

The Renewal of the Minimum Age of Children for Criminal Responsibility: A Comparative Study of Positive Law and Islamic Criminal Law

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ABSTRACT

This study aims to find the renewal idea of the children's minimum age for criminal responsibility as an effort to address juvenile crime. The idea of renewal was obtained through a comparison of the minimum age for criminal liability in the positive law contained in the Juvenile Criminal Justice System Law Number 11 of 2012 and Islamic criminal law. This research belongs to normative qualitative research with a legal approach, a normative theological approach, a comparative approach, and a psycho-socio-historical approach. The method of data collection and data analysis was carried out by studying documents using books, journals, and others. The contribution from the results of this study is the reduction of the minimum age for criminal responsibility to 15 years and 8 years and the abolition of criminal sanctions for children. This change is based on Islamic law, juridical, historical, and cognitive maturity considerations. This change must be accompanied by improvements to the justice system and criminal sanctions as well as an emphasis on moral education before puberty.

Keywords: *Minimum Age of Criminal Responsibility, Juvenile Delinquency, Comparative Law.*

1. INTRODUCTION

The United Nations Convention on the Rights of the Child (UN-CRC) defines a child as an individual below 18 years of age. CRC is a human rights treaty that guarantees children's rights in the civil, political, economic, social, health, and cultural fields which was ratified in 1989 by the United Nations. This convention stipulates what the state should do so each child can grow healthily, attend school, be protected, have their opinions heard, and be treated fairly [1]. Indonesia ratified CRC in 1990 with Presidential Decree Number 36/1990. One of the implementations of CRC in law in Indonesia is the enactment of the juvenile criminal justice system law (hereinafter abbreviated as UU SPPA) Number 11 of 2012. This law focuses on children and adolescents who are in conflict with the law, especially those who are perpetrators of criminal acts. Children and youth must be treated differently from adults from the judicial process to sentencing. They will be given child sanctions if the age at the time of sentencing is between 12 to 18 years

and not sanctioned if the age is under 12 years. At the level of investigation, prosecution, and examination of children's cases in district courts, it is obligatory to seek diversion or transfer of settlement of children's cases from the criminal justice process to outside of criminal justice [2]. This regulation was made to protect the rights of children and youth and protect them from criminality in order to guarantee their future.

Behind the efforts to protect the children of criminals, another reality seems implausible. The number of teenagers who commit crimes is increasing every year and is quite alarming. According to data from KPAI (Indonesian Child Protection Commission) from 2011 to 2020, the number of cases of child conflict with the law (*anak berhadapan dengan hukum/ABH*) secured first place among other cases, reaching 13,071 cases. Data for 2020 from January to early August recorded as many as 123 children as perpetrators of criminal acts comprising physical violence, psychological violence, sexual violence, pedophiles, murder, theft, traffic accidents,

possession of sharp weapons, kidnapping, and abortion [3]. According to data from the Jakarta Legal Aid Institute, from January 2020 to June 2021, there were 27 cases of children in conflict, as many as 30% of criminal offenders [4]. According to the Head of the Cilacap Correctional Center (*Balai Pemasyarakatan/Bapas*) during the COVID-19 pandemic, cases of child criminal offenders in Central Java increased by 10% [5].

Child criminal cases are aggravated in quantity and quality from minor crimes to serious crimes. For example, in Jepara in September 2021, a 17-year-old teenager killed his biological mother because he was emotional after being prevented from watching TV, he stabbed and tortured his biological mother to death [6]. In Kalimantan, a 15-year-old child killed five of his friends by mixing drinks with hand sanitizer. He did it because he had been bullied for 4 to 5 months [7]. In 2020, a 16-year-old girl killed a 5-year-old child who was her neighbor. She strangled and buried the victim in the bathroom tub to death and stored the body in a cupboard [8]. Serious crimes committed by children and adolescents are committed not only individually but also in groups. In 2016, 14 teenagers in East Kalimantan abused and harassed a 14-year-old girl to death, then her body was dumped into a ravine naked [9]. This case had garnered attention from various circles because of the atrocities committed by teenagers to fellow teenagers.

There are many other serious cases committed by children and adolescents. Indeed, these cases can no longer be called juvenile delinquency, which can be understood and deterred. Therefore, there is a need for reflection and evaluation from various parties, especially the law as an effort to prevent crime by children and adolescents. The role of the law is not only as a protector of children and adolescents but also as a social controller.

According to Sidharta, the founder of the Indonesian Legal Philosophy Association, with the increase in the quantity and quality of serious crimes committed by children under 18 years, it is requisite to improve the juvenile criminal justice system based on more comprehensive benchmarks. One of them is the improvement of the minimum age for criminal liability [10]. Input from the People's Representative Council (*Dewan Perwakilan Rakyat/DPR*) in an academic setting on the implementation of the SPPA Law Number 11 of 2012 is the reduction of the minimum age for criminal responsibility for children. DPR suggested amending article 1 paragraph 3 which contains age restrictions for a child who is in conflict with the law. The age limit for children under 18 is considered irrelevant and too high for the psychological and biological age of a child. At that age, a person already possesses psychological maturity so that he is able to be legally responsible [11].

The minimum age of maturity or the age of maturity that can be used as a standard of legal responsibility ability is something that needs to be further discussed and

even reviewed as an effort to find ideas for renewal. Age restrictions can distinguish children and adults so someone who has not been able to take responsibility will not be held accountable and will not violate his rights as a child. Vice versa, if someone is eligible to take responsibility, then the punishment and a deterrent effect must be given as a form of compensation for his actions.

The effort to find the idea of legal reform is to do comparative law. Comparative law is carried out by examining legal systems in other countries or other legal conceptions that are deemed effective in dealing with juvenile criminal problems. So far, no specific data have been found regarding countries that are capable of addressing juvenile crime. However, criminals in Islamic countries, in general, have been known to have very low crime rates compared to non-Islamic countries [12].

