



## Criminal Liability of Children in Indonesia: A Review of Age Limits, Implementation of Restorative Justice, and Its Relevance to Islamic Law

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### ABSTRACT

This study aims to analyze the criminal liability of children in Indonesia with a focus on three main aspects, first, the age limit for criminal liability, second, the implementation of restorative justice in the Juvenile Criminal Justice System (SPPA), and third, its relevance to the principles of Islamic criminal law. The method used is normative law with a qualitative approach, through a literature study of laws and regulations, legal doctrine, and academic literature, as well as a comparative analysis between positive law and Islamic law. The results of the study indicate that the minimum age limit for criminal liability of children is set at 12 years and a maximum of 18 years according to Law No. 11 of 2012, children under 12 years old are subject to correctional measures. The implementation of restorative justice is accommodated through diversion which emphasizes the restoration of social relations and the protection of children's rights, but its implementation still faces obstacles such as regulatory disharmony, limited capacity of officers, and minimal community participation. From the perspective of Islamic law, the responsibility of children is oriented towards intellectual maturity (tamyiz) and puberty, as well as educational punishment through ta'zīr, so there is a meeting point with the restorative concept in positive law.

## **INTRODUCTION**

Children are the nation's future generation and hold a strategic position in national development. They are human resources who will ultimately determine the direction of the nation's progress, so their existence and quality of life must be safeguarded and protected. Children have the right to grow, develop, and receive protection from various threats that could hinder their future. However, reality shows that children often face difficult situations, including being entangled in criminal acts and having to deal with the law. The phenomenon of children in conflict with the law cannot be separated from sociological factors. (Arief, 2017, h. 11)

Unconducive social environments, weak parental control, the influence of social media, and even dire economic conditions often trigger children to commit unlawful acts. In these situations, children are not entirely to blame, as they are still in the process of discovering their identity and are easily influenced by their environment. (Syamsuddin, 2018, h. 13) Therefore, treating children as criminals with the same approach as adults will have serious psychological and social impacts, including stigmatization and the loss of opportunities for self-improvement.

From a legal perspective, the protection of children in conflict with the law has a strong foundation, both in international legal instruments and national legislation. Internationally, Indonesia has ratified the Convention on the Rights of the Child (CRC) through Presidential Decree Number 36 of 1990. This ratification affirms Indonesia's commitment to upholding the principles of the best interests of the child, non-discrimination, and the child's right to life, growth, development, and participation in accordance with human dignity. The Convention also emphasizes that children in conflict with the law have the right to special treatment, distinct from that of adults, with an emphasis on rehabilitation and social reintegration. (Wijayanti, 2021, h. 98)

The principles of the CRC were later adopted into national law through various regulations, one of which is Law Number 23 of 2002 concerning Child Protection, which was later amended by Law Number 35 of 2014. This law expressly states that children have the right to protection from violence, discrimination, and degrading treatment, including in cases of conflict with the law. (Rachmat, 2021) This emphasizes that the juvenile criminal justice process must not be solely oriented towards revenge but must also ensure the fulfillment of children's basic rights.

As a follow-up, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) was enacted, replacing Law Number 3 of 1997 concerning Juvenile Courts. The SPPA Law ushered in a new paradigm by introducing the concept of restorative justice and diversion as the primary mechanisms for resolving juvenile cases. Diversion, the transfer of case resolution from the criminal justice process to outside the formal justice system, is mandatory at every stage of the examination, from investigation, prosecution, to trial, as long as the criminal penalty is no more than seven years and the offense is not a repeat offense. (Lilik, 2020)

Furthermore, the Juvenile Justice and Child Protection Law provides additional protections in the form of a prohibition on disclosing children's identities, mandatory legal assistance, special child investigators, and the establishment of special correctional institutions for children. This demonstrates that Indonesian legislation has strived to create a system that emphasizes not only punishment but also the protection, rehabilitation, and social reintegration of children into society. Thus, legally, the Indonesian juvenile criminal justice system is based on comprehensive legal instruments. The existence of the Juvenile Justice and Child Protection Law not only fulfills the state's constitutional obligation to protect children, as mandated by Article 28B paragraph (2) of the 1945 Constitution, but also emphasizes the harmonization of national law with international standards in an effort to guarantee the rights of children in conflict with the law. (Hadisuprappto, 2008, h. 42)

From a philosophical perspective, the enactment of the Juvenile Justice and Child Protection Law reflects the values of just humanity. Children cannot be viewed solely as perpetrators of criminal acts, but also as victims of the social conditions that shape their behavior. The principle that imprisonment is the *ultimum remedium* (last resort) reflects the state's efforts to provide room for improvement and rehabilitation for children, enabling them to return to society as better individuals. Therefore, the juvenile criminal justice system is not only oriented towards legal certainty but also prioritizes benefit and justice in accordance with the values of Pancasila. The enactment of the Juvenile Justice System (SPPA) Law also demonstrates Indonesia's commitment to aligning national law with international standards, while strengthening guarantees of child protection as part of human rights. (Marlina, 2012, h. 16) Therefore, a discussion of the juvenile criminal justice system in the context of child protection is crucial for assessing the effectiveness of its implementation and identifying challenges still faced in its implementation.

