



## **The Implementation of Restorative Justice for Children Who Commit Crimes from the Perspective of National Law and the Qanun Jināyat**

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### **Abstract**

This study aims to examine the application of restorative justice for children as criminal offenders under the 2012 Juvenile Criminal Justice System Law (UU SPPA) and the 2014 Qanun Jināyat. The research is an empirical legal study that utilizes a statutory approach and the theory of restorative justice. The findings show that Article 5, paragraph (1) of the 2012 UU SPPA stipulates that children who commit criminal acts (jarimah) must prioritize a restorative justice approach. Moreover, Article 7, paragraph (1) mentions that at the stages of investigation, prosecution, and trial of child offenders in the district court, diversion efforts must be made. The 2014 Qanun Jināyat does not specifically regulate the handling of cases involving children as offenders but refers to laws concerning juvenile justice. It outlines that the handling of children involved in jarimah ikhtilat must follow the procedures set out in the aforementioned laws. However, if a child commits an ikhtilat crime and is investigated by the police, the process must be handled through restorative justice and diversion. The forms of restorative justice resolution include: reconciliation with or without compensation, returning the child to their parents/guardians, social rehabilitation, and religious rehabilitation. This study argues that restorative justice treats children offenders with dignity, focusing on fairness and the best interests of the child. It also demonstrates that the UU SPPA and Qanun Jināyat complement each other in the context of juvenile justice.

Keywords: Restorative Justice; National Law; Islamic law

### **Abstrak**

Penelitian ini bertujuan untuk mengkaji penerapan keadilan restoratif pada anak sebagai pelaku pidana berdasarkan Undang-Undang Sistem Peradilan Pidana Anak (UU SPPA) 2012 dan Qanun Jināyat 2014. Penelitian ini merupakan studi hukum empiris yang menggunakan pendekatan perundang-undangan dan teori keadilan restoratif. Hasil penelitian menunjukkan bahwa Pasal 5 ayat (1) UU SPPA 2012 menetapkan bahwa anak yang melakukan tindak pidana (jarimah) harus mengutamakan pendekatan keadilan restoratif. Selain itu, Pasal 7 ayat (1) menyebutkan bahwa pada tahap penyidikan, penuntutan, dan persidangan perkara anak di pengadilan negeri, upaya diversifikasi harus dilakukan. Qanun Jināyat 2014 tidak secara spesifik mengatur penanganan kasus anak sebagai pelaku pidana, namun merujuk pada peraturan perundang-undangan yang mengatur peradilan anak. Qanun tersebut mengatur bahwa penanganan anak yang terlibat dalam jarimah ikhtilat harus mengikuti prosedur yang diatur dalam undang-undang tersebut. Namun, jika anak melakukan tindak pidana ikhtilat dan disidik oleh pihak kepolisian, prosesnya harus dilakukan melalui keadilan restoratif dan diversifikasi. Bentuk-bentuk penyelesaian keadilan restoratif meliputi: perdamaian dengan atau tanpa ganti rugi, pengembalian anak kepada orang tua/wali, rehabilitasi sosial, dan rehabilitasi keagamaan. Penelitian ini berargumen bahwa keadilan restoratif memperlakukan anak sebagai pelaku pidana dengan martabat, yang berfokus pada keadilan dan kepentingan terbaik bagi anak. Selain itu, studi ini juga menunjukkan bahwa UU SPPA dan Qanun Jināyat saling melengkapi dalam konteks peradilan anak.

Kata Kunci: Restorative Justice; Hukum Nasional; hukum Islam

## **INTRODUCTION**

The issue of children committing crimes, or more commonly referred to as children in conflict with the law (Anak Berhadapan dengan Hukum/ABH), is a significant concern both nationally and internationally. It forms part of the broader efforts to safeguard children's rights

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and ensure justice, involving both government action and community involvement.<sup>1</sup> Various types of legal protection to uphold children's rights can be offered through both formal legal institutions and informal mechanisms within society.<sup>2</sup> Historically, children who commit criminal offenses have been treated the same as adult offenders, facing sanctions and imprisonment. However, under Law No. 11 of 2012 on the Juvenile Criminal Justice System (Undang-Undang Sistem Peradilan Anak/SPPA), children who commit crimes are not subjected to the traditional legal process. Instead, they are handled through diversion, followed by the implementation of restorative justice.<sup>3</sup>

