

# Analysis of Islamic Criminal Law on Continued Criminal Acts by Children

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## Article info

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**Abstract :** *The handling of ongoing sexual violence crimes committed by children requires an approach that considers victim protection, offender rehabilitation, and legal certainty. Using Decision Number 59/Pid.Sus-Anak/2024/PT MDN as a framework, this essay examines how Islamic criminal law applies to persistent cases involving juvenile offenders. Researchers used primary and secondary sources, conducted descriptive and qualitative analyses, and adhered to a normative juridical methodology that included a statute approach, a case approach, and an examination of Islamic law. The results show that the judges' decision to impose a 12-month prison term with a 6-month work-study program was based on legal considerations (Article 81 paragraph (2) of Law No. 17/2016 Jo. Article 64 paragraph (2) of the Criminal Code Jo. Law No. 11/2012), philosophical considerations (the rehabilitation of children), and sociological aspects (the psychological impact on victims). According to Islamic criminal law, a juvenile offender who commits a crime at the age of seventeen is regarded to be in the puberty and accountability stages, but due to the presence of compulsion and the juvenile's position, syubhat (doubt) arises, and hudud is not enforced. In accordance with the concepts of ishlah (reform) and ta'dib (education), the crime is designated as jarimah zina (fornication) with violent components and is punished with ta'zir, a kind of education that is both corrective and instructional. Islamic law and positive law work together to prioritize victim protection and offender rehabilitation, as emphasized by this ruling, which represents maqasid syariah, especially hifz al-nafs (protection of life) and hifz al-nasl.*

**Keywords :** *Islamic Criminal Law, Continuous Criminal Act, Child, Sexual Violence, Ta'zir.*

**Abstrak :** Penanganan tindak pidana berlanjut kekerasan seksual oleh anak memerlukan pendekatan yang mempertimbangkan perlindungan korban, kepentingan rehabilitasi pelaku, dan kepastian hukum. Artikel ini menganalisis penerapan hukum pidana Islam terhadap tindak pidana berlanjut yang dilakukan oleh anak, dengan merujuk pada Putusan Nomor 59/Pid.Sus-Anak/2024/PT MDN. Penelitian menggunakan metode yuridis normatif dengan pendekatan statute approach, case approach, dan studi hukum Islam, memanfaatkan sumber primer dan sekunder, serta dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa majelis hakim mempertimbangkan aspek yuridis (Pasal 81 ayat (2) UU No. 17/2016 Jo. Pasal 64 ayat (2) KUHP Jo. UU No. 11/2012), filosofis (rehabilitasi anak), dan sosiologis (dampak psikologis pada korban) dalam menjatuhkan pidana penjara 1 tahun 6 bulan serta 6 bulan pelatihan kerja. Perspektif hukum pidana Islam memandang pelaku berusia 17 tahun telah baligh dan mukallaf, namun unsur paksaan dan status anak menimbulkan syubhat sehingga hudud tidak diterapkan. Perbuatan dikualifikasi sebagai jarimah zina dengan unsur kekerasan dan dihukum dengan ta'zir yang bersifat edukatif dan korektif sesuai prinsip ishlah dan ta'dib. Penjatuhan pidana dalam putusan ini



selaras dengan maqasid syariah, khususnya hifz al-nafs dan hifz al-nasl, serta prinsip al-dararu yuzal, untuk memulihkan kondisi korban dan mencegah pengulangan tindak pidana. Temuan ini menegaskan bahwa penerapan hukum pidana Islam melalui prinsip ta'zir dapat bersinergi dengan hukum positif dalam penanganan tindak pidana berlanjut oleh anak dengan tetap memprioritaskan perlindungan korban dan rehabilitasi pelaku.

**Kata kunci :** Hukum Pidana Islam, Tindak Pidana Berlanjut, Anak, Kekerasan Seksual, Ta'zir.

## I. INTRODUCTION

Child protection is a fundamental issue in every legal and social system in the world. It can be in the framework of modern positive law as well as Islamic law, children are recognized as vulnerable subjects and entitled to special protection, including in the context of law enforcement. This fundamental similarity is reflected in the purpose of providing sanctions that are not only retributive, but also educational and rehabilitative, in order to ensure that children's future is guaranteed. However, social reality shows that children are not always victims, but can also be perpetrators of serious crimes, including crimes of sexual violence. This phenomenon has become increasingly worrying considering the psychological and social impact it has on victims, as well as the challenges in determining the right form of accountability for child perpetrators<sup>1</sup>.

Specifically, cases of TPKS occurring continuously on children are a serious concern. Although various regulations have been enacted, such as Law No. 17 of 2016 related to Child Protection and Law No. 11 of 2012 related (SPPA), the number of incidents of sexual violence occurring against children as perpetrators has even increased. This raises crucial questions about the effectiveness of the application of existing laws, as well as how the perspective of Islamic criminal law can contribute to handling such cases. In positive law, the age limit of the child has been clearly regulated, while in Islamic law, the concepts of puberty and mukallaf are the main determinants of legal liability, which sometimes do not always align with formal age limits.