The juvenile criminal justice system in Indonesia underwent significant transformation through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), which prioritizes protection and restorative justice. However, various fundamental aspects of its implementation still require in-depth study. This research specifically aims to analyze several of these crucial issues. First, this study will examine the general principles that serve as the philosophical and legal foundation for juvenile criminal justice in Indonesia. Second, it will analyze the determination of the age of criminal responsibility for children according to applicable positive law. Third, this study will outline the substance of the regulations in the Juvenile Justice and Child Protection Law, which is specifically designed to provide maximum legal protection for children in conflict with the law. Furthermore, this study will explore the implementation of restorative justice and diversion approaches as the primary resolution mechanisms. As a comparative analysis, this study will conclude with a discussion of the Islamic legal perspective on juvenile criminal responsibility. Through an analysis of these five aspects, this study is expected to provide a comprehensive understanding of the legal framework and practice of juvenile criminal justice in Indonesia.

## **LITERATURE REVIEW**

### **A. Juvenile Criminal Responsibility and Age Limits**

The evolution of regulations from Law No. 3 of 1997 to Law No. 11 of 2012 established a minimum age of 12 for juvenile criminal responsibility, with specific provisions that the potential penalty for juveniles is reduced from the maximum penalty for adults, and that the death penalty or life imprisonment is not applicable to juveniles. (Pangemanan, 2015; Lihat juga, Prema dkk., 2021) Research by Holinda Handayani (2024) emphasizes a rehabilitative approach in the juvenile criminal justice system, as well as the fulfillment of children's rights (life, development, and protection from violence/discrimination) as key pillars of the regulations. (Handayani, 2024) Komang Ayu Kencana Utami (2021) demonstrates the priority of diversion for crimes with a sentence under seven years, rather than reoffending, while underscoring the limitations of diversion for serious crimes such as murder. (Utami & Hariyanto, 2021) Comparisons with the Philippines indicate variations in age limits (Indonesia 12–18, Philippines 15–18) and the involvement of parental responsibility, which can provide policy lessons for Indonesia. (Indah & Subekti, 2024)

### **B. Implementation of Restorative Justice in the Juvenile Justice System**

Filonia (2024) identified obstacles to the implementation of Restorative Justice, including disharmony in technical regulations, limited understanding among officials, and minimal community participation. He recommended strengthening technical regulations, training officials, and cross-institutional collaboration. (Filonia, 2024) Hasbi Hasan (2013) emphasized that Restorative Justice should be integrated throughout the judicial process, not understood solely as an alternative to the courts. (Hasan, 2013) Muladi (in a Diponegoro University journal) emphasized Restorative Justice as a collective process to identify the losses, needs, and obligations of stakeholders, in line with the Juvenile Justice System's goal of avoiding stigmatization and supporting social reintegration. (Muladi, t.t.) A study by Hasanah & Yusuf (2025) called for mainstreaming Restorative Justice into national policy, including integration into the National Medium-Term Development Plan (RPJMN), with an emphasis on public outreach and strengthening institutional capacity. (Hasanah & Yusuf, 2025)

### **C. Relevance of Islamic Law to the Criminal Liability of Children**

In Islamic jurisprudence (*fiqh jinayah*), the responsibility of children regarding *tamyiz* (the attainment of puberty) and *baligh* (the attainment of puberty). *Ta'zir* (the attainment of puberty) for children is educational and proportional and is delegated to the authorities (*waliyul amri*) to prevent recurrence and improve morals. (Surabangsa & Arifin, 2022) Nabilla et al. (2023) found convergence between Islamic law and the Child Protection System (SPPA) on the best interests of the child and a restorative approach (diversion), with differences in the normative basis and age determination. (Nabilla dkk., 2023) A comparative study by Romadhon (2021) showed that positive law diversion protects children's rights, whereas under Islamic law, children who commit crimes are not subject to criminal penalties, but *diyat* (fines) may be imposed as a form of social responsibility. (Romadhon, 2021) Elfa Murdiana (2012)

emphasized the relevance of Islamic legal values (justice, welfare, and child protection) for reforming Indonesian criminal law, strengthening a humanistic and educational orientation in child punishment.(Murdiana, 2012)

