

**Restorative Justice for Juvenile Offenders in Indonesia:
A Study of Psychological Perspective and Islamic Law**

**Keadilan Restoratif dalam Penanganan Anak Pelaku Tindak
Pidana di Indonesia: Kajian Psikologi dan Hukum Islam**

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Abstract: Regulations on handling criminal children in Indonesia refer to restorative justice that prioritizes the most beneficial for children's future. However, the number of child perpetrators of criminal acts whose handling through the judicial process is relatively high. This study aims to describe and analyze the application of restorative justice in Indonesia and acknowledge the psychological conditions and stages of adolescent development involved in criminal acts. In addition, this study also considers from an Islamic Law perspective. This paper is a literature review using legislation, journals, and books as primary data described descriptively. This study reveals that children aged 12-18 years are immature emotionally and cognitively and experience turbulent changes from various aspects that cause children to commit criminal acts. Thus, managing through the diversion mechanism is prioritized over the judicial process. The diversion mechanism regulating juvenile perpetrators of criminal acts aims to restore relationships, children's best advantages and protect children's rights based on restorative justice. The author argues that punishment for children must consider the child's ability to take responsibility for the cases committed, not as revenge for the violations committed.

Keywords: Restorative Justice, Child Psychology, Diversion, Islamic Law.

Abstrak: Regulasi penanganan anak pelaku tindak pidana di Indonesia berdasarkan keadilan restoratif yang mengedepankan kepentingan terbaik bagi masa depan anak. Namun, jumlah anak pelaku tindak pidana yang penanganannya melalui proses peradilan relatif masih cukup tinggi. Penelitian ini bertujuan untuk mendeskripsikan dan menganalisis penerapan keadilan

restoratif di Indonesia, mengungkap kondisi psikologis dan fase perkembangan anak sehingga terlibat tindak pidana, serta sumbangsuhnya terhadap kajian hukum Islam. Tulisan ini merupakan kajian pustaka dengan menggunakan perundang-undangan, jurnal dan buku-buku sebagai data primer yang diuraikan secara deskriptif. Studi ini mengungkapkan bahwa anak usia 12-18 tahun belum matang secara emosi dan kognisi, serta mengalami gejala perubahan dari beragam aspek yang menyebabkan anak melakukan tindak pidana. Dengan demikian, penanganan melalui mekanisme diversi lebih diutamakan dari pada proses peradilan. Mekanisme diversi dalam penanganan anak pelaku tindak pidana ini berorientasi pada pemulihan hubungan, kepentingan terbaik bagi anak, dan perlindungan atas hak anak yang berasaskan pada keadilan restoratif. Penulis berargumentasi bahwa hukuman terhadap anak harus mempertimbangkan kesanggupan anak dalam mempertanggungjawabkan perkara yang dilakukan, bukan sebagai balas dendam atas pelanggaran yang dilakukan.

Kata Kunci: Keadilan Restoratif, Psikologi Anak, Diversi, Hukum Islam.

A. Introduction

Act No. 35/2014 on Child Protection declares that every child is protected from acts of violence and discrimination.¹ Children have the right to receive humane treatment even if they have the status of criminals or are undergoing a judicial process.² The criminal perspective believes that imposing a sentence on a child will harm the child's mental development in the future.³ Furthermore, the imposition of a crime will give a stigma as a criminal, and the child feels ostracized by the environment.⁴ In the end, it is not only the children themselves who will suffer losses, but also families, communities, and nations that have no future generations.

Unfortunately, the number of children who commit crimes is not tiny; based on data obtained from the Directorate General of Corrections in the last five years, the average number of children who commit crimes is more than 7,500 cases per year.⁵ The following are the current data:

¹ Act No. 35 of 2014 on Amendments to Act No. 23 of 2012 on Child Protection.

² Yul Ernis, "Diversi dan Restoratif Justice dalam Penyelesaian Perkara Sistem Peradilan Anak di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016).

³ Alit Kurniasari et al., *Kondisi Anak Berkonflik Hukum (ABH) di LP Dewasa dan LPKS* (Jakarta: Pusat Penelitian dan Pengembangan Kesejahteraan Sosial, Kementerian Sosial RI, 2017), 1.

⁴ Wahyu Saefudin, "Menghindari Stereotip Pada Narapidana Asimilasi," in *Kapita Selekta Pemasarakatan* (Kalimantan Barat: IDE Publishing, 2020), 132-138, <https://books.google.co.id/books?id=2AXeDwAAQBAJ>.

⁵ Dirjenpas, "Jumlah Anak yang Terlibat Tindak Pidana di Indonesia" (Jakarta, 2020), <http://smlap.ditjenpas.go.id/public/ar1/current/monthly/year/2020/month/12>.

Table 1

Number of Children who Commit Criminal Offenses in 2015-2019

No.	Year	Number of Children
1.	2015	6.993
2.	2016	7.259
3.	2017	9.357
4.	2018	6.997
5.	2019	7.275
Average		7.576

In 2015 there were 6993 cases, increased in 2016 to 7,259 points. In 2017 cases increased again and became the highest number of issues, which was 9,357 cases. Then in 2018, there were 6,997 cases, and in 2019 there were 7,275 cases. The data on children in conflict with the law in the table above comes from 33 Regional Offices in Indonesia. This large number needs special treatment to prioritize their rights.

Special treatment for juvenile offenders refers to a restorative justice approach.⁶ Restorative justice can reduce the repetition of criminal acts through the strengthening of accountability.⁷ Moreover, developing an understanding of the perpetrators while ensuring that the treatment is based on the child's best interests.⁸ Thus, there will be no criminalization of naughty children who are forced to undergo legal processes.⁹ Discussions on the application of restorative justice have been studied before, such as Lasmadi et al.,¹⁰ Mufidah and Khasanah,¹¹ Rado et

⁶ Rini Fathonah, Nikmah Rosidah, and Mashuril. Anwar, "Formulation of Diversion in National and International Law," *International Journal of Business, Economics and Law* 24, no. 2 (2021): 176-82.

⁷ By Dennis Mcchague, "Restorative Justice Interventions," *Corrections Today*, December (2020): 20-25.

