

Underage Murder Case Against Robbers in the Perspective of Criminal Law and Islamic Criminal Law

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ABSTRACT

This research explores legal issues related to perpetrators of child abuse with a focus on the analysis of the decision of the Kepanjen District Court (Number: 1/Pid.Sus-Anak/2020/PN.KPn). The crime of abuse, which involves an attack on another individual with the aim of torturing or oppressing, has serious implications in criminal law and Islamic criminal law. The research uses a statutory and case approach, exploring normative and doctrinal aspects of Indonesian and Islamic law that are relevant to the case. The main data is obtained from primary legal materials such as the 1945 Constitution, Criminal Code, Law Number 11 of 2012, Law Number 35 of 2014 concerning Child Protection, as well as Islamic legal sources such as the Qur'an and Hadith and also secondary legal materials such as books, articles, journals, and other scientific works. By using deductive analysis, this research aims to provide an overview and solution to legal problems that occur, especially regarding legal protection for minors who commit persecution as a form of defense that causes the death of begal both according to criminal law and Islamic law. This study found that children who commit persecution against begal until they die, both criminal law and Islamic law both agree that minors can only be sentenced as a last resort and must still pay attention to the best interests of the child. In juvenile law, research considers psychological factors, the need for compassion, and rehabilitation efforts to achieve balanced justice. This research contributes to the understanding of criminal law and Islamic criminal law related to cases of sexual abuse, especially those involving underage offenders.

Keywords: Assault, Underage, Islamic Criminal Law, Juvenile

1. INTRODUCTION

Crime is an act that not only harms the victim but also harms society, such as the loss of peace, balance, and order (Syahrudin Husein, 2003). Crime is a human action that arises as a result of interactions within society. Although societal behavior varies, some groups exhibit similar patterns of behavior (Santoso, 2003). However, people in this world desire to live an organized, prosperous, safe, and just life. To reduce the level of crime, humans have made efforts both in the form of prevention and strict action.

One form of crime is persecution, where persecution refers to arbitrary actions that involve torture or oppression, causing pain or injury to another individual. It is considered an unlawful act and is prohibited by both criminal and Islamic law (Poerdaminto, 2003). Maltreatment is generally committed by someone who finds themselves in a coercive situation, to protect themselves from the threats they face. This action arises as a result of various motivations, such as revenge, feelings



of betrayal, feeling that their self-esteem and dignity have been violated, defamation, loss, and other reasons.

Article 351 of the Criminal Code (KUHP) in the Second Book XX regulates the offense of maltreatment in Indonesian positive law. This article states that "(1) The act of maltreatment is punishable by a maximum imprisonment of two years and eight months or a fine of up to four thousand five hundred rupiahs. (2) If the act results in serious injury, the perpetrator may be sentenced to imprisonment for up to five years. (3) If death results, the maximum prison sentence is seven years. (4) Maltreatment with intent to damage health is considered equivalent. (5) Attempts to commit these crimes are not punishable."

According to Mr. M.H. Tirtamidjaja, maltreatment is defined as an act or action which, because of the act, causes another person to suffer injury or pain. However, such actions cannot be categorized as persecution if there are justifiable reasons such as to protect and maintain personal safety (Tirtamidjaja, 1955). The elements of the crime of maltreatment involve intent, action, and effort aimed at causing pain or injury to a person's body. Maltreatment can include a variety of behaviors, such as cutting, beating, slicing, trapping, administering substances, and so on. Typical penalties for maltreatment include imprisonment not exceeding two years and eight months or a fine not exceeding three hundred rupiahs. For cases of maltreatment resulting in serious injury, imprisonment can be up to five years, while maltreatment resulting in death can carry a prison sentence of up to seven years (RENALDY, 2019).

In cases of persecution committed in self-defense, Islamic law recognizes the right to protect oneself, echoing human rights acknowledged in the Indonesian Criminal Code. This aligns with the Maqasid Asy-Syariah concept, emphasizing self-protection as a human right. Legal consequences for self-defense persecution, in both Islamic and criminal law, must uphold the principle of justice (Armiyanto & Tobing, 2022). Islamic criminal law categorizes persecution, or jarimah pelukaan, as distinct from murder, focusing on harm to the body without endangering life. A Sahih Al-Bukhari hadith emphasizes seeking forgiveness for harm caused to a brother, stressing the urgency of reconciliation in this life before material wealth loses significance (Sekho, 2007). This Islamic wisdom encourages conflict resolution, justice, and peace, emphasizing the immediate correction of wrongs for a meaningful life (Nitha, 2023).

The Qur'an, in Surah Al-Maidah verse 45, outlines the qisas law, stipulating that retribution for harm inflicted must be equal. It emphasizes the principle of retaliation, stating that every offense demands an equivalent punishment, such as soul for soul and eye for eye. The verse acknowledges the right of individuals to seek retribution but also highlights the noble act of



forgiveness. Choosing to forgive is seen not only as relinquishing the right to retaliate but also as an attempt to cleanse sin and restore peace. Additionally, offenses that don't result in death or injury are not subject to qisas; instead, the perpetrator faces proportional imprisonment based on the offense's severity (Sari, 2020). In Islam, Allah SWT commands self-defense as in His word Surat Al-Baqarah verse 194 in which the command of al-taqwa indicates that demanding retaliation or making a defense (al mumatsalah) and phasing (at-tadarruj) must be the same in its implementation, starting from the lightest and easiest, to difficult and severe consequences such as killing (Putri, 2021).