## **METHODOLOGY**

This research is a normative legal study with a qualitative approach, examining written law from various aspects, such as statute, conceptual, historical, and comparative. Data sources include primary legal materials (the SPPA Law), secondary (academic journal articles), and tertiary (academic databases). The analysis is conducted through systematic, historical, and comparative interpretation, and the findings are supported by relevant jurisprudential case studies.(Dwiarti, t.t.; Filonia, 2024; Prema dkk., 2021)

## **RESEARCH RESULT**

### **A. General Principles of Juvenile Criminal Justice**

The juvenile criminal justice system has characteristics that differ from those of criminal justice in general. This is based on the consideration that children are not simply perpetrators of crimes, but rather individuals still in the physical and mental development stage, requiring special treatment.(Nashrullah, 2021, h. 9) Therefore, juvenile criminal justice aims not only to impose sanctions but also emphasizes the protection, guidance, and rehabilitation of children so they can return to their normal social roles. Regulations regarding this are reflected in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which comprehensively regulates the mechanisms for resolving juvenile cases by emphasizing the principle of restorative justice. Before discussing this further, it is important to first understand the general principles that underlie the implementation of juvenile criminal justice in Indonesia.(Anwar, 2020)

#### **a. The Principle of the Best Interest of the Child**

This principle is the primary foundation of every policy, action, and legal decision relating to children. In the context of criminal justice, every process, from investigation, prosecution, to trial, must prioritize the best interests of the child, not solely the interests of law enforcement. This means that case resolution must be directed at ensuring the child's growth and development, providing opportunities for self-improvement, and preventing negative impacts that could destroy their future.

#### **b. Principle of Non-Discrimination**

Every child has the right to equal treatment before the law, regardless of race, religion, ethnicity, social status, gender, or economic background. This principle prohibits differential treatment that could harm a child solely based on identity or specific circumstances. This is affirmed in Article 28B paragraph (2) of the 1945 Constitution and is in line with Article 2 of the Convention on the Rights of the Child (CRC).

#### **c. Principle of Respect for the Dignity and Rights of Children**

Children in conflict with the law remain human beings with dignity and worth. Therefore, degrading treatment, physical and psychological

violence, and coercion must be avoided. The Child Protection and Child Protection Law prohibits law enforcement officers from taking actions that could harm a child's dignity, whether during the investigation, detention, or sentencing process. This principle also includes a prohibition on publishing the identities of child perpetrators or victims of crimes.(Ahmad, 2021)

- d. **The Principle of Humane Treatment Appropriate to the Age of Children**  
Children should not be treated the same as adults in the judicial process. This concerns the examination method, communication techniques, and the form of sanctions imposed.(Wulan, 2022) For example, juvenile courtrooms should be made more welcoming, examinations should involve a chaperone, and criminal sanctions should be educational, not repressive.
- e. **The Principle of Ultimum Remedium (Criminal Justice as a Last Resort)**  
Punishment of children, especially imprisonment, should be a last resort if all other alternative solutions have failed. The Child Protection and Child Protection Law emphasizes that detention or criminalization of children may only be implemented if diversion cannot be achieved or the crime is considered serious. Therefore, criminal law is no longer viewed as the primary means, but rather as a last resort after other remedial measures have failed.
- f. **The Principle of Restorative Justice**  
The juvenile criminal justice system should not be oriented toward retaliation (retributive), but rather toward restoring the damaged situation caused by the crime. Restorative justice brings the perpetrator, victim, family, and community together to find the best solution, with the goal of repairing relationships, redressing losses, and restoring social balance.(Huda, 2008, h. 16)
- g. **The Principle of Diversion**  
Diversion is the transfer of case resolution from formal judicial channels to mechanisms outside the courts. This principle must be followed at every stage of the investigation, as long as the crime committed by the child carries a sentence of less than seven years and is not a repeat offense. Diversion aims to prevent children from being stigmatized as a result of the judicial process and imprisonment.(Muladi, 2005, h. 20)
- h. **Principle of Child Identity Protection**  
The Child Protection Law prohibits the mass media or any other party from publishing the identity of children in conflict with the law, whether as perpetrators or victims. This is intended to protect children from negative societal stigma that can damage their psychological well-being and future.
- i. **Principle of Rehabilitation and Social Reintegration**  
Children who have undergone legal proceedings, including criminal proceedings, must still be given the opportunity to return to society with adequate guidance. Therefore, the juvenile criminal justice system prioritizes rehabilitation (psychological and social recovery) and social

reintegration (returning children to the community so they can function normally).

j. Principle of Child Participation

Children have the right to have their opinions heard in every process concerning them. During police investigations, prosecutions, and trials, children must be given the opportunity to express their opinions and explanations in an age-appropriate manner. This principle aligns with Article 12 of the CRC, which affirms the child's right to be heard.