⁸ Juvenile Justice System Act No. 11 of 2012

⁹ Susana Andi Meyrina, "Restorative Justice dalam Peradilan Anak Berdasarkan Undang-Undang Nomor 11 Tahun 2012," *Jurnal Penelitian Hukum De Jure* 17, no. 1 (2017): 92, <https://doi.org/10.30641/dejure.2017.v17.92-107>.

¹⁰ Sahuri Lasmadi, Ratna Kumala Sari, and Hari Sutra Disemadi, "Restorative Justice Approach as an Alternative Companion of the Criminal Justice System in Indonesia," *Advances in Economics, Business and Management Research* 140, no. 1 (2020): 206-9, <https://doi.org/10.2991/aebmr.k.200513.044>.

¹¹ Lailatul Mufidah and Uswatul Khasanah, "Implications of Diversion in Shaping Children's Responsibility towards Restorative Justice," *Legislatif*, no. 11 (2019): 24-37.

al.,¹² Setyorini and Utomo,¹³ and Adly.¹⁴ All of them have a focus on the implementation of restorative justice in juvenile criminal justice. Meanwhile, research on restorative justice in Islamic Law is still limited. One of the studies conducted by Soleh,¹⁵ Zainuddin,¹⁶ and Amdani.¹⁷

Research conducted by Soleh and Zainuddin discusses the concept of restorative justice in Islamic Criminal Law by providing sanctions for *jarimah al-qisāsh wa al-diyāt*. Meanwhile, the study conducted by Amdani reviewed the application of Islamic Law and customary Law to children who were perpetrators of the crime of theft, with the research locus in Aceh. Although studies in juvenile criminal justice in Indonesia and concepts in Islamic Law are quite widely presented in other studies, analyses of restorative justice from a psychological perspective are still challenging to find in Indonesia.

Based on the description of previous research, this article has a significant difference because it supplements discussion from psychology's scientific point of view. The aim is to describe and analyze the application of restorative justice in Indonesia, reveal the psychological condition and developmental phase of children involved in criminal acts, and contribute to the study of Islamic Law in handling unlawful children. The author uses a literature review approach by tracing the laws and regulations, the latest journals, and books to provide an actual study concept. Before, we analyze them through qualitative methods by collecting and utilizing all information related to the subject matter. The author then processes and studies descriptively and systematically to answer the problems in this article.

¹² Nurul Widhanita Y Rado, Rudini Hasyim; Badilla, "The Concept of Restorative Justice in an Integrated Criminal Justice System," *Jurnal Restorative Justice* 3, no. 2 (2019): 145-59.

¹³ Erny Herlin Setyorini, Sumiatio, and Pinto Utomo, "The Concept of Restorative Justice for Children in Conflict with the Law in the Juvenile Criminal Justice System," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 149-59.

¹⁴ Fahmi Noor Adly, "Diversion as a Form of Resolving Child Criminal Cases at the Investigation Level in Cases of Decency Crimes in the East Java Regional Police Jurisdiction" 15, no. 2 (2020): 26-32.

¹⁵ Nor Soleh, "Restorative Justice in Islamic Criminal Law and Its Contribution to Criminal Law Reform in Indonesia," *Jurnal Studi Hukum Islam* 2, no. 2 (2015).

¹⁶ Zainuddin Zainuddin, "Restorative Justice Concept on Jarimah Qishas in Islamic Criminal Law," *Jurnal Dinamika Hukum* 17, no. 3 (2017): 335, <https://doi.org/10.20884/1.jdh.2017.17.3.826>.

¹⁷ Yusi Amdani, "Konsep Restorative Justice dalam Penyelesaian Perkara Tindak Pidana Pencurian oleh Anak Berbasis Hukum Islam dan Adat Aceh," *Al-Adalah* XIII, no. 1 (2016).

B. Juvenile Offender: Ratification to Regulation

The existence of a child who commits a crime is a concern for the world community. Therefore, the United Nations makes rules, guidelines, standards, and international human rights conventions specializing in child justice.¹⁸ The way is called the United Nations Standard Minimum Rules of the Administration of Juvenile Justice, or The Beijing Rules. This legal instrument is one of the international legal instruments that regulate the authority of law enforcement agencies in making policies for handling crimes committed by children.¹⁹

The emphasis on handling children is contained in the fundamental perspectives or basic views that become the common ground. In general, the preparation of The Beijing Rules aims to ensure there is justice in the intervention of the juvenile criminal justice system. In addition, to ensure that any intervention carried out will not harm a child and consider the child's best interests. Because it is undeniable that until now, in handling children who are perpetrators of criminal acts, law enforcement officials often equate them with adult criminals—for example, leaving children in adult prisons and detention centers in the process of waiting for a criminal sentence.²⁰

The following rule formed is the Riyadh Guidelines. The third rule is the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The United Nations adopted the Beijing Rules in 1985, while the United Nations adopted the Riyadh Guidelines in 1990. The fourth rule is the United Nations Convention on the Child's Rights (UNCRC),²¹ further enhancing the previous three rules. The UNCRC later became the most widely adopted human rights document by countries in the world.²²

Indonesia, as a member state of the United Nations, has also ratified this convention on the rights of the child through Presidential Decree No. 36/1996 on

¹⁸ Barry Goldson, "HM Inspectorate of Probation International Human Rights Standards and Youth Justice," 2019, <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/07/2019-04-International-Human-Rights-Standards-and-Youth-Justices-FINAL.pdf>.

¹⁹ Fathonah, Rosidah, and Anwar, 24:II."

²⁰ Kurniasari et al., 2.

²¹ United Nations, "The Convention on the Rights of the Child," *Social Policy & Administration*, vol. 23, 1989, <https://doi.org/10.1111/j.1467-9515.1989.tb00500.x>.

²² Goldson, I.