Although there is a legal framework that regulates the actualization of child crimes, there are still gaps in the understanding and in-depth analysis of harmonization and differences in positive legal approaches and Islamic crimes, especially in the case of continuing criminal acts involving sexual violence. Judicial decisions, such as Decision No. 59/Pid.Sus-Anak/2024/PT MDN, which provides prison sentences and job training, show that there are rehabilitation efforts. However, how this ruling is in line with the principles of ta'zir, ishlah, and ta'dib in Islamic criminal law, as well as how the judge's consideration accommodates the status of a child who has reached puberty but remains a minor based on positive law, still requires further analysis. There have not been many studies that specifically examine the comparative and in-depth legal considerations of judges in cases of continuing crimes by children from the perspective of these two legal

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<sup>1</sup> Syaibatul Hamdi, M. Ikhwan M. Ikhwan, and Iskandar Iskandar, "*Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia*," MAQASIDI: Jurnal Syariah dan Hukum, June 30, 2021, 74, <https://doi.org/10.47498/maqasidi.v1i1.603>.

systems, especially those that highlight the element of coercion and its impact on the classification of *jarimah zina* and the application of *hudud* or *ta'zir*.

Teenagers have been involved in sexual violence with adults in recent times. From January 1, 2024 until now, there have been 31,947 cases of violence in Indonesia, based on information made by the Ministry of PPPA. Of these, 14,459 cases involved sexual abuse, while 12,168 cases involved children as victims or perpetrators<sup>2</sup>. The vision of child protection is to realize quality, noble, and prosperous Indonesian children, along with ensuring that all children, regardless of where they live, have the opportunity to grow and develop optimally in an environment free from violence and discrimination<sup>3</sup>. The term "sexual violence" refers to the sexual abuse of another person without consent<sup>4</sup>. From the point of view of severe criminal consequences, sexual violence can manifest in several types, in particular: attempts to commit domestic violence, persuasive to carry out the action and threats to commit domestic violence<sup>5</sup>. Adultery, the Islamic term for sexual violence, is one of the harshest criminal punishments.

Sexual relations between men and women outside of marriage are legal involving the entry of male genitalia into the female genitals until *hasyafah* (the tip of the penis) is considered adultery according to Islamic criminal law<sup>6</sup>. On the other hand, according to positive law, adultery is defined as sexual relations between a man and a woman married to another man and woman who is not their legal partner<sup>7</sup>. The 2 forms of adultery are *zina muhsan* and *zina ghair muhsan*. A free, mentally healthy adult, has reached the legal sexual age, and has never had a lawful sexual relationship with another person commits adultery *muhsan*<sup>8</sup>. On the other hand, having an affair with a partner without a valid marital bond is called *zina ghair muhsan*. The perpetrator of adultery *ghair muhsan* was sentenced to stoning, as well as whipping or 100 lashes, as well as subsequent expulsion<sup>9</sup>.

By definition, a continuing criminal act is when a person commits the same offense or crime repeatedly and has a very close relationship between the acts so that the series of acts is said to be a continuing criminal acts<sup>10</sup>.

The perpetrator of the act in this case was a 17-year-old child at the time of committing it and the victim was 16 years old, the study intends to examine the actualization of Islamic

<sup>2</sup> SIMFONI-PPA, Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, <https://kekerasan.kempppa.go.id/ringkasan>.

<sup>3</sup> Sihombing, F. S., Zulkarnain, Z., & Yazid, I. (2023). PERLINDUNGAN HUKUM TERHADAP ANAK DARI ORANG TUA PECANDU NARKOBA PERSPEKTIF MAQASID SYARIAH. *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial*, 10(001). <https://doi.org/10.30868/am.v10i001.3515>.

<sup>4</sup> Nafilatul Ain, Anna Fadilatul Mahmudah. (2022) ANALISIS DIAGNOSTIK FENOMENA KEKERASAN SEKSUAL DI SEKOLAH. *JURNAL Pendidikan Dasar dan Keguruan*. Volume 7, No. 2,

<sup>5</sup> AGUNG SETIYAWAN. ANALISIS HUKUM PIDANA ISLAM TERHADAP SANKSI TINDAK PIDANA BEGAL YANG DILAKUKAN ANAK DI BAWAH UMUR. Skripsi Uin Walisongo Semarang, 2020

<sup>6</sup> Syamsul Huda, ZINA DALAM PERSPEKTIF HUKUM ISLAM DAN KITAB UNDANG UNDANG HUKUM PIDANA, Vol. 12, No. 2, Desember 2015: 377-397.

<sup>7</sup> Tim Redaksi, KUHAP dan KUHP, EFATA Publishing, Cetakan III, 2016

<sup>8</sup> Tindak Pidana Kesusilaan dalam Perspektif Hukum Islam", <http://one.indoskripsi.com>.

<sup>9</sup> Abdul Halim Hasan, Tafsir AL-Ahkam (Jakarta: Kencana, 2006), h. 531

<sup>10</sup> NAZIR. TINJAUAN YURIDIS TENTANG DELIK BERLANJUT DALAM PERKARA TINDAK PIDANA KORUPSI. *Jurnal Ilmu Hukum Legal Opinion*. Edisi 6, Volume 3, Tahun 2015.

criminal law for the continued criminal act actualized by children in the context of sexual violence, by referring to Judicial Decision No. 59/Pid.Sus-Anak/2024/PT MDN based on Law No. 11 of 2012 related to SPPA<sup>11</sup>. Then Law No. 35 of 2014 related to Child Protection<sup>11</sup>. So the author's careful study is how the judge's legal considerations in imposing a verdict in the case of a criminal act of continuing sexual violence committed by a child in Decision No. 59/Pid.Sus-Anak/2024/PT MDN? Then what are the provisions of Islamic criminal law related to the continuing criminal act of sexual violence committed by children?, and how is the analysis of Islamic criminal law on the judge's decision in Decision Number 59/Pid.Sus-Anak/2024/PT MDN?