Therefore, the general principles of juvenile criminal justice serve as the foundation for every stage of the legal process involving children, from investigations and prosecutions to court appearances. This principle emphasizes that the protection and best interests of children must always be prioritized over mere punishment. Understanding this principle is crucial for the implementation of the juvenile criminal justice system to truly reflect the goals of fostering and social reintegration. After understanding the basic principles, the discussion can move on to other, more specific aspects of the administration of juvenile criminal justice.

## **B. Age of Legal Responsibility**

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) clearly limits the age at which children can be held criminally responsible. (Djoko, 2018) Article 1, number 3, emphasizes that children in conflict with the law are those aged 12 but under 18 who are suspected of committing a crime. Furthermore, Article 21 states that if a child under 12 commits or is suspected of committing a crime, investigators, community counselors, and professional social workers are required to hand the child over to their parents or enroll them in a social development program at a social institution for a maximum of 6 (six) months. (Pangemanan, 2015) This provision emphasizes that a criminal approach is not the primary option for children under 12, but rather social development and rehabilitation. Concrete examples can be seen in several cases that have occurred in Indonesia. For example, in the case of a 10-year-old child in Jakarta who committed the crime of petty theft. Based on the provisions of Article 21 of the SPPA Law, the child was not brought to court, but was returned to his parents with the obligation to participate in a social development program facilitated by the Correctional Center (BAPAS). In this program, the child was given psychological support, counseling, and directed to return to school. This step reflects the application of the principle of "the best interest of the child," which emphasizes protection and guidance, not punishment. (Djoko, 2018)

Another example is a case in Central Java, where an 11-year-old child was involved in a minor assault. In handling the case, law enforcement officials did not proceed to court but instead collaborated with social institutions and relevant agencies to place the child in a three-month behavioral rehabilitation program. As a result, the child was able to return to society with a more controlled attitude and receive a better education. (Rina, 2019) These examples demonstrate that the

provisions of Article 21 of the Child Protection and Child Protection Law are not merely normative but are also implemented in practice. This also demonstrates the fundamental difference between juvenile criminal law and adult criminal law, where the primary focus of juvenile criminal law is the guidance, recovery, and social reintegration of children into society.

### **C. Substance of the Law on the Juvenile Criminal Justice System**

The provisions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) demonstrate that legal protection for children is a top priority in the criminal justice system. This protection is not only provided to children who are perpetrators of crimes, but also to children who are victims and witnesses. (Zulkifli, 2021) Several important provisions are as follows:

- First, recognition of children's rights in the judicial process. Article 3 of the Law on the Juvenile Criminal Justice System affirms that every child in the judicial process has the right to be treated humanely in accordance with the child's dignity and rights, to be protected from physical and psychological pressure, to be kept away from arbitrary deprivation of liberty, and to have their identity kept confidential. This regulation emphasizes that children should not be treated like adults but must still be given special protection.
- Second, the age limit for criminal responsibility of children. Article 1, number 3, states that children in conflict with the law are those aged 12 but under 18. Meanwhile, Article 21 states that children under 12 years of age cannot be brought to court even if they commit a crime. Instead, they must be returned to their parents or placed in a social institution with supervision for a maximum of six months. This demonstrates that the Child Protection and Juvenile Justice Law substantively provides legal protection by adjusting children's criminal responsibility based on their age and psychological development.
- Third, the implementation of diversion as a mechanism for resolving cases outside the courts. Article 7 paragraph (1) of the Child Protection and Juvenile Justice Law requires diversion efforts to be implemented at the investigation, prosecution, and trial levels of children's cases in court. Diversion can only be implemented for crimes with a penalty of less than seven years or that do not constitute a repeat offense. This aligns with Article 8, which regulates the objectives of diversion, namely achieving reconciliation between the victim and the child, resolving cases outside the courts, and preventing children from being deprived of their liberty. This substantively demonstrates that the law provides space for children to take responsibility for their actions without experiencing stigmatization from the formal judicial process.
- Fourth, regulations regarding the types of crimes and actions taken against children. Article 71 of the Child Protection and Child Protection Law stipulates that the penalties that can be imposed on children consist of principal penalties (warnings, conditional sentences, job training,

institutional guidance, and even imprisonment) and additional penalties (confiscation of profits or fulfillment of customary obligations). Furthermore, Article 82 states that the actions that can be imposed include returning the child to parents, surrendering to a specific person, treatment in a mental hospital, treatment in a social institution, and mandatory formal education or training. This demonstrates that the law prioritizes protection, guidance, and social reintegration over punishment.