Ratification of the Convention on the Rights of the Child,²³ and Act No. 5/1998 on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁴ Furthermore, to guarantee children's rights in the judicial process, the government established Act No. 3/1997 on Juvenile Court. The Indonesian government re-compiled a law to improve Act No. 3/1997; the government then passed Act No. 11/2012 on the Juvenile Criminal Justice System (later referred to as the Juvenile Criminal Justice System).²⁵

The juvenile criminal justice system in Article 1 Paragraph (1) is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage up to the location of mentoring after serving a sentence.²⁶ Then, children who become criminals are called children in conflict with the law. Children in conflict with the law are 12 years old but not yet 18 years old and suspected of committing a crime.²⁷ The government then uses the Juvenile Criminal Justice System as a legal instrument that explicitly regulates children's criminal acts.²⁸ Article 106 also states that after this law comes into effect, all rules regarding handling a child criminal must use the Juvenile Criminal Justice System, and Law No. 3 of 1997 is no longer used. In addition, to ensure that juvenile offenders have a different place from adult perpetrators, the Juvenile Criminal Justice System also guarantees it in Article 3.²⁹

Compared with existing regulations, the Juvenile Criminal Justice System is most advanced in imposing sentences other than imprisonment.³⁰ As the principle in the punishment of children that criminal sanctions and imprisonment are the last

²³ Raissa Lestari, "Implementasi of Convention on The Rights of The Child in Indonesia," *Journal of Chemical Information and Modeling* 4, no. 2 (2017): 1-10.

²⁴ Yul Ernis, "Diversi dan Restoratif Justice dalam Penyelesaian Perkara Sistem Peradilan Anak di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 10, no. 2 (2016).

²⁵ Wahyu Saefudin, *Correctional Psychology* (Jakarta: Prenada Media, 2020), <https://ebooks.gramedia.com/id/buku/psikologi-pemasyarakatan>.

²⁶ Juvenile Justice System Act No. 11 of 2012.

²⁷ Rachmat Putro Ferdiawan, Meilanny Budiarti Santoso, and Rudi Saprudin Darwis, "The Right to Education for Children in Conflict with the Law," *Jurnal Kolaborasi Resolusi Konflik* 2, no. 1 (2020): 19, <https://doi.org/10.24198/jkrk.v2i1.27044>.

²⁸ Fathonah, Rosidah, and Anwar, II.

²⁹ Juvenile Justice System Act No. 11 of 2012.

³⁰ Erasmus A.T. Napitupulu et al., "Sentences without Imprisonment: Regulation, Implementation, and Projection of Alternative Sentences to Non-Prison in Indonesia," 2019, 1-126.

alternative or known as the *ultimum remedium*.³¹ The Juvenile Criminal Justice System regulates other alternative sentences such as warnings, unlawful conditions (community service, supervision, and coaching outside the institution), and job training.³² Other forms of action such as returning to parents, treatment in LPKS, and the obligation to attend formal education can also be given.³³

C. Implementation of the Juvenile Criminal Justice System Act and its Implications in Indonesia

Implementing the Juvenile Criminal Justice System in juvenile criminal procedural law is a government concern for children's future. This application can also mean that the government does not adhere to treatment principles following international legal standards. In Article 2, Paragraph (a-j), the code in handling children of criminal offenders is stated. These principles include the regulation of protection; Justice; non-discrimination; the child's best interests; respect for the child's opinion; survival and development of children; fostering and mentoring children; proportional; deprivation of liberty and punishment as a last resort; and avoidance of retaliation.³⁴

The special treatment of the Juvenile Criminal Justice System for children of criminal offenders also has implications for the involvement of various institutions to find the best formula for handling them.³⁵ The multiple institutions involved include the police, prosecutors, courts, and prisons. Even the Juvenile Criminal Justice System also requires law enforcement officers involved to have particular expertise in handling children or attended education and training. In addition, it also consists of the village government and related customary institutions in terms of taking through a deliberation process. The involvement of various existing institutions ensures that no rights of children of perpetrators and victims are violated.

³¹ Afni Zahra and RB Sularto, "Penerapan Asas *Ultimum Remedium* Dalam Rangka Perlindungan Anak Pecandu Narkotika," *Law Reform* 13, no. 1 (2017): 18, <https://doi.org/10.14710/lr.v13i1.15948>.

³² Juvenile Justice System Act No. 11 of 2012.

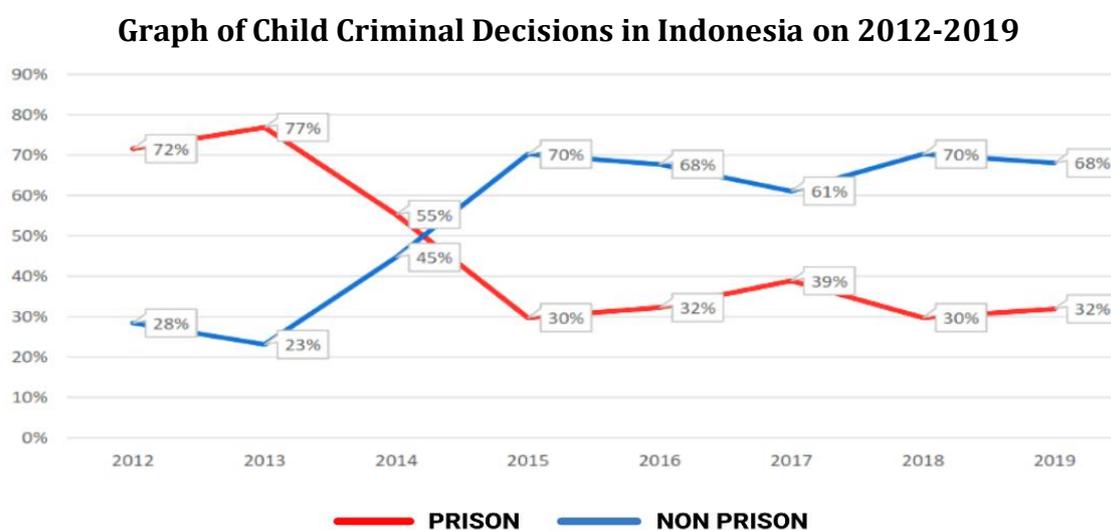
³³ Napitupulu et al., 1-126.

³⁴ Juvenile Justice System Act No. 11 of 2012.

³⁵ Rado, Rudini Hasyim; Badilla, 3: 2.