## II. RESEARCH METHODS

The study utilizes normative legal design, which focuses on the study of legal principles in harmony with Islamic law, laws, and court decisions. Judicial Decision No. 59/Pid.Sus-Anak/2024/PT MDN discusses the analysis of continued criminal acts actualized by minors based on Islamic criminal law. The study intends to examine this by focusing on the determination of punishments for children involved in these criminal acts<sup>12</sup>. The methodology of this study combines the approach of the law and the case approach. The study also examines Islamic law, along with referring to primary sources such as Law No. 17 of 2016, the Criminal Code, Law No. 11 of 2012 related to SPPA, the Qur'an, Hadith, and other Islamic legal texts. Secondary sources include study findings and legal writings, while tertiary sources include encyclopedias and legal journals. The data was analyzed descriptively and qualitatively after collection.

## III. DISCUSSION

### The Judge's Legal Considerations in Decision Number 59/Pid.Sus-Anak/2024/PT MDN.

The purpose of criminal punishment is to prevent criminal acts through the criminal justice system. Giving punishment to the perpetrators of criminal acts is essential so that criminal punishment can be effective.

Batu Bara District became the location of the incident. The decision of the jury panel stipulated a vocational program for 12 months and a prison sentence of 12 months for underage offenders. Because they understood the social vision, the jury decided on the sentence. Batu Bara Regency became the location of the incident. The panel of judges decided on the punishment in the form of a vocational program for 12 months and a prison sentence of 12 months for juvenile offenders. Understanding the purpose of law and justice and the values held by the general public, the judges in this case chose to sentence the juvenile offender to prison for his actions<sup>13</sup>.

Judges carry out judicial duties by issuing a verdict on a case. This can only happen if the judge decides immediately, free from interference from the government, legislature, or

<sup>11</sup> BPK RI, Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak, Jakarta, 2014. <https://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014>.

<sup>12</sup> Dr. Jonaedi Efendi S.H., I. M.H., Prof. Dr. Johnny S.H., S.E., M.M., M.Hum. (2016). "Metode Penelitian Hukum Normatif dan Empiris." PRENADAMEDIA GROUP.

<sup>13</sup> Putusan.mahkamahagung.go.id. Putusan Nomor 59/PID.SUS-Anak/2024/ PT MDN.

other interested parties. The authority of judges to decide a case is guaranteed by Article 24 Paragraph 1 of the Constitution of the Republic of Indonesia<sup>14</sup>.

The judge bases his decision on formal legal limitations, known as legal considerations. The legal analysis in this case is based on the provisions of Law No. 11 of 2012, the Criminal Code, and Article 64 (2) of Law No. 17 of 2016. In order to help the perpetrator grow and learn from his mistakes, the court considers philosophical factors. From sociological factors, we can deduce the philosophical aspect of this case, which states that the punishment imposed on the Child Offender should, given his age, encourage him to behave better in the future. According to sociological theories, the behavior of the perpetrator in this example makes the victim, a young person, feel humiliated and resentful. The child's future is tarnished by diminished courage, frequent anxiety, low self-esteem, and lack of self-confidence. In order for the court to find guilty, there must be strong evidence that the defendant committed the crime at issue here<sup>15</sup>.

The rule that determines the ability of the law to prove guilt in a criminal case is evidence. Evidence contrary to the law cannot be considered by the court, because all evidence, regardless of its validity, has the same probative value<sup>16</sup>.

The court must have a strong belief that the crime is genuine and that the defendant is guilty of committing it in order to impose a criminal sentence on a person, in accordance with Article 183 of the Criminal Code. In other words, you need two strong evidences<sup>17</sup>.

A pink T-shirt, beige and black trousers with red stripes, a black veil, a white singlet, a gray bra, and blue underwear were the items that the public prosecutor handed over during the hearing, as listed in the court decision. To impose a criminal sentence against a child offender, the court must have a combination of evidence that meets the minimum threshold of two pieces of evidence, as stipulated in Article 183 of the Criminal Code.

In order to provide a guarantee of truth, justice, and legal certainty for individuals, the court distributes criminal sentences<sup>18</sup>. In this case, a panel of judges ruled that the child predator had committed a criminal act by repeatedly forcing a minor to have sexual relations with him. Based on these findings, the panel of judges ruled that the perpetrators of child crimes had violated the Criminal Code (Law No. 11 of 2012) and Article 81 paragraph (2) of Law No. 17 of 2016. As a result, the Court has decided to distribute a prison sentence of one year and six months, distributed an additional six months of vocational training through the Batubara Regency Social Service.

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<sup>14</sup> BPK RI, Undang-undang Dasar (UUD) Tahun 1945 dan Amandemen Nomor - tentang UUD 1945 dan Amandemen. Indonesia, Pemerintah Pusat.

<sup>15</sup> Triu Artanti, Karyoto. LANDASAN PERTIMBANGAN HAKIM DALAM PENJATUIHAN PIDANA TERHADAP ANAK YANG BERHADAPAN DENGAN HUKUM (Studi Putusan Pengadilan Negeri Sampang Perkara Nomor 2/ID.SUS.ANAK/2018/PN.SPG) Mizan: Jurnal Ilmu Hukum, Volume 14, 2025. <https://doi.org/10.32503/mizan.v14i1.6878>

<sup>16</sup> Risky Themar Bes Safsafubun, Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Pembunuhan yang Dilakukan Oleh Anak. Jurnal Kreatif Mahasiswa Hukum, Volume 1, Nomor 2, 2021, hlm.90.