- Fifth, special protection for child victims and witnesses. Article 89 of the Child Protection and Child Protection Law guarantees that child victims or witnesses have the right to assistance, protection from threats from certain parties, and guaranteed identity confidentiality. This substance demonstrates that legal protection under the Child Protection and Child Protection Law is comprehensive, extending not only to child perpetrators but also to children harmed by criminal acts.

Thus, through the various articles above, the Juvenile Justice and Child Protection Law provides comprehensive legal protection for children, including limiting the age of criminal responsibility, prioritizing diversion and restorative justice mechanisms, and guaranteeing children's rights at every stage of the trial. This substance reflects the primary focus of juvenile criminal justice on protecting, fostering, and guiding children toward social reintegration, in accordance with the principle of the best interest of the child.

#### **D. Restorative Justice and Diversion Approach**

The implementation of the restorative justice and diversion approaches in Indonesia's juvenile criminal justice system embodies a new paradigm in criminal law that emphasizes child protection, not just punishment. Through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), the state has firmly shifted the orientation of juvenile law enforcement from a retributive approach to restorative action. (Zulkifli, 2021) This is emphasized in Article 1, number 6 of the SPPA Law, which defines restorative justice as the resolution of criminal cases involving the perpetrator, victim, the perpetrator's family, the victim's family, and other relevant parties to seek a just solution that emphasizes restoration to the original state, rather than retribution. Similarly, Article 1, number 7, defines diversion as the transfer of juvenile cases from the criminal justice process to a process outside the criminal justice system. In fact, Article 7, paragraph (1) emphasizes that diversion must be pursued at every level of examination, including investigation, prosecution, and trial, as long as the crime committed is punishable by imprisonment of less than seven years and does not constitute a repeat offense. (Rina, 2019)

The implementation of restorative justice and diversion is based on the principles of the best interests of the child, non-discrimination, respect for the child's dignity, and the avoidance of criminal stigma that could damage a child's future. In practice, diversion can be implemented from the investigation stage. For example, when a child commits a minor theft, the police, along with the Correctional Center (Bapas), parents, and the victim, facilitate a meeting to reach a peaceful agreement. If the victim accepts an apology and the perpetrator repays

the damages, the case can be dropped, eliminating the need for the child to go to trial. Similar mechanisms apply at the prosecution and trial stages, where prosecutors and judges can postpone the case process and allow for penal mediation. Thus, restorative justice not only reduces the burden on the courts but also provides an opportunity for children to improve themselves and continue their education and social life. (Marlina, 2010, h. 14)

Although normatively clear, the implementation of this concept still faces several obstacles. These include a lack of understanding among law enforcement officials, who are still focused on punishment, resistance from victims or their families, who often reject peaceful resolutions, and limited supporting infrastructure such as social workers, child counselors, and mediators. (Filonia, 2024; Hasan, 2013) It's not uncommon for society to still negatively stigmatize children who have been in conflict with the law, even if they have successfully resolved their cases through diversion. (Gosita, 2012, h. 64)

This challenge demonstrates that the success of restorative justice and diversion depends not only on regulations, but also on the readiness of human resources and social acceptance. Compared with other countries, restorative justice practices in Indonesia share a similar trajectory to the Netherlands, which implemented the Halt Program as a form of out-of-court settlement through social activities or written apologies, and Australia, which developed Youth Justice Conferencing, where children, victims, and the community come together to reach an agreement. However, Indonesia still needs to strengthen its legal infrastructure, increase the capacity of its authorities, and provide broader public outreach to ensure the optimal implementation of restorative justice and diversion. (Qardhawi, 2015, h. 11)

Thus, it can be concluded that the implementation of restorative justice and diversion in the juvenile criminal justice system is a form of legal protection that prioritizes children's education, recovery, and social reintegration over punishment. Although still facing obstacles in implementation, the SPPA Law provides a solid legal foundation to ensure that children in conflict with the law still have the opportunity to improve themselves and return to society without negative stigma.

### **E. Islamic Legal Perspective**

In Islamic law, the criminal liability of children (*mas'uliyah al-jinayah lil athfal*) differs from that of adults because it is closely related to their level of maturity (*baligh*) and intellectual capacity (*tamyiz*). Islam places reason and maturity as the primary requirements for the implementation of *taklifi* law. This is confirmed in the hadith of the Prophet Muhammad (peace be upon him).

رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ الصَّبِيِّ حَتَّى يَجْتَلِمَ وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ

*The pen (burden of justice) has been lifted from three groups: from the sleeping person until he wakes up, from the child until he reaches puberty, and from the insane person until he recovers.* (Narrated by Abu Dawud and Ahmad). (Dawud, 2004, h. 104)

In relation to the hadith, the Qur'an also does not explicitly mention the age of adulthood for children, but only mentions their biological signs, as explained in the word of Allah in Surah al-Nur verse 59, which reads:

وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمْ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ  
وَاللَّهُ عَلِيمٌ حَكِيمٌ

" ... And when your children reach puberty, let them ask permission just as those who came of age before them asked permission. Thus does Allah make His verses clear to you. Allah is Knowing, Wise. (QS. an-Nur: 59)

Based on the verses and hadiths presented by the author, the primary signs of a child reaching puberty are demonstrated through several physical characteristics, such as wet dreams for boys and menstruation for girls. These verses and hadiths do not provide specific information regarding the age limit for puberty, but rather describe the physical signs that indicate a child has reached puberty, known as the signs of physical maturity. (Yunitasari, 2020, h. 15) Therefore, these verses and hadiths provide the basis for the belief that children who have not yet reached puberty cannot be held fully criminally responsible, as they lack the maturity of reason and moral judgment. (Fitriani, 2020)

According to the Hanafi school of thought, a boy is considered puberty when he experiences a wet dream followed by the emission of semen, while for girls, menstruation is a sign of puberty. However, if these signs do not appear, the age limit for puberty is set at 18 for boys and 17 for girls. Meanwhile, according to Imam Malik, puberty is marked by the absolute emission of semen, whether conscious or asleep. Another recognized sign is hair growth in certain areas of the body, which is an indication of maturity. According to Imam Shafi'i, the age limit for puberty is 15 years for boys and 9 years for girls, without emphasizing other physical signs. Meanwhile, according to the Hanbali school, puberty for boys is marked by a wet dream or reaching 15 years of age, while for girls it is marked by menstruation. (Khusurur, 2021, h. 71)

Islamic jurisprudence scholars then divided the stages of child responsibility into several categories. First, children who have not reached the age of tamyiz (approximately 7 years old) are not burdened with criminal responsibility at all. None of their actions carry criminal consequences, but the responsibility for providing education rests more with their parents or guardians. Second, children who have reached the age of tamyiz but have not yet reached puberty (approximately 7-15 years old) are also not burdened with full criminal responsibility. However, Islam permits forms of educational sanctions such as reprimands, advice, or light, educational spankings, administered by parents or judges (qadi). Third, children who have reached puberty (marked by biological signs such as wet dreams, menstruation, or the age of 15 according to the majority of scholars) are considered legally mature and therefore can be held criminally liable as adults.

The views of the Islamic jurisprudence schools reinforce this. According to Hanafi scholars, a child who has not reached puberty is not subject to hudud or qisas punishments, but they can be subject to ta'zir (minor educational sanctions) at the judge's discretion. The Shafi'i and Hanbali schools of thought also hold similar views, stating that a child who has not reached puberty is not subject to full criminal responsibility. Although if their actions cause harm, the

responsibility for compensation (diyat or arsh) can be assigned to their guardian or family through the aqilah (male kinship group) mechanism.

According to Maliki scholars, children approaching puberty (muraḥiq) can be subject to more serious disciplinary action if they commit a crime, as a warning before they are actually burdened with criminal law upon reaching puberty. This difference shows that Islam does not necessarily exempt children from legal consequences, but rather adapts the type of responsibility to the child's developmental stage. (Ali, 2016, h. 74)

Furthermore, Islamic law also differentiates between the types of crimes committed by children. In the case of theft, for example, a child who has not yet reached puberty is not subject to the punishment of amputating his or her hand because the hudud requirements have not been met, but they can still be subject to ta'zir sanctions in the form of a warning or social punishment. If the crime committed by a child results in material loss, compensation for the loss can be sought from the child's assets (if any) or covered by their guardian. This demonstrates that under Islamic law, even though children are not subject to full criminal responsibility, their actions are not considered trivial, and there are mechanisms for compensation.

In the modern context, the principle of criminal responsibility for children in Islamic law aligns with Indonesian positive law through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). Both legal systems prioritize child protection, education, and prevention over punishment. The difference lies in the age limit criteria. The Child Protection Act (SPPA) sets 12 years as the minimum age for children to be held criminally responsible, while Islamic law bases it on biological and intellectual maturity, namely when a child reaches puberty. Nevertheless, both emphasize the principle of the best interest of the child, which ensures that children who commit crimes still have the opportunity to improve themselves and do not lose their future. (Nabilla dkk., 2023; Surabangsa & Arifin, 2022)

Thus, the Islamic legal perspective on juvenile criminal liability emphasizes that children should not be treated the same as adults. Children's accountability is gradual according to their intellectual development, and the measures taken are more educational than punitive. This principle also reflects the objectives of sharia (maqasid al-syari'ah), which seeks to safeguard life, mind, religion, lineage, and property, while still considering the best interests of children as the next generation of the ummah.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusion**