The implementation of the Juvenile Criminal Justice System can be seen from the Child Special Guidance Institution (LPKA), which does not experience overcapacity,³⁶ unlike what happened in adult prisons.³⁷ The absence of overcapacity in LPKA means a judicial system that prioritizes non-prison sentences in Indonesia has been implemented. Therefore, this fact must be appreciated because there has been cooperation between agencies and institutions in realizing justice for children who are criminals. Other alternative punishments from law enforcement officers can be seen in the Directorate General of Corrections table.

Figure 1



Source: Directorate General of Corrections, 2021.

The graph above shows that in 2012-2013 the number of criminal convictions for imprisoned children was very high, namely 72% to 77%. Even in 2013, the second year of the promulgation of the Juvenile Criminal Justice System became the year with the highest number of imprisonment decisions, which was 4,970 out of a total of 6,466 decisions. In 2014 the number of children who received non-prison decisions almost doubled from the previous year, from 23% to 45%. After that, from 2015-2019, non-prison sentences in Indonesia were consistently

³⁶ Insan Firdaus, "The Role of Community Counselors in Overcrowded Handling Efforts in Correctional Institutions," *Jurnal Ilmiah Kebijakan Hukum* 13, no. 3 (2019): 339, <https://doi.org/10.30641/kebijakan.2019.v13.339-358>.

³⁷ Wahyu Saefudin et al., *Kapita Selekta Pemasyarakatan Edisi II*, ed. Wahyu Saefudin and Mirna Fitri Nur Cahya Dewi (Kalimantan Barat: IDE Publishing, 2021), https://play.google.com/store/books/details/Wahyu_Saefudin_Kapita_Selekta_Pemasyarakatan_Edisi?id=71UrEAAAQBAJ.

above 60% of the total verdicts. The highest non-prison verdicts for eight years occurred in 2015 and 2018, which reached 70%.

The dominant application of prison sentences in 2012 to 2014 was due to the Juvenile Criminal Justice System, which entered a transition to be used in the criminal justice process. The Juvenile Criminal Justice System shall come into force no later than two years after its promulgation in 2012. Thus, from 2015 onwards, the number of children sentenced to non-prison sentences was stable at over 60%. This figure can also mean that implementing the Juvenile Criminal Justice System in the judicial process follows international legal instruments, based on the child's best interests and making imprisonment the last alternative in the criminal decision given.

Thus, the Juvenile Criminal Justice System has brought about a change in the juvenile justice paradigm. First, the Juvenile Criminal Justice System guarantees the rights of every child through the many institutions involved in it, from pre-adjudication to post-adjudication processes.³⁸ Then, in terms of criminal sanctions given to children, criminal offenders no longer emphasize corporal punishment. In addition, it is evident that this law prioritizes and upholds children's rights in terms of existing principles. Therefore, the Juvenile Criminal Justice System used in juvenile justice procedural law has applied the principles of restorative justice.

D. Psychological Conditions and Developmental Phases of Children Involved in Crime

Various changes occur during adolescence, ranging from physical, psychological, social, cognitive to academic. There are conditions where teenagers feel trapped in confusion about the changes that are happening to them. The adolescent phase is categorized into early adolescence (12-14) and late adolescence (15-19).³⁹ In the emotional aspect, adolescents experience sensitivity to various stimuli. Teenagers tend to be reactive in responding to every issue. However, the distance between stimulus and response is quite close, so teenagers are often seen

³⁸ Meyrina, 17:1.

³⁹ Caterine Tucker and Sondra Smith-Adcock, *Counseling Children and Adolescent* (United States of America: SAGE Publications Inc, 2016), <https://us.sagepub.com/en-us/nam/counseling-children-and-adolescents/book242525>.

as immature children.⁴⁰ Emotional maturity in adolescents is generally categorized as low to moderate.⁴¹ According to Jean Piaget's theory, adolescents are open to receiving information on the cognitive aspect. This matter includes analyzing the norms around them because teenagers have been able to think ultimately abstract, concrete, and formal. Adolescents also strive to inquire about their self-constructed hypotheses, then get answers through natural behavior. So that the way teenagers think becomes complex.⁴² In the social aspect, adolescents are susceptible to the surrounding social environment, such as family, teachers, and peers. Social elements can significantly influence how teenagers behave, make decisions, and solve problems. In this phase, teenagers attempt to adjust to the environment, especially peers, because there is a desire to be popular.⁴³

Therefore, teenagers are not afraid to do risky behavior, only to be accepted by the environment. Including health risks, dropping out of school, unplanned pregnancy, going to prison, to death. Mainly because in this phase, adolescents begin to form an identity outside of the influence of the family.⁴⁴ So that the lives of adolescents cannot be separated from their peers who are members of groups, this phase is where conformity appears, which has a negative connotation, including triggering criminal acts. The reason is that teenagers are prone to following group decisions even though they deviate. They were starting from small things, such as violating school rules.⁴⁵ However, as fellow teenagers, they experience the same

⁴⁰ Dienne J. Bos et al., "Distinct and Similar Patterns of Emotional Development in Adolescents and Young Adults," *Developmental Psychobiology* 62, no. 5 (2020): 591-99, <https://doi.org/10.1002/dev.21942>.

⁴¹ Mohd Sani Ismail et al., "Emotional Maturity among Student Disciplinary Problems in Secondary School at Terengganu," *International Journal of Academic Research in Business and Social Sciences* 11, no. 4 (2021): 1153-61, <https://doi.org/10.6007/IJARBS/v11-i4/9240>.

⁴² Firman Sidik, "Actualizing Jean Piaget ' S Theory of Cognitive Development In Aktualisasi Teori Perkembangan Kognitif Jean Piaget" 4, November (2020): 1106-11.

⁴³ Emma J. Kilford, Emily Garrett, and Sarah Jayne Blakemore, "The Development of Social Cognition in Adolescence: An Integrated Perspective," *Neuroscience and Biobehavioral Reviews* 70 (2016): 106-20, <https://doi.org/10.1016/j.neubiorev.2016.08.016>.

⁴⁴ Charles E. Irwin et al., "Risk-Taking Behavior in Adolescents: The Paradigm," *Annals of the New York Academy of Sciences* 817 (1997): 1-35, <https://doi.org/10.1111/j.1749-6632.1997.tb48193.x>.

