

THE CRIMINAL SYSTEMS FOR CHILDREN THAT ARE AGAINST LAW REVIEWED FROM LAW NUMBER 11 OF 2012 CONCERNING THE CHILD CRIMINAL JUSTICE SYSTEM AND ISLAMIC LAW (STUDY AT THE MEDAN DISTRICT COURT)

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Abstract: *L Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the criminal justice system for child offenders in the Act places more emphasis on educational penalties in the best interest of children. Therefore, this research tries to study the child criminal system which is in conflict with the law and analyze the child criminal system according to Law Number 11 of 2012 concerning the Criminal Justice System for Children and according to Islamic Law studies in the Medan District Court. The research method used in this study is a normative juridical research method with the approach taken is the statute approach. The Legislative Approach is used because the basis of the criminal justice system which is the subject of this research is Law Number 11 of 2012 concerning the Criminal Justice System for Children. A comparative approach is also carried out. The results showed that the criminal justice system in Indonesia currently refers to Law Number 11 of 2012 concerning the juvenile criminal justice system whose provisions must be sought restorative justice and diversion, where the Child as a criminal in the Medan District Court in 3 the last year has tended to be stable and decreased in the number of cases that were tried in the Medan District Court, wherein 2017-2018 there were 81 cases each, and in 2019 there were 64 cases that were tried. The child criminal system according to Law Number 11 of 2012 concerning the Child Criminal Justice System with the child criminal system according to the Islamic Criminal Law lies in the concept of criminal liability, it can be seen from the limits of the child being able to be responsible.*

Key Words: *Criminal System, Children Who Face Law, Islamic Law.*

1. INTRODUCTION:

Children are the greatest gift for family, religion, nation, and state. In the life of the nation and state, children are the successors of the ideals for the progress of a nation. Children's human rights are also protected through Article 28 B paragraph (2) of the 1945 Constitution which reads; "Every child has the right to survival, growth, and development and is entitled to protection from violence and discrimination" (Article 28 B paragraph (2) of the 1945 Constitution). The age limit stated by a child in the Act is different from the definition according to Islamic law and customary law. According to Islamic law and customary law both determine a person is still a child or an adult not of the age of the child. This is because each child is different in age to reach maturity. Islamic law determines the definition of a child seen from the signs on someone whether someone is an adult or not. This means that a person is declared as a child if the child does not yet have the signs possessed by an adult as specified in Islamic law. Ter Haar, a traditional leader, said that customary law provides a basis for determining whether a person is a child or an adult, that is, seeing an element that is fulfilled by someone, i.e. whether the child is married, leaves the parents' house or in-law's house and establishes his own family life (Marlina, 2009). Meanwhile, according to the legislation, among others explained that a child is a person who has not reached the age of 21 (twenty-one) years or is not married. Some say the child is someone who is not yet 18 (eighteen) years old, Law No. 23 of 2002 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old and is even still in the womb, whereas Law No. 3 of 1997 concerning the Juvenile Court, a child is a person who in the case of a bad boy has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married.

The principle of legal protection for children must be in accordance with the Convention on the Rights of the Child as ratified by the government of the Republic of Indonesia with Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child Children's Rights) (Explanation of Law Number 11 of 2012 Concerning the Criminal Justice System for Children). In the Convention on the Rights of the Child which regulates the principle of legal protection for children, Indonesia as a country that ratifies the convention also follows the obligation to provide special protection for children in conflict with the law. Violations of legal norms that make a child face the justice system, give rise to a response that says that there are law enforcers who have not paid special attention to child suspects, and this shows that the law in Indonesia is still not sufficiently in favor of children, while as

part of the legal subject children should get protection. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the development and growth of children in a reasonable manner both physically, mentally, and socially (Explanation of Law Number 11 of 2012 Concerning the Criminal Justice System for Children).

The crime of children who are in conflict with the law every year is always increasing, therefore various efforts to prevent and deal with the crime of children who are in conflict with the law should be immediately carried out. One of the efforts to prevent and deal with children in conflict with the current law is through the implementation of the juvenile justice system, which is in accordance with Law Number 11 of 2012 concerning the Juvenile Justice System. The purpose of implementing a juvenile justice system (Juvenile Justice System) is not merely aimed at imposing criminal sanctions on children who have committed a crime, but rather is focused on the rationale that the imposition of sanctions as a means of supporting realizing the welfare of child offenders who deal with law. One example is the case of the theft of a Rp 10,000.00 credit voucher committed by a grade 1 junior high school boy who underwent legal proceedings and was charged with Article 362 of the Criminal Code and threatened with imprisonment for 7 years. The case of pinched burglary committed by a child with the initials AL in Palu was then processed in a formal legal manner and was brought to justice. These cases can provide an illustration of a large number of children with legal problems who must undergo criminal justice processes. At a very young age, these children must experience legal proceedings for criminal cases that are so long and tiring, starting from the stage of investigation by the police, prosecution by prosecutors, trials conducted in court by judges and the implementation of judges' decisions. Starting from the investigation stage, the legal apparatus has been given the authority by the Law to carry out detention. The situation of detention creates a mental burden, plus the psychological pressure that must be faced by those sitting on trial as prisoners. The process of punishment given to children through the formal criminal justice system by putting children in prison proved unsuccessful in making children deterrent and becoming better individuals to support the child's growth and development process, prisons often make children smarter in committing crimes (Mugopal, 2012).