In fact, many scientists are skeptical about the low crime data in Islamic countries. Prof. Sam S. Souryal, a non-Muslim scholar who conducted research in Saudi Arabia due to skepticism about the low crime rate in Islamic countries. Prof. Souryal conducted research by living in Saudi Arabia and several other Middle Eastern countries between December 1983 and March 1984. The results showed that these data, especially in serious crimes in Saudi Arabia, were reliable. According to Prof. Souryal, the low crime rate is strongly influenced by Islamic law. Islamic law is able to form a non-criminal society and a society with high social control. According to Prof. Souryal, Islamic law has socio-religious rules based on the principles of prevention, conditioning, morality, and punishment [13].

The punishment system in Islam is unique and different from the Western legal system. The concept of Islamic law protects the community from the impact of crime, changes the perpetrators not to repeat the action so that crimes are reduced, and provides compensation to victims. Moreover, offenders are isolated from society. In addition, the priority of punishment in Islamic criminal law is the protection of individual rights. The Islamic criminal approach is considered the same as the criminal rehabilitation approach in the study of criminology in the 21st century. In addition, security in Islamic law is also considered superior to Western law [13]. Islamic law highly concerns about children's rights comprehensively from various aspects [14].

The advantage of Islamic law is that it can be used to consider the minimum age for criminal responsibility and compare it with positive law to picture ideas for renewal as an effort to prevent crime among children and adolescents. Islamic law has been integrated with Indonesian society. The majority of Indonesia's population is Muslim so Indonesia can also be referred to as an Islamic country [15]. Therefore, this study will compare the minimum age for criminal responsibility for children with the positive law in the SPPA Law Number 11 of 2012 and Islamic Criminal Law as an effort to seek

the renewal of the child minimum age for criminal responsibility.

The aims of this study were to 1) obtain information regarding the minimum age for criminal responsibility for children in the SPPA Law Number 11 of 2012 and Islamic Criminal Law; 2) find similarities and differences in the minimum age for child criminal responsibility in the SPPA Law Number 11 of 2012 and Islamic Criminal Law; 3) find the idea of renewing child minimum age for child criminal responsibility that can be applied in Indonesia as an effort to combat child crime.

2. METHODOLOGY

This type of research is normative qualitative research using four approaches; First, the statutory approach was used to examine the minimum age for criminal liability for children in the SPPA Law Number 11 of 2012; Second, the normative theological approach was employed to analyze the minimum age for criminal liability for children in Islamic criminal law; Third, the comparative approach was used to compare the minimum age for criminal responsibility for children in positive law and Islamic law and find the idea of renewing the minimum age for criminal responsibility; Fourth, a psycho-socio-historical approach was used to examine the motives of crime and find the idea of renewal of the minimum age for criminal responsibility. This study used secondary and primary data obtained from document studies through books, reports, journals, and others. The data analysis technique used analysis, interpretation, and conclusion methods.

3. RESULTS AND DISCUSSION

3.1. *The minimum age of children for Criminal Responsibility according to the SPPA Law Number 11 of 2012*

Based on the juvenile criminal justice law, there are two limits of criminal liability; the first is the limit on a person to be sentenced to a child criminal and the second is the limit a person can be sentenced to an adult sentence. According to the prevailing laws and regulations in Indonesia, the age limit for a person to be sentenced to an adult sentence has never experienced changes, while the restriction on a person who can be sentenced to a child sentence has changed three times. First, this can be found in Law Number 1 of 1946 on the Criminal Code (KUHP). In this law, the minimum age for criminal liability for children is 16-18 years. Children under 16 years old who commit criminal acts will be returned to their parents, guardians, or those who take care of them without any sanctions [16]. The second is Law Number 3 of 1997 on Juvenile Court. In this law, the minimum age for criminal liability for children is 8-18 years old and has never been married [17]. The reason for lowering the minimum age

for child imprisonment is due to psychological, sociological, and pedagogical considerations that at that age children already have a sense of responsibility [18]. The third is the Law on the Juvenile Criminal Justice System Number 11 of 2012. In this law, the minimum age for criminal liability for children is improved to 12-18 years of age. Children under 12 committing a crime will be transferred to a guardian or included in a rehabilitation program for a maximum of 6 months, depending on the judge's verdict. Children of 12-18 years who commit a crime can be subject to two types of sanctions; action sanctions for perpetrators of criminal acts under the age of 14 years and criminal sanctions for perpetrators of 14 years and over [19].

3.2. *Minimum Age of children for Criminal Responsibility according to Islamic Criminal Law*

Criminal liability or *al mas'uliyah al jinaiyah* is the imposition of a person for the consequences of actions carried out of his own volition and he is aware of the intentions and consequences of his actions [20]. Criminal liability can be in effect if three basic principles are met, namely 1) the prohibited actions against the law; 2) actions based on their own authority (*ikhtiyar*); 3) the awareness of the perpetrator of the consequences of his actions (*idrak*) [20]. If one of the principles is not fulfilled, then he is not subject to criminal responsibility [15]. Thus, criminal responsibility will not be imposed on those who do not know their actions, such as children and mentally ill people, nor will they have a choice over their behavior such as people who are forced to [20]. Therefore, limiting the age of criminal responsibility in Islamic criminal law is the same as limiting the age of adults and children.

Someone who has matured is called a *mukallaf*, which according to language can be interpreted as a person who is burdened with the law [21]. A person is referred to as an adult or *mukallaf* when he has reached puberty. *Balig* according to language is reaching or approaching or has reached adulthood. According to the Hanafi Madhhab, puberty is the boundary between children and adults that perfects the mind for most people. According to the Maliki school of thought, puberty is an ability that exists in a child that can eliminate a childish state and become an adult state, that ability that is unknown by anyone and there are only signs in the *Shari'a* that signify that someone has reached adulthood [22].

