

State Policies and Islamic Law Regarding Juvenile Punishment for Theft

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Abstract

The development of an increasingly sophisticated era certainly has an impact on children, both positive and negative impacts. Due to the absence of maximum direction and assistance to children, children can at any time do disgraceful acts. When children are involved in the crime of theft, they will be faced with the law and processed. Therefore, there is a need for special guidance and assistance from parents and parties whose status and roles have been recognized as external companions for these children. In this research, the writer uses descriptive qualitative research method with normative juridical research type. The analysis was conducted to determine the form of state and Islamic protection against children who are perpetrators of the crime of theft. The results of the study state that the judge can give a decision on the case of a child crime case of theft. However, legal protection is needed for children who do not commit the crime of theft, considering that they are still underage and still need to be given more maximum attention and guidance. The state protects children because their future is also the future of the state. Every level of society in Indonesia is obligated to provide moral support and guarantee that children in dispute with the law are not excluded from the social environment and society, and that they continue to obtain an appropriate education so that their futures are secure. So that youngsters affected by this law do not feel alienated, continued enjoyment of the nation's youth is possible.

Abstrak

Perkembangan zaman yang semakin hari semakin canggih tentu berdampak terhadap anak-anak, baik itu dampak positif maupun dampak negatif. Karena tidak adanya pengarahan dan pendampingan yang maksimal terhadap anak-anak membuat anak-anak sewaktu-waktu dapat melakukan perbuatan-perbuatan tercela. Saat anak-anak terlibat tindak pidana pencurian, maka akan berhadapan dengan hukum dan diproses. Karenanya perlu adanya bimbingan dan pendampingan khusus dari orangtua dan pihak-pihak yang telah diakui status dan perannya sebagai pendamping eksternal untuk anak-anak tersebut. Dalam penelitian ini penulis menggunakan metode penelitian kualitatif deskriptif dengan jenis penelitian yuridis normatif. Analisis dilakukan untuk mengetahui bentuk perlindungan negara dan Islam terhadap anak pelaku tindak pidana pencurian. Hasil penelitian menyatakan bahwa hakim dapat memberikan putusan terhadap kasus tindak pidana anak kasus pencurian. Namun demikian, diperlukan perlindungan hukum kepada anak-anak yang melakukan tindak pidana pencurian tersebut, mengingat usia mereka masih dibawah umur dan masih perlu diberikan perhatian dan bimbingan yang lebih maksimal lagi. Anak-anak dilindungi oleh negara, karena masa depan mereka adalah masa depan negara. Setiap lapisan masyarakat di Indonesia wajib memberikan perhatian dan



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dukungan moril dan memastikan tidak ada anak-anak yang sedang berhadapan hukum mendapatkan diskriminasi dari lingkungan sosial dan masyarakat, serta tetap memastikan bahwa anak-anak tersebut tetap masih bisa terus mendapatkan pendidikan yang layak agar masa depan anak-anak bangsa tetap terus bisa dinikmati sehingga anak-anak yang pernah berhadapan dengan hukum ini tidak merasa diasingkan.

A. INTRODUCTION

1. Background

In recent years, the occurrences in society indicate that the frequency of criminal activities perpetrated by youngsters has increased. This is a common occurrence in both print and electronic media coverage of crimes affecting minors. Various factors contribute to the occurrence of deviant criminal behavior in youngsters. Among them are the negative effects of rapid development, the flow of globalization in the field of communication and information, advances in science and technology, and changes in lifestyle, all of which result in fundamental social changes in people's lives, particularly affecting the values and behavior of children. In addition, children who lack or do not receive affectionate guidance, guidance in the development of attitudes and behaviors, and supervision from their parents, guardians, or foster parents will be easily dragged into unhealthy relationships, resulting in negative effects on their personal development. Even yet, this can provide youth with opportunities to do criminal activities. Although children can select their own movements and acts based on their own thoughts, emotions, and wants, their environment can impact their conduct, especially their propensity to do wrong.¹

In essence, children lack the ability to defend themselves against activities that inflict physical, emotional, and social harm in numerous aspects of life. Children who perform deviant or illegal behaviors must also be afforded protection, particularly in the application of criminal justice for children who are not their own. The application of rules and regulations that inflict emotional, physical, and social harm to children must be prevented.²

In accordance with Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System, children in conflict with the law consist of children in conflict with the law, children who are victims of criminal actions, and children who are witnesses to criminal activities. In the meantime, a kid in conflict with the law, hereafter referred to as a child, is a child between the ages of 12 and 18 who is accused of committing a crime or being a perpetrator of a crime. Children who are victims of criminal actions, henceforth referred