Restorative justice is an approach aimed at addressing injustices by acknowledging the wrongdoings that have occurred, using this recognition as a foundation for repairing the harm caused.<sup>4</sup> The protection of children in conflict with the law is governed by the 2012 SPPA Law, which is rooted in the principle of restorative justice. This approach involves resolving criminal cases by bringing together the offenders, victims, their families, and other relevant parties to collaboratively find a fair solution focused on rehabilitation rather than punishment. Through diversion and restorative justice, the aim is to keep children out of the formal judicial system and shield them from stigmatization, ensuring their reintegration into society in a just manner. Diversion refers to the authority granted to law enforcement officials to exercise discretion in addressing or resolving cases involving juvenile offenders without resorting to formal legal procedures. This may include halting, continuing, or releasing the case from the criminal justice system, or redirecting the offender to the community or other social service programs.<sup>5</sup>

Diversion can be applied at all stages of the legal process and aims to reduce the negative effects of children's involvement in the justice system. Consequently, not all cases involving children in conflict with the law need to be handled through formal legal procedures; they can instead be resolved in a way that prioritizes the best interests of both the child and the victim, using a restorative justice approach. Diversion is not intended to bypass the law or justice, but rather to maintain law and order in society. As key actors in addressing cases involving children in conflict with the law, the police must give careful consideration to the unique needs and circumstances of children. One effective way to prevent children from being incarcerated and stigmatized as criminals is by implementing a diversion strategy through restorative justice.

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<sup>1</sup> Junimart Girsang and Ninne Zahara Silviani, "PROGRESSIVE AND DIVERSION PROCESS: PROTECTION RULE AND ENFORCEMENT OF THE JUVENILE JUSTICE," *Jurnal Komunikasi Hukum (JKH)* 8, no. 1 (2022), <https://doi.org/10.23887/jkh.v8i1.47832>.

<sup>2</sup> Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (2022), <https://doi.org/10.21580/ahkam.2022.32.2.12130>.

<sup>3</sup> Yichen Pan, "Critical Analyse of the Exceptions in Resorting to Restorative Justice When Children Come into Conflict with the Law," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 8, no. 8 (2023), <https://doi.org/10.47405/mjssh.v8i8.2428>.

<sup>4</sup> Nur Rochaeti and Nurul Muthia, "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021), <https://doi.org/10.6000/1929-4409.2021.10.35>.

<sup>5</sup> Hamidah Abdurrachman and Fajar Ari Sadewo, "THE MODEL OF LAW ENFORCEMENT FOR JUVENILE DELINQUENT IN THE PROCESS OF INVESTIGATION BASED ON LAW NUMBER 11 YEAR 2012 CONCERNING JUVENILE JUSTICE SYSTEM," *Jurnal Dinamika Hukum* 16, no. 1 (2016), <https://doi.org/10.20884/1.jdh.2016.16.1.438>.

Restorative justice involves resolving offenses by bringing together the victims and offenders (suspects) for a dialogue.<sup>6</sup>

Restorative justice is a process of resolving disputes outside the formal criminal justice system, involving victims, offenders, the families of both parties, the community, and other stakeholders, with the aim of reaching a mutual agreement and resolution.<sup>7</sup> Restorative justice is seen as a new approach to handling criminal offenses. The implementation of restorative justice under the 2012 SPPA Law mandates that law enforcement officials (investigators, prosecutors, and judges) must consistently pursue diversion at every stage of resolving cases involving children in conflict with the law. Diversion can be described as an action taken by law enforcement officials to address juvenile crime cases outside the formal criminal justice system.<sup>8</sup> In Aceh Qanun No. 6 of 2014, there are no specific provisions for handling *jarimah ikhtilat* cases involving children. However, Article 66 stipulates that the juvenile justice system regulations should guide the investigation of crimes committed by minors. *Ikhtilat* refers to intimate acts, such as making out, touching, hugging, and kissing, between a man and a woman who are not married, with the consent of both parties, whether in private or public places.

Under the law, diversion is given priority in addressing cases involving children who commit offenses. The goal of implementing diversion is to shield the child from the harmful effects of the criminal justice system. The juvenile justice system must focus on safeguarding the best interests of the child. In many instances, however, the juvenile justice process tends to prioritize formal legal procedures over the well-being and interests of the child. Law enforcement is required to pursue diversion in juvenile justice cases. This can be achieved by shifting the resolution of cases involving children from the formal criminal justice system to alternative processes. Children in conflict with the law are initially addressed through diversion, followed by the application of restorative justice

## RESEARCH METHOD

This research is an empirical legal study that employs a statutory approach and the theory of restorative justice. It focuses on legislative analysis, specifically the SPPA 2012 Law and the Qanun Jināyat 2014, regarding children as offenders in adultery cases. The SPPA 2012 Law outlines the procedural mechanisms for handling juvenile offenders in Indonesia, while the Qanun Jināyat 2014 reflects Aceh's implementation of Islamic criminal law, including provisions for adultery. These laws are critically analyzed to identify their alignment with restorative justice principles and their practical implications for juvenile offenders.<sup>9</sup> The theory of restorative justice, in this context, is a legal approach that prioritizes achieving justice and balance for

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<sup>6</sup> Azwad Rachmat Hambali, "Penerapan Diversi Terhadap Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 1 (2019), <https://doi.org/10.30641/kebijakan.2019.v13.15-30>.