<sup>17</sup> Bilher Hutahaen, Penerapan Sanksi Pidana Bagi Pelaku Tindak Pidana Anak Kajian Putusan Nomor 50/Pid.B/2009/PN.Btg, Jurnal Yudisial, Volume 6 No.1, 2023, Hlm.73

<sup>18</sup> Johan Wahyudi, Dokumen Elektronik Sebagai Alat Bukti Pada Pembuktian di Pengadilan, Jurnal Perspektif, Volume 17, Nomor 2, 2022, hlm.11.

There is no criminal act that does not contain an element of guilt, and this is the foundation of the concept of criminal responsibility. Therefore, imprisoning the perpetrator of a child crime as a punishment for his actions is a way to make him offend the consequences of his mistake<sup>19</sup>.

Before imposing a criminal sentence of imprisonment on the perpetrator of a child crime, it is very important to thoroughly examine all factors related to the best interests of the perpetrator<sup>20</sup>. The best interests of the child of the perpetrator must be considered thoroughly before assigning criminal liability to the child of the perpetrator<sup>21</sup>.

However, a teenager can carry out all the things that adults can do, both good and bad, so it is not impossible for them to plan crimes, even sexual violence. The ability to distinguish between right and wrong is shown when adolescents exhibit thinking that transcends their chronological age. A person's ability to take responsibility is demonstrated by his ability to distinguish between right and wrong<sup>22</sup>. During his trial, the perpetrator in this case stated that he was in good mental and physical condition.

The verdict described that the perpetrator's son had planned to carry out his seizure repeatedly. This shows that, even though he is still a legal minor, the thinking of the Child Perpetrator has equaled the behavior of an adult who already knows what is good or bad, so that the Child can account for his actions to the Child Victim.

In this Court Decision, the court sentenced the child to prison after considering various factors, one of which was the element of intention. Neither the official nor the unofficial version of the Criminal Code restricts the interpretation of intent. Criminal acts are committed with intentions with knowledge or conditional intent (*voorwardelijk opzet*), sometimes called *dolus eventualis*, when the perpetrator intends to produce a certain result but is aware of the possibility of unintended consequences<sup>23</sup>.

The judge will then consider the continuing behavioral factors when making a decision. Based on Article 64 of the Criminal Code, a person is considered to carry out sustainability actions if in a short period of time he or she carries out many actions that are interrelated with the same goal.

Because the minor had engaged in repeated sexual intercourse with the intention of repeating the act, the court upheld the indictment and defended the charges against him. Regarding the behavior of minors, charges against him were filed based on Article 81 (2) of Law No. 17 of 2016, Article 64 (2) of the Criminal Code, and Law No. 11 of 2012 of the Republic of Indonesia.

<sup>19</sup> Thia Efrillia. Pertanggungjawaban Pidana anak dalam Tindak Pidana Pembunuhan Berencana: Analisis Yuridis Putusan Nomor 3/Pid.Sus-Anak/2022/PN.bnt. Jurnal Krisna Law, Volume 7. 2025.

<sup>20</sup> Failin. Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia. JCH Jurnal Cendekia Hukum. Vol.3.2017.

<sup>21</sup> Wagiman, Didi Jubaidi. Ultimatum Remedium Principles: Realizing Restorative Justice for Children In Conflict With The Law. KRTHA BHAYANGKARA, Vol. 18. Pp. 685-701. <https://doi.org/10.31599/krtha.v18i3.2984>.

<sup>22</sup> Kristianto Jansen Hengkengbala. Pertanggungjawaban Pidana Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia. Doktrin:Jurnal Dunia Ilmu Hukum dan Politik. Vol.1 Hal250-266. <https://doi.org/10.59581/Doktrin-widyakarya.v1i4.2059.2063>.

<sup>23</sup> Fauzan, Baharuddin Siagian, Kamus Hukum dan Yurisprudensi, (Depok: Kencana, 2017) h. 526.

The punishment of juvenile offenders should not be carried out solely out of revenge, but to help the perpetrators grow as better individuals and realize justice for all parties involved (the victim, the wider community, and the perpetrator himself<sup>24</sup>.

As a result, the juvenile offender was ordered to undergo six months of vocational training at the Batu Bara Regency Social Service Office as part of the court rehabilitation program.

Restoring justice for the community and child victims is the vision of the court's decision. Restorative justice intends to restore the legitimacy of criminal punishment by highlighting the effectiveness of criminal punishment in achieving the goals justified by it. Due to the genetic defects, fear, and distrust experienced by the victim due to the actions of the perpetrator of child crimes, the court ruled that the victim's future was tarnished.

As a result, the perpetrator of the child crime was sentenced to prison by the Panel of Judges. This is done in the hope that the perpetrators can be rehabilitated, justice for the victims can be restored, and the welfare of the community as a whole can be achieved.

### **Islamic Criminal Law Provisions Against Crimes Continued by Children**

According to verse 6 of Surah At-Tahrim, taking care of children is a joint obligation of both parents in Islam<sup>25</sup>. Parents have two roles in the lives of their children, as explained in this verse: first, as guardians, and second, as teachers.

