



Juvenile Justice in Indonesia: Analysis of Positive Law and Islamic Law

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Article Info	Abstract
Article History Received: 2025-07-05 Revised: 2025-08-06 Published: 2025-09-10 Keywords: <i>Juvenile Justice, Positive Law, Islamic Law, Diversion, Justice, Maqasid Syariah, Restorative Justice</i>	The juvenile criminal justice system in Indonesia is specifically regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a form of <i>lex specialis</i> to the Criminal Procedure Code, which marks a shift in approach from a retributive system to a more restorative and rehabilitative system. This study aims to analyze how Indonesian positive law regulates juvenile justice and explore how Islamic law views the position of children who commit crimes. The study uses a normative juridical method with a statutory and conceptual approach, and is based on two main legal theories, namely John Rawls' Theory of Justice and Imam Al-Syathibi's Maqasid al-Syariah Theory. The results show that both Indonesian positive law and Islamic law have the same goal of protecting children's rights through educative and non-repressive mechanisms. However, there are philosophical differences in determining the limits of criminal responsibility, where positive law uses chronological age as a measure, while Islamic law emphasizes mental maturity (<i>baligh</i>). This study emphasizes the importance of synthesizing values between the national legal system and Islamic legal principles to establish a juvenile justice system that is not only procedurally just, but also substantively and contextually just. The main conclusion of this study is that Indonesia needs to redesign its juvenile criminal law paradigm by integrating the principles of distributive justice and the spiritual values of its society, so that the law becomes not merely a tool of power, but a vehicle for liberating children from the misleading logic of punishment.

I. INTRODUCTION

The juvenile criminal justice system in Indonesia is a legal entity specifically established to protect and process children in conflict with the law. The establishment of this system reflects the state's awareness that children are not miniature adults, but individuals still undergoing mental, intellectual, and emotional development. Therefore, juvenile criminal justice should not be equated with criminal justice for adults, either in terms of substance, structure, or procedure. (Main 2024)

The primary legal basis for this system is Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which serves as *lex specialis* to Law No. 8 of 1981 concerning Criminal Procedure Code (KUHP) in handling criminal cases against children. Law No. 11/2012 provides a new approach through the introduction of the concept of diversion, special treatment in the investigation process through to correctional, and

a minimum age limit for criminal responsibility. However, it is also important to examine how this system aligns with or differs from the perspective of Islamic law, considering that the majority of Indonesia's population is Muslim and Islamic values are still alive in the legal consciousness of society.

Law Number 11 of 2012 defines a child as a person who is not yet 18 (eighteen) years old, including children who are not yet married. (Yusuf 2025) This law was introduced as a response to the need for a justice system that is oriented towards the best interests of children, as well as an implementation of various international conventions, such as the Convention on the Rights of the Child (CRC), which has been ratified by Indonesia through Presidential Decree Number 36 of 1990.

One important element of this law is the concept of diversion, which involves transferring the resolution of juvenile cases from the criminal

justice process to an out-of-court process. Article 7 states:

- (1). *At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted.*
- (2). *Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:*
 - a. *threatened with imprisonment of less than 7 (seven) years; and*
 - b. *not a repetition of the crime.*

The principle of restorative justice is the basis of the diversion approach, which prioritizes restitution for losses caused by criminal acts, not just punishment.

However, in practice, law enforcement officers often still use a repressive approach that is insensitive to the psychological condition of children. This shows that although normatively the system has been directed towards a more humanistic approach and corrective justice, in its operation many violations still occur. Many law enforcement officers treat children the same as adult perpetrators, thus potentially violating children's rights as guaranteed by Article 28B paragraph (2) of the 1945 Constitution which states: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."

In the context of modern law, the theory of justice is an important instrument in evaluating legal systems, including juvenile justice systems. One influential figure in this theory is John Rawls, with his concept of justice as fairness. Rawls argued that justice is the result of a rational and just social contract, and that just institutions are those that treat individuals differently based on their specific needs and circumstances. In the context of children, this means the legal system must treat them differently based on the child's age, maturity, and ability to understand the consequences of their actions. (Mahmudah, Juhriati, and Zuhrah 2018)

Corrective justice theory also emphasizes the importance of redressing the impacts of unlawful acts, rather than simply retaliating or punishing. Therefore, the diversion and restorative justice mechanisms in Law No. 11 of 2012 are essentially implementations of corrective justice, where children who commit crimes are not immediately punished but are instead directed to improve themselves and their social relationships.