⁴⁵ Hanna Permata Hanifa and Muslikah Muslikah, "The Relationship between Peer Conformity in Terms of Gender and Compliance with School Rules," *JURNAL EDUKASI: Jurnal Bimbingan Konseling* 5, no. 2 (2019): 136, <https://doi.org/10.22373/je.v5i2.5092>.

turmoil of problems.⁴⁶ Especially because teenagers fear rejection, this anxiety can also trigger aggressive behavior in early adolescents, mediated by low empathy skills.⁴⁷

In addition, the problem of using the internet in adolescents can also trigger deviant behavior. They are starting from the decline in the welfare of life both in increasing depression and low life satisfaction due to excessive use of social media. Furthermore, they are facings with increased feelings of loneliness and social anxiety.⁴⁸ Teenagers also begin to compare their lives with the lives of others on social media.⁴⁹ On the other hand, pornography can also be a free sex stimulus. Teenagers have sexual fantasies that have been repressed. This fact makes teenagers do hidden searches. Especially for teenagers who are not confident, they will shift their focus in exploring sexual potential.⁵⁰ So the higher the exposure to pornography, the higher the risky sexual behavior. Furthermore, the destructive behavior of adolescents is a form of failure of educational institutions in building character. Without considering the attitude aspect, the high academic demands make the school world a stressor that makes teenagers need catharsis. In the end, teenagers feel lost confidence and interest in positive things.⁵¹

Lastly, parents are the most influential factor. Juvenile delinquency is present because of the absence of parental figures who provide love and role models.⁵² A warm family environment, mutually supportive, can give happiness and life satisfaction. On the other hand, a conflict-ridden family climate, full of pressure and

⁴⁶ Winarsih and Sahat Saragih, "Family Harmony, Peer Conformity and Juvenile Delinquency," *Persona: Jurnal Psikologi Indonesia* 5, no. 01 (2016), <https://doi.org/10.30996/persona.v5i01.743>.

⁴⁷ Milena D. Batanova and Alexandra Loukas, "Social Anxiety and Aggression in Early Adolescents: Examining the Moderating Roles of Empathic Concern and Perspective Taking," *Journal of Youth and Adolescence* 40, no. 11 (2011): 1534-43, <https://doi.org/10.1007/s10964-011-9634-x>.

⁴⁸ Yoke Yong Chen et al., "Smartphone Usage and Psychological Well-Being among Malaysian University Students" 13, no. 2 (2021).

⁴⁹ Maartje Boer et al., "Social Media Use Intensity, Social Media Use Problems, and Mental Health among Adolescents: Investigating Directionality and Mediating Processes," *Computers in Human Behavior* 116, no. May 2020 (2021): 106645, <https://doi.org/10.1016/j.chb.2020.106645>.

⁵⁰ Peter J. B. Wilson, "The Porn Retreat: Narcissism and Adolescence," *Psychodynamic Practice* 24, no. 3 (2018): 235-44, <https://doi.org/10.1080/14753634.2018.1494621>.

⁵¹ Ingunn Marie Eriksen, "Class, Parenting and Academic Stress in Norway: Middle-Class Youth on Parental Pressure and Mental Health," *Discourse: Studies in the Cultural Politics of Education*, 2020, 1-13, <https://doi.org/10.1080/01596306.2020.1716690>.

⁵² Eriksen, II.

judgment, can trigger stress that diverts various destructive behaviors.⁵³ In addition, the irrationality of adolescent thought patterns and behavior is influenced by the type of family atmosphere,⁵⁴ likewise with the kind of parenting.⁵⁵

As for criminal acts, children have to face the law. It even ends with a logical consequence in the form of imprisonment. However, prison sentences on children have various faces and various perspectives. First, children who commit crimes are victims, referring to the phase of child development. Children in their teens result from different external stimuli, namely parents,⁵⁶ school,⁵⁷ peers. The growth of children both emotionally and cognitively is immature and is strongly influenced by external factors.⁵⁸ Second, adaptation to the prison environment is not easy; generally, the correctional maladjustment score is very high. Officers assess this adaptability from two things: the child's psychological condition (anger, stress, anxiety, depression) and behavioral indicators.⁵⁹ Last, there is violence in prison. Consequently, that suicide attempts and self-harm in prisoners continue to occur. One of them is associated with experiences of being sexually assaulted and abused while in prison.⁶⁰

Given these conditions, the prison environment is not a place that can support child development. Therefore, this adolescent development challenge should be seen as a potential, not a problem to be solved. There must be preventive efforts with various positive stimuli such as increasing empathy, assertiveness,

⁵³ Xiaoli Ni, Xiaoran Li, and Yuping Wang, "The Impact of Family Environment on the Life Satisfaction among Young Adults with Personality as a Mediator," *Children and Youth Services Review* 120, 2020 (2021): 105653, <https://doi.org/https://doi.org/10.1016/j.chilyouth.2020.105653>.

⁵⁴ Tomuletiu Elena-Adriana et al., "Impact of Family Environment on Adolescent's Irrationality," *Procedia-Social and Behavioral Sciences* 46 (2012): 2528-32, <https://doi.org/10.1016/j.sbspro.2012.05.516>.

⁵⁵ Ansu Francis, Mamatha Shivananda Pai, and Sulochana Badagabettu, "Psychological Well-Being and Perceived Parenting Style among Adolescents," *Comprehensive Child and Adolescent Nursing* 44, no. 2 (2021): 134-43, <https://doi.org/10.1080/24694193.2020.1743796>.

⁵⁶ Francis, Pai, and Badagabettu, 4:2.

⁵⁷ Eriksen, II.

⁵⁸ Caterine Tucker and Sondra Smith-Adcock, *Counseling Children and Adolescent* (United States of America: SAGE Publications Inc, 2016), <https://us.sagepub.com/en-us/nam/counseling-children-and-adolescents/book242525>.

⁵⁹ Alina Sanda Vasile, Manuela Mihaela Ciucurel, and Simona Ciucă, "Study of the Variables Associated with Correctional Adjustment in Adolescents," *Procedia - Social and Behavioral Sciences* 5 (2010): 1409-13, <https://doi.org/10.1016/j.sbspro.2010.07.297>.