<sup>7</sup> Muliani S et al., "Reformulasi Syarat Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 5, no. 2 (2023), <https://doi.org/10.14710/jphi.v5i2.358-373>.

<sup>8</sup> Zul Asfi Siregar, Ismail Malik, and Suwanti, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Melalui Pendekatan Keadilan Restoratif (Restorative Justice)," *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 1 (2022).

<sup>9</sup> Mukti Fajar ND and Yulianto Achmad, *Dualisme Penelitian Hukum, Yogyakarta. Pensil Komunika*, vol. 1, 2007.

offenders while ensuring compensation for the victims. It emphasizes reconciliation and rehabilitation over punitive measures, particularly for vulnerable groups such as children. This approach seeks to address the root causes of the offense while fostering accountability, community involvement, and the reintegration of the child offender into society. Restorative justice is especially significant in the context of Aceh, where Islamic values and cultural norms heavily influence the legal framework.

Data collection was conducted through two methods: in-depth interviews with key informants and a literature review. The interviews provided firsthand insights into the practical challenges and procedural nuances in implementing these laws, as perceived by practitioners in Aceh. The key informants included police officers, prosecutors, judges from the Syar'iyah Court and the District Court, staff from the Social Service, members of Wilayatul Hisbah (sharia police), and officials from Correctional Institutions in Aceh. These diverse perspectives allowed the study to explore the interplay between legal norms, Islamic principles, and local customs in addressing juvenile offenses. The literature review complemented these findings by analyzing academic discussions, statutory provisions, and prior studies on restorative justice and juvenile delinquency in Islamic and Indonesian legal contexts. Together, these methods provided a comprehensive understanding of the issue and highlighted areas for potential reform in juvenile justice practices in Aceh.

## **RESULTS AND DISCUSSION**

### **Child Punishment Through Educational Measures**

Punishment and sentencing as tools for addressing crime are continuously evolving and subject to ongoing debate. This change is a natural process, as people consistently reassess and enhance their well-being based on lessons learned from past experiences.<sup>10</sup> At its core, the history of criminal law is the history of crime and punishment, both of which are closely tied to criminal acts. Crime is a fundamental aspect of the human condition, as it exists wherever there are people—crime is as enduring as society itself.<sup>11</sup> The causes of crime and strategies for its elimination are topics of ongoing debate. This led to the emergence of abolitionism, which argued that prisons were not necessary to combat crime. The 2012 SPPA Law was founded on sociological and philosophical principles, acknowledging that children are crucial to the survival of humanity, the nation, and the state. Given this, it is essential that children receive continuous development—physically, mentally, and socially—while also ensuring their protection.

The Beijing Rules and the Convention on the Rights of the Child (CRC) provide guidelines for dealing with children in conflict with the law. Both the Beijing Rules and the CRC emphasize that children should not be treated the same as adults, and that the deprivation of liberty should be a last resort. These frameworks also ensure children's rights to remain with their parents and

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<sup>10</sup> Andhik Eko Susanto, "PENERAPAN SANKSI PIDANA DAN TINDAKAN TERHADAP ANAK MENURUT UU NO. 11 TAHUN 2012 TENTANG SISTEM PERADILAN PIDANA ANAK," *Mizan: Jurnal Ilmu Hukum* 11, no. 1 (2022), <https://doi.org/10.32503/mizan.v11i1.2666>.

<sup>11</sup> Devi Mardiana and Oci Senjaya, "PERTANGGUNGJAWABAN PIDANA TERHADAP ANAK SEBAGAI PELAKU TINDAK PIDANA PERSETUBUHAN BERDASARKAN SISTEM PERADILAN PIDANA ANAK," *Jurnal Kertha Semaya* 9, no. 2 (2021).

not be separated from them unnecessarily.<sup>12</sup> In addition to addressing the judicial process, the juvenile criminal justice system also focuses on sentencing. Both lawmakers and judges must carefully consider sentencing when deciding on the appropriate sanctions. Punishment should be based on the understanding that the child needs criminal sanctions as a means of rehabilitation.

