re-integrating them into society. Sanctions imposed on minors often include educational measures, counseling, and community service, rather than incarceration. In more severe cases, children may be placed in Special Child Placement Institutions (LPKS), where they receive tailored programs designed to foster rehabilitation and personal growth.²²

Furthermore, Indonesia's juvenile justice reform has placed significant emphasis on social rehabilitation and reintegration. These efforts are designed to ensure that children in conflict with the law are not only protected but also prepared to reintegrate into society as responsible citizens. One notable initiative is the provision of rehabilitation services for juveniles within specialized institutions where they can receive

²¹ See Polri, "Greater Jakarta Metropolitan Police Captured Perpetrators of Theft and Rape", *Online*, May 19, 2021. Available at <https://inp.polri.go.id/artikel/greater-jakarta-metropolitan-police-captured-perpetrators-of-theft-and-rape-2>; Marhaenjati, Bayu, "Police Charge South Jakarta Man With Sexual Assault of 15 Boys", *Jakarta Globe*, October 27, 2015. Available at <https://jakartaglobe.id/context/police-charge-south-jakarta-man-sexual-assault-15-boys>

²² See further Thoriiq, Alif Jabaaral. *Analisis Yuridis Peran Balai Pemasyarakatan (BAPAS) Terhadap Anak Yang Ditempatkan di Lembaga Penyelenggara Kesejahteraan Sosial (LPKS) (Studi di BAPAS Kelas I Medan)*. Diss. Universitas Sumatera Utara, 2018; Putry, Sasty Deli, and Ahkhmad Rifa'i. "Teknik Komunikasi Pendamping Pembina Anak di LPKS ABH Anak Bangsa." *Jurnal Literasiologi* 10.2 (2023); Alfari, Muhammad, et al. "Maladministrasi Dalam Pemenuhan Hak Anak Yang Berhadapan Dengan Hukum." *JURNAL RECHTENS* 12.2 (2023): 257-272.

counseling, vocational training, and educational support. This holistic approach is grounded in the belief that children, as the future of the nation, should be given the tools they need to overcome past mistakes and become contributing members of society.²³

The success of these rehabilitation programs can be seen in the successful reintegration of juvenile offenders into their communities after undergoing rehabilitation. The law mandates that reintegration must take place after the conclusion of the legal process, ensuring that children are equipped to lead normal lives free of the negative influences of incarceration.

The ongoing development of juvenile justice in Indonesia represents a shift toward a more child-centric approach, emphasizing the importance of rehabilitation, restorative justice, and the protection of children's rights. While challenges remain in balancing accountability with compassion, Indonesia's legal framework provides a comprehensive model for handling juvenile offenders, one that prioritizes the potential for rehabilitation and reintegration into society. Through continued efforts to refine and adapt the juvenile justice system, Indonesia is making significant progress toward creating a justice system that reflects the values of child protection, fairness, and rehabilitation.

D. Islamic Law on Juvenile Justice

Islamic law on juvenile justice operates on principles that differ significantly from those found in secular legal systems. The following sections provide an overview of the fundamental principles, criminal responsibility, punishments, and rehabilitation approaches in Islamic law concerning children.

²³ Siregar, Iskandarsyah, and Aziz Rahimy. "A Normative Analysis of Juvenile Sentencing Laws in Indonesia: Reconciling Justice, Rehabilitation, and Victim Redress." *Polit Journal Scientific Journal of Politics* 3.3 (2023): 160-169; Purwanti, Ani. "Protection and rehabilitation for women victims of violence according to Indonesian law (Study on Central Java Government's handling through KPK2BGA)." *Diponegoro Law Review* 2.2 (2017): 312-325; Angkasa, Angkasa, et al. "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia." *Journal of Indonesian Legal Studies* 8.1 (2023): 93-128.

In Islamic law, children are regarded as legal subjects but are exempt from severe punishments (*hudud*) for offenses committed before reaching the age of puberty. The basis for this exemption stems from the understanding that children have not yet developed the mental and moral faculties necessary to be held accountable for their actions. The concept of criminal responsibility in Islam is tied to the notion of *baligh* (maturity), marking the age at which an individual becomes legally accountable for their actions.²⁴

Under Islamic principles, children are viewed as a "*mandate*" that must be safeguarded by their parents and the broader community. They are not subjected to the same harsh criminal sanctions as adults. Instead, children who engage in unlawful acts may only face *ta'zir* punishments, which are corrective in nature and designed to educate rather than punish.