As a community group, children are considered incapable and underage according to the law considering the intellectual and physical growth of the development process, in accordance with the Hadith of the Prophet PBUH which reads "*Raised a pen (not subject to sin) on three groups: people who sleep until they wake up, young children until they wake up, and crazy people until they are reasonable*" (HR. Abu Daud)<sup>26</sup>. states that children are considered incapable or underage by society and the law because of their developing mental and physical abilities. Because of this, the law does not impose criminal responsibility on minors and exempts them from punishment for their actions. Until they reach puberty, the Qadhi can only punish them if they make mistakes or limit their freedom to help them grow and learn from their mistakes<sup>27</sup>.

A person's age can be determined using several phrases in Fiqh Jinayah. According to Imam Shafi'i, a person is considered a child if he is under fifteen years old, has not experienced wet dreams (for men), and has not reached puberty (for women). In addition, Imam Malik and Abu Hanifah are of the view that a person is no longer considered a child after reaching the age of 18 and is able to reason<sup>28</sup>.

<sup>24</sup> Sahat Maruli Tua Situmeang. *Legal Protection for Street Children in Connection With State Responsibility from the Pancasila Perspective*. KRTHA BHAYANGKARA. Vol. 19. Pp.1-16. 2025 <https://doi.org/10.31599/krtha.v19i1.3151>.

<sup>25</sup> Rohinah. Pendidikan Keluarga Menurut Al-Qur'an Surat At-Tahrim Ayat 6. *Jurnal An Nur*. Volume 7. 2015.

<sup>26</sup> Abadi, Abu Ath-Thayib Muhammad Syamsul Ghaq Al Azhim. *Aunul Ma'bud: Syarah Sunan Abu Daud*. Pustaka Azzam. Jakarta. 2010

<sup>27</sup> Bambang Surabangsa. Analisis Konsep Diversi Dan keadilan Restoratif Dalam Peradilan Pidana Anak Di Indonesia Perspektif Hukum Islam. *Hukum Islam*. Vol.22. 2022.

<sup>28</sup> A. Hamid Sarong dan Nur Ahmad Fadhil Lubis, "The Child Rights in Islamic Law With a Special Focus on Aceh," PETITA: Jurnal Kajian Ilmu Hukum dan Syariah 4, no. 1 (2019): 51

A child is considered *tamyiz* according to Islamic criminal law when he is nine or ten years old. According to the *fuqaha*, seven years is the minimum limit before a person can be considered *tamyiz*<sup>29</sup>.

Although he did not yet have a perfect intellect, *Tamyiz's* child was able to think, knew the difference between good and bad, and had knowledge. On the other hand, children's abilities are considered less as compared to adults. Therefore, it is unfair to compare persistent criminal behavior in adults with that of children. The punishment of *hudud* and *qishash* applies to adults who commit crimes<sup>30</sup>.

*Hudud*, *qishas*, and *ta'zir* are the three components that constitute a violation of sharia norms, as stated by 'Abd al-Qadir Audah<sup>31</sup>. In order for even the smallest offense that causes harm to others to be punished, *ta'zir* can be used for offenses and offenses that are not included in *hudud* and *qishas*.

The act of *jarimah* is prohibited by the *shari'a* and is punished by Allah with limits and *ta'zir*, according to Imam Al Mawardi<sup>32</sup>. The following three types of *jarimah* are generally accepted by scholars: *hudud*, *qishas*, and *ta'zir*.

The section known as *jarimah hudud* prescribes the specific punishments mentioned in the Qur'an and Hadith, along with the types of offenses or sins that are considered serious. Crimes involving severe damage or murder are subject to *Jarimah Qishas*. By receiving fair compensation, the victim's family can demand retaliation while at the same time forgiving the perpetrator. The term "crime of *ta'zir*" refers to violations of Islamic law that have no special punishment.

In this case, the judge can use his authority to impose sentences that he deems just and reasonable. The public interest and special circumstances must also be considered. The perpetrator will be responsible for his actions if he intentionally and with full awareness commits an unlawful act and is aware of the legal consequences that may arise. The juvenile offender in this case intentionally and knowingly participated in sexual intercourse repeatedly, despite knowing that his actions would entail serious legal consequences.

Children are exempt from punishment under Islamic law. There is no prohibition on the use of corporal punishment against children in Islamic criminal law. The authority to determine the punishment is in the hands of the government or *Waliyul Amri*<sup>33</sup>. However, few *fiqh* scholars are of the opinion that physical punishment such as spanking and reprimand is *ta'dib*, or disciplinary punishment.

Punishment for children can be decided by the government or *Waliyul Amri* based on time and place. The concept of restorative justice for juvenile offenders in

<sup>29</sup> Tuti Herawati, "Child Judicial System: Islamic Criminal Law Concerning Criminal Enforcement of Children in The Court of Subang District," Legal Brief 10, no. 2 (Mei 2021): 97.

<sup>30</sup> Fitri Wahyuni, *Hukum Pidana Islam: Aktualisasi Nilai-nilai Hukum Pidana Islam dalam Pembaharuan Hukum Pidana Indonesia* (Tangerang Selatan: Nusantara Persada Utama, 2018), 106.

<sup>31</sup> Abd al-Qadir Audah. *At-Tasyri' al-Jina'i al-Islami*. Beirut: Dar al-Kitab al-'Arabi, 1992.

<sup>32</sup> Abu Hasan Al-Mawardi, *Al-Ahkam As-Sulthaniyah*, (Mesir : Musthafa Al-Baby AlHalaby, 1975), Cet. 3, hlm. 219.