The 2012 SPPA Law was enacted to ensure that children in conflict with the law are handled more effectively within the criminal justice system, prioritizing the best interests of the child. Punishment is not seen as a solution to the problem; in fact, its application often leads to violations of children's rights. Philosophically, the goal of punishing children is to promote their well-being. However, existing laws suggest that the aim of punishment, in addition to providing legal protection, also carries an element of retribution. Therefore, when determining penalties and measures, judges play a crucial role in selecting appropriate sanctions for children. Law No. 11 of 2012 follows a double-track system, combining both punishment and corrective measures (*maatregelen*). The purpose of punishment is not just to impose criminal sanctions but to provide corrective action. The objectives of punishment and corrective measures are based on different foundational principles. Punishment is intended to cause suffering for the offender as a consequence of their actions, and also serves as a form of reproach.

The main difference between criminal sanctions and corrective actions lies in the presence of a reproach element, rather than the element of suffering. Corrective actions are non-punitive sanctions, designed solely to protect the community from potential threats that could harm its interests.<sup>13</sup> The formulation of the double-track system in the criminal justice process aligns with the objectives of sentencing, with the aim of ensuring the protection of children throughout the judicial process, from investigation to rehabilitation after serving a sentence. The regulations concerning the types of criminal sanctions and corrective actions are outlined in Chapter V, Articles 69 to 83, of the 2012 SPPA Law. Article 71, paragraph (1) addresses principal crimes, while paragraph (2) covers additional crimes, and Article 82 focuses on corrective actions. Article 69 specifies that children who commit criminal acts can only be subjected to sentencing or corrective actions, distinguishing this approach from the provisions in the Criminal Code.

In accordance with Article 69, paragraph (2), children under the age of 14 can only be subject to corrective measures. According to Article 32, detention of a child can only occur under certain conditions: a) The child must be 14 years old or older and suspected of committing a crime punishable by imprisonment for seven years or more. If the crime carries a cumulative sentence involving both imprisonment and a fine, the fine will be replaced with work training. Imprisonment is recognized as potentially causing both philosophical and practical harm. Another drawback of imprisonment is the stigma that child offenders face when reintegrating into society, along with the additional hardships experienced by the offenders and their families. Therefore, a prison sentence should only be imposed as a last resort, after all other forms of sanctions have been exhausted and found ineffective.

Corrective actions can be imposed for a maximum duration of one year and may be proposed by the public prosecutor in the charges, except in cases of crimes punishable by a

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<sup>12</sup> Erna Dewi et al., *Sistem Peradilan Pidana Anak Indonesia Mewujudkan Kepastian Hukum Terbaik Bagi Anak Yang Berhadapan Dengan Hukum, Pertama, Pustaka Yustisia*, vol. 10, 2020.

<sup>13</sup> Dina Ayudectina Posumah, Nontje Rimbing, and Max Sepang, "Prosedur Pelaksanaan Diversi Dalam Sistem Peradilan Pidana Anak," *Lex Privatum XI*, no. 3 (2023).



minimum of seven years of imprisonment. The act of entrusting a child to another person is done in the child's best interest, while the act of caring for a child aims to support parents and guardians in educating and guiding the child. Based on the explanation above, there are alternative sanctions available for children, such as punishment or corrective actions. If the judge determines that the child can still be supported and nurtured within the care of their parents, guardians, foster parents, or another person or institution, corrective action will be imposed.

Punishment and corrective actions are two types of sanctions that may be applied to children. Corrective measures can include returning the child to their parents or guardians, designating them as state children, or, if feasible, assigning community service. The purpose of corrective actions is to continue the child's education and guidance, helping them build a better future. The purpose of punishing children within the criminal justice system includes providing legal protection and ensuring a better future for the child. Imprisonment is one of the alternatives for criminal sanctions, reflecting that punishment serves not only as a form of retaliation but also as a means to deter the child and resolve the conflict.

### **Exploring Restorative Justice for Child Cases Under National Law**

In restorative justice theory, the resolution of legal violations involves bringing together the victims and offenders (suspects) in a meeting to address the conflict. During this meeting, the mediator allows the offender to explain their actions clearly. Restorative justice is a process where all parties involved in a specific crime collaborate to resolve the issue and determine how to address the consequences moving forward. The development of criminal law in Indonesia has led to a shift in the philosophy of juvenile justice, evolving from a retributive approach to a rehabilitative one, and ultimately to restorative justice. The resolution of criminal cases now involves the perpetrator, victim, their families, and other relevant parties working together to find a fair solution, focusing on restoring the situation to its original state rather than seeking retribution. This approach aligns with the concept of diversion, which serves as a key instrument in restorative justice under the 2012 SPPA Law.