However, it must be acknowledged that this system has not been operating optimally. Unpreparedness of law enforcement officials, weak public understanding, and the lack of supporting infrastructure often result in the principle of justice remaining merely a normative discourse. This poses a challenge for the juvenile criminal justice system to truly realize substantive justice, not merely procedural justice.

In Islamic law, children who have not reached puberty (*mukallaf*) cannot be held criminally responsible in the same way as adults. This is based on various legal sources, including the Quran, Hadith, and the consensus of Islamic scholars. (Oktaviani 2019)

First, in the Qur'an it is stated in Surah An-Nur verse 59:

"And when your children reach the age of puberty, then let them ask for permission, as people before them asked for permission."

This verse normatively shows that children who have not reached puberty are still at a stage where their minds are not yet fully developed.

In the Hadith of the Prophet SAW, the Prophet said:

"Pens (charity records) are appointed from three groups: from people who sleep until they wake up, from small children until they reach maturity, and from crazy people until they wake up." (HR Abu Dawud and al-Tirmidhi)

This hadith explicitly states that children are not subject to legal responsibility until they reach puberty. In this context, the concept of criminal responsibility in Islam is closely linked to reason and mental maturity. (Ritonga, Hasibuan, and Zarzani 2024)

The consensus of scholars also states that children who have not yet reached puberty cannot be subject to *hudud* or *qisas* punishments. However, this does not mean that children are completely free from responsibility. In some *fiqh* literature, children who have reached the age of *tamyiz* (around 7 years and above) can be subject to educational and corrective forms of guidance, rather than criminal punishment like adults. (Sani 2015)

When compared, the juvenile justice systems under national and Islamic law share a fundamental similarity: they recognize that children face different conditions than adults, necessitating a special approach. Law No. 11 of 2012 emphasizes the importance of protecting children at every stage of the legal process, in line with the spirit of Islamic law, which prioritizes

tarbiyah (education) and islah (correction) for children who commit crimes.

The differences that emerge lie in the philosophical and normative aspects. Islamic law bases criminal responsibility on mental maturity and puberty, while the national system establishes a minimum age (12 years) as the legal criterion for criminal responsibility. The Islamic system is more flexible in assessing a child's mental readiness, while the national system is based on chronological age.

One important distinction is the absence of the *doli incapax* doctrine in the national system. In common law systems like Malaysia, this doctrine is used to assess whether children aged 10-12 possess moral awareness and knowledge of the right and wrong of their actions. Islam, in this case, places criminal responsibility only on children who have reached puberty, and before that, *ta'dib* (moral education) or light *ta'zir* (religious guidance) is sufficient. (Rochaeti 2013)

Indonesia's juvenile criminal justice system has normatively adopted many universal values regarding child protection, including the introduction of the principles of diversion and restorative justice. However, its implementation remains far from perfect due to limited human resources, infrastructure, and a legal culture that is not yet child-friendly.

Islamic law can be a moral and philosophical alternative to enrich the national legal system by strengthening educational and preventive approaches to child offenders. Islamic law comprehensively views children as a trust that must be nurtured, not merely punished. Therefore, it is crucial for policymakers and law enforcement officials to broaden their legal horizons, relying not only on positive laws but also considering the ethical and moral values long-standing in Indonesian society.

Synergy between positive legal norms and Islamic legal norms is needed to build a juvenile criminal justice system that is not only procedurally just, but also substantively and humanistic. This way, the goal of establishing a living constitution that respects children's rights in practice, not just in text, can be truly realized.

We discuss this research by focusing on 2 main problems, including:

1. How is the juvenile criminal justice system regulated in Indonesian positive law?
2. What is the Islamic law's view on the criminal responsibility of children?

3. What are the similarities and differences between the juvenile justice system under positive law and Islamic law?

II. RESEARCH METHODS

The research method used in this study is the normative juridical method, (Tanjung, Irham, and Wanto 2023) namely legal research conducted by examining relevant primary and secondary legal materials, such as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 8 of 1981 concerning the Criminal Procedure Code, as well as sources of Islamic law including the Qur'an, Hadith, and *Ijma'* of scholars. The approach used includes a legislative approach and a conceptual approach to analyze how the juvenile criminal justice system is formulated and implemented both in the Indonesian positive legal system and from an Islamic legal perspective. Data is reviewed qualitatively with a focus on normative interpretation of Islamic legal rules and doctrines to find the conformity and differences in principles in the protection of children in conflict with the law.