¹ Tambalean, Pingkan V. *Penegakan Hukum Atas Tindak Pidana Pencurian Yang Dilakukan Oleh Anak Di Bawah Umur*. *Lex et Societatis*, Vol. I, No. 2, April-Juni 2013. DOI: <https://doi.org/10.35796/les.v1i2.1746>

² Maidi Gultom. *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Anak di Indonesia*. Bandung: Rafika Aditama, 2008, p.2.

to as child victims, are those under the age of 18 who suffer physical, mental, and/or financial harm as a result of illegal crimes.³

Crime is more accurately defined as pain that is intentionally imposed or supplied by the state to a person or persons as a legal consequence (sanctions) for his activities that breach criminal law prohibitions. In particular, this criminal law prohibition is referred regarded as a crime (*strafbaar feit*).⁴

Article 69, paragraph 1 of Law No. 11 of 2012 on the Juvenile Criminal Justice System stipulates that only 14-year-olds are subject to action (1). In the meanwhile, youth between the ages of 12 (twelve) and 18 (eighteen) may be liable to a criminal penalty. Article 70 states, "The lightness of the act, the child's personal condition, the situation at the time the act was committed, or subsequent events may be used as a basis for courts to consider not imposing a sentence or action taking into account justice and humanity."⁵

Due to the sheer number of occurrences that are reported on by the media, youngsters have become more aggressive and dishonest. Children who are depicted as being helpless and defenseless are unable to understand what constitutes appropriate and inappropriate behavior. The commencement of criminal behavior in children by a deviant attitude toward societal norms is sometimes referred to as juvenile delinquency, which is a word that is often used to characterize the phenomenon. These kinds of abnormal attitudes almost often result in criminal activity, which is what we mean when we talk about juvenile delinquency.⁶

The sanctions that can be imposed on naughty children are in the form of criminal sanctions and actions. In Article 23 paragraph (2) of Law Number 3 of 1997 concerning Juvenile Court, the types of criminal sanctions that can be imposed on perpetrators of child crimes are:⁷ a). Principal Crimes, namely: 1). imprisonment; 2). Criminal detention; 3). Criminal fines; 4). surveillance crime. b). Additional Criminal, namely: 1). confiscation of certain goods; 2). Compensation payment.

Regarding the sanctions for actions that can be imposed on perpetrators of child crimes based on Article 24 paragraph (1) of Law Number 3 of 1997 concerning Juvenile

³ Rudy Bangun; Kristiawanto; Diah Sulastris Dewi. *Penerapan Diversi Sebagai Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Pencurian Dalam Sistem Peradilan Pidana Anak*. Jurnal Pengabdian Masyarakat: DIKMAS. Volume 02, (2), June, 2022. DOI: <http://dx.doi.org/10.37905/dikmas.2.2.391-402.2022>

⁴ Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1*. Jakarta: PT RajaGrafindo Persada, 2014, p. 24.

⁵ Hadi Setia Tunggal, *Undang-Undang RI Nomor 11 tahun 2012 tentang Sistem Peradilan Pidana Anak*, Jakarta: Havarindo, 2003, p. 38.

⁶ S Kusumaningrum, *Penggunaan Diskresi dalam Proses Peradilan Pidana*, Jakarta: UI Press, 2014.

⁷ Pasal 23 ayat (2) Undang-Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak

Court, that there are three kinds of sanctions, namely:⁸ a). Return to parent, guardian or foster parent; b). Returning to the state to participate in education, coaching, and job training; c). Submit to the Ministry of Social Affairs or Social Organizations engaged in education, coaching, and job training.

According to the Child Protection Law System, the imposition of appropriate sanctions in the best interests of children is carried out through rehabilitation efforts. Children in conflict with the law are the responsibility of the government and society. Law Number 35 of 2014 Amendments to Law Number 23 of 2002 concerning Child Protection in Article 59 jo. Article 64 paragraph (1) and paragraph (2). In the article it is explained that the punishment of children is not merely punishment, but rehabilitation in the context of education and prevention. Thus, giving punishment to children is not as pain, but as guidance, so that with coaching it is hoped that children can realize their actions and can return to the midst of society to continue their future.⁹