<sup>33</sup> Abd. Al-Rahman Al-Jaziri, *Al-Fiqh 'ala Al-Mazahib Al-Arba'ah*, Juz V, Beirut: Dar AlFikr, hlm. 288 292.



Indonesia includes reprimands, corporal punishment, and placement in social or educational institutions, among other measures. In terms of punishing juvenile offenders, (RJS) takes a more culturally oriented and less normative approach<sup>34</sup>.

Those entrusted with the responsibility of protecting children from harm will be held accountable for the consequences that arise in Islam. Only the ta'dibiof punishment focuses on the lesson rather than the punishment, later it will be imposed on this child<sup>35</sup>.

A young person should not be punished because they are not considered ahlul uqubah. In Islamic law, scholars agree on the age of maturity. Scholars differ on the right time for a person to reach maturity due to differences in location, climate, and the passage of time, all of which affect the maturation process<sup>36</sup>. In Islam, the age of the perpetrator is a relevant factor in determining the severity of repeated criminal offenses..

Only children who have not reached adulthood can share ta'dibi, which is a form of punishment aimed at giving fear without damaging children's mental health, according to Abdul Qadir Audah<sup>37</sup>. Since ta'dibi is not considered a form of punishment, a juvenile who commits the same crime more than once cannot be considered a repeat offender<sup>38</sup>.

#### **Analysis of Islamic Criminal Law on Decision Number 59/Pid.Sus-Anak/2024/PT MDN.**

In Islamic criminal law, a person is considered puberty when he reaches puberty, which is characterized by wet dreams (*ibtilam*) and menstruation. Then a person who has reached puberty and has common sense is considered mukallaf, meaning that he has been burdened with sharia legal obligations, including criminal responsibility. The perpetrator in this case is 17 years old. Based on the definition of puberty in Islamic law, it is included in the categories of puberty and mukallaf. Therefore, he can be legally held criminally responsible.

Explained in the Qur'an. An-Nur:2 on Zina Ghairu Muhsan and HR. Bukhari (6443) on Zaid bin Khalid, he said, "*I heard the Messenger of Allah say about the adulterer ghairu muhsan, he was whipped a hundred times and exiled for years*"<sup>39</sup> The righteous ruler will decide that the adulterer of ghairu muhsan should be exiled as far as is necessary to qashar prayer or more. Considering that it is not said to be safar and cannot achieve the vision, the distance of seclusion should not be less than that. This scared him by keeping him away

<sup>34</sup> Dony Pribadi, "Perlindungan terhadap Anak Berhadapan dengan Hukum," Jurnal Hukum Volkgeist 3, no. 1 (Desember 2018): 17.

<sup>35</sup> Ma'murotussa'adah, Perlindungan Anak Dalam Al-Qur'an (Analisa Perbandingan Antara Tafsir Ahkām Al-Qur'an Karya Al-Jaṣṣāṣ Dan Tafsir Al-Munir Karya Az-Zuhaili), TESIS, 2016, hal. 29.

<sup>36</sup> Muhammad Zaki, "PERLINDUNGAN ANAK DALAM PERSPEKTIF ISLAM," Asas Jurnal Hukum Ekonomi Syariah 6, no. 2 (2014): 1–15, <https://doi.org/https://doi.org/10.24042/asas.v6i2.1715>.

<sup>37</sup> Abd al-Qadir Audah. *At-Tasyri' al-Jina'i al-Islami*. Beirut: Dar al-Kitab al-'Arabi, 1992.

<sup>38</sup> Adam Sani, "Pemidanaan Anak Menurut Konsepsi Hukum Islam Dan Hukum Pidana Indonesia," Jurnal Public Policy 3, no. 3 (2015): 11–20, <https://doi.org/10.35308/jpp.v0i0.702>.

<sup>39</sup> Ridho Riyadi. Penafsiran Ali Ash-Shabuni Tentang Ayat-Ayat Zina. Jurnal Kajian Al-Qur'an & Tafsir. Volume 5. 2020

from his family and his country. Men and women are the same. Nevertheless, a woman should not travel without the accompaniment of her mahram<sup>40</sup>.

However, because in this discussion, Indonesia's positive legal system classifies him as a child, juvenile justice is applied, which emphasizes the rehabilitation aspect. In Islamic Law, even though it has been mukallaf, the status of children in the context of young age remains a consideration in the sentencing of sentences, especially in the category of ta'zir<sup>41</sup>. Judges may consider the young age factor as a mitigating factor or as a basis for focusing on coaching. To be punished with hudud adultery, the act must be done on the basis of the willingness of both parties. If there is an element of coercion or rape, then the victim is not subject to adultery, the perpetrator will be subjected to heavier punishments, often including the heavy ta'zir group and can be equated with crimes that threaten life and honor.

The action of actualization in this case is included in the category of jarimah ta'zir which is aggravated considering that it contains elements of coercion and is carried out on underage girls continuously<sup>42</sup>. Actions include gross violations of the honor ('irdh) and safety of the victim's soul (nafs), as well as forms of violation of the maqashid sharia (purposes of Islamic sharia), especially the protection of posterity and martabat<sup>43</sup>.

Although the indictment uses the word "persuade", the narrative of the incident shows an initial rejection from the victim and a promise from the perpetrator. This indicates the manipulation and exploitation of underage victims.