The age at which a child reaches *baligh* varies depending on the individual's development. For boys, this is generally recognized around the age of 15, though it can be influenced by factors such as circumcision. For girls, *baligh* is associated with the onset of menstruation, typically occurring between the ages of 12 and 15. Before this age, children are not held criminally liable as they are not considered *mukallaf* (capable of responsibility) for their actions.²⁵

1. *Child Criminal Responsibility in Islam*

Children who commit unlawful acts before reaching the age of puberty are exempt from hadd punishments, such as flogging or amputation, and are not subject to qisas (retributive justice for bodily harm). Instead, they may face *ta'zir* punishment, which is a more lenient, educational form of penalty. The primary purpose of *ta'zir* is to correct and guide the child's behavior, rather than impose harsh retribution.

Islamic criminal law places a strong emphasis on rehabilitation and guidance. Juvenile offenders are expected to undergo educational and

²⁴ Abiad, Nisrine, and Farkhanda Zia Mansoor. *Criminal law and the rights of the child in Muslim states: A comparative and analytical perspective*. BIICL, 2010; Hascall, Susan C. "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?." *Berkeley Journal of Middle Eastern & Islamic Law* 4.1 (2011).

²⁵ Qafisheh, Mutaz M. "Restorative Justice in the Islamic Penal Law: A Contribution to the Global System." *International Journal of Criminal Justice Sciences* 7.1 (2012).

rehabilitative measures, rather than be incarcerated or subjected to punitive detention. This rehabilitative focus is reflected in Islamic jurisprudence's broader approach to crime, where the goal is to restore the offender's moral compass through education, repentance, and spiritual development.

In contrast to Indonesian positive law, where children between 8 and 18 years of age can be held criminally accountable, Islamic law only holds children responsible once they reach puberty. Prior to this stage, children are considered incapable of criminal responsibility.

2. Types of Punishment and Rehabilitation Approaches

Islamic criminal law categorizes crimes into three distinct areas: *hudud*, *qisas*, and *ta'zir*. Each category carries different implications for punishment and rehabilitation:

- a) *Hudud* refers to crimes with fixed punishments as prescribed in the Qur'an and Hadith, such as theft, adultery, and apostasy. Punishments for these crimes are severe and fixed, including corporal penalties like amputation or stoning. However, children who commit these offenses before reaching puberty are exempt from such punishments.
- b) *Qisas* is the retributive justice applied to crimes that harm the integrity of a person, such as murder or bodily injury. In *qisas* cases, the victim's family may demand the offender's life or equivalent harm as retribution. However, in Islamic law, there is room for forgiveness or a monetary settlement (*diyat*), depending on the victim's or family's wishes. Children under the age of puberty are not subject to *qisas*.
- c) *Ta'zir* encompasses crimes where no specific punishment is defined in Shariah. These offenses carry flexible penalties, which can be adapted to the specific circumstances of the offender. Judges have the discretion to impose appropriate sanctions, such as imprisonment,

flogging, or fines, based on the nature of the crime and the offender's circumstances.²⁶

While the punishment for children under Islamic law is generally light and educational, the key goal remains rehabilitation. Rehabilitation involves moral and spiritual education designed to reintegrate the child into society, ensuring they become responsible, ethical individuals. Through programs that focus on ethical conduct, prayer, and community service, juvenile offenders are encouraged to correct their ways.

Comparison between State Law and Islamic Law

The juvenile justice systems in both Islamic law and Indonesian state law share several commonalities as well as distinct differences in the treatment of children who commit offenses. These systems emphasize the need for protection and rehabilitation of minors, though their approaches are shaped by their respective cultural and legal frameworks.