The scholars say that the signs are congenital signs or biological signs that appear in individuals who have reached the age of puberty as an indication of sexual maturity. Modern scholars also refer to it as reproductive ages [22]. The signs of puberty can be grouped into three, namely the same signs between men and women, specific symptoms in men, and specific symptoms in women.

The signs of puberty are similar between men and women, which are the growth of armpit hair, growth of pubic hair, discharge of semen when awake or asleep, height growth, smelly armpits, and others. The special signs of puberty in men are the growth of a mustache and beard and the ability to impregnate. Specific signs in women are menstruation, breast enlargement, and pregnancy [22]. If the discharge of semen (*ihtilam*) in men and menstruation in women does not appear, then the age limit is used to determine it. The Quran only limits the end of childhood with *ihtilam* and does not limit it by age. Limiting the age of puberty is the *ijtihad* of the scholars based on the hadith of Ibn Umar. The validity of this hadith is agreed upon by the scholars but not with the legal *istinbath* [23]. Hadith from Ibn Umar reads:

"I have proposed myself to the Prophet PBUH to participate in the battle of Uhud when I was 14 years old, and he did not permit me. I proposed again to him for the Battle of Khandak (Trench) when I was 15 years old, and he allowed me (to follow the war)."

Through the hadith of Ibn Umar and the Hanafi school of thought, it is agreed that puberty can be limited to a certain age. However, they differ on the age limit for puberty. The first opinion is the opinion of Imam Abu Hanifah who states that the age of puberty is 17 years for women and 18 years or 19 years for men. The second opinion states that the age of puberty is 15 years for both boys and girls [23]. The Maliki school of thought has a conflicting opinion with other schools of thought. According to Maliki, the limit of puberty is a wet dream or menstruation and is not determined by age. This is because Malikiyah argues that the hadith of Ibn Umar does not contain the argument that puberty can be limited by age. According to them that the Prophet allowed Ibn Umar to fight because the age of 15 is the age that is considered capable of battling and not about the age of puberty. In addition, other postulates state that the determination of puberty considers wet dreams and menstruation and not age [23].

The scholars of the Shafi'i school of thought agree on the use of age as a limit for puberty and they agree that the age limit for puberty is 15 years. The Hambali school of thought has a corresponding idea as the syafi'iyah in terms of limiting puberty to age and the minimum age of puberty is also in the arguments used [23].

Among the opinions of mazhab, the age limit of 15 years for the age of puberty is the most popular opinion. Therefore, when a person has shown signs of puberty on his body or is 15 years old, he is referred to as a *mukallaf*. The scholars agree that the basis for *taklif* (legal imposition) on a *mukallaf* is reason and understanding, so all the demands of sharia law applied to the *mukallaf* will always be adjusted to their abilities and skills, based on the understanding and reason they have [24].

Abdul Qodir Audah divides criminal liability into three levels according to the ability to think (*idrak*) and the ability to distinguish right and wrong (*tamyiz*). The first is the inability to think. This period begins at birth and stops at the age of seven. At this time, a child is considered not to have the ability to think, or commonly referred to as a child who is *mumayyiz*. If at that age they commit a criminal act, therefore they are not sentenced, either as criminal law or as an education [20]. The second is the period of incomplete thinking ability. This period starts from the age of 7 years until maturity (*balig*) and most jurists limit it to the age of 15 years. At this time a child is not subject to criminal responsibility for the crime he has committed, but the child is punished in the form of supervision and education.

The third is the period of full thinking ability. This period begins when a person reaches the age of ingenuity (*sin Ar-Rasyd*) or after reaching the age of 15 years. If a person commits a criminal act at that age, then criminal liability applies to all types of *jarimah* (prohibited acts) he has committed, regardless of the type. So, Islamic criminal law has no child crime. Children who have not reached maturity are only given education and guidance punishments. Criminal penalties are only imposed on someone who is an adult [20].

3.3. Comparative Analysis

3.3.1. Definition Analysis of adolescence

There are different definitions of juveniles in positive law and Islamic law which are the causes of different concepts in addressing crime. Positive law which refers to Western law defines adolescence as a turbulent period during the transition between childhood and adulthood. G. Stanley Hall, the originator of the term adolescence refers to that as a time of storms and stress. According to Hall, the occurrence of turmoil during this period is due to biological changes in the individual. Individuals need time to adapt to physical and hormonal changes [25].

According to the sociologist, Talcott Parsons, the term adolescence is a socio-cultural categorization, meaning that the subject is modified by history. The term adolescence has only emerged after the industrial revolution in England during a capitalist culture. This term became scientific thanks to psychology which specializes in adolescence as a transitional period that must receive special attention. Then, it was followed by psycho-pathology which gave rise to the term juvenile delinquency. Through this long history, juvenile delinquency is a natural thing so juveniles who commit misdemeanors and even felonies deserve special attention in the form of waivers and other dispensations [26].

There is no transition period between adults and children in Islam. If the individual is mature, then he is

considered an adult. *Balig* means to have reached, meaning to reach perfect accountability. This means that the individual has become a *mukallaf* who is able to account for all his actions, including in the criminal acts. *Balig* is marked by biological signs, which include *ihtilam* (wet dreams) for men and menstruation for women. Islam places great emphasis on education before reaching puberty. Children must be prepared to face puberty. A person's physique begins to perfect at the age of puberty, his body experiences conditions that have never been experienced during childhood. Education and the imposition of responsibilities as a *mukallaf* become one's self-control in dealing with these changes so that in Islam a person is not only physically mature but also intellectually [27].