Under Article 29 of the 2012 SPPA, investigators are required to attempt diversion within 7 (seven) days from the start of the investigation. The diversion process must be completed within 30 (thirty) days. If an agreement is reached through diversion, the investigator submits the diversion minutes and the agreement to the head of the Sharia Court for a decision. If diversion is unsuccessful, the investigator must continue the investigation and forward the case to the public prosecutor, along with the diversion minutes and social research reports. A diversion agreement is a written document signed by all parties involved, which results from a discussion. The agreement must be approved by the victim and/or the victim's family, as well as the child and their family, with the following exceptions: a) Offenses classified as violations; b) Misdemeanors; c) Victimless crimes; or d) When the victim's loss does not exceed the value of the local provincial minimum wage.

The agreement between the perpetrator and the victim is a crucial element in the process of applying restorative justice, especially in diversion. The agreement serves as the primary foundation for diversion. This process can take place at any stage of the Juvenile Criminal Justice System, from the investigation phase to prosecution, and even during the trial stage. The investigator may initiate diversion during the investigation phase. If diversion is not carried out,

the case will be forwarded to the public prosecutor. Upon receiving the case from the police, the prosecutor will decide whether to transfer the case to court or apply diversion. Once the case reaches the court, the judge will attempt diversion, and if unsuccessful, the case will proceed to a formal trial.

The restorative approach implemented at the Banda Aceh Syariah Court is based on the agreement of the parties involved in the diversion process. This agreement must ensure that the outcome is not burdensome to the child and serves as a lesson to prevent reoffending. The outcomes of the diversion are specified in the diversion agreement. If the diversion process fails to reach an agreement, the juvenile justice process will continue at each stage. In cases where diversion is successful, social reintegration follows. During this process, the child will be placed under the guidance of an institution, such as LPKS, to support their rehabilitation.<sup>14</sup> During the coaching process, the child receives training aimed at personal development. Upon completing the coaching, positive changes may be observed, such as the child expressing regret for their past actions and recognizing that what they did was wrong or shameful. Subsequently, the child is returned to their parents or family. However, in some cases, there may be parents or family members who are unable to forgive or fully accept the child's return to the family.

### **Finding the Concept of Restorative Justice in the Qanun Jinayat**

The penal system in Islamic law differs significantly from the Anglo-Saxon legal system, which is based on transcendental principles. In contrast, Islamic criminal law is rooted primarily in the Qur'an, hadith, and the discretion of the judge. Additionally, in practice, Islamic criminal law is influenced by the opinions of various schools of thought, particularly the four major Sunni schools, Hanafi, Maliki, Shafi'i, and Hanbali.<sup>15</sup> In Islamic law, individuals who commit criminal acts may face charges if they fulfill the conditions of having engaged in prohibited actions willingly, with full awareness of the consequences of their actions.<sup>16</sup> Criminals (*jarimah*) may be subject to punishment if their actions are deemed accountable. Each criminal act must involve elements of unlawfulness; the act must be blameworthy; and it must be recognized as a punishable offense under the law.<sup>17</sup>

In Islamic criminal law, a criminal is referred to as *'uqubah*, meaning punishment or retribution for a crime. According to Abu Zahrah, punishment serves as a form of retribution for the perpetrator's actions, and it is a legal provision (*syara'*) designed to eliminate harm (*mafsadah*), with *mafsadah* itself being understood as a detriment to public welfare.<sup>18</sup> In Islamic law, individuals who commit criminal acts may be held accountable if they fulfill the criteria for unlawful actions, voluntarily engage in the act, and are aware of the consequences of their

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<sup>14</sup> Masngud Afandi and Gunarto Gunarto, "The Legal Protection Against Children Who Did Criminal Actions Through Diversion," *Law Development Journal* 3, no. 2 (2021), <https://doi.org/10.30659/ldj.3.2.283-289>.

<sup>15</sup> Ahmad Naufal Kawakib, "Quo Vadis Hukum Pidana Islam Dalam Sistem Hukum Pidana Indonesia," *Progresif: Media Publikasi Ilmiah* 10, no. 2 (2023), <https://doi.org/10.61595/progresif.v10i2.512>.

<sup>16</sup> Khurul Anam & Inna Qomariyah, "Asas-Asas Hukum Islam Dalam Hukum Modern," *Al Maqashidi* 3, no. 2 (2020).