Criminal acts have a basis that involves certain motives or plans, such as jealousy, hurt, revenge, anger, financial problems, and so on. To state that a person is in a situation of "emergency defense" and cannot be punished, the concept of "emergency defense" or noodweer is used (Soesilo, 1995). Noodweer excès is a forced defense with high mental stress due to the threat of attack. The defense must protect self, others, property, and honor under duress (Utoyo, 2013). Article 49 (2) noodweer excès states that not all perpetrators will be sentenced to the full extent of the law. Although not punishable without fault, noodweer excès are still considered an offense. Presumed guilt is not acceptable; in this context, an unlawful attack must exist as a basis for the offense (Dumgair, 2016). In situations involving a minor, judges utilize the provisions of Article 351 paragraph (3) of the Criminal Code, which imposes a seven-year prison sentence if the assault causes death.

A tragic incident occurred on September 8, 2019, involving Zainul Afandik defending himself and Vivin from Misnan and Mamat, who demanded money and a phone. Zainul used a knife in self-defense, resulting in Misnan's death. The judge highlighted the absence of physical obstacles for the children to escape and the lack of weapons from the perpetrators. Despite being referred to as "delinquent children," Law No. 11/2012 allows minors to face criminal penalties, as seen in Decision Number: 1/Pid.Sus-Anak/2020/PN.KPn. This case prompted an analysis of criminal law and Islamic criminal law related to minors in conflict with the law (Widodo, 2016).

2. RESEARCH METHOD

In this research, the author applies the Peter Mahmud Marzuki approach, which consists of a statutory approach and a case approach. The statutory approach is used to understand and review legislation related to the legal issues being studied. In addition, the case approach is used to develop legal arguments based on concrete field cases and to find legal truth by the principles of justice. This research has a normative legal nature and is prescriptive, aiming to provide an



overview of cases that have occurred and create suggestions and solutions related to the problems that arise. The focus of this research is the analysis of decision number 1/Pid.Sus-Anak/2020/PN.KPn of the Kepanjen District Court regarding the perpetrator of persecution who is still a minor. Another objective is to understand the legal protection for perpetrators of persecution of begal, especially related to the defense of themselves or others in the context of criminal law and Islamic law. Data sources involve primary, secondary, and tertiary legal materials, as well as literature study data collection methods with data analysis techniques using the deduction method.

3. RESULTS AND DISCUSSION

Analysis of Decision Number: 1/Pid.Sus-Anak/2020/PN.KPn Kepanjen District Court Regarding Persecution of Minors

The judge's decision in decision No. 1/Pid.SusAnak/2020/PN.Kpn covers a case related to an overreaching act of self-defense committed by a child to protect his property, dignity, and other people from an attack by a thief. The judge in his decision imposed a penalty in the form of persecution that resulted in death. In terms of criminological theory, this decision is by the theory of anomy advocated by Emile Durkheim and Robert K. Merton. In his book entitled "The Division of Labor in Society" (1893), Durkheim explains the state of deregulation in society. Deregulation is defined as a condition in which people do not comply with applicable norms and do not understand the expectations that exist from others. This state of deregulation or the absence of norms can lead to deviant behavior) (Abby, 2016). The absence of these norms leads to deviant behavior called deviation, where deviation in this context does not only mean breaking the law because of the desire to do something prohibited by law, but rather as a response to the law itself which is considered an inappropriate means of social control. In the cases described in the verdicts, the causal factors of criminal acts are shown by the response to the law in the form of deviant behavior, such as the lawless acts committed by Fandik. This offense was not only driven by the desire to do something prohibited by law but also as an effort to protect property and dignity from threats from others.

The judge's decision is a crucial endpoint in criminal cases, considering juridical, philosophical, and sociological aspects. According to Articles 183 and 184 of the Criminal Code, the judge requires at least two valid pieces of evidence to establish guilt. Valid evidence includes witness testimony, expert opinions, letters, instructions, and the defendant's testimony. The judge's decision provides legal certainty for the defendant's status and guides further actions such as accepting the verdict, filing an appeal, or pursuing a cassation (Hoessein, 2016).



In Decision Number: 1/Pid.Sus-Anak/2020/PN.KPn, there is a story about a child who killed a robber in the context of excessive self-defense to protect property, dignity, and others. The judge used juridical considerations, which included the chronology of the case, the facts that emerged in the trial, the testimony of witnesses, and the judge's views. To achieve justice in decision-making, judges also need to consider philosophical and sociological considerations. The concept of justice in judges' decisions includes legal justice, social justice, moral justice, and community justice. Legal justice is based on laws and regulations, but it can often lead to injustice due to changes in the values of justice in a society that can make laws and regulations irrelevant. Justice in one society is not always the same as in another, so judges need to understand the legal values prevailing in society. Judges are expected to consider moral justice and social justice in the application of laws and regulations (Permana, 2016).