Over time, Law Number 3 of 1997 concerning Juvenile Court is not very relevant to the current situation. Where the criminal system of child offenders is still widely applied in the criminal justice system like adult justice. Then Law Number 3 of 1997 concerning the Juvenile Court was revised or replaced with Law Number 11 of 2012 concerning the Juvenile Justice System, which emphasized the best interests of children. In the provisions of Law No. 11 of 2012 concerning the Criminal Justice System for Children, against bad children can only be handed down criminal or action. The crimes that can be handed down to naughty children are the main and additional crimes. The main criminal penalties for children consist of criminal warnings, crimes on the condition, job training, coaching in institutions, and prisons. Meanwhile, additional crimes consist of deprivation of profits derived from criminal acts, or fulfillment of adat obligations. Furthermore, the provisions regarding the form and procedure of the criminal conduct as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be regulated by Government Regulation (Article 69, Article 70 of Law Number 11 Year 2012). Based on the above background, the researcher is interested in conducting research with the title "The Criminal Systems for Children That Are Against Law Reviewed from Law Number 11 of 2012 Concerning the Child Criminal Justice System and Islamic Law (Study at the Medan District Court)".

2. LITERATURE REVIEW

Some of the terms below are operational definitions of the concepts used to avoid mistakes in interpreting the concepts, namely:

- The Criminal System is a process of giving or imposing a crime by a judge, so it can be said that the criminal system includes the entire statutory provisions governing how the criminal law is enforced or operationally concretely so that a person is subject to sanctions (criminal law) especially for children who are dealing with the law.
- Children as perpetrators are children who commit criminal acts.
- The juvenile justice system is the whole process of resolving cases of children dealing with the law, from the investigation stage to the guidance stage after serving a crime.
- Children who are in conflict with the law (ABH) are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts.
- Children in conflict with the law hereinafter referred to as Children are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing criminal offenses.
- Children who are victims of criminal acts hereinafter referred to as Child Victims are children who are not yet 18 (eighteen) years of age who suffer physical, mental, and/or economic losses caused by criminal acts.
- A child who is a witness of a crime hereinafter referred to as a Child of a Witness, is a child who is not yet 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution and examination in a court of law concerning a criminal case heard, seen, and/or he experienced it himself.

- Restorative Justice (Restorative Justice) is the settlement of criminal cases involving the perpetrators, victims, the families of the perpetrators/victims, and other related parties (in the case of settlement of cases of children) to jointly seek a fair resolution by emphasizing restoration to its original state, and not retaliation.
- Diversion is a diversion of the settlement of child cases from criminal justice processes to processes outside of criminal justice.

3. RESEARCH RESULTS:

3.1. Research result:

Based on the results of research in the Medan District Court, the author obtained statistical data that Children Against the Law starting from 2017-2018 are stable, in this case, there is no decrease or addition, reaching as many as 81 cases in 2017 and 81 the same cases in the year 2018, while in 2019 there were as many as 64 cases, in this case, there was a reduction in the number of cases being tried.

4. DISCUSSION:

4.1. The difference in Child Criminal System According to Law No. 11 of 2012 concerning the Children's Criminal Justice System with the Criminal System According to Islamic Criminal Law:

According to Jam Rimmelink, punishment is the conscious and mature imposition of punishment by the competent authority to the offender who is guilty of violating a legal rule (Khair & Ekaputra, 2011). Criminalization of children who commit criminal events in the two models of the juvenile justice system, namely between the juvenile justice system and the Islamic criminal law, emphasizes:

4.2. The age limit system of children who can be responsible for their actions:

Al Faruk (2009) states that child offenders in Islamic law cannot be held accountable for the actions they have committed, because children are not among those who are capable of being responsible. If children commit a crime, then the act is forgiven for those who still tamyiz. Whereas in the criminal justice system of children aged 14 years and over who are considered capable of being responsible for the actions that have been committed that have caused a legal event can be held accountable (Article 32 of Law No. 11 of 2012 concerning SPPA). Criminal liability in Islamic Sharia is a liberation of a person with the results (consequences) of actions (or no actions) which he does of his own volition, where he knows the intentions and consequences of these actions. Fulfillment is capable of being carried out or carried out if it has fulfilled three conditions namely: "the existence of acts that are prohibited, done of their own volition, the maker knows the consequences" (Hanafi, 2005).