III. RESULTS AND DISCUSSION

A. The Juvenile Criminal Justice System is Regulated in Indonesian Positive Law

The juvenile criminal justice system in Indonesia is explicitly regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). This law represents a normative leap in Indonesian criminal law, specifically addressing the law enforcement process for children in conflict with the law, distinct from the criminal justice system for adults. This law is enacted with the spirit of protecting and respecting children's rights and adopts a restorative approach as the basis for resolving juvenile criminal cases. (Hanudin 2022)

Prior to the enactment of the Child Protection Act (SPPA), the handling of juvenile criminal cases was still based on the Criminal Procedure Code (Law Number 8 of 1981), where the judicial system did not differentiate between children and adults. This resulted in a discrepancy with the principles of juvenile justice stipulated in the

Convention on the Rights of the Child (CRC), which Indonesia ratified through Presidential Decree Number 36 of 1990. Therefore, the ratification of the SPPA Act demonstrates the state's response to demands for harmonization of national law with international instruments regarding child protection.

The SPPA Law contains numerous provisions that reflect a progressive and child-responsive legal system. Some of the basic principles of the SPPA Law are:

1. Protection of children's dignity and rights;
2. Best interests of the child;
3. Non-discrimination;
4. Special treatment and not treated the same as adults;
5. Recognition that children have the right to grow and develop.

One of the main features of the SPPA Law is the implementation of the concept of diversion. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the courts. This concept is expressly stated in Article 7 paragraph (1) of the SPPA Law, which states that "At the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be attempted." Thus, diversion is not an optional policy, but a legal obligation for every law enforcement officer who handles children's criminal cases.

Furthermore, Article 7 paragraph (2) stipulates the conditions for diversion, namely that diversion can only be carried out in cases that carry a criminal penalty of less than 7 years and are not a repeat offense. This is a form of legal limitation to ensure that diversion is applied in minor cases, with the primary orientation being the restoration of social relations, not punishment. Diversion is based on the principle of restorative justice, which aims to create justice not only for the perpetrator, but also for the victim and society as a whole. (Janur, Maulana, and Jasmani 2023)

The concept of restorative justice used in the Juvenile Justice and Child Protection Law aims to repair damaged social relationships caused by criminal acts through mediation, dialogue, and agreement between the parties involved. This approach differs from the classic retributive system, which emphasizes solely imposing sanctions on perpetrators. In the context of children, restorative justice is crucial because it rests on the non-penal principle, namely, resolving issues without punishment.

In addition to diversion, the SPPA Law also regulates a criminal justice system that differs from the general justice system. The SPPA Law recognizes two types of sanctions for children found guilty: criminal sanctions and measures. Article 71 of the SPPA Law stipulates that decisions against children can be either criminal or measures. Criminal sanctions for children are divided into principal and additional penalties, while measures include return to parents/guardians, surrender to the state, job training, educational guidance, or community service.

This flexibility in the form of sanctions reflects an approach to justice that takes into account the psychological and social development of children. In the adult criminal justice system, punishment tends to be punitive, while in juvenile criminal justice, punishment is more educational and corrective.

Another important aspect of the juvenile justice system according to the Child Protection Act (SPPA) is the active role of various parties in the legal process for children. Handling juvenile cases involves judges, prosecutors, investigators, community counselors, social workers, and child protection agencies. The presence of community counselors, for example, is tasked with compiling social reports on the child to be used in the judge's decision-making. This demonstrates that the juvenile justice system is not adversarial like in adult cases, but rather collaborative and rehabilitative. (Natsif 2018)

Protection for children in conflict with the law is also strengthened by the existence of a specialized judicial institution, the Juvenile Court. Article 45 of the Juvenile Justice and Child Protection Law stipulates that criminal cases against children be examined in district courts by judges specifically appointed as juvenile judges. This demonstrates the importance of specialization and competence in handling juvenile cases. The judicial process must also be conducted in private to maintain the confidentiality of the child's identity, as stipulated in Article 19. (Mintarsih 2020)

Philosophically, the juvenile criminal justice system in Indonesian positive law reflects the principle of legal protection for vulnerable groups. Children, as legal subjects who are not yet mentally and emotionally mature, are seen as individuals who are in the process of character formation, so that every legal intervention against children must consider aspects of their growth and development and social rehabilitation. This is

in accordance with the values contained in Article 28B paragraph (2) of the 1945 Constitution which states that "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."