⁶⁰ Louis Favril et al., "Risk Factors for Self-Harm in Prison: A Systematic Review and Meta-Analysis," *The Lancet Psychiatry* 7, no. 8 (2020): 682-91, [https://doi.org/10.1016/S2215-0366\(20\)30190-5](https://doi.org/10.1016/S2215-0366(20)30190-5).

building relationships, and forming identities.⁶¹ Furthermore, the attitude instilled since adolescence has an impact on life in adulthood.⁶² Therefore, it needs consideration regarding the childhood of the perpetrators of criminal acts. Childhood injuries or past adverse experiences can be a stimulus for adolescent aggressive behavior. Moreover, the majority of youth involved in juvenile justice report significant health problems and behavioral trauma.⁶³ Thus, educators and parents are also required to be able to understand the world of adolescence comprehensively. Then provide education with effective strategies.⁶⁴

E. Restorative Justice in Handling Juvenile Offenders: Diversion Mechanisms

The Juvenile Criminal Justice System guides the settlement of child cases in criminal justice in Indonesia. Since the government ratified and began to apply it in juvenile justice, the Juvenile Criminal Justice System has proven to represent restorative justice for children who are criminals. According to McCargue, restorative justice is a concept that seeks to repair and reduce losses caused by criminal acts or mistakes.⁶⁵ Then according to Marshall, restorative justice is an approach in solving an illegal problem that involves the parties themselves, and society in general, in an active relationship with government organizations.⁶⁶

Furthermore, Marshall also explains the principles in implementing restorative justice, including perpetrators, victims, families, and local communities. In addition, Marshall also emphasizes seeing crime based on the social context of the local community. Then, the orientation in problem-solving is forward improvement

⁶¹ Diana Paricio et al., "Positive Adolescent Development: Effects of a Psychosocial Intervention Program in a Rural Setting," *International Journal of Environmental Research and Public Health* 17, no. 18 (2020): 1-17, <https://doi.org/10.3390/ijerph17186784>.

⁶² Mathias Allemand, Andrea E. Steiger, and Helmut A. Fend, "Empathy Development in Adolescence Predicts Social Competencies in Adulthood," *Journal of Personality* 83, no. 2 (2015): 229-41, <https://doi.org/10.1111/jopy.12098>.

⁶³ Jeff M. Kretschmar et al., "Examining the Impact of a Juvenile Justice Diversion Program for Youth with Behavioral Health Concerns on Early Adulthood Recidivism," *Children and Youth Services Review* 91, no. March (2018): 168-76, <https://doi.org/10.1016/j.chilyouth.2018.06.010>.

⁶⁴ Katie Jansen and Sarah M. Kiefer, "Understanding Brain Development: Investing in Young Adolescents' Cognitive and Social-Emotional Development," *Middle School Journal* 51, no. 4 (2020): 18-25, <https://doi.org/10.1080/00940771.2020.1787749>.

⁶⁵ Mcchargue, 20-25.

⁶⁶ Tony Marshall, "Restorative Justice: An Overview," *Home Office Research Development and Statistics Directorate* (London, 1999), <http://uci.or.kr/G300-jX950354.vn37p137>.

and preventive efforts. The last principle is the flexibility of practice in the execution of punishment.⁶⁷ Settlement based on restorative justice can also benefit perpetrators, victims, and the community regarding recovery and fulfillment of accountability needs.⁶⁸

The concept of restorative justice described by Marshall is also applied in the Juvenile Criminal Justice System. It is starting from understanding principles to implementation processes such as mediation and diversion. In the Juvenile Criminal Justice System, the notion of restorative justice is the settlement of criminal cases by involving the perpetrator or victim and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation.⁶⁹ The concept of restorative justice is practically known in Indonesia through problem-solving through consensus deliberation. However, if the way of consideration cannot be used, the judiciary will resolve it.⁷⁰ Specifically, the application of restorative justice practices in the Juvenile Criminal Justice System is through the diversion mechanism.⁷¹ Law enforcement officers must prioritize this diversion mechanism at every stage, starting from the police, prosecutors, and courts. Although it is mandatory to strive for, the diversion mechanism must also meet the Juvenile Criminal Justice System requirements.

The resolution of legal problems through the diversion process implements restorative justice in the Juvenile Criminal Justice System.⁷² Through the diversion process, children can be avoided from corporal punishment while still protecting their rights. As the principle in restorative justice, namely to restore, not as a punishment.⁷³ The purpose of the diversion deliberation is to achieve peace, resolve

⁶⁷ Marshall.

⁶⁸ Jennifer L. Lanterman, "Models Versus Mechanisms: The Need To Crack," *British Journal of Community Justice* 17, no. 1 (2021): 60-78.

⁶⁹ Juvenile Justice System Act No. 11 of 2012.

⁷⁰ Ferry Fathurokhman, "The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases," *Procedia Environmental Sciences* 17 (2013): 967-75, <https://doi.org/10.1016/j.proenv.2013.02.115>.

⁷¹ Jufria Mahfud, Binti Mohamed Nazerib Norbani, and Saroja Dhanapal, "Restorative Justice: An Alternative Process for Solving Juvenile Crimes in Indonesia," *Brawijaya Law Journal* 6, no. 2 (2019): 157-69, <https://doi.org/http://dx.doi.org/10.21776/ub.blj.2019.006.02.03>.

⁷² Mahfud, Norbani, and Dhanapal, 6:2.

⁷³ Lasmadi, Sari, and Disemadi, 140.

cases outside the judicial process so that children avoid deprivation of liberty, invite the community to participate, and instill responsibility in children.⁷⁴

According to Nasirudin, finding a joint decision on diversion can be more satisfying and fulfills the value of justice for both parties. In addition, the implementation of the diversion process will override the criminal justice process, close the occurrence of detentions, and encourage the community to be involved in diversion consultations. Another positive thing about the purpose of this diversion meeting is that there is a form of accountability in the form of recognition, compensation for compensation, and other agreed matters.⁷⁵

The diversion process must be pursued by law enforcement at every stage, starting from the level of the police, prosecutors, and courts.⁷⁶ However, not all cases involving a child can be resolved by a diversion process. At least two conditions must be met: the threat of a sentence of fewer than seven years in prison and not a repetition of a crime.⁷⁷ These two conditions are attached to a child who commits a crime. If a child commits a crime with a criminal penalty of greater than seven years, then the settlement through the diversion process cannot be carried out, even though it is not a repetition of the crime.