From the overall discussion, it can be concluded that the juvenile criminal justice system in Indonesia is built on the principle of protection and the best interests of the child, emphasizing humane, non-discriminatory treatment and a focus on social recovery. Positive law, through the Child Protection and Juvenile Justice Act (UU SPPA), sets the age limit for criminal responsibility for children at a minimum of 12 and a maximum of 18, so that children in conflict with the law are not automatically treated the same as adults. The substance of the regulations in the UU SPPA clearly provides legal protection for children

through guaranteed rights to assistance, identity protection, avoidance of degrading punishment, and prioritization of developmental efforts. The implementation of restorative justice and diversion is a key characteristic, where the resolution of juvenile cases prioritizes reconciliation, compensation, and out-of-court development rather than punishment. Although in practice, this still faces several obstacles such as limited understanding by authorities and victim resistance. Correspondingly, the Islamic legal perspective also holds that children cannot be held fully criminally responsible until they reach puberty and possess a sound mind, so the measures implemented place greater emphasis on education, supervision, and development. Thus, both Indonesian positive law and Islamic law share the view that children are individuals who need to be protected and nurtured so they can return to society without losing their future, rather than simply being subjected to punishment.

### **B. Recommendations**

Based on the discussion and conclusions above, it is recommended that the implementation of the juvenile criminal justice system in Indonesia be further strengthened by increasing the capacity of law enforcement officers to better understand the principles of restorative justice and diversion as the primary means of resolving juvenile cases. Furthermore, supporting facilities such as counselors, social workers, and mediation facilitators are needed in every region to ensure optimal guidance and social reintegration mechanisms. The government also needs to conduct broader outreach to the community to reduce the negative stigma against children who have been in conflict with the law, so that children can be accepted back into their social environment. Furthermore, Islamic legal values, which emphasize the importance of education, guidance, and supervision for children, can be integrated into Indonesian positive law practices as a form of legal harmonization that aligns with community culture. With these steps, it is hoped that legal protection for children can be truly realized in a comprehensive, fair, and sustainable manner.

### **REFERENCES**

- Ahmad. "Kedudukan Restorative Justice dalam Sistem Peradilan Pidana Anak." *Jurnal Penegakan Hukum Indonesia* vol 12, no. 2 (2021).
- Ali, Zainuddin. *Hukum Pidana Islam*. Jakarta: Sinar Grafika, 2016.
- Anwar, Yesmil. "Reformasi Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum dan Pembangunan* vol 50, no. 3 (2020).
- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Kencana Prenada Media Group, 2017.
- Dawud, Abu. *Sunan Abu Dawud*. Beirut: Dar al-Kutub al-Ilmiyyah, 2004.

- Djoko. "Aspek Hukum Perlindungan Anak dalam Perspektif Restorative Justice." *Jurnal Hukum dan Pembangunan* vol 48, no. 4 (2018).
- Dwiarti, Fitri Setiyani. "Implementasi Keadilan Restoratif dalam Penyelesaian Perkara Pidana Anak: Studi pada PT Tanjung Karang." *Neliti*, t.t.
- Filonia, Fredella Bunga. "Penerapan Restorative Justice terhadap Anak dalam Perspektif Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum In Concreto* vol 3, no. 1 (2024): 98-110.
- Fitriani, Nurul. "Implementasi Diversi dalam Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum dan Peradilan* vol 7, no. 2 (2020).
- Gosita, Arif. *Masalah Perlindungan Anak*. Jakarta: Akademik Pressindo, 2012.
- Hadisuprappto, Paulus. *Delinkuensi Anak: Pemahaman dan Penanggulangannya*. Malang: Bayu Media, 2008.
- Handayani, Holinda. "Pertanggungjawaban Pidana Anak sebagai Pelaku Kejahatan Pembunuhan." *Innovative: Journal of Social Science Research* vol 4, no. 1 (2024): 7039-49.
- Hasan, Hasbi. "Penerapan Keadilan Restoratif dalam Sistem Peradilan Pidana Anak di Indonesia." *Jurnal Hukum dan Peradilan* vol 2, no. 2 (2013): 247-68.
- Hasanah, Ulfatul, dan Hudi Yusuf. "Kajian Literatur Restorative Justice sebagai Alternatif Penyelesaian Tindak Pidana Anak di Indonesia." *Jurnal Cendekia Hukum Indonesia* vol 1, no. 2 (2025). <https://doi.org/10.71417/jchi.v1i2.57>.
- Huda, Chairul. *Dari Tiada Pidana tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana tanpa Kesalahan*. Jakarta: Kencana, 2008.
- Indah, Putri Jasminta, dan Subekti. "Optimalisasi Pengaturan Pertanggungjawaban Pidana Anak (Studi Perbandingan Indonesia-Filipina)." *Jurnal Hukum dan HAM Wara Sains* vol 3, no. 1 (2024). <https://wnj.westscience-press.com/index.php/jhhws/article/view/1000>.
- Khusurur, Misbah. "Baligh (Kajian Hukum Fiqh dan Hukum Positif di Indonesia)." *Al-Wasith: Jurnal Studi Hukum Islam* vol 6, no. 7 (2021).
- Lilik. "Pertanggungjawaban Pidana Anak dalam Perspektif Hukum Islam." *Al-Mawarid: Jurnal Hukum Islam* vol 22, no. 1 (2020).