Furthermore, the juvenile criminal justice system cannot be separated from the principle of a state based on the rule of law, which upholds human rights. In the post-amendment Indonesian constitutional system, the recognition and protection of human rights, including children's rights, have become an integral part of the state's fundamental normative structure.(Hartono 2022)Therefore, the existence of the SPPA Law must be understood within the broader framework of the ideals of establishing a democratic, humanistic state based on law, which upholds the rights of its citizens.

However, the implementation of the juvenile criminal justice system still faces various challenges. Many law enforcement officers still lack an adequate understanding of the principles of restorative justice. Investigators, prosecutors, and judges often employ formalistic procedural approaches similar to those used in the adult justice system. Yet, the Juvenile Justice and Child Protection Law explicitly emphasizes the need for a different and more humane approach.

Furthermore, limited legal infrastructure, such as the limited number of Juvenile Courts, the shortage of professionals such as community counselors and child social workers, and weak oversight of the diversion process, means many children continue to face criminal proceedings like adults. The primary goal of this system is to prevent children from being involved in the judicial process and correctional institutions as much as possible.

Normatively, the existence of the Juvenile Justice System (SPPA) Law has made Indonesia's juvenile criminal justice system quite advanced compared to many other developing countries. However, sound norms will be meaningless without legal awareness among law enforcement officers and the wider public. Therefore, structural, cultural, and substantive reforms are needed in the juvenile criminal justice system.(Malikah, Septiandani, and Junaidi 2021)

Structurally, the state must strengthen the institutions supporting the juvenile justice system, including providing adequate funding, facilities, and professional staff. Culturally, the community and law enforcement officials must be educated on the importance of a humanistic approach to children in conflict with the law.

Substantively, continuous evaluation of the implementation of the Child Protection Law (SPPA) is necessary to ensure its relevance to social dynamics and scientific developments, particularly in child psychology and child criminology.

By strengthening the implementation of the juvenile justice system in accordance with the Child Protection Law (SPPA), Indonesia is not only fulfilling its obligations as a nation governed by the rule of law but also realizing its moral responsibility for the future of the younger generation. Protecting children from unfair legal treatment is part of the nation's social investment, which will determine the quality of future civilization.

The juvenile criminal justice system, as regulated by Indonesian positive law through the Child Protection Act (UU SPPA), should be viewed as a strategic step toward a just legal system that prioritizes protection and respects children's rights. Amidst the challenges of implementation, commitment to the principles of this law must be continuously strengthened so that the value of justice becomes not merely a written norm but a living legal reality that truly protects children in every corner of Indonesia.

B. Islamic Law's View on the Criminal Responsibility of Children

Within the framework of Islamic law, the criminal liability of children has a unique conceptual foundation, fundamentally different from the approach in positive law. Islamic law emphasizes the principle that legal burdens can only be imposed on individuals who have met certain conditions, particularly those related to reason and maturity. In Islamic jurisprudence (fiqh) terminology, the conditions for a person to be held criminally responsible are that they have reached puberty and are of sound mind (reason). Therefore, a child who has not yet reached puberty is not subject to criminal liability in the form of hudud or qisas, as is the case with adults.(Sya 2023)

This view is firmly based in the Qur'an and Hadith, and is the consensus of scholars through *ijma'* (consensus). One relevant verse is Allah's words in Surah An-Nur, verse 59:

"And when your children reach the age of puberty, then let them ask for permission, as people before them asked for permission."(QS. An-Nur: 59)

This verse implicitly indicates that children who have not yet reached puberty do not yet have

the full social responsibilities of adults. In a criminal context, this principle provides the basis for children not yet being fully legally accountable.