The difference in the definition of adolescents in Western and Islamic theories is seen from the state of a person changing from childhood to adulthood. Islam understands that physical and hormonal changes will cause liability in a person, so Islam emphasizes education before puberty and gives full responsibility to children after puberty. In Western theory, adolescents are given a long space to understand their liability and find their identity. This is one of the reasons for the emergence of many delinquency and crime committed by teenagers.

3.3.2. Analysis of Legal Concepts

Based on the analysis that has been carried out at a minimum age, the criminal liability of children in the SPPA Law Number 11 of 2012 and Islamic Criminal Law found three similarities in the legal concept of the minimum age limitation for criminal liability, namely: the first is from the perspective of the law in governing the minimum age for criminal responsibility. Both of these legal conceptions aim to protect individuals involved in criminal cases. Islam provides certainty about the minimum age limit for criminal liability so it can distinguish those who are charged with criminal responsibility and those who are not. The second is these two legal conceptions require *mens rea* or criminal intent to take full responsibility for the consequences of crimes that have been committed [28]. Third, these two legal conceptions both impose binding and coercive rules for someone who has been declared to have reached adulthood.

Based on this analysis, two differences were also found, namely: First, in terms of legal sources in minimum age determination for criminal responsibility, the source of criminal law is the Criminal Code, others besides the Criminal Code are the Narcotics Law and the Corruption Law as well as customary law [29], while the sources of Islamic criminal law are the Quran and Hadith. Second, in terms of making law, it is made by the authorities (government) so that regulations or legislation can be changed once legislation is deemed no longer effective, while Islamic law is made by Allah and its provisions absolute and must be followed by Muslims. The rules in Islamic criminal law are made by Allah and should be obeyed. However, in positive law, laws are made to fill the regulatory vacuum in the social life of the community where previously there were events for which there were no rules.

3.3.3. Analysis of the Minimum Age for Child Criminal Liability

Based on the analysis that has been carried out, five similarities were noticed, including; First, these two legal conceptions equally agree that the minimum age limit for criminal liability is important. This is based on the fact that an individual who is still a child is different from an adult. Second, based on the age division of criminal responsibility, these two legal conceptions uniformly divide the age of criminal responsibility into three levels. The comparison of these two conceptions is presented in Table 1.

Third, based on the minimum age division of criminal responsibility in Table 1, these two legal conceptions both agree that there is no punishment for children who have not been able to distinguish right from wrong and have not had the thinking maturity. The jurists state that the core of criminal responsibility is to have understanding (*idrak*) and authority (*ikhtiyar*) [20]. Roslan Soleh asserts that understanding and authority are the determining factors for criminal liability in positive law [30]. Fourth, these two legal conceptions decide that full criminal responsibility is only imposed when a person has the perfection of reason. If the mind is perfect then the punishment received shall be fully imposed as that of adult. Fifth, the age limit for full criminal liability in the SPPA Law Number 11 of 2012 is in accordance

Table 1. Comparative Analysis of the Minimum Age for Criminal Responsibility in the SPPA Law Number 11 of 2012 and Islamic Criminal Law

Degree	SPPA Law Number 11 of 2012		Islamic Criminal Law	
	Age	Status	Age	Status
First	Under 12 years	Not liable	Infant– <i>tamyiz</i> (0-7 years)	Not liable
Second	Between 12-18 years	Partly liable	<i>Tamyiz – balig</i> (7-15 years)	Punishment in form of education and guidance
Third	Above 18 years	Fully liable	After <i>balig</i> (above 15 years)	Fully liable

with the opinion of the Hanafi school of thought, which is 18 years.

Based on this analysis, three differences were also found. First, the minimum age difference in these two legal conceptions lies in the benchmark of determination. In the SPPA Law Number 11 of 2012, there is a clear statement of number as the minimum age for criminal responsibility for children, although the rules regarding this minimum age have been changed several times, while in Islamic law, the minimum age for criminal liability is not clearly stated with numbers. However, more emphasis is placed on physical characteristics such as *ihtilam* in men and menstruation in women. The scholars through their considerations provide certainty in determining the minimum limit of criminal liability by mentioning the age at which *ikhtilaf* occurs.

Second, the SPPA Law Number 1 of 2012 has two minimum age limits for criminal liability, the minimum age a person can be sentenced to a child crime and the minimum age a person can be sentenced to a full sentence. In contrast, Islamic criminal law states that the minimum age for criminal liability is only one, which is full responsibility or not responsible at all. In other words, Islamic criminal law has no term for child crime. Third, scholars are of the opinion that the minimum age for criminal liability is 15 years. This is different from the minimum age for criminal liability in the SPPA Law Number 11 of 2012 of 18 years. However, if we comprehend the opinion of the Hanafi, the minimum age for criminal liability in positive law does not conflict with Islamic law.

3.3.4. Comparative Analysis Regarding Criminal Sanctions

Based on the analysis that has been carried out, there are several differences in criminal sanctions based on the criminal age limit in SPPA Law Number 11 of 2012 and Islamic criminal law. The results of the comparison of these two legal conceptions can be seen in Figure 1.

Based on Figure 1, it can be determined that there are several differences between the two legal conceptions. First, the SPPA Law Number 11 of 2012 comprises

special criminal sanctions for children, namely half of the adult sentences, while in Islamic criminal law there are no criminal sanctions for children. Children are only given education and guidance. Second, based on the two types of punishment in positive criminal law, there are two age restrictions for criminal sanctions, namely age restrictions for juvenile criminal sanctions and age restrictions for adult criminal sanctions, while in Islamic criminal law there is only one type of crime, namely full or adult criminal sanctions in form of education and rehabilitation. Therefore, Islamic criminal law does not regulate criminal sanctions for children.