Protection and realization of the rights of children, especially legal protection for children in confrontation with the law. International and national legal instruments contain provisions pertaining to the legal protection of children in confrontation with the law.¹⁰ First: Legal protection for children in conflict with the law can be found in the following international instruments: a) Universal Declaration of Human Rights; b) the International Covenant on Civil and Political Rights (ICCPR) or the 1966 International Covenant on Civil and Political Rights; c) the International Covenant on Economic and Social Rights (ICESCR) or the 1966 International Covenant on Economic, Social and Cultural Rights; d) Convention on the Rights of the Child or the Convention on the Rights of the Child (CRC); e) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).¹¹ Second: Legal Protection for Children in Conflict with the Law Based on National Legal Instruments, namely: a) the 1945 Constitution of the Republic of Indonesia; b). Law Number 39 of 1999 concerning Human Rights; c). Law Number 4 of 1979 concerning Child Welfare; d). Law Number 35 of 2014 concerning

⁸ Pasal 24 ayat (1) Undang-Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak.

⁹ Pasal 43 ayat (1) Undang-Undang Nomor 3 Tahun 1997 Tentang Pengadilan Anak.

¹⁰ Ikrima Asya Wirantami; Eko Purwoto Soponyono, *Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana Pencurian Dengan Pemberatan (Studi Putusan Nomor 33/Pid.Sus-Anak/2018/PN Smg)*. Diponegoro Law Journal, Volume 10, Nomor 3, 2021.

¹¹ Enshen LiEnshen, LiMingyue Su, *From Punishment to Control: Assessing Juvenile Diversion in China*, Law & Social Inquiry 45(2) 2020, p.1-26. DOI: 10.1017/lis.2019.70

Amendments to Law Number 23 of 2002 concerning Child Protection; e). Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

There are a number of causes for these children's criminal behavior, including parental neglect, social media, promiscuity, alcohol and drugs. Some cases involving minors are subject to diversion. Giving law enforcement officers the authority to take policy actions in dealing with or resolving the problem of juvenile offenders without taking formal steps, including stopping or not continuing/releasing from the criminal justice process or returning/handing over to the community and other forms of diversion other forms of social service activities, is the definition of diversion.¹²

From the discussion above, the writer focuses on the following three questions: how is child protection based on the laws and regulations in Indonesia? What are the legal efforts and protection for children who are perpetrators of criminal acts in the stages of arrest, detention and investigation of criminal acts of theft? What is the Islamic recommendation in the case of a child committing the crime of theft?

2. Methods

In this study, qualitative research methodologies were employed. This sort of research is descriptive research, which is a problem-solving technique studied by describing the existing state of the subject or target of inquiry based on observable facts.¹³ The author relies on library research and data collection. The analysis is based on a dynamic relationship paradigm between theories, concepts, and data, which is a constant feedback or adjustment of theories and concepts in light of the data acquired. Second, there is a wide variety in the studied data, each of which has its own unique set of foundational characteristics. Third, the investigation necessitates the availability of detailed information because the data to be studied is extensive and forms a unified whole (holistic).¹⁴

¹² Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Pidana Anak di Indonesia*, Yogyakarta: Genta Publishing, 2003.

¹³ Soerjono Soekanto; Abdul Rahman. *Metode Penelitian Hukum*. Jakarta: Rineka Cipta, 2003, p. 23.

¹⁴ M Siregar, *Perdagangan Internasional dan Penanaman Modal: Studi Kesiapan Indonesia dalam Perjanjian Investasi Multilateral*, Medan: Sekolah Pascasarjana Universitas Sumatera Utara, 2005.

B. DISCUSSION

1. Child Protection Based on Legislation in Indonesia

Legal protection is to provide protection for human rights that have been harmed by others, and this protection is given to the community so that they can enjoy all of the rights granted by law, or, to put it another way, legal protection is the various legal remedies that must be provided by law enforcement officials in order to provide a sense of security, both mentally and physically, from interference and various threats from any party.¹⁵

The definition of a child based on the Juvenile Criminal Justice System (SPPA) law is a child who is not yet 12 years old and not yet 18 years old. Differences between children are related to crime in three categories, namely: 1). Children who commit crimes (Article 1 point 3 of the SPPA Law); 2). Children who are not criminal victims (child victims) (Article 1 point 4 of the SPPA Law); 3). Children who are witnesses to criminal acts (children witnesses) (Article 1 point 5 of the SPPA Law).