<sup>17</sup> Makhrus Munajat, *Dekonstruksi Hukum Pidana Islam, NBER Working Papers*, 2019.

<sup>18</sup> Makhrus Munajat, "Transformasi Hukum Pidana Islam Dalam Tata Hukum Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019), <https://doi.org/10.24090/mnh.v0i1.2124>.

behavior.<sup>19</sup> Criminals (jarīmah) may be subjected to punishment if their actions are deemed accountable. Every criminal act must involve elements of unlawfulness, be subject to blame, and qualify as a punishable offense under the law.<sup>20</sup>

In Islamic criminal law, the term 'uqubah refers to punishment or retribution for a crime. According to Abu Zahrah, punishment serves as a form of retribution for the offender, and it is a requirement under syara' to eliminate mafsadah (harm or corruption), with mafsadah itself being something detrimental to societal benefit.<sup>21</sup> In Islam, the core purpose of punishment for perpetrators of a \*jarīmah\* is prevention and retribution (ar-rad'u wa al-zajru), as well as reform and education (al-islah wa al-tahzib). The objective is to ensure that offenders do not repeat their offenses, while also serving as a deterrent to others. Criminal acts in Islam are categorized into three types based on the severity of the punishment: ḥudūd, qiṣaṣ, dīyat, and ta'zīr.<sup>22</sup> Ḥudūd refers to unlawful acts for which the types of punishment are explicitly defined in the nas (text), representing God's right, often referred to as ḥadd punishment. According to Ahmad Wardi, Qiṣaṣ involves imposing a punishment that is equivalent to the crime committed by the perpetrator.<sup>23</sup> Qiṣaṣ can be substituted with dīyat, which refers to financial compensation paid for killing or injuring someone.<sup>24</sup> If the guardian or heir of the deceased pardons the killer in cases of qiṣaṣ, unintentional killing, or killings without malicious intent, dīyat (financial compensation) is required.

Jarīmah ta'zīr refers to offenses that are punishable by ta'zīr sanctions, which are penalties other than ḥudūd, qiṣaṣ, and dīyat. Ta'zīr serves as a form of education, whether imposed by a judge or by parents on their children. Offenses under the ta'zīr category include actions like perjury, giving false testimony, breaking promises, betraying trust, and blasphemy. Punishments are categorized into four types: (1) corporal punishment, which encompasses capital punishment, amputation, flogging, and stoning to death; (2) restriction of liberty, including imprisonment or exile; (3) financial penalties; and (4) a judicial warning issued by the judge.<sup>25</sup> In Islam, prisons or correctional facilities (Lembaga Pemasyarakatan/LAPAS) are considered a form of ta'zīr, a punishment not explicitly outlined in Islamic texts. The decision to impose ta'zīr punishment is entrusted to the authority of the waly al-amri (governing authority) and the judge (qadli). This aligns with the function of LAPAS, which aims to provide a deterrent effect while rehabilitating offenders, thus categorizing it as a form of ta'zīr. However, scholars are divided on the permissibility of imprisonment or the use of LAPAS. Some, particularly from the Hanbali school

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<sup>19</sup> Abdul Syatar, "RELEVANSI ANTARA PEMIDANAAN INDONESIA DAN SANKSI PIDANA ISLAM," *DIKTUM: Jurnal Syariah Dan Hukum* 16, no. 1 (2018), <https://doi.org/10.35905/diktum.v16i1.525>.

<sup>20</sup> Safaruddin Harefa, "PENEGAKAN HUKUM TERHADAP TINDAK PIDANA DI INDONESIA MELALUI HUKUM PIDANA POSITIF DAN HUKUM PIDANA ISLAM," *University Of Bengkulu Law Journal* 4, no. 1 (2019), <https://doi.org/10.33369/ubelaj.v4i1.7303>.

<sup>21</sup> Fauzan, "Alternatives to Criminal Conviction in a Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022), <https://doi.org/10.29240/jhi.v7i1.4308>.

<sup>22</sup> Misran Misran, "KRITERIA JARIMAH TAKZIR," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 2, no. 1 (2018).

<sup>23</sup> Hakim Rahmat, *Hukum Pidana Islam (Fiqh Jinayah)*, Bandung: Pustaka Setia, 2000.

<sup>24</sup> Fitri Wahyuni, *Hukum Pidana Islam (Aktualisasi Nilai-Nilai Hukum Pidana Islam Dalam Pembaharuan Hukum Pidana Indonesia)*, PT Nusantara Persada Utama, 2018.