Third, these two legal conceptions have similarities in the application of education and guidance for children. The difference lies in; the SPPA Law Number 11 of 2012 orders education and guidance for children as determined in Article 82 concerning types of sanctions for children under 14 years of age [19], whereas in Islamic criminal law the form of application of education and guidance is governed by *wali amr* [20]. Fourth, the SPPA Law Number 11 of 2012 stipulates that children can be imprisoned at the age of 14 years with the condition that the threat of imprisonment is above 7 years. In contrast, Islamic criminal law views that children can only be sentenced at the age of puberty or 15 years with a full sentence. In this analysis, there are similarities that the age of 18 years in the SPPA Law Number 11 of 2012 is the age that can be sentenced to an adult sentence which is similar to the minimum age of adulthood in Islamic criminal law according to the Hanafi school of thought.

3.4. Ideas for Renewing the Minimum Age for Child Criminal Responsibility

Based on the comparison of the similarities and differences in the minimum age for criminal liability in positive law and Islamic criminal law, several points in Islamic law can be implemented in Indonesia. First, the use of the minimum age for criminal responsibility for children uses numerical parameters instead of biological parameters (*ihtilam* or menstruation). This is done in order to ease the enforcement of the laws. In addition, almost all countries in the world use numeric measurement.

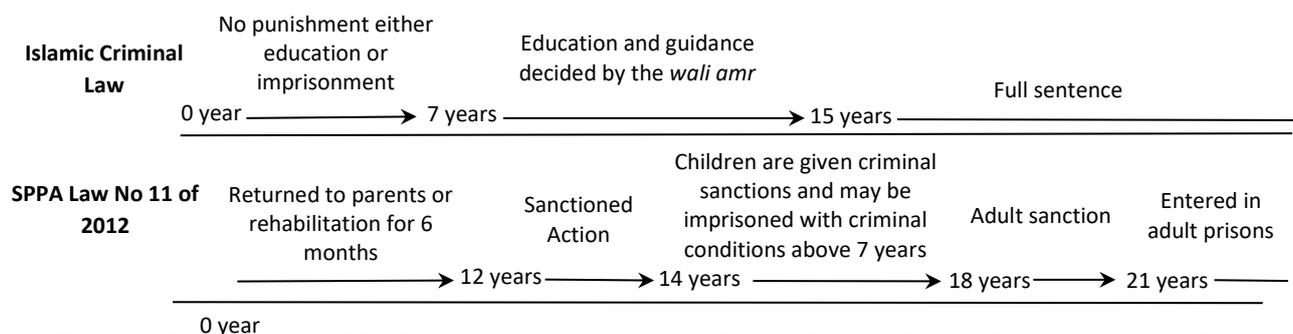


Figure 1. Comparison of SPPA Law Number 11 of 2012 and Islamic Criminal Law in Criminal Sanctions Based on the Minimum Age of Criminal Liability

Second, it reduces the minimum age for adult criminal liability from 18 years old to 15 years old according to the age restriction in Islamic law. This change is also based on considerations 1) Historically, the determination of the age of 18 years used in almost all of the world is based on the age of majority given the history of the first and second world wars. The age of the majority was initially 21 years and then reduced to 18 years to admit a larger number of soldiers. Thus, the age limit of 18 years is not based on physiological or psychological development but is the product of history [31]; 2) Juridical, which consists of a) suggestions from the DPR in academic studies on SPPA Law Number 11 of 2012 to reduce the minimum age for adult criminal liability because it is considered too high; b) Indonesia once had a similar minimum age for criminal liability, namely 16 years; 3) Adolescent cognitive abilities. Piaget's theory of cognitive development states that someone who is 12 years old has been able to develop hypothetical-inductive reasoning and abstract reasoning, meaning that a person has been able to use 'if-then' reasoning and formulate the consequences of his actions not only for himself but also for others [32]. In addition, based on observations and research conducted on more than 5,000 adolescents, it is shown that adolescents have achieved the same cognitive abilities as adults once they reach 16 years old [33].

Third, it reduces the minimum age for criminal liability for children from 12 years old to 8 years old. This is based on the *tamyiz* age of a child, which is 7 years as well as juridical considerations. In the past, Indonesia had a minimum age of child criminal responsibility of 8 years. In addition, social considerations are to protect children and adolescents from parties who take advantage of them to be involved in criminal acts.

Fourth, abolish criminal penalties for children and adolescents and replace them with various forms of education, guidance, and supervision. It is based on Islamic criminal law which does not impose criminal penalties on children and only provides them with education and supervision. In addition, it is based on 1) Children are subjects that must be protected both under the law and outside the law; 2) Most children and adolescents who commit crimes have a history of mental disorders. The UK's National Statistics data showed that 80% of juvenile offenders had two or more mental disorders [34], while the data in America reach 90% and about half were diagnosed with more than one mental disorder [35]. In addition, 47 studies from 9 countries

consisting of 28,033 male and 4,754 female juvenile offenders with a median age of 16 years were identified as having mental disorders [36].

Fifth, there is a need for priority in psychological examinations for convicted children and adolescents. It is based on the concept in positive law and Islamic law that a person who does not have power over his actions or attempts and does not understand the consequences of his actions or *idrak* cannot be punished. In addition, many studies have shown that adolescents with mental disorders are more vulnerable to committing crimes compared to those without mental disorders [37].

Sixth, the application of this minimum age must be followed by improvements in several justice systems, such as in 1) Criminal sanctions, namely changing imprisonment into other alternative punishments. Imprisonment has not been shown to have a major impact on reducing crime rates [38] including the long-term prevention of criminal offenders [39], so it does not guarantee that recidivists can be handled [40]. In addition, imprisonment has a criminogenic effect (a factor that causes new crimes to emerge) [40]. UN standards and norms urge countries to use alternatives to imprisonment and make prisons as the last resort, especially for groups who are vulnerable to the negative effects of prison such as children, women, and people with mental disorders [41]; 2) Application of diversion. The need to keep criminals away from criminal justice, not all socially undesirable behavior can be classified as a crime or dealt with by the judicial process. Diversion is accomplished by sending them to treatment or other programs rather than formally prosecuting them in the criminal justice system [41]. The concept of diversion has essentially been regulated in Islam, it is known as the concept of *sulh* (peace), which encourages the settlement of cases amicably [42].