A very basic hadith of the Prophet Muhammad SAW in this case reads:

"The pen has been lifted from three groups: from the sleeping person until he wakes up, from the child until he reaches maturity, and from the crazy person until he wakes up."(HR. Abu Dawud and al-Tirmidhi)

This hadith serves as the legal basis for children's deeds, both good and sinful, not being recorded until they reach puberty. This confirms that, according to Islamic law, children who have not yet reached puberty are not subject to legal obligations, including criminal ones.(Farhan 2016)

The consensus of Islamic scholars has also agreed that children are not subject to hudud or qisas sanctions. Even in classical Islamic jurisprudence, such as Ibn Qudamah's Al-Mughni and Ibn Rushd's Bidayat al-Mujtahid, it is stated that children cannot be punished even if they commit acts that would be considered criminal if committed by adults.

Islamic law clearly distinguishes between children who have not reached the age of tamyiz (the ability to distinguish between right and wrong), tamyiz children, and puberty. Children who have not reached tamyiz are considered to lack sufficient reason to understand their actions and their consequences. Tammyiz children (around 7 years of age and older), even though they have not yet reached puberty, gradually begin to receive moral education and social responsibility. Only then do children who have reached puberty and are of sound mind become fully subject to the legal burden (taklif syar'i).

Imam Shafi'i stated that a child is considered to be of puberty when semen is released, whether due to a wet dream or other cause, pubic hair grows, or they reach the age of 15. This is in accordance with the hadith of the Prophet Muhammad (peace be upon him) and the consensus of scholars. Therefore, if a child commits a crime before that age, they are not subject to criminal penalties such as hudud and qisas, but are instead subject to guidance or educational measures by their guardians or state authorities.

In the context of children, Islamic law does not recognize retributive punishment as it does for adults. Instead, Islam applies a ta'dib (moral education) and ta'zir (light reprimand or educational punishment) approach administered

by guardians, parents, or religious or state authorities.

The goal of this approach is not to inflict suffering, but to instill in children the values of justice, legal awareness, and a sense of responsibility. Al-Mawardi's book, Al-Ahkam Al-Sulthaniyyah, explains that if a child commits an unlawful act, the authorities may impose disciplinary action for the child's benefit, as long as the action is educational and does not undermine the child's dignity as a human being.

Thus, sanctions in Islamic law against children who have not reached puberty are not "punishments" in the formal criminal sense, but are more accurately described as "educational measures" aimed at shaping the child's social and moral behavior.

In Islamic law, the purpose of punishment is not merely retribution, but rather to achieve public welfare (al-mashlahah), maintain social order, and educate the perpetrator to prevent repeat offenses. This is in accordance with the principle of maqasid al-syari'ah, which encompasses five basic protections: religion (deen), life (nafs), reason (aql), offspring (nasl), and property (maal). Protection of children falls within the scope of protection of reason and offspring.(Firdawaty 2020)

If a child who has not yet reached puberty commits a crime, Islamic law focuses on the process of correction, not retribution. Therefore, there is no justification for punishing a child with a severe punishment that could destroy their future. This approach aligns with the spirit of child protection in Indonesian positive law, which prioritizes the concepts of diversion and restorative justice.

Furthermore, in Islam, justice is not equality in the form of identical treatment, but rather proportional treatment based on ability and responsibility. Therefore, treating children like adults in the judicial system contradicts the principle of substantive justice in Islam.

The values developed in Islamic law have been incorporated into the national legal system through Law No. 11 of 2012. For example, the Child Protection Act stipulates that the resolution of juvenile criminal cases must be carried out through a diversion approach, protection of children's rights, and an orientation toward education and development. This demonstrates that Indonesian national law, while secular, does not completely contradict the basic principles of Islamic law.

The principle of diversifying criminal sanctions, such as return to parents, guidance in educational institutions, community service, and even conditional release, is very much in line with the ta'dib and ta'zir approaches in Islamic criminal jurisprudence.(Purba and Zarzani 2023)

On the other hand, Islamic law provides a philosophical and normative basis for a more humane and just juvenile justice system. By establishing puberty and sanity as prerequisites for criminal responsibility, Islamic law has established strict limits on who can and cannot be punished. These limits are crucial for preventing structural violence against children by the legal system.