In Islamic law, persuasion that takes advantage of the victim's helplessness or fear, especially with false promises, can be considered a form of fraud that removes the element of true willingness, so that the perpetrator's actions become more serious. This strengthens the argument that the punishment imposed is ta'zir, not hudud zina, due to the element of exploitation and the lack of pure willpower on the part of the victim.

According to the majority view of the fuqaha (jurists), the perpetrator of adultery if he has reached puberty and mukallaf is sentenced to hadd, namely stoning for the married and 100 lashes and exile for one year for the unmarried<sup>44</sup>. However, in the case of minors, as in this case, the perpetrator is 17 years old and his status is child, a student, classified as not fully mukallaf (legally responsible). Therefore, the punishment of hadd is not applied, but is included in the area of ta'zir, which is a punishment that is left to the policy of the judge and the state, with the aim of educating, preventing repeat crimes, and improving the morals of the perpetrator.

<sup>40</sup> Dr. Musthafa Dīb Al-Bughā, FIKIH ISLAM LENGKAP Penjelasan Hukum-hukum Islam Mazhab Syafi'i. MEDIA ZIKIR, SOLO, 2016.

<sup>41</sup> Eliana Nirmala Kumalasari, Hanuring Ayu AP. Proses Peradilan Tindak Pidana Perzinaan Yang Dilakukan Anak Dibawah Umur. Jurnal Bevingding Vol 01. 2023.

<sup>42</sup> Ruslan Renggong, Hukum Pidana Khusus Memahami Delik -delik di Luar KUHP, (Jakarta: PT Kharisma Putra Utama, 2016), h., 265.

<sup>43</sup> Suhartini dan Syandi Rama Sabekti, Penyelesaian Tindak Pidana Zina Melalui Mediasi Perspektif Hukum Positif Dan Hukum Islam, Jurnal Bina Mulia Hukum Volume 4, Nomor 1, September 2019 Hal. 72-84.

<sup>44</sup> Dr. Musthafa Dīb Al-Bughā, FIKIH ISLAM LENGKAP Penjelasan Hukum-hukum Islam Mazhab Syafi'i. MEDIA ZIKIR, SOLO, Hal 445, 2016.

Punishment in Islam is not only intended to take revenge, but also to achieve broader goals or *maqashid shari'ah* including *Hifz al-Nafs* to protect the life and physical and mental health of individuals. The trauma experienced by the victim shows a violation of the maintenance of the soul. Then *Hifz al-Nasl* (preserving ancestry/honor) to protect honor and lineage. And *hifz al-Aql* (nurturing the intellect) to protect the intellect and the ability to think. Although indirect, but psychological trauma can interfere with cognitive and emotional function.

The High Court decision that aggravates the punishment of the Court of First Instance, taking into account the psychological impact on the victim and the need for justice for the community, implicitly seeks to achieve the *maqashid* of the *Shari'ah*, especially *Hifz al-Nafs* and *Hifz al-Nasl*. The punishment imposed aims to restore the social order damaged by the perpetrator's actions and prevent further damage. In the facts of the trial, the Case Decision handed out a sentence of 1 year and 6 months in prison along with 6 months of job training in accordance with the principles of *ta'zir* in Islamic law. This is a corrective and educational punishment, as well as considering the age of the perpetrator and his future. However, considering that the act is carried out repeatedly and with elements of psychological pressure and persuasion that degrades the dignity of the victim, in the *fiqh jinayah* the perpetrator is subject to severe *ta'zir*.

The concept of "Job training in the Social Service" imposed by the court is relevant to the Islamic approach to the development of perpetrators, especially children. In Islam, the main purpose of punishment for a child is *ishlah* (improvement) and *ta'dib* (education/discipline). Social Service Institutions can function as a means of providing religious education, morals, life skills, and psychological therapy to perpetrators, so that they can return to being productive members of society and not repeat mistakes.

In the case of *ta'zir*, there is *nonash* that specifically specifies the type and degree of punishment, the judge (*qadhi*) has the authority to perform *ijtihad*<sup>45</sup>. This *ijtihad* is based on a deep understanding of the *shari'a*, the purpose of Islamic law, and the specifics of the case. Then using the concept of *Urf* which is one of the considerations in determining the punishment of *ta'zir*. Judges can consider the practices or norms that exist in society when they do not deviate from the basic principles of *shari'ah*<sup>46</sup>. In modern contexts, it can consider the prevailing justice system, including juvenile justice, which prioritizes rehabilitation.

Although it does not fall under the category of *hudud* directly due to strict evidentiary requirements and the status of the perpetrator is a child, the essence of the act is still a great sin in Islam. The punishment imposed is *uqubah ta'zir*. It is important to underline that Islamic criminal law, *uqubah*, does not aim to retaliate, but to mitigate the perpetrator from repeating his actions and prevent other individuals from committing similar crimes<sup>47</sup>.

<sup>45</sup> Mizbahuzzulam, IJTIHAD HAKIM. *AL-MAJALIS* Jurnal Dirasat Islamiyah. Vol 1. 2023.

<sup>46</sup> Syarif Ali bin Muhammad Al-Jurjani, *al-Ta'rifat*, Loc.cit, dan Abd al-'Aziz Muhammad 'Azzam, *al-Qawa'id al-Fiqhiyah* (Kairo: Dar al-Hadits, 2005), hlm. 173.