<sup>25</sup> Wenny Oktaferani, Ariesta Nurlailatul Jannah, and Fariha Ramadhanti, "PENERAPAN SYARIAT ISLAM DALAM SISTEM HUKUM DI PROVINSI ACEH," *Politea: Jurnal Politik Islam* 5, no. 2 (2023), <https://doi.org/10.20414/politea.v5i2.4429>.



and others, argue that imprisonment or incarceration was never an obligation in Islam. They point out that during the time of the Prophet Muhammad (PBUH) and Caliph Abu Bakr, there were no prison institutions, and neither of them ever incarcerated individuals; instead, they would resort to exile for those who needed to be removed from society.

Islam prescribes various types of punishment, each serving a distinct purpose. For instance, the death penalty for intentional murder is intended to prevent personal vengeance from the victim's family. However, if the family chooses to forgive, the offender may instead face alternative punishments, such as paying a fine (dīyat) as an expression of remorse, along with compensation to the victim's relatives.<sup>26</sup> In Islamic law, punishment for children is not explicitly defined because a child is considered a trust from Allah SWT, who must be cared for and nurtured to the best of one's ability. Therefore, when a child commits a crime, the child is not held directly accountable, and instead, the responsibility falls on the parents or guardians. Under Islamic law, children cannot be held criminally accountable for ḥudūd, qiṣaṣ, dīyat, or ta'zīr. Islam places the responsibility of educating children on the parents, and if a child engages in wrongdoing, it suggests a failure on the part of the parents to fulfill this duty. In Islam, children are regarded as a "trust" that must be upheld, and it is the parents' responsibility to raise and guide them in accordance with religious principles. However, Islam provides leniency in this matter, as indicated by a hadith that suggests a child is considered "innocent" (rat al-qalam) until they reach puberty (aqil baliqh), which is marked by the onset of "dreams" (ihtilam) in boys and menstruation in girls.<sup>27</sup>

If a child commits theft or murder, they cannot be subjected to punishment. Wahbah al-Zuhaylī explained that, in the context of Islamic jurisprudence (fiqh), the child's actions do not qualify as a criminal act (jināyah) and therefore cannot be treated as such.<sup>28</sup> In Islamic law, criminal responsibility is based on the ability to reason and make choices (irādah and ikhtiar). A child's status is viewed differently depending on the stage of their life. The elements of a jarīmah in Islamic criminal law are: 1. clear prohibitions and threats outlined in the texts; 2. the behavior that constitutes the criminal act; and 3. the fact that the perpetrator is mukallaf, meaning they are accountable for their actions due to reaching a level of mental and legal maturity.<sup>29</sup> In principle, individuals who commit a jarīmah are subject to punishment; however, certain individuals may be exempt from punishment, such as those who are intoxicated, mentally ill, or not yet of legal age.

According to Abdul Qadir Audah, children are only subject to ta'dibi, which is a corrective punishment aimed at educating them without causing harm to their mental well-being. Since ta'dibi is not classified as a crime, a child cannot be regarded as a repeat offender, even if they commit the same act again.<sup>30</sup> In Islamic law, there is no normative basis for imposing criminal sanctions on children, especially imprisonment. Instead, the role of the waliy al-amri

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<sup>26</sup> Sri Wulandari, "Efektifitas Sistem Pembinaan Narapidana Di Lembaga Pemasyarakatan Terhadap Tujuan Pemidanaan," *Hukum Dan Dinamika Masyarakat* 9, no. 2 (2012).

<sup>27</sup> B Ramadi, "Fikih; Antara Teori Dan Praktik Serta Isu-Isu Kontemporer," *Diktat*, 2022.

<sup>28</sup> Salman Abdul Muthalib, "Analisis Kepentingan Terbaik Bagi Anak Dalam Hukum Jinayat," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 2021.

<sup>29</sup> Agustin Hanapi and Heri Fuadhi, "Perlindungan Terhadap Anak Dalam Analisis Undang-Undang Perlindungan Anak Dan Qanun Jinayat," *MAQASIDI: Jurnal Syariah Dan Hukum*, 2023, <https://doi.org/10.47498/maqasidi.v3i2.2123>.

<sup>30</sup> Hani Sholihah, "Perbandingan Hak-Hak Anak Menurut Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Dan Hukum Islam," *Al-Afkar, Journal For Islamic Studies* 1, no. 2 (2018).

(government) comes into play, as the appropriate sanction for children is ta'dibi—a corrective measure. A child cannot be punished for committing a jinayah because they do not meet the criteria of ahl al-'uqūbah (those eligible for punishment).