Children are different from other adult humans, both physically and mentally. Child protection is a legal protection that brings legal consequences, therefore there is a need for a legal guarantee. In Article 34 paragraph (1) of the 1945 Constitution which reads "The poor and neglected children are cared for by the State."¹⁶

Juvenile delinquency is one of the government's most pressing concerns in Indonesia's fight against crime. Children should be an integral component of human, national, and state survival. The 1945 Constitution Article 28 B paragraph explains that the state ensures the right of every child to survival, growth, and development, as well as the right to be protected from violence and discrimination. This gives children a strategic position in the constitution (2).¹⁷

¹⁵ Satjipto Rahardjo, *Ilmu hukum*. Bandung: Citra Aditya Bakti. Cetakan ke-V, 2000, p. 53.

¹⁶ Undang-Undang Dasar 1945.

¹⁷ Friwina Magnesia Surbakti, Rizkan Zulyadi, *Penerapan Hukum terhadap Anak sebagai Pelaku Tindak Pidana Pencurian dengan Kekerasan*. Journal of Education, Humaniora and Social Sciences (JEHSS). Vol 2, No. 1, Agustus 2019, p. 143 -162, DOI: <https://doi.org/10.34007/jehss.v2i1.58>

Even when he has committed a crime, a 12-year-old youngster cannot be brought before a juvenile court.¹⁸ This conclusion is founded on sociological, psychological, and educational evidence that the 12-year-old youngster cannot account for his behavior.¹⁹

In Law Number 11 of 2012 regarding the Juvenile Criminal Justice System, specifically regarding sanctions against children, it is determined based on the age difference, namely, children aged 14 years are only subject to action, according to Article 69 paragraph (1), whereas children who have reached the age of 14 above 12 years old up to 18 years old are sentenced. Article 70 states, "The lightness of the act, the child's personal condition, the situation at the time the act was committed, or subsequent events may be used as a basis for courts to consider not imposing a sentence or action taking into account justice and humanity."²⁰

The present juvenile justice system is governed by Law No. 11 of 2012. In the mechanism of the process, it must undergo a formal procedure, just as adults do, such as the absence of a criminal conviction, which removes the maker's ability to be held responsible for an act. This lengthy legal procedure has prompted scientists and law enforcement agencies to consider developing as many alternatives as possible to keep youngsters out of the formal judicial system.

Restorative justice is an approach to problem-solving that focuses on criminal activities including perpetrators, victims, the families of perpetrators and victims, and other associated parties. Rather than focusing vengeance or punishment for abusers, solutions to difficulties encountered by both perpetrators and victims should focus on restoring normalcy (Article 1 paragraph 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System).

The protection of children as perpetrators of the crime of theft is as follows: First: The principle of protection in Law Number 11 of 2012. Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System clearly states the principles of child protection, namely: a). Protection Principle; b). Principles of Justice; c). Principle of Non-Discrimination; d). the principle of the best interests of the child; e). The principle of

¹⁸ Jazz Robson, Sharyn Graham Davies, *Juvenile (In)justice: Children in Conflict with the Law in Indonesia*, Asia Pacific Journal on Human Rights and the Law Vol. 17 (1), p.119-147. DOI: 10.1163/15718158-01701009

¹⁹ Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak*. Yogyakarta: Laksbang Grafika, 2013, p. 88.

²⁰ Hadi Setia Tunggal, *Undang-Undang RI Nomor 11 tahun 2012 tentang Sistem Peradilan Pidana Anak*. Jakarta: Havarindo, 2003, p. 38.

respect for children's opinions; f). the principle of survival and child development; g). Principles of Guiding and Guiding Children; h). Proportional principle; i). The principle of deprivation of liberty and punishment as a last resort; and j). The principle of avoidance of retaliation.

Second: Children's Rights in Law Number 11 of 2012, Article 3 reads: Every child in the criminal justice process has the right to: a). Treated humanely by taking into account the needs according to their age; b). Separated from adults; c). Obtain legal and other assistance effectively; d). Carry out recreational activities; e). Free from torture, punishment or other cruel, inhuman, and degrading treatment of their dignity; f). Not sentenced to death or life imprisonment; g). Not arrested, detained, or imprisoned, except as a last resort and for the shortest time; h). Obtain justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public; i). His identity is not published; j). Obtain assistance from parents/guardians and people who are trusted by the child; k). Obtain social advocacy; l). Acquire a personal life; m). Gaining accessibility, especially for children with disabilities; n). Obtaining education; o). Obtaining health services; p). Obtain other rights in accordance with the provisions of the legislation.²¹

Then in article 4 it is also stated that a child who is undergoing a criminal period has the right to: a). get a reduced sentence; b). gain assimilation; c). obtaining leave to visit family; d). obtain parole; e). obtain leave before being released; f). obtain conditional leave; and g). obtain other rights in accordance with the provisions of the legislation.