Both legal systems prioritize child protection, acknowledging that children are not fully capable of understanding the consequences of their actions due to their developmental immaturity. This principle underpins their approach to juvenile crime, ensuring that children are not treated as fully responsible adults. In addition, both systems focus on rehabilitation rather than punitive measures. The aim is not to simply punish the offender but to guide them back into society, helping them to reform their behavior and reintegrate successfully. Both legal systems also establish specific age thresholds to determine when a child can be held criminally responsible. Children below these ages are exempt from adult penalties, and the legal procedures for minors are adapted to their developmental status.²⁷

²⁶ See also Alotaibi, Hajed A. "Inconsistency in Ta'zir Punishments in Islamic Juveniles' System." *Asian Social Science* 14.4 (2018): 70; Rizanizarli, Rizanizarli, et al. "The Application of Restorative Justice for Children as Criminal Offenders in the Perspective of National Law and Qanun Jināyat." *Samarah: Jurnal Hukum Keluarga dan hukum Islam* 7.1 (2023): 21-39.

²⁷ Islam, Mohammad Saiful. "Criminal Accountability and Juvenile Offenders: A Study under Islamic Principles, International Law and the Children Act, 2013." *International Journal of Ethics in Social Sciences* 3.2 (2015); Rahmatullah, Asep, and Segaf Baharun. "Ta'zir (Punishment) at Islamic Boarding Schools;

Despite these similarities, there are notable differences in how each legal system defines and addresses juvenile criminal responsibility. Indonesian law sets a clear age range for criminal accountability, stipulating that children between the ages of 12 and 18 can be held criminally responsible, as outlined in the Juvenile Criminal Justice System Act (UU No. 11/2012). Islamic law, however, does not fix a particular age but considers the onset of puberty as the determining factor, which can vary from child to child. In terms of punishment, the Indonesian system typically applies less severe, more rehabilitative sanctions, such as diversion and social rehabilitation, to ensure that children receive education and guidance rather than retribution. Islamic law, in contrast, includes categories of punishment such as *hudud* (fixed punishments for specific crimes) and *qisas* (retribution for bodily harm), though children under the age of puberty are exempt from these harsher punishments. Furthermore, the judicial process in Indonesia emphasizes a specialized juvenile court system focused on the protection and rehabilitation of minors, whereas Islamic law places a stronger emphasis on the responsibility of the family to guide and correct the child's behavior, with less formalized judicial procedures.²⁸

When it comes to rehabilitation, both systems aim to correct the behavior of juvenile offenders, but the methods they use are deeply influenced by their respective cultural and moral values. In Indonesia, rehabilitation is primarily based on restorative justice principles, with a focus on diversion away from the formal justice system. This approach aims to avoid stigmatizing children by facilitating reconciliation between offenders and victims and emphasizing social rehabilitation through counseling, education, and skills development. On the other hand, Islamic law links rehabilitation closely with moral and spiritual education. Offenders are encouraged to repent for their actions through *taubat*

Between Tradition, Conception, and Shadows of Human Rights Violations." *Tribakti: Jurnal Pemikiran Keislaman* 34.2 (2023): 267-280.

- ²⁸ Pratama, Jerry. "Restorative Justice in Resolving Criminal Cases of Child Abuse from an Islamic Legal Perspective." *Al Hurriyah: Jurnal Hukum Islam* 8.2 (2023): 124-133; Fathurokhmandan, Ferry, and Ahmad Fauzi. "Islamic Criminal Law as a Bridge of Contention Between Public and Individual Interest Within Restorative Justice." *Jurnal Media Hukum* 22.1 (2015): 21.

(repentance), a process that seeks to restore the individual's relationship with God and guide them to better behavior by instilling strong moral and ethical values. Thus, while both systems value rehabilitation, Indonesian law takes a more social and psychological approach, while Islamic law integrates a religious dimension to moral reformation.

The social and cultural implications of these two legal systems are also noteworthy. The secular nature of the Indonesian legal system fosters an environment of diversity and inclusivity, emphasizing human rights and the rule of law. It promotes a sense of justice that transcends religious and cultural boundaries, though conflicts may arise in rural areas where traditional customs prevail. In contrast, Islamic law, with its foundation in religious principles, has a more pronounced influence on societal norms, particularly in terms of ethical conduct and piety. The integration of religious values into the legal system strengthens community cohesion and moral guidance. However, Islamic law may also reinforce traditional gender roles and other conservative societal norms. While punishments under hudud laws can create a climate of fear, practices such as *ta'zir* (discretionary punishment) focus on correction rather than retribution, reflecting a more rehabilitative approach.²⁹