Islamic law's perspective on juvenile criminal responsibility emphasizes mental maturity and spiritual maturity as the primary prerequisites for legal interpretation. Children under puberty are exempt from formal criminal sanctions and are directed toward an educational approach through the ta'dib (religious counseling) and ta'zir (religious counseling) mechanisms. This aligns with the principles of child protection and education adopted in Indonesian national law through the diversion and restorative justice systems outlined in the Juvenile Justice System Law.(Perdana, Zarzani, and Fauzi 2018)

Theoretically and normatively, Islamic law has made a significant contribution to the development of a just, humanistic, and reform-oriented juvenile criminal justice system. In the context of Indonesia, a predominantly Muslim country, the integration of Islamic legal values into the positive legal system not only strengthens the social legitimacy of the law but also makes the juvenile justice system more in line with the cultural and religious values of the community.

C. Similarities and Differences Between the Juvenile Justice System According to Positive Law and Islamic Law

Within the framework of Islamic law, the criminal liability of children has a unique conceptual foundation, fundamentally different from the approach in positive law. Islamic law emphasizes the principle that legal burdens can only be imposed on individuals who have met certain conditions, particularly those related to reason and maturity. In Islamic jurisprudence (fiqh) terminology, the conditions for a person to be held criminally responsible are that they have reached puberty and are of sound mind (reason). Therefore, a child who has not yet reached puberty is not subject to criminal liability in the

form of hudud or qisas, as is the case with adults.(Hartono 2022)

The issue of juvenile criminal justice is crucial in modern legal discourse because it concerns aspects of justice, human rights protection, and the formation of the nation's next generation. Both within the Indonesian positive legal system and within the Islamic legal framework, children are viewed as individuals requiring special legal protection. However, the emphasis and philosophical foundations underlying each differ. A thorough comparison of these two legal systems will provide insight into how substantive justice can be established, as well as how theories of justice and Islamic law can complement each other to strengthen the juvenile criminal justice system in Indonesia.(Dwiono et al. 2023)

Both Indonesian positive law and Islamic law recognize children as legal subjects whose intellectual maturity is not yet fully developed, thus requiring a different approach than adults. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) explicitly states that the legal process for children must uphold the principles of restorative justice and a diversion approach. This approach, although born from the development of modern positive law, is highly aligned with the principle of ta'dib (education) in Islamic law.

In Islamic law, as previously explained, criminal responsibility only applies to children who have reached puberty and are of sound mind. Children who have not yet reached puberty are directed towards a system of moral guidance and education, not punishment. This reflects the rehabilitative spirit that is also a hallmark of positive law. In other words, both systems emphasize that the goal of the legal system for children is to develop good and responsible individuals, not to repay crimes with severe punishment.(Baskara 2019)

Another similarity is that both recognize the importance of a child's psychological and social well-being in determining criminal responsibility. The Child Protection and Juvenile Justice Law stipulates that children can only be held criminally responsible if they are at least 12 years old, and even then, with a very cautious approach. Similarly, in Islamic law, the requirement of tamyiz (the ability to distinguish between right and wrong) is the basis for initiating moral development, even if it does not yet reach formal criminal responsibility.

Despite common ground, fundamental differences remain between the two systems,

particularly in philosophical and normative aspects. Indonesian positive law is a product of the modern legal system, which is secular, legalistic, and written. Its orientation rests on social regulation through universally applicable state law. Islamic law, on the other hand, is a normative system derived from revelation and prophetic tradition, encompassing moral, spiritual, and social aspects in an integrated manner.(SIMAMORA 2021)

The difference also lies in the age parameters for criminal responsibility. The Child Protection Act (SPPA) sets the minimum age at 12, without considering biological or psychological maturity as in Islamic law. This reflects a positivistic approach, where age is the formal legal criterion, not psychological maturity as in the concept of puberty.(Muthoin 2012)

Islamic law also does not recognize the complex and multi-tiered litigation process seen in positive law. Children's cases in Islam are often resolved by families, community leaders, or religious scholars (qadi) through deliberation and education. The legal process in Islam is more informal and emphasizes moral improvement, not just punishment.(Pintabar, Rafianti, and Saragih 2024)

Analysis of these two legal systems needs to be placed within the framework of legal theory, particularly the Theory of Justice. One of the leading figures in modern justice theory is John Rawls (1921–2002), best known for his work, *A Theory of Justice* (1971).(Al Kautsar and Muhammad 2020)Rawls formulated the principle of justice as fairness, namely, justice that guarantees the basic rights of individuals while taking into account differences in social conditions. In his view, justice is providing different treatment to individuals who are indeed in unequal circumstances. This is particularly relevant in the context of children in conflict with the law.