The basis for implementing child protection are: 1). Philosophical basis; Pancasila's basic activities in various fields of family, community, state and nation life are based on the philosophical implementation of child protection. 2). Ethical basis; the implementation of child protection must comply with the relevant professional ethics, to deviate behavior in the exercise of authority, power and power for the implementation of child protection to prevent. 3). Legal Basis; The implementation of child protection must be based on the 1945 Constitution and various other applicable laws and regulations, the application of this legal basis must be interesting, namely the implementation of integrated laws and regulations of various related jurisdictions.

In the implementation of protection for children, the state and government are obliged to provide responsibility and support to these children. The government is

²¹ Pasal 3 Undang-undang Nomor 11 tahun 2012

obliged to provide learning infrastructure, bring teachers, and also tools for learning, as well as provide health services as appropriate.

To be held accountable for their acts, children have not been able to protect themselves from conditions that cause harm. In the face of some minor infractions of the law, the government is not required to initiate criminal action to achieve this objective. A violation of the law is not necessarily accompanied with a criminal sanction. Because the primary objective of the penalty is to protect the community and the offender, rather than to exact revenge.

For juvenile punishment, there is a minimum and maximum age at which a minor may commit a crime. In relation to the purpose of punishment, it can be concluded that punishment is not of an independent nature, but rather consists of a combination of social actions that are intended to produce useful results, are felt by both criminals and the community, and constitute the suffering inflicted on criminals.

2. Protection of the Law and Efforts to Arrest and Confine Juvenile Offenders During the Theft Investigation Phase

A judge's decision to punish a minor criminally serves as both an education and a guidance for the youngster to help him or her avoid repeating the behavior that got them into trouble in the first place. Sanctions for action are highly suitable to apply on children because the goal of punishment is to teach and better those who have committed crimes so that they can become better people.²²

Theft is an illegal act from a legal perspective. Theft, from a sociological perspective, is an act or behavior that, in addition to causing harm to the victim, is also extremely harmful to society, specifically in the form of a loss of equilibrium, peace, and order.

The limitation of theft in accordance with Criminal Code article 363 paragraph (5), if the theft is not committed in a house or a closed yard where there is a house, and if the value of the stolen goods does not exceed twenty-five rupiah, is subject to, for minor theft, a maximum of three months in prison and a maximum fine of sixty thousand rupiah.²³

In Article 1 number 2 of the Law of the Republic of Indonesia Number 3 of 1997 pertaining to Juvenile Court, the minimum and maximum age limits for a child who can be

²² Friwina Magnesia Surbakti, Rizkan Zulyadi, *Penerapan Hukum terhadap Anak sebagai Pelaku Tindak Pidana Pencurian dengan Kekerasan*. Journal of Education, Humaniora and Social Sciences (JEHSS). Vol 2, No. 1, Agustus 2019, pp.143 -162, DOI: <https://doi.org/10.34007/jehss.v2i1.58>

²³ Kitab Undang-Undang Hukum Pidana (KHUP).

held accountable for his or her actions are set at 8 years old and 18 years old, respectively, if unmarried and unattached with bad boys:²⁴ a). a child who commits a crime; b). a child who commits an act that is declared prohibited for a child, either according to the laws and regulations or according to other legal regulations that live and apply in the community concerned.

Handling child cases that are not distinguished from adult cases is deemed inappropriate because such a system will harm the interests of the child concerned. For example, children will feel stressed and afraid so they become more quiet and less creative. For this reason, the government has passed a law regarding children, especially for children who have committed criminal acts in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

There are two categories of child behavior that require him to deal with the law, namely: 1). Offense status is juvenile behavior that, if committed by an adult, is not considered a crime, such as disobedience, truancy or running away from home; 2). Juvenile delinquency is juvenile behavior which, if committed by adults, is considered a crime or a violation of the law.