Islamic law does not impose strict limitations on disciplinary sanctions for children, leaving the determination of punishment to the government. Some scholars of fiqh argue that reprimands and physical discipline, such as beatings, are part of ta'dibi (corrective measures). The waliy al-amri (government) has the authority to impose such sanctions on children, taking into account the context of time and place. These punishments could include reprimands or even placing the child in institutions such as prisons or educational facilities. Since a child is not yet considered to have reached the level of taklif (legal responsibility), the punishment imposed is not meant to penalize, but rather to serve an educational and preventative purpose, helping to prevent the child from repeating the offense.

The provisions regarding primary criminal sanctions and corrective actions for children are outlined in Articles 71 and 38 of the 2012 SPPA Law. However, Qanun No. 6 of 2014 does not specifically regulate the sanctions applicable to children who commit ikhtilaṭ. According to Article 25, paragraph (1), adults who intentionally commit the crime of jarīmah ikhtilaṭ are subject to a punishment of lashing up to 30 times, a fine of up to 300 grams of pure gold, or imprisonment for up to 30 months. For children who commit jarīmah ikhtilaṭ, the sanctions are limited to a maximum of one-third of the punishment prescribed for adults.

Article 67 of Qanun Number 6 of 2016 stipulates:

- (1) If a child who is at least 12 years old but has not yet reached the age of 18 or is unmarried commits a jarīmah, the child may be subject to a punishment of up to one-third of the penalty prescribed for adults. Alternatively, the child may be returned to their parents/guardians or placed in a facility provided by the Aceh Government or the local District/City Government.
- (2) The procedures for implementing punishment against children, where not regulated by existing laws and regulations on juvenile justice, will be outlined in a Governor's Regulation.

Governor Regulation No. 5 of 2018, which addresses the Implementation of Jināyat Procedural Law concerning punishments for children, outlines the forms of punishment for children aged 12 to 18 years in Articles 38 to 41. According to Article 38, the following forms of punishment may be applied:

- a. Whipping
- b. Confinement
- c. Imprisonment
- d. Fines
- e. State-sponsored rehabilitation
- f. Return to the custody of their parents.

Islamic law defines punishment differently from secular law's definition of crime. The key distinction is that in Islamic criminal law, the concept of crime is rooted in Shari'a, and it is an integral part of the Islamic aqeedah (creed), which every Muslim must believe in as a fundamental aspect of their faith. The concept of punishment in Islamic law is grounded in religious teachings, with all provisions related to punishment—both as legal norms and principles—derived from the Qur'an and hadith. As such, punishment in Islam serves as a deterrent, motivating Muslims not to commit crimes, not merely out of fear of legal consequences, but also from the fear of violating

divine commandments and facing punishment in the hereafter. To align with the Islamic creed, punishment must be viewed through the lens of Islamic principles, as Islam is a faith that seeks to bring mercy and benefit to all humanity.

The Islamic approach to punishment is intended to serve the welfare of every individual, regardless of their ethnicity, race, nationality, or religion. This is evident in the objectives of punishment outlined in Islamic criminal law. The implementation of restorative justice for children who commit criminal offenses, as outlined in the 2014 Qanun Jināyat, emphasizes sanctions that focus on education and guidance. This approach reflects the principle that Islamic criminal law seeks to benefit all individuals, particularly when the offenders are children who have not yet reached full maturity. One clear indication of this is found in the objectives of punishment in Islamic criminal law, which are designed not only to deter crime but also to impart educational value to the offender

## **CONCLUSION**

The conclusion should answer the objectives of the research and research discoveries. The concluding remark should not contain only the repetition of the results and discussions or abstract. You should also suggest future research and point out those that are underway. The approach to handling children as criminal offenders through restorative justice, particularly in cases of \*jarimah ikhtilaḥ\*, takes into account several factors, including the nature and severity of the offense, the circumstances surrounding the crime, the child's attitude toward the offense, the response of the child's parents or family, and efforts to make amends or seek forgiveness from the victims. The goal of restorative justice is to prevent children from entering the formal judicial system, thereby avoiding the stigma of criminalization. This approach positively influences the physical, psychological, and social development of children, allowing them to maintain healthy interactions with their communities. This study highlights that restorative justice for children involved in ikhtilaḥ offenses reflects a legal framework that is fair, respects children's dignity, and prioritizes their best interests. The sanctions imposed are educational in nature, designed to rehabilitate rather than punish, fostering a sense of justice. Additionally, the Qanun Jināyat, which governs criminal offenses in the region, complements the SPPA (Child Protection) Law by specifying that for children under 18, the legal process should align with both the national law and the provisions outlined in the Qanun Jināyat.

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