In its implementation, the diversion deliberation process involves perpetrators and victims and parents of perpetrators and victims, community counselors, and professional social workers. Including community leaders and local religious leaders if they are considered to help the diversion deliberation process. In addition, the diversion process must also pay attention to the interests of the victim, the welfare and responsibility of the child, avoid retaliation, social harmony, avoid negative stigma, and be adjusted to local moral norms.⁷⁸ Furthermore, the efforts of law enforcement officers in providing restorative justice through diversion consultations can be seen in the graph below.

⁷⁴ Juvenile Justice System Act No. 11 of 2012.

⁷⁵ Nasirudin and Evi Loliancy, *Mediation and Diversion Deliberation Module* (Jakarta: BPSDM Hukum dan HAM, 2021).

⁷⁶ Wahyu Saefudin, "The Prison Paradigm in the Juvenile Criminal Justice System," in *Kapita Selekta Pemasarakatan* (Kalimantan Barat: IDE Publishing, 2020), 161-66, <https://books.google.co.id/books?id=2AXeDwAAQBAJ>.

⁷⁷ Juvenile Justice System Act No. 11 of 2012.

⁷⁸ Juvenile Justice System Act No. 11 of 2012.

Figure 2
Percentage of Settlement of Child Cases Through
Diversion Efforts in 2012-2019



Source: Directorate General of Corrections, 2021.

Figure 2 in 2012-2013 shows that the percentage of settlements through diversion efforts was still below 10% of the total juvenile cases, namely 7.66% and 5.37%. In 2014 the number of case settlements through the diversion process increased to 24% or amounted to 1,388 points out of a total of 5,754 criminal cases involving children. After that, from 2015-2019, more than 40% of child cases were successfully resolved through diversion efforts. For eight years, the highest implementation of diversion efforts occurred in 2015, reaching 55.28% of the total child cases, which amounted to 6,993. Meanwhile, the lowest number of case settlements through diversion efforts occurred in 2013, where there were only 5.37% cases or around 347 of 6466 issues that were successfully resolved through diversion efforts. The increase in the number of settlements of children's claims through the diversion process demonstrates the effectiveness of the restorative justice approach, which is the basis of this regulation. Furthermore, this shows that the diversion effort implies a Juvenile Criminal Court that prioritizes children's best interests.⁷⁹

The diversion mechanism, which is the implementation of restorative justice, can restore children to normal human beings to be helpful in the future.⁸⁰ This matter can happen because of diversion agreements, including compensation for

⁷⁹ Setyorini, Sumiatio, and Utomo, 16:2.

⁸⁰ Tatan, *Building an Integrated Child Protection System in Conflict with the Law* (Jakarta: BPSDM Hukum dan HAM, 2016).

losses for victims, medical and psychosocial rehabilitation, being returned to parents, participation in education, and community services for 3 (three) months.⁸¹ Therefore, law enforcement officers' application of diversion efforts must continue to be maximized to protect children's rights and make child perpetrators still be held accountable for any mistakes they have made. The mechanism for solving problems through diversion efforts is also implementing restorative justice, which seeks to restore criminal offenders, not make the punishment an effort to revenge.

In Islamic Law, the discourse on restorative justice has existed since the Qur'an was revealed and has been accommodated by the Islamic *jināyah* system. Long before the emergence of the restorative justice system, which is currently being implemented in various Anglo-Saxon, Roman, and German linguistic countries. Since 1000 AD Islam has been implementing the essence of restorative justice since 600 AD and since then has made significant contributions in the Middle East.⁸²

As for restorative justice in Islamic Law, it is defined as the context of punishment for perpetrators of the *qisāsh* crimes whose priority is the type of punishment under the victim's authority and the victim's family. There are several types of criminal acts in Islam whose settlement system uses a restorative justice approach. For example, crimes relating to property or wealth, crimes against life and life, crimes against honor, crimes against dignity, offenses related to the provisions of marriage administration, and crimes involving children's rights. Alternative punishments that can be applied to criminals are exile, fines, and reprimands or warnings.⁸³

F. Juvenile Offenders: Legal Proficiency and Criminal Accountability in Islamic Criminal Law

Islam, as a comprehensive and universal teaching, has provided every guide for its people. The prohibitions and obligations are clearly stated in the argument

⁸¹ Juvenile Justice System Act No. 11 of 2012.

⁸² Absar Aftab Absar, "Restorative Justice in Islam with Special Reference to the Concept of Diyya," *Journal of Victimology and Victim Justice* 3, no. 1 (2020): 38-56, <https://doi.org/10.1177/2516606920927277>.

⁸³ Darsi Darsi and Halil Husairi, "Ta'zir in Fiqh Jinayat Perspective," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 16, no. 2 (2018): 60, <https://doi.org/10.32694/010500>.

text (*nāsh*). Likewise with humans, since they were born into the world, they have been given a nature inherent in them. As for puberty, skills will be charged to act based on the law, both for the obligation to carry out orders and leave prohibitions. In this case, it is called the *mukalla* for *mahkūm 'alaih*. Likewise, if it is not considered an adult, then according to the provisions of the *nāsh*, it is not subject to *taklīf* obligation.⁸⁴

The signs of maturity in humans are if they have experienced biological events, for women when they have menstruated, and for men when dreams of having sex come. Not only that, but the determinant of maturity in Islam also focuses on the perfection of reason. The urgency of the mind possessed can comprehensively understand the hopes and objectives of a *taklīf* proposition⁸⁵ because there is no normative argument that explicitly mentions the age of maturity in humans. Consequently, the scholars differ on the age limit of a person being categorized as a child or not yet mature.

Hanafi and Maliki scholars argue that a man's age of maturity is up to 18 years old. In comparison, women mature faster than men. Until the age of 17, a woman has entered puberty. As for the opinion of *Shafi'i* scholars, Hambali and the majority of jurisprudence scholars say that a person has passed the phase of children when a man has *ihtilām*, and a woman has menstruation, or both are 15 years old. Suppose a child commits violations and crimes before entering adulthood. In that case, he will not be held accountable for either the *jarīmah al-hudūd*, *jarīmah al-qisāsh*, or *jarīmah al-ta'zīr* because it is considered not *mumayyiz*, and unable to take responsibility for his actions so that he will be given the teaching of *ta'dibiyah* or returned to his parents. In addition, the child's parents are still required to pay *diyāt* following the type of *jarīmah* committed as a consequence of the criminal act committed by the child.⁸⁶

⁸⁴ Nasrun Haroen, *Ushul Fiqh* (Jakarta: Logos Wacana Ilmu, 1997).