The application of criminal justice to children in confrontation with the law will simply stigmatize them as criminals and set them up for future failure and disaster. The resolution of criminal proceedings involving juvenile offenders is also possible through diversion. The origin of the term diversion is the English word diversion, which denotes avoidance or diversion. Diversion is the granting of authority to law enforcement officers to take policy actions in dealing with or resolving the problem of juvenile offenders without taking formal steps, including stopping or not continuing/releasing from the criminal justice process or returning and submitting to the community and other social service activities. Article 1 number 6 of the SPPA Law defines Restorative Justice as the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a just settlement by pressing the restoration back to its original state, as opposed to retaliation.²⁵ The Juvenile Criminal Justice System must prioritize the Restorative Justice method, according to Article 5, paragraph 1. The SPPA Law defines Restorative Justice as the obligation to implement diversion. The primary objective of diversion is to avoid the harmful effects of

²⁴ Pasal 1 angka 2 Undang-Undang Republik Indonesia Nomor 3 Tahun 1997 Tentang Pengadilan Anak.

²⁵ Pasal 1 angka 6 Undang-Undang No 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak.

punishment. The purpose of diversion is also to ensure that children grow and develop physically and mentally. The implementation of the process of diversion involves thought. Diversion Deliberation involves the kid and his/her parents/guardians, victims and/or their guardians, community advisors, professional social workers, and possibly social welfare workers and/or the community.²⁶

To carry out an examination in children's matters, it is not necessary to conduct an examination of cases against adults, but must be carried out through family methods and certain places.²⁷

Judging from the rights granted to investigators in order to carry out investigations that have been regulated by the Criminal Procedure Code in the following articles: 1). Article 7 paragraph (1) investigators have the obligations and authorities as referred to in Article 6 paragraph (1) letter a; 2). Article 7 paragraph (2) investigators as defined in article 6 paragraph (1) letter b have the authority that has been regulated by law which is the basis for investigators in carrying out their duties which are under coordination under the supervision of investigators Article 6 paragraph (1) letter a; 3). For the implementation of investigators, it is obligatory to uphold the applicable law as referred to in paragraphs (1) and (2).

Investigation is not only governed by the Criminal Procedure Code, but also by Law No. 11 of 2012 concerning the juvenile justice system in Article 26 paragraph (1), which regulates the investigation of children's problems by official investigators on the basis of a decision by the police chief or Indonesians designated to handle the case.

Before the emergence of the theory of restorative justice in the settlement of perpetrators of violations, a repressive approach has been used, namely by suppressing perpetrators who have violated the law and who have provided reciprocal justice, prioritizing retaliation against perpetrators in the form of punishment. In fact, there is a mistake if the perpetrator can be held accountable for his actions, after serving the sentence and cannot give satisfaction to the victim, thus creating a prolonged grudge against the perpetrator and can lead to other crimes. This is because there has not been a complete problem solving between the perpetrator and the victim's family, because in the

²⁶ Pasal 1 Angka (1) PERMA No 4 Tahun 2004 tentang Pedoman Pelaksanaan Diversi dalam Sistem Peradilan Pidana Anak.

²⁷ Moch. Faisal Salam, *Hukum Acara Peradilan Anak di Indonesia*. Bandung: Mandar Maju, 2005.

implementation of a decision that does not involve the two parties concerned, even though in solving a problem it is obligatory to contribute to those who are litigating.²⁸

Diverting investigators, prosecutors and judges should consider: a). The crime category is an indicator that the lower the crime threat, the higher the priority for intimidation. This disturbance is not intended to be carried out against perpetrators of serious crimes such as murder, rape, drug trafficking and terrorism, which can be punished with a crime of more than 7 (seven) years. b). The age of the child is intended to determine the priority of the disturbance and the younger the child, the higher the priority of diversion. c). Support for family and community environments. While the forms of sanctions in the judiciary with the paradigm of diversion and restorative justice are: a). Restitution; b). Mediation of perpetrators and victims; c). Community restoration; d). Direct services for victims; e). Recover fines.

The investigation process against children includes: 1). Provisions regarding procedural law for juvenile courts are lexspecialist. Likewise, investigations are carried out by child investigators. This is regulated in Article 26 paragraph (1) (2) (3) and (4) which contains the investigation of children; 2). Investigations into cases of children must be carried out by investigators based on the decision of the Chief of Police or other officers appointed by the Chief of Police; 3). Investigation of the children of the victims as well as the children of witnesses were executed by the investigators as referred to in paragraph (1); 4). The requirements that must be determined as a researcher as referred to in paragraph (1); 5). If there is no researcher who meets the requirements as referred to in paragraph 3, the research task must be carried out by a researcher who investigates adult criminal offenses.

The duration of detention at the juvenile investigation level in the first phase is 7 days, if the investigation process is not completed, it will be extended to 8 days, bringing the total to 15 days. As for adults in the research process, adult prisoners are held for the first phase for 20 days and can be extended up to 40 days, bringing the total to 60 days. The arrest and detention of children who violate the law is regulated by article 30 of law number 11 of 2012 concerning the criminal justice system for children.