Using Rawls's framework, a restorative and educational juvenile criminal justice system embodies the principle of distributive justice. Differentiated treatment of children is not discrimination, but a form of substantive justice that takes into account their age and psychological well-being. In this regard, Indonesian positive law, through the Child Protection Act (UU SPPA), aligns with Rawlsian principles of justice.

Within the framework of Islamic Legal Theory, one of the important figures is Imam Al-Syathibi (d. 790 H/1388 AD) with his work *Al-Muwafaqat fi Usul al-Shariah*. He emphasized the

importance of maqasid al-shariah (sharia goals) in every application of Islamic law. The main aim of law according to Al-Syathibi is to protect five main things: religion, soul, reason, lineage and property. In the context of juvenile justice, preserving reason and heredity is the main moral basis for why children must be treated educationally, not repressively.

Thus, the juvenile criminal justice system under Islamic law rests on the principles of protection and guidance, not retribution. This correlation is important because it demonstrates that while Islam does not separate law and morality, the approach used remains rational and humane. This is relevant for Indonesia's predominantly Muslim society, ensuring that a positive legal system aligned with the maqasid (objectives) of sharia will have stronger social legitimacy.

From the above description, it can be concluded that there is a compatibility of values between Indonesian positive law and Islamic law in handling juvenile criminal cases. Both reject a repressive, punitive approach and promote an educational and protective approach. However, the implementation of both systems often faces significant challenges, both structurally and culturally, and in terms of legal substance.

Positive law still relies too heavily on legal age parameters without considering psychological and moral maturity, as recognized in Islamic jurisprudence. Meanwhile, Islamic law, despite its highly humanistic approach, is often considered ineffective in practice in modern countries like Indonesia because it is not formalized in written regulations.

This is where the importance of the synthesis between Rawls's theory of justice and Syathibi's theory of maqasid is important. The ideal juvenile criminal law system is not a system that only imposes sanctions, but rather a system that is able to create a balance between protecting individual rights and social interests in a proportional manner, while still respecting religious values and local morality. The justice sought is not only procedural justice, but substantive justice that lives in society.(Risawati et al. 2023)

From the comparison above, it can be emphasized that both Indonesian positive law and Islamic law have complementary perspectives in establishing a just, humane, and protection-oriented juvenile criminal justice system. By synergizing Rawls's principles of justice and Syathibi's maqasid al-shari'ah, Indonesia has a significant opportunity to build a juvenile legal

system that not only meets formal legal requirements but also responds to the moral and spiritual needs of its society. Therefore, future juvenile criminal law reform should not only focus on institutional strengthening but also on integrating Islamic values of justice into a more vibrant and contextual national legal system.

IV. CONCLUSIONS AND RECOMMENDATIONS

The shared values between positive law and Islamic law regarding child protection need to be more progressively articulated in national legal policy. As a researcher, I believe that Indonesia, as a predominantly Muslim country, has the moral and social legitimacy to incorporate Islamic values of justice into juvenile justice. This is not to establish Islamic law as a formal positive system, but rather as a source of legal ethics and a corrective to the rigidity of secular law, which relies too heavily on formal age categories without considering the psychological and spiritual maturity of children.

The combination of John Rawls's theory of justice, which emphasizes fairness through proportional differential treatment, and Al-Syathibi's Islamic legal theory, which emphasizes the welfare of the people, can serve as a dual framework for reforming Indonesia's juvenile justice system. A legal system must not be merely fair on paper; it must also foster legal instruments, institutions, and a work culture that truly favors the future of children.

As a researcher, I state that we are currently in a transitional phase from repressive law to reflective law. Therefore, the courage to redesign the paradigm of juvenile criminal law is inevitable. The state must not only prepare normative instruments; it must also restructure the mentality of its officials, build a child-friendly legal ecosystem, and expand the dialogue between national legal values and Islamic legal teachings. True juvenile justice is not merely about freeing children from prison, but about freeing the law from the logic of revenge against children who have not yet completed their development as human beings.

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