⁸⁵ Ahmad Mafaid, "The Ability to Accept Rights and Carry Out Legal Actions Reviewing the Civil Code and Usul Fiqh," no. 1 (2016), <http://etheses.uin-malang.ac.id/id/eprint/11728>.

⁸⁶ Noercholis Rafid and Saidah Saidah, "Criminal Sanctions for Children Facing the Law of Jinayah Fiqh Perspective," *Al-MAIYYAH: Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 11, no. 2 (2018): 321-41, <https://doi.org/10.35905/almaiyyah.v11i2.661>.

Ayu Darisah also mentioned that the punishment for child offenders in Islam is returned to parents or guardians and given intensive teaching in particular institutions, better known today as the Correctional Facility (LPKA).⁸⁷ However, suppose it turns out that the parents lack understanding and cultivate the child's values of religiosity. In that case, the parents can direct where the child will be led to answer the problem. For example, by involving children in socialization activities or religious assistance for adolescents in terms of '*amaliyah* worship and *mu'āmalah*, they hope that children will inspire and implement religious values to realize responsible and beneficial people themselves themselves

In addition, law enforcement and prevention of child *jināyat* criminal offenders is also applied in the province of Aceh *Qanūn* No. 11 of 2008 on Child Protection.⁸⁸ In Article 40, Aceh *Qanūn* No. 11 of 2008 on Child Protection explained that the matter involving a child could be settled out of court by promoting the child's best interests, with a record when it meets specific criteria. Among them are children under 12; the threat of punishment up to one year; material-related crimes, not those related to body and life; cases of theft not associated with body and soul; as well as fights that do not cause physical disability and loss of life.

Examples of case law that puts the solution through the rule in the *Qanūn* Aceh on Protection of Children took place in South Aceh jurisdiction. There is a case with *khalwat* and *ikhtilāth* committed by a minor and then processed in *wilayatul hisbah* by calling the parents or guardians of the two perpetrators. Because of age consideration, they were not given the punishment of whipping or marriage. Therefore, the alternative provided in the *wilayatul hisbah* is guidance related to Islamic law. The form of the suggestion itself is education, such as in a formal school for 3-7 days with the supervision of a parent or perpetrator's guardian.⁸⁹

⁸⁷ Ayu Darisah, Edi Darma Wijaya, and Rispalman, "Review by Fiqih Jinayah (Case Study at the Banda Aceh Police)" 8, no. 2 (2017): 151-60.

⁸⁸ Qanun Aceh No. 11 of 2008 on Child Protection (Indonesia, 2008), <http://www.bphn.go.id/data/documents/08pdaceh011.pdf>.

⁸⁹ Khairani, "Mechanism of Handling Children Violators of Qanun Jinayat about Seclusion and Ikhtilat (Case Study in South Aceh District)," *Journal of Child and Gender Studies* 4, no. 1 (2018): 39-54.

The values in the form of accountability and sanctions are under the concept of restorative justice in Islam, prioritizing forgiveness.⁹⁰ This is explained in *al-Baqarah* (2): 178 and 109, *Ali 'Imran* (3): 159, *al-Nisā* (4): 149, *al-Thaghābun* (64): 14, *al-Mā'idah* (5): 13, *Yusuf* (19): 92, and *al-Hijr* (15): 85. Applying the idea of forgiveness and reconciliation is a form of implementation of the *maqāsid al-sharī'ah* to protect the mind and souls of children of criminals from mental degradation and lack of insight⁹¹ by considering that these children will be the next generation of the nation. As for the conflict resolution mechanism exemplified by Islam through the concept of Madani society in the prophetic period, it also highly prioritizes the values of Islamic brotherhood in the form of justice for each individual. Therefore, inner and spiritual satisfaction through deliberation becomes the primary orientation for the disputing parties. To implement restorative justice, we must consider the following five things: aspects of justice, humanity, characteristics of public welfare, aspects of forgiveness, and aspects of peace.⁹² To sum up, the primary function of the conviction, which aims to prevent, atonement, recover, and repair damage for the parties can be realized.⁹³

G. Conclusion

Restorative justice, which is the basis of the juvenile justice system in Indonesia, guarantees that children of offenders have special rights in the judicial process through diversification efforts. The restorative justice approach used in Indonesia's Juvenile Criminal Justice System has affected children in juvenile prisons. In addition, the imposition of sanctions for children of criminals in Islam prioritizes the condition of the child's mind, soul, and future as an implementation of the *maqāsid al-sharī'ah*. These are the logical consequence of the psychological developmental needs of adolescents who are experiencing turbulent changes in various aspects.

⁹⁰ Ramizah Wan Muhammad, "Restorative and Retributive Justice in Sharia and in Malaysia: A Highlight," *Journal of Contemporary Islamic Law* 3, no. 1 (2018): 35-41.

⁹¹ Khairani, 4:1.

⁹² Ahmad Ropei, "The Resolution Of Criminal Cases through A Restorative Justice Approach in Islamic Law Perspective," *Jurnal Hukum Islam* 18, no. 2 (2020): 293-312.

⁹³ Rachmawati Rachmawati, "Settlement of Child Matters Faced with Law According to Law No. 11 of 2012," *Tadabbur: Jurnal Peradaban Islam* 2, no. 2 (2020): 291-311, <https://doi.org/10.22373/tadabbur.v2i2.23>.

Recommendations for further research are to analyze from different perspectives, such as the child's physical health or biological aspects. It also has a role in making policies to deal with child offenders, adding health facilities, and improving the system that has been running. The weakness of this research is to take a broad perspective of psychological science. Further research can focus on one specific discussion, such as the urgency of the role of parents and teachers as a form of crime prevention. That way, solutions, and more in-depth discussions can be formulated.

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