- Marlina. *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*. Bandung: Refika Aditama, 2012.
- Marlina. *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung: Refika Aditama, 2010.
- Muladi. "Implementasi Pendekatan Restorative Justice dalam Sistem Peradilan Pidana Anak." *Jurnal (Undip)*, t.t., 58–85.
- Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit UNDIP, 2005.
- Murdiana, Elfa. "Pertanggungjawaban Pidana dalam Prespektif Hukum Islam dan Relevansinya terhadap Pembaharuan Hukum Pidana Indonesia." *Al-Mawarid* vol 12, no. 1 (2012). <https://media.neliti.com/media/publications/42556>.
- Nabilla, Alifia Desya, Noor Azizah, dan Ramadani. "Pertanggungjawaban Pidana terhadap Anak Ditinjau dari Hukum Pidana Islam dan UU No. 11 Tahun 2012 tentang SPPA." *Ahkam* vol 2, no. 3 (2023): 573–82.
- Nashrullah, Riza. *Perlindungan Anak dalam Perspektif Nasional dan Internasional*. Jakarta: Prenada Media, 2021.
- Pangemanan, Jefferson B. "Pertanggungjawaban Pidana Anak dalam Sistem Peradilan Pidana Indonesia." *Lex et Societatis* vol 3, no. 1 (2015): 1–12. <https://doi.org/10.35796/les.v3i1.7075>.
- Prema, I. K. A. S, Masruchin Ruba'i, dan Nurini Aprilianda. "Pembatasan Usia Pertanggungjawaban Pidana Anak dalam Peraturan Perundang-undangan." *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* vol 4, no. 2 (2021): 232–41.
- Qardhawi, Yusuf. *Fiqh al-Jinayah dalam Syariat Islam*. Kairo: Dar al-Syuruq, 2015.
- Rachmat. "Perlindungan Hak Anak dalam Perspektif Restorative Justice." *Jurnal Ilmu Hukum Humaniora* vol 5, no. 1 (2021).
- Rina. "Diversi Sebagai Upaya Perlindungan Anak dalam Sistem Peradilan Pidana." *Jurnal Yustisia* vol 7, no. 2 (2019).
- Romadhon, Mohammad Iqbal Fathoni. "Analisis Komparatif Pertanggungjawaban bagi Pelaku Tindak Pidana Anak di Bawah Umur Perspektif Hukum Positif dan Hukum Islam." *UIN KHAS Jember*, 2021. <http://digilib.uinkhas.ac.id/id/eprint/23383>.

- Surabangsa, Bambang, dan Tajul Arifin. "Peradilan Pidana Anak di Indonesia dalam Perspektif Hukum Islam." *Hukum Islam* vol 22, no. 1 (2022). <https://ejournal.uin-suska.ac.id/index.php/hukumislam/article/view/18402>.
- Syamsuddin, M. Arifin. *Hukum Perlindungan Anak dalam Perspektif Nasional dan Internasional*. Yogyakarta: UII Press, 2018.
- Utami, Komang Ayu Kencana, dan Diah Ratna Sari Hariyanto. "Pertanggungjawaban Pidana Anak yang Menjadi Pelaku dan Korban Tindak Pidana serta Penanggulangannya." *Kertha Semaya* vol 9, no. 10 (2021).
- Wijayanti, Desi. *Hukum Pidana Anak di Indonesia: Teori dan Praktik*. Bandung: Refika Aditama, 2021.
- Wulan. "Pertanggungjawaban Pidana Anak dalam Perspektif Maqasid al-Syari'ah." *Jurnal Al-Ahkam* vol 30, no. 1 (2022).
- Yunitasari, Riska. "Dinamika Pembaharuan Batas Usia Perkawinan (Analisis Batas Umur Melangsungkan Pernikahan dalam Hukum Nasional Indonesia)." *Doktrina: Journal of Law*, 2020.
- Zulkifli. "Pertanggungjawaban Pidana Anak dalam Perspektif Fiqh Jinayah." *Jurnal Al-Adalah* vol 22, no. 1 (2021).