²⁸ Mansyur Kartayasa, *"Restorative Justice dan Prospeknya dalam Kebijakan Legislasi,"* proposal disampaikan pada Saminar Nasional, Peran Hakim dalam Meningkatkan Profesionalisme. Menuju Penelitian yang Agung, Dilaksanakan, Diselenggarakan IKAHI dalam rangka Ulang Tahun IKAHI ke 59, 25 April 2012.

The arrest of a misbehaving child is identical to the arrest of an adult and is conducted according to Article 19 of the Criminal Procedure Code and includes arrests for longer than 1 (one) day or 24 hours. The length of confinement distinguishes juvenile incarceration from that of adults. As it is well recognized that humans have distinct qualities, desires, and requirements, and that they strive to sustain their lives and pursue a better existence, it is not uncommon to satisfy these desires and needs, which are frequently dissimilar and sometimes even in conflict with those of others.

3. Islamic Recommendations on Juvenile Justice for the Crime of Theft

The secrets of enforcing the criminal penalty for theft include safeguarding the property of Muslims and prohibiting the thief from doing the same. When amassing an abundance of treasures, it is common practice to abuse them. The act of stealing stems from a bad character, a lack of faith in Allah, and a lack of faith in Allah's promises and vows.²⁹

God's punishment for the criminal is primarily for the achievement of good. Allah continues to show favor to the thief by sparing him the loss of his hands, allowing him to continue eating, drinking, and purifying without difficulty. Allah has the greater right to pardon the monotheists and spare them eternal damnation. The thief's left hand is not amputated if he commits the crime a third time, because this would eliminate the hand's role as a grasping device. His right leg will also abolish the function of the foot as a walking tool, preventing him from having trouble walking, defecating, or performing other functions, which also causes him harm.

A second secret is that a thief is not obligated to replace stolen property when punished for a criminal act. He was exempt from these two extremely hefty loads. Surely Allah will not allow his servant to suffer the loss of soul and faith upon his demise. A second secret is that the theft of tiny amounts of property does not result in the amputation of the culprits' hands. Allah established a precise measure for stolen goods, which is 10 dirhams, in order to execute the punishment.

The amount is the consensus of the scholars, while below that amount is still disputed. This is because the amount dirham is in addition to being the largest number, it

²⁹ Abu Abdillah Muhammad bin Abd Ar-rahman Al-Bukhari, *Keagungan dan Keindahan Syariat Islam*, (Bandung: Cv Puataka Setia, 1999), p. 124.

is also generally very tempting. On the other hand, the treasures below are usually considered trivial and not tempting.

Another hidden fact is that Allah permits his slaves to plunder his wealth (in the form of gold and silver) stashed in the earth's depths because he is wealthy, but he forbids them to plunder the wealth of another of his servants (who is an infidel) because he is a kaffir. When someone steals, it's as if Allah Himself told them to do it. It's another secret that a thief can reduce his sentence by half if he turns himself in before being caught. Allah swt said in verse 34 of the Qur'an Al-Ma'idah, "Unless people repent (among them) before you can control them (arrest them), then know that Allah is Forgiving, Most Merciful."³⁰

Therefore, a thief who returns the item that they have stolen does not need to be punished because the act of returning the property itself is a demonstration of the thief's repentance. While the method of penitence for adulterers is contingent on a number of variables. If he is able to exercise contrition prior to being punished for his transgression, then he is exonerated.³¹

In Islamic law, there are two categories of theft: common theft and serious theft. This instance of serious theft is classified as a robbery. The average age of a robbery perpetrator is between 12 and 17 years old, which, according to the National Law, defines a kid as anyone under the age of 18. It indicates that, on average, thieves who commit theft with violence are between the ages of 15 and 17 and so fall into the group of children. Therefore, the age restriction must adhere to both criminal and civil law.

As for the countermeasures, particularly those carried out by minors, they should not be subject to hudud criminal penalties, but they are subject to ta'zir punishment under Islamic law, which consists of guidance, education, and instruction not to do such crimes in the future. The sentencing is dependent on the judge's consideration, who will determine that the child who committed the offense may not be freed at all for his or her own good. Teaching, a decent education with the assistance of the most essential parents, then what is done by the community, in this case the government, and carried out by all components of society and must be done collectively constitute the foundation of prevention efforts. In addition, efforts to overcome them are met with severe

³⁰ Abu Abdillah Muhammad bin Abd Ar-rahman Al-Bukhari, *Keagunan dan Keindahan Syariat Islam*, p. 125.