4.3. The system for the reasons for criminal abolition:

The Islamic criminal system really emphasizes that children cannot be held liable even if they have committed a crime. The flow of accountability in Islamic criminal law is part of the fault of his parents who are unable to educate their children. This means that in this case if it is connected to the Prophet's Hadith which reinforces the sense of responsibility held by parents, namely "Every child is born in a state of fitrah, only his parents make him good or bad". While the juvenile criminal justice system, also firmly stated that for children who have not reached the age of 14 years, efforts to hold procedural responsibility for the law will automatically be deleted by itself. The firmness of this policy rule reveals that "for irregularities in behavior or unlawful acts committed by children, among others, are caused by factors outside the child's self" (Explanation of Law No. 11 of 2012 concerning SPPA, paragraph 2).

4.4. Criminalization is the last resort:

The field of Islamic criminal law, as explained above, where minors cannot be equalized with people who are converted, because there are certain things that are not possessed by minors. For children who have not tamyiz, if he performs Jarimah, then he is not sentenced to a criminal sentence but is punished with ta'dib (education) through punishment ta'zir from the ruler (judge) as teaching. He is freed purely from the sanctions of punishment, because he does not have perfect awareness of thinking, cannot distinguish between what is good and what is bad. Limitation of teaching penalties handed over to the authorities that are in accordance with his fingers. Hanafiyah scholars revealed that the actions of minors in their legal consequences are not the same as those of those who have reached the age of consent so that the killing of minors is not mandatory. And does not cause the right to inherit (Bahisniy, 1964). While the application of the criminal justice system to problems affecting children, treatment theory, namely the improvement of children's behavior attitudes is preferred in the process of resolving cases of children dealing with the law as the spirit of Law No. 11 of 2012 concerning the Child Criminal Justice System (Article 5 paragraph (1) of Law No. 11 of 2012 concerning the Child Criminal Justice System), through diversion and restorative justice initial efforts that must be made. This is because when a child commits a crime, the child is positioned as a victim not as an offender because the child does not stand alone, but because it is caused by problems outside the child's own ability, for example, due to economic, social, cultural and environmental problems they are in (Considerations Explanation of Law No. 11 of 2012 concerning the juvenile justice system second paragraph). Provisions as intended in the principle of legality of Law No. 11 of 2011 concerning the Child Criminal Justice System, expressly states:

Article 5 paragraph (1), that the juvenile justice system must prioritize the Restorative Justice approach as well as paragraph (3) in the juvenile justice system as referred to in paragraph (2) letter a and letter b must be pursued Diversity (Article 5 paragraph (1) of the Law No. 11 of 2012 concerning the Juvenile Criminal System). The criminal liability applies for 3 things (Hawwa, 2004), namely:

- Forbidden acts;
- Done on their own volition;
- Need to know the consequences of these actions.

The three things above, the existence of prohibited acts, carried out of their own volition, and the perpetrators know the consequences of such actions are a logical ratio for the enactment of criminal liability. Thus, for adults, common sense and self-will apply criminal liability. Based on the Compilation of Islamic Law, the definition of a child is explained by the age limit, that the age limit of a child who is able to stand alone or adult is 21 years, as long as the child is not physically or mentally disabled, or has never married (Article 98 Compilation of Islamic Law). After knowing the child's understanding according to Law No. 11 of 2012 and Islamic Criminal Law, this is related to the child committing a crime and criminal liability. The conclusion is that criminal offenses committed by children according to Law No. 11 of 2012 concerning the Criminal Justice System for Children can be seen first through the age limit of children. Children who can be submitted to the juvenile trial are at least 12 years of age and have not yet reached the age of 18 years. In the case of a child committing a crime at the age limit after the child concerned exceeds the age limit but has not reached 21 years, but can be submitted to the child's trial. If a child is suspected of committing a crime while his age is less than 14 years, he may only be subject to action under Article 69 paragraph (2), whereas regarding criminal sentences for children who are dealing with the law, whose age is more than 14 years, a criminal sentence may be imposed one-half of the maximum criminal threat for adults based on Article 81 paragraph (2). Diversion Efforts based on Article 7 paragraph (2) states that diversionary efforts, namely efforts to transfer the settlement of child cases from criminal justice processes to processes outside of criminal justice, for children who are in conflict with the law of children aged 12 years but have not reached 18 years of age, are carried out in the case of criminal done:

- threatened with imprisonment of under 7 years, and
- is not a repeat of a criminal offense

Based on Islamic Criminal Law, criminal offenses committed by children according to Islamic Criminal Law are as follows: Regarding criminal liability, Islamic criminal law requires adult conditions. Therefore, children are not liable to be responsible for criminal acts, before the limit of maturity is reached, it cannot be said of Mukallaf (people who have religious obligations). Then the person's condition cannot be accounted for his actions, and therefore he cannot be punished for these actions. The experts of Islamic Law argued that the basis for the imposition of the law is to look at the reason, meaning that a person can only be burdened with the law if he is sensible and can understand well taklif (age of legal imposition). Thus, people who do not or have no sense then they are considered not understand taklif (legal imposition age) in a syara'. Then the person cannot be held responsible for the criminal offense he committed. Rather it is a penalty for compensation or a form of teaching, and therefore he cannot be punished for the act and as a justification for abolishing and authorizing the sentence. Thus, criminal conviction committed by children in the perspective of Law No. 11 of 2012 and Islamic Criminal Law has the same similarity, namely the existence of Ultimum Remedium or as a last resort as well as the transfer of the process of settlement of child cases from criminal justice processes to processes outside of criminal justice. Islamic criminal law is familiar with the theory of retribution (retribution), but that does not necessarily become the final part of the sentence or application of the sentence imposed on the perpetrators. Islamic criminal law also prioritizes imposing penalties for prevention (Deterrence) and also the theory of reformation. It aims at how to protect the public from crime and violations of law (protection function) (Santoso, 2000). Islamic law in this case is more emphasizing that ta'zir punishment is an educational punishment for acts of sin (immoral) whose punishment has not been determined by syara' (Muslich, 2005). Based on the description above, it can be seen the differences in the criminal system in Law No. 11 of 2012 concerning the Juvenile Justice System and Islamic Criminal Law are as follows:

No.	Law No. 11 of 2012 concerning the Criminal Justice System for Children	Islamic Criminal Law
1.	Provisions for the responsibility of children who commit crimes are permanent or measurable, along with the fixed age limit set by Law No. 11 of 2012 along with sanctions. (See the provisions of Article 1 point 3).	The provision of liability for underage criminal offenses according to Islamic criminal law is not fixed, because the responsibility is determined based on the criteria of baligh, mukalaf, and tamyiz.
2.	The upper age limit of children according to Law No. 11 of 2012 can be seen in the provisions of Article 1 point 3, children are children who are 12 years old, but not yet 18 years old who are suspected of committing criminal offenses.	The age limit of children according to Islamic Criminal Law is if the boy has issued semen (sperm), and if the woman has menstrual bleeding then the child is considered baligh.

3.	Minors (not yet 14 years old) cannot be punished like adults, but are subject to action. Children can be sentenced to prison if the circumstances and actions of children can endanger the community. The penalty is ½ (one half) of the maximum threat of imprisonment for adults.	Minors cannot be penalized. Because the child hasn't reached baligh. Then the punishment is Ta'zir.
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5. CONCLUSION:

From the description of the previous chapters as the essence of this research, several main conclusions can be drawn, including:

- Child criminal system in Indonesia refers to Law No. 11 of 2012 before entering the judicial process must be sought restorative justice (restorative justice) and diversion to avoid and keep children away from the judicial process so that children can avoid stigmatization of children in conflict with the law. Unlike the case with the provisions of Law Number 3 of 1997 concerning Juvenile Courts which emphasize more on the aspect of draft or punishment.
- The difference in the child criminal system according to Law Number 11 of 2012 concerning the Child Criminal Justice System with the child criminal system according to the Islamic Criminal Law lies in the concept of criminal responsibility, it can be seen from the limits of the child being able to be responsible. As in the concept of a juvenile criminal justice system that is more specific in the application of the context of diversion and restorative justice in the approach to handling child criminal acts, however, it still provides opportunities for punishment that are adjusted to the diversion process that has been carried out as a material consideration in dropping criminal decisions. Whereas Islamic law does not recognize the limits of criminal liability of children. Children in Islamic criminal law are not given sanctions / basic punishments because children cannot be held accountable in accordance with the hadith of Rasullullah SAW namely "Pena raised from three people, from small children to dreaming (baligh), from people sleeping to waking up, and from crazy people until normal again ". But the child can be given hukman ta'zir for providing deterrence in the form of teaching and direction as part of education for children who commit violations or acts that are prohibited by religion and government. As for the results of research conducted in the Medan District Court, the Case of Children in Conflict with the Law from the last 3 years tends to be stable and declining, wherein 2017 to 2018 it is stable in the number 81 cases that were tried while in 2019 relatively decreased in the number 64 Cases in fair.

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