<sup>47</sup> Muallif. 'Uqubah dan Ta'zir : Pengertian, Macam-Macam, Ta'adud 'Uqubah, Tujuan 'Uqubah dan Hal-hal yang Membatalkan dan Menghapus 'Uqubah. Universitas Islam An Nur Lampung.(Artikel) 2022. <https://an-nur.ac.id/uqubah-dan-tazir-pengertiank-macam-macam-taadud-uqubah-tujuan-uqubah-dan-hal-hal-yang-membatalkan-dan-menghapus-uqubah/>.

For Children, the aspects of *ishlah* and *zajr* are strongly emphasized. Prison sentences and job training area combination that tries to achieve these two goals. Prison as a form of *zajr* and job training as a form of *ishlah*<sup>48</sup>.

The principle of *Daf'u al-Hudud bi al-Syubhat* is a fundamental idea in Islamic criminal law: "hudud is avoided by the presence of doubt." That is, if there is the slightest doubt improving the crime of hudud, then the hudud punishment cannot be applied<sup>49</sup>.

In the case of adultery, the proof is very difficult. The existence of an element of persuasion, the initial avoidance of the victim, and the fact that the victim is a child, can cause sufficient *syubhat* not to apply the punishment of hudud adultery. Therefore, the sentencing of *ta'zir* is an appropriate and fair choice in the context of sharia.

From the victim's side, the psychological examination report from P2TP2A stated that the victim experienced shame, anger, anxiety, distrust in others, and damage to the future. In determining the severity of the punishment of *ta'zir*, the judge can consider the psychological and social impact caused by the crime. This non-physical damage, although not always measured materially, is important in determining the degree to which the façade is caused. The harsher sentences by the High Court reflect a recognition of severe psychological damage. It also shows that justice is not only about corporal punishment, but also about the restoration of the dignity and well-being of the victim.

There are 3 (three) rules that are relevant to this case such as "*Al-Dararu Yuḥḍal*" (Harm Must Be Eliminated) the perpetrator's actions cause great harm to the victim. Punishment aims to eliminate this harm and prevent future harm<sup>50</sup>. Then "*Dar'u al-Mafasid Muqaddam 'ala Jalbi al-Masalih*" (mitigation of Harm is prioritized rather than obtaining benefits) despite the benefits of lighter punishments, preventing greater damage (trauma of the victim, repetition of crimes) becomes priority<sup>51</sup>, and "*Al-Hukmu Yaduru ma'a al-illah* The manifestation of *wa'Adaman*" (Law revolves around its Illat, Existence and Absence) The Illat of punishment is to prevent crime and protect society. As long as this illat exists, then punishment must be applied<sup>52</sup>.

Islamic law pays great attention to the protection of dignity and psychological recovery. Sexual violence against children includes a form of persecution against the honor and future of the victim. Therefore, the victim should be entitled to protection, psychological support, as well as moral and material compensation if possible, which in the classical context can be associated with *diyat al-'irdh* (honorary compensation). In the verdict, it was explained that the victim experienced trauma, shame, and physical injuries, as well as a loss of confidence, all of which were serious impacts according to sharia.

<sup>48</sup> <https://siplawfirm.id/hukum-pidana-islam/?lang=id>.

<sup>49</sup> Rujukan Santri. Kaidah Al-Hudud Tasquth bi al-Syubhat. 2024. <https://www.rujuwannyanstri.com/2023/07/kaidah-al-hudud-tasquth-bi-al-syubhat.html>.

<sup>50</sup> Wildan Jauhari, Lc. Kaidah Fikih; Adh-Dhararu Yuzal. Rumah Fiqih Publishing. 2018.

<sup>51</sup> Isniyatin Faiza. Implementasi Kaidah Dar'ul Mafasid Muqaddamun 'ala Jalbil Mashalih Terhadap Pencatatan Perkawinan di Indonesia. As-Sakinah Jurnal Hukum Keluarga Islam. 2024. <https://doi.org/10.55210/jhki.v1i2.333>

<sup>52</sup> Ahmad Zarkasih, Lac. Hukum Yang Punya Sebab. Rumah Fiqih Indonesia. <http://www.rumahfiqih.com/fikrah/174>.

#### IV. CONCLUSION

The study illustrates that continuing criminal acts in the form of sexual violence are actualized by children, as in Decision No. 59/Pid.Sus-Anak/2024/PT MDN, requiring balanced handling between aspects of victim protection, the interests of rehabilitation of perpetrators, and law enforcement. From a positive legal perspective, the imposition of 1 year and 6 months in prison and 6 months of job training have considered juridical, philosophical, and sociological aspects, with the aim of providing a deterrent effect as well as rehabilitation for child offenders.

From the perspective of Islamic criminal law, a 17-year-old child is considered to have reached puberty and mukallaf so that he can be held criminally responsible. However, the existence of an element of coercion and the perpetrator's status as a child causes syubhat so that hudud punishment is not applied. The perpetrator's actions are qualified as jarimah zina with elements of violence that require the application of ta'zir sanctions that are educational and corrective, in line with the principles of islah and ta'dib in Islamic law.

This decision has also applied the principles of sharia maqasid, especially hifz al-nafs and hifz al-nasl, as well as the principle of al-dararu yuzal (harm must be eliminated) by taking into account the psychological impact experienced by the victim and the protection of the community from the potential for repetition of criminal acts. Thus, this study emphasizes that the Islamic criminal law approach through the application of the principle of ta'zir can synergize with positive laws in handling continued criminal acts by children, while still prioritizing victim protection, social recovery, and rehabilitation of perpetrators.

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