³¹ Abu Abdillah Muhammad bin Abd Ar-rahman Al-Bukhari, *Keagunan dan Keindahan Syariat Islam*, (Bandung: Cv Puataka Setia, 1999), p. 127.

punishments based on the suitability of the children, as decided by the judge. The judge made the most advantageous judgment for the youngster.

The Islamic law solution to the crime of theft with violence perpetrated by children is to provide guidance, instruction, and education so that the youngster does not repeat his actions. Additionally, children who commit crimes are susceptible to judicial penalty. As the perpetrators of the offense are youngsters, the judge must recognize the benefits of imposing these sanctions in order to impose them.

In the context of Islamic law, the responsibility of parents compares a child to a sheet of white paper on which the color of his religion, whether he is Jewish or Christian, is determined by his parents. This is a major issue in the matter of religion, from which other concerns emerge, such as moral issues, education, and the question of how to approach the future. All of this begins with the family, because if the family is successful, it is inevitable that their offspring will follow in their footsteps in the future.

In the Islamic concept, efforts to overcome *saddu syara* — that is, how to close the way — are coached from childhood on in the household, and this coaching then expands in the home. However, parents have the largest influence over a child's development.³²

Efforts to overcome the crime of theft with violence committed by children are the family, namely the parents. The role of parents in this matter is very important because the nature of the child depends on the nature of the parents. This means that the behavior of a child depends on his parents. How parents educate their children, how parents teach their children, and how parents are able to respond to their children to avoid bad behavior. If a child does not commit another crime such as theft with violence, then he must be given good education from his parents, and this is the most important thing so that the child does not repeat his actions.

To better clarify efforts to combat the crime of theft committed by children in jurisdictions where Islamic law imposes the punishment of mutilation of the hands and restitution for the stolen goods. However, especially for perpetrators of criminal acts by minors, they should not be punished by cutting their hands. Instead, the child should be subject to *takzir* punishment, which consists of receiving instruction and a good education from family, parents, or government institutions such as the school environment, the police, and other organizations.

³² Perlindungan Anak dan Undang-undang RI no. 11 tahun 2012 tentang Sistem Peradilan Anak, (Permata Press, 2013). p. 21.

As a result, the government has enacted Law Number 23 of 2002 concerning child protection in an effort to lessen the amount of work required to prevent minors from committing crimes. Where in the child protection law have efforts been made to address the conditions that cause children to do criminal crimes, such as in articles 48 and 49, which state:

Article 48: "The government is obliged to provide a minimum of 9 (nine) years of basic education for all children."

Article 49: "The state, government, family and parents are obliged to provide the widest opportunity for children to obtain education".³³

As stated in Articles 48 and 49 of the Child Protection Law, in addition to Islamic law, which controls measures to combat crimes committed by children, mitigating efforts have been stipulated in Articles 48 and 49 of Islamic law. Where children must receive early education in order to prevent them from engaging in illegal behavior.

C. CONCLUSIONS

The introduction of Law No. 11 of 2012 regarding the Juvenile Criminal Justice System, which supersedes Law No. 3 of 1997 regarding the Juvenile Court, outlines the disposition of criminal acts committed by children with a greater emphasis on their special protection. The purpose of the law is to establish order and safety in order to foster a harmonious and peaceful community. The provision of legal protection for children who are the subject of an investigation must respect the children's rights.

Article 362 of the Criminal Code defines theft as follows: "Every individual whose goods are totally or partially held by another person with the intent to possess it against the law is punished for theft with a maximum of five years in prison or a fine of sixty rupiahs."

There are children who become perpetrators of criminal acts, and there are factors that influence them, including their own family factors such as frequent quarrels in the household, lack of harmony in the household, lack of religious education, due to lack of or not receiving love from parents, lack of guidance and coaching in the development of children's attitudes and behaviors, lack of supervision from parents, due to association in the community or in the wrong enclave, etc. It is not uncommon for children to engage in criminal behavior as a result of negative or unfavorable social influences. It was due to

³³ Perlindungan Anak dan Undang-undang RI no. 11 tahun 2012 tentang Sistem Peradilan Anak, (Permata Press, 2013). p. 22.

persuasion, spontaneity, or simply following along. However, the child's actions constitute a criminal offense, and the perpetrator of a crime must be prosecuted and punished in accordance with the applicable laws and regulations.

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