Seventh, it is necessary to emphasize education from law enforcement authorities to adolescents and children regarding criminal acts and punishments. The idea of renewing the minimum age for criminal liability can be seen in Figure 2.

3.5 The Importance of Moral Education of Children before the Age of Criminal Responsibility

According to criminologist, Per-Olof H Wikstrom, crime is an act of general moral violation [43]. There is a strong relationship between moral reasoning ability and

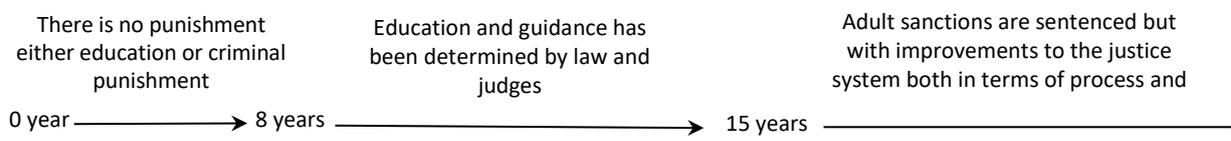


Figure 2. The idea of a minimum age of criminal responsibility

juvenile crime [44]. Research reveals that adolescents with strong morality do not engage in crime regardless of their self-control abilities. However, for adolescents with weak morality, self-control ability is an important factor in involvement with crime [45]. So, moral reasoning and self-control are two important things that should be possessed by teenagers to prevent them from being involved in criminal acts.

The ability of moral reasoning and self-control is a form of psychosocial maturity. Psychosocial maturity has an important role in preventing juvenile criminal behavior [46]. Although cognitive maturity has been perfect at the age of 16 years, adolescent psychosocial maturity does not develop until the age of 20 years. This maturity gap is an opportunity for adolescents to make risky decisions that lead to criminal behavior [33].

The maturity gap needs to be standardized so that when adolescents are cognitively mature they are also psychosocially mature. A person's psychosocial maturity is closely related to the social, cultural, and educational environment [47]. Research discovers that psychosocial characteristics of the family during childhood are associated with criminal behavior later in life [48].

According to Prof. Souryal, crime handling in Islamic law emphasizes the aspect of morality. Muslims are accustomed to a long-term positive environment and conditioning. Prof. Souryal relates the effectiveness of Islamic law to the social learning theory of Sutherland and the conditioning construction of James Q Wilson [15]. Both theories state that criminal behavior can be learned through interaction and communication in groups and can be shaped through conditioning [49]. Research conducted on the activities of young mosque activists affected the moral character of adolescents and the village environment [50]. Therefore, the prevention of juvenile crime needs to consider aspects of moral education both from the school and family environment. The research found that adolescents were given an understanding of risks, benefits, and choices, when the influence of personal and peer emotions were minimized, 16-year-old adolescents could make the same decisions as adults [51].

4. CONCLUSION

Child and juvenile crime are complex problems caused by not only non-judicial factors such as education and social but also historical factors, given the definition of youth itself. Definitions that appear to be negative lead to the promulgation of criminal acts committed by teenagers which are protracted and cause moral degradation. In addition, biological and hormonal changes in adolescents trigger various anxiety so that self-control and moral reasoning are needed so as not to fall into criminal acts.

Comparative studies that have been carried out resulted in a contribution to the idea of renewal as an effort to combat juvenile crime. The renewal of the minimum criminal age is carried out by reducing the minimum age for criminal responsibility from 18 years to 15 years and from 12 years to 8 years and eliminating criminal sanctions for children under 15 years. This change is based on Islamic law, juridical, historical, and cognitive maturity considerations. This change must be accompanied by improvements to the justice system and criminal sanctions. Such as changing imprisonment, implementing diversion, and carrying out mental disorder examinations. In addition, it is necessary to emphasize moral education, especially before children reach puberty, both from law enforcers, teachers, and parents.

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REFERENCES

- [1] UNICEF Indonesia, "Konvensi Hak Anak: Versi Anak-anak", *UNICEF Indonesia*, 2018. <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>.
- [2] B. A. Oktavira, "Jerat Hukum bagi Pelaku 'Klitih' di Yogyakarta", *hukumonline.com*, 2020. [Online]. Available: <https://www.hukumonline.com/klinik/detail/ulasan/lt5e3d2d9f5f3a7/jerat-hukum-bagi-pelaku-klitih-di-yogyakarta>.
- [3] Komisi Perlindungan Anak Indonesia, "Update Infografis KPAI-Per 31-08-2020", Aug. 31, 2020. <https://www.kpai.go.id/publikasi/infografis/update-data-infografis-kpai-per-31-08-2020>.
- [4] G. T. Mawangi, "LBH Jakarta: Anak-anak Masih Rentan jadi Korban Kekerasan Seksual", *Antara News*, Jakarta, Jul. 23, 2021. [Online]. Available: <https://www.antaraneews.com/berita/2284918/lbh-jakarta-anak-anak-masih-rentan-jadi-korban-kekerasan-seksual>.
- [5] R. Farasonalia, "Selama Pandemi Covid-19, Kasus Anak Berhadapan dengan Hukum di Jateng Meningkat 10 Persen", *kompas*, Jan. 04, 2021. [Online]. Available:

- <https://regional.kompas.com/read/2021/01/04/22393921/selama-pandemi-covid-19-kasus-anak-berhadapan-dengan-hukum-di-jateng>.
- [6] D. U. Aji, “Durhaka! Remaja di Jepara Bunuh Ibu Kandung Gegara Ditegur Nonton TV”, *Detik News*, Jepara, Sep. 21, 2021. [Online]. Available: <https://news.detik.com/berita-jawa-tengah/d-5733658/durhaka-remaja-di-jepara-bunuh-ibu-kandung-gegara-ditegur-nonton-tv>.
- [7] Z. D. Daton, “Dijebak Teman Minum Ciu Ternyata Hand Sanitizer, 5 Remaja di Kaltim Tewas”, *Kompas*, Samarinda, Sep. 14, 2021. [Online]. Available: <https://regional.kompas.com/read/2021/09/14/204843378/dijebak-teman-minum-ciu-ternyata-hand-sanitizer-5-remaja-di-kaltim-tewas>.
- [8] Y. Makdori, “Begini Kronologi Gadis Remaja Bunuh Bocah 6 Tahun di Jakpus”, *Liputan 6*, Jakarta, Mar. 07, 2020. Accessed: Nov. 18, 2021. [Online]. Available: <https://www.liputan6.com/news/read/4196222/begini-kronologi-gadis-remaja-bunuh-bocah-6-tahun-di-jakpus>.
- [9] Y. H. Putro, “Kronologi Kasus Kematian Yuyun di Tangan 14 ABG Bengkulu”, *Liputan 6*, Bengkulu, May 04, 2016. [Online]. Available: <https://www.liputan6.com/regional/read/2500244/mimpi-besar-yuyun-kandas-di-tangan-14-pemuda>.
- [10] Shidarta, “Kenakalan Anak dan Sistem peradilan Pidana Anak”, *Binus University Faculty Of Humanity*, 2016. https://business-law.binus.ac.id/2016/09/21/kenakalan_anak_dan_sistem-peradilan_anak/
- [11] Pusat Pemantauan Pelaksanaan Undang-Undang Badan Keahlian DPR RI, “Kajian Akademik Pelaksanaan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak”, 2019. [Online]. Available: <https://berkas.dpr.go.id/puspanlakuu/kajian/kajian-public-98.pdf>
- [12] D. June, D. June, and Obi. N. I. Ebbe, “The Islamic Criminal Justice System”, in *Comparative and International Criminal Justice Systems Policing, Judiciary, and Corrections, Third Edition*, 3rd ed., O. N. I. Ebbe, Ed. CRC Press, 2013, pp. 217–226. DOI: 10.1201/b14863.
- [13] Topo Santoso. 2016. *Asas-asas Hukum Pidana Islam*. Jakarta: Rajawali.
- [14] S. Ramzan, N. Akhter, and A. Rubab, “Punishment from Islamic Perspectives”, *FWU Journal of Social Sciences*, vol. 9, no. 1, p. 53, 2015, [Online]. Available: https://www.researchgate.net/publication/281060481_Punishment_from_Islamic_Perspectives.
- [15] M. A. F. Santoso, “Islamic Perspective on The Rights of Child: Their Consequences for The Roles of State and Civil Society (Especially in Education)”, 2016. [Online]. Available: <https://publikasiilmiah.ums.ac.id/handle/11617/7187>
- [16] Pemerintah Indonesia. 1847. “Kitab Undang Undang Hukum perdata”.
- [17] I. K. A. S. Prema, M. Ruba’i, and N. Aprilianda, “Pembatasan Usia Pertanggungjawaban Pidana Anak dalam Peraturan Perundang-Undangan”, *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, vol. 4, no. 2, p. 232, 2020, DOI: 10.17977/um019v4i2p232-241.
- [18] A. L. Rahmat, N. Aprilianda, and F. Sulistio, “Batas Usia Pertanggungjawaban Pidana Anak dalam Hukum Pidana di Indonesia”, *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, vol. 1, no. 1, 2014, [Online]. Available: <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/476>.
- [19] Pemerintah Indonesia, “Undang Undang Sistem Peradilan Pidana Anak Nomor 11 tahun 2012,” 2012.
- [20] A. Q. ‘Audah, *Al- Tashrī’ al- Jinai al- Islamiy*, Juz 1. Bairut: Dar Al-Kitab Al-’azly, 2008.
- [21] M. M. Zein. 2013. *Menguasai Ilmu Ushul Fiqh: Apa dan Bagaimana Hukum Islam Disarikan dari Sumbernya*. Yogyakarta: Pustaka Pesantren.
- [22] H. ibnu Husain. 2007. *At-Tahdiid As-sinn Al-Bulug fi At-Taklif*.
- [23] M. Musa. 2011. *Al-Bulugh wa Ar-Rusyid fi Syari’at Al-Islamiyah*. Libanon: Dar Al-Kutub Al-Ilmiyah.
- [24] M. Bahrudin. 2019. *Ilmu Ushul Fiqh*. Bandang lampung: AURA.
- [25] L. Roundy. 2017. “G. Stanley Hall: Storm & Stress in Adolescence”. *Study.com*. <https://study.com/academy/lesson/g-stanley-hall-storm-stress-in-adolescence.html>
- [26] M. Zacky. 2015. “Remaja : Subjek yang Dibentuk Sejarah”. *Perkumpulan Keluarga Berencana Indonesia Yogyakarta*. <https://pkbi-diy.info/remaja-subyek-yang-dibentuk-sejarah/>
- [27] E. Elftriadi. 2019. “Menyoal Usia Pendidikan: Jangan Balig Sebelum Aqil”. *Majalah Fasilitator Diklat Teknis*. pp. 23–26. [Online]. Available: <https://www.researchgate.net/publication/3409848>