The implementation of juvenile criminal law in Indonesia faces a number of challenges, particularly in ensuring the protection of children's rights and maintaining consistency in the application of restorative justice. One significant challenge is the limited knowledge and understanding of restorative justice among law enforcement officials. In many cases, law enforcement officers tend to prioritize punitive measures over rehabilitative approaches, which hinders the effectiveness of the juvenile justice system. Furthermore, there is a shortage of child-friendly detention facilities in Indonesia, with many minors still being placed in adult prisons due to the lack of specialized institutions. The stigma surrounding juvenile offenders also complicates their reintegration into society, often resulting in social ostracism and recidivism. Additionally, the available

²⁹ Ilmi, Jamiatul, M. Rahmat Hidayat, and Ika Maslyna. "The Diversion Completion Based on Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System from the Perspective of Islamic Law." *ARRUS Journal of Social Sciences and Humanities* 3.3 (2023): 327-334.

infrastructure for rehabilitation is insufficient, with many programs focusing primarily on mental health and skill development but lacking a comprehensive approach to social rehabilitation.

To address these challenges, several solutions can be implemented. *First*, enhancing the capacity of law enforcement officials through comprehensive training on juvenile justice and restorative practices is crucial. This will help shift the focus from punitive approaches to rehabilitative methods. *Second*, improving the infrastructure for juvenile offenders, such as child-friendly courts and rehabilitation centers, is essential for ensuring effective legal processes. Furthermore, the involvement of families and communities in the rehabilitation process is vital. Community-based support systems can help reintegrate juvenile offenders and prevent recidivism, ensuring that children are guided back into society in a supportive environment. Finally, strengthening monitoring and evaluation mechanisms will allow for continuous improvements to the juvenile justice system, ensuring that it aligns with international standards while respecting local cultural and religious values. By adopting these strategies, Indonesia can create a more effective and humane juvenile justice system that better addresses the needs of young offenders.³⁰

Conclusion

This study finally concludes that the concept of juvenile criminal law in both the Indonesian legal system and Islamic law reveals both significant similarities and key differences. While both systems emphasize the special protection of children and prioritize rehabilitation over punitive measures, they diverge in fundamental ways. These include the definition of when a child can be held criminally responsible, the types of punishment applied, and the judicial processes followed. Indonesian state

³⁰ See also Wieringa, Saskia E. "Gender harmony and the happy family: Islam, gender and sexuality in post-Reformasi Indonesia." *South East Asia Research* 23.1 (2015): 27-44; Yulianti, Ni Putu Rai. "Legal Protection for Victims of Criminal Violations (Case Study of Violence Against Children in Buleleng District)." *Veteran Law Review* 2.2 (2019): 30-41; Beazley, Harriot. "The construction and protection of individual and collective identities by street children and youth in Indonesia." *Children, Youth and Environments* 13.1 (2003): 105-133.

law favors lighter, more rehabilitative sanctions, focusing on diversion and social rehabilitation. In contrast, Islamic law incorporates a strong element of moral and spiritual education as part of its rehabilitative process, underscoring personal repentance and ethical transformation. Additionally, the social and cultural implications of these systems differ considerably. The secular nature of Indonesia's legal framework fosters inclusivity, modernization, and alignment with international human rights norms, while Islamic law emphasizes adherence to religious values, moral conduct, and the reinforcement of traditional gender roles within the family and society. Understanding both the similarities and differences between these legal approaches is crucial for enhancing the treatment of children in conflict with the law, ensuring that their rehabilitation is prioritized, and their rights are protected within the context of the prevailing social and cultural environment.

The implementation of juvenile criminal law in Indonesia faces numerous challenges. These include limited knowledge of restorative justice among law enforcement officials, inadequate infrastructure, and pervasive social stigma toward juvenile offenders. Many children continue to be placed in adult prisons, which hinders their rehabilitation and increases their risk of further harm. The disparity in law enforcement between urban and rural areas, along with the limited availability of rehabilitation programs, further complicates the issue. Addressing these challenges requires a collaborative effort between the government, civil society, and communities to consistently apply the principles of rehabilitation and restorative justice. In doing so, children can be treated fairly, their rights protected, and their opportunities for rehabilitation maximized.

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