- 61_MENYOAL_USIA_PENDIDIKAN_JANGAN_BALIG_SEBELUM_AQIL.
- [28] I. Grey, A. AlMazrouei, J. Thomas, and P. Randall, "Forensic Psychology and ISLAMIC Jurisprudence", *Mental Health, Religion and Culture*, vol. 21, no. 1, pp. 20–34, Jan. 2018, DOI: 10.1080/13674676.2018.1437720.
- [29] I. K. Mertha *et al.* 2016. *Buku Ajar Hukum Pidana*. Denpasar: Fakultas Hukum Universitas Udayana.
- [30] L. Hakim. 2020. *Asas-asas Hukum Pidana: Buku Ajar Hukum Pidana*. Sleman: Deepublish.
- [31] T. E. James, "The Age of Majority", *American Journal of Legal History*, vol. 4, no. 1, pp. 22–33, Jan. 1960, DOI: 10.2307/844549.
- [32] A. L. Pillay and C. Willows, "Assessing the Criminal Capacity of Children: A Challenge to the Capacity of Mental Health Professionals", *Journal of Child and Adolescent Mental Health*, vol. 27, no. 2, pp. 91–101, 2015, DOI: 10.2989/17280583.2015.1040412.
- [33] G. Icenogle *et al.*, "Adolescent's Cognitive Capacity Reaches adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample", *Law and Human Behavior*, vol. 43, no. 1, pp. 69–85, Feb. 2019, DOI: 10.1037/LHB0000315.
- [34] D. Lader, N. Singleton, and H. Meltzer, "Psychiatric Morbidity Among Young Offenders in England and Wales", *International review of psychiatry (Abingdon, England)*, vol. 15, no. 1–2, pp. 144–147, Feb. 2003, doi: 10.1080/0954026021000046074.
- [35] C. A. Schubert, E. P. Mulvey, and C. Glasheen, "Influence of Mental Health and Substance Use Problems and Criminogenic Risk on Outcomes in Serious Juvenile Offenders", *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 50, no. 9, pp. 925–937, 2011, DOI: 10.1016/j.jaac.2011.06.006.
- [36] G. Beaudry, R. Yu, N. Långström, and S. Fazel, "An Updated Systematic Review and Meta-Regression Analysis: Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities", *Journal of the American Academy of Child & Adolescent Psychiatry*, vol. 60, no. 1, pp. 46–60, Jan. 2021, DOI: 10.1016/j.jaac.2020.01.015.
- [37] K. L. Coker, P. H. Smith, A. Westphal, H. v. Zonana, and S. A. McKee, "Crime and Psychiatric Disorders Among Youth in the US Population: An Analysis of National Comorbidity Survey-Adolescent Supplement", *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 53, no. 8, p. 888, 2014, DOI: 10.1016/J.JAAC.2014.05.007.
- [38] D. Stemen, "The Prison Paradox: More Incarceration Will Not Make Us Safer", *Vera Institut Of Justice*, 2017. <https://www.vera.org/publications/for-the-record-prison-paradox-incarceration-not-safer>
- [39] J. D. Harding, "Do Prisons Make Us Safer?", *Scientific American*, 2019. <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>
- [40] F. T. Cullen, C. L. Jonson, and D. S. Nagin, "Prisons do Not Reduce Recidivism: The High Cost of Ignoring Science", *Prison Journal*, vol. 91, no. 3 SUPPL., 2011, DOI: 10.1177/0032885511415224.
- [41] United Nation Office on Drugs and Crime. 2007. *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*. New York: United Nations.
- [42] M. Mujibah. 2013. "Konsep Diversi Dalam Sistem Peradilan Pidana Anak Perspektif Hukum Islam (Studi Atas UU RI No. 11 Tahun 2012 Tentang Sitem Peradilan Pidana Anak)".
- [43] P. O. H. Wikström, "Explaining Crime as Moral Actions", in *Handbook of the Sociology of Morality*, Springer, New York, NY, 2010, pp. 211–239. DOI: 10.1007/978-1-4419-6896-8_12.
- [44] L. F. Romeral, J. S. Fernández, and J. A. G. Fraguera, "Moral Reasoning in Adolescent Offenders: A Meta-Analytic Review", *Psicothema*, vol. 30, no. 3, pp. 289–294, 2018, DOI: 10.7334/psicothema2017.378.
- [45] P. O. H. Wikström and R. Svensson, "When does Self-Control Matter? The Interaction Between Morality and Self-Control in Crime Causation", *European Journal of Criminology*, vol. 7, no. 5, pp. 395–410, Sep. 2010, DOI: 10.1177/1477370810372132.
- [46] S. L. Mordell, "Defining Psychosocial Maturity: a Risk Factor for Offending and Aggression in Adolescents and Young Adults", 2009. [Online]. Available: <http://summit.sfu.ca/item/9493>
- [47] M. D. Gellman and J. R. Turner, "Psychosocial Characteristics", *Encyclopedia of Behavioral Medicine*. Springer, New York, NY, pp. 1578–1580, 2013. DOI: 10.1007/978-1-4419-1005-9_918.
- [48] B. Klinteberg, Y. Almquist, U. Beijer, and P. A. Rydelius, "Family Psychosocial Characteristics Influencing Criminal Behaviour and Mortality - Possible Mediating Factors: A Longitudinal Study

of Male and Female Subjects in the Stockholm Birth Cohort”, *BMC Public Health*, vol. 11, no. 1, pp. 1–14, Oct. 2011, DOI: 10.1186/1471-2458-11-756.

- [49] Utah Education Network, “Causes of Crime”, in *Manual, Law Enforcement and Criminal Justice*, Utah, 2016.
- [50] A. Nirwana *et al.*, “Sosialisasi dan Konsolidasi Program Remaja Masjid/Remas terhadap Transformasi Akhlak Remaja”, *Monsu’ani Tano: Jurnal Pengabdian Masyarakat*, vol. 3, no. 1, 2020.
- [51] L. Steinberg, “Adolescent Development and Juvenile Justice”, *Annual Review of Clinical Psychology*, vol. 5, pp. 459–485, Apr. 2009, DOI: 10.1146/annurev.clinpsy.032408.153603.