A judge in rendering a decision needs to adopt a syllogistic pattern of thought, which involves establishing the facts committed by the defendant as the first step. Next, the judge determines the punishment that is appropriate to the facts or actions through interpretation, so that the conclusion can be drawn that the defendant can be convicted. In the dictum of the decision, this conclusion is then elaborated as a conclave. In applying criminal provisions, it is important to first establish that the defendant's actions have fulfilled the elements contained in the relevant provisions. Once this has been established, it is necessary to conduct further research to ensure that there are no circumstances that could eliminate the unlawfulness of the act (Alam et al., 2021).

In the chronology contained in the decision, it is explained that the judge's consideration in applying Article 49 of the Criminal Code is not legally appropriate. Article 49 contains the element that Zainal carried out forced defense that exceeded the limit, not because of a plan to eliminate the lives of others, but to defend his property and the lives of others. Zainal also faced unlawful attacks and threats, causing mental shock, as explained in the chronology that Zainal stabbed a sharp weapon at Misnan because he was worried about rape against Vivin. Therefore, the application of noodweer exces should have led to Zainal being acquitted by the judge, given that the perpetrator was a minor, aged 17. The application of noodweer exces must be balanced between the victim and the perpetrator, and the judge acts as a law enforcer who helps to create balance. Judges as individuals have the conscience and ability to declare whether or not a person is guilty, and therefore, judges have the freedom to decide a case (Zubaidah, 2017).

The judge concluded that the defendant's actions met the criteria for maltreatment resulting in death under Article 351(3) of the Penal Code. Despite testimonies and mitigating circumstances, the judge believed it wasn't appropriate to find the defendant guilty, considering the actions as



excessive self-defense triggered by unlawful threats. The judge saw the defendant as a victim protecting himself and others, citing Article 49 of the Criminal Code, which exempts punishment in such cases, even when charges are under Article 351(3) on maltreatment causing death. The decision also recognized the element of *noodweer exces*, indicating excessive forced defense as per Article 49, stating that a person cannot be considered criminal if the defense is purely to protect life, body, honor, and others (Dumgair, 2016).

In discussing self-defense, R. Sugandhi outlines the conditions of Article 49 of the Criminal Code. He emphasizes that defense must aim at protecting oneself or others, consider norms of decency, and involve the protection of property. Additionally, there must be a violation of rights and a sudden threat to justify the act of defense. This legal framework helps identify whether an act of defense qualifies as an emergency and provides legal justification. (Kaudis, 2021).

Zainal was accused of murdering the victim, so the case fell under the jurisdiction of the District Court. However, in the context of the robbery case, the perpetrator was defending himself against the deprivation of property and protecting the honor of his girlfriend from the victim. Although the panel of judges charged the perpetrator with the crime of maltreatment that resulted in death, there was an element of forced defense that exceeded the limit that could have been a reason to erase the crime.

Zainal's actions, such as using a knife, are justified under forced defense outlined in Article 49 of the Criminal Code. The first element involves actions taken under duress for self-defense, evident in Zainal's response to the threat posed by Misnan. The second element of overreaching defense pertains to protecting oneself and others, as seen in Zainal's efforts to defend his girlfriend's property and honor. The third element addresses the existence of an assault, demonstrated by Misnan's threat to rape Zainal's girlfriend. The fourth element encompasses mental shock caused by threats and attacks, indicating the disturbance in Zainal's mental state due to the threats against his girlfriend and property.

In Decision Number 1/Pid.Sus-Anak/2020/PN.KPn, a child named Zainal, aged 17, was sentenced to 1 (one) year, which is considered inappropriate when viewed from the perspective of legislation, especially Article 49 paragraph (2) of the Criminal Code which regulates excessive self-defense (*noodweer exces*). Although self-defense is considered the main solution when facing threats, in reality, actions that are supposed to protect oneself can hurt others, even to the point of causing death. The act that results in death is not done out of personal will or desire, but rather occurs due to compelling circumstances, leading to a violation of the law. As a result, the act can



be justified, especially if it is done in self-defense against a threatened attack that harms oneself and others.

Through further analysis, there are similar decisions that can be used as a comparison, such as Court Decision Number 115/Pid/B/2021/PN Stb. In this decision, the defendant was considered to have legally committed the crime of maltreatment causing death, but it was committed as an act of forced defense (noodweer). In this case, the defendant used a firearm to stop the attack of the victim who was carrying a sharp weapon. Although the defendant legally proved the act of maltreatment that resulted in death, the judge viewed it as a defense of necessity and decided to acquit the defendant from all charges. Thus, in Zainal's case, the judge's reasoning can be broken down through the facts of the trial, the judge's consideration, and the defendant's belief that an act of forced defense had occurred. This verdict was based on the assessment that the defendant went beyond the call of duty solely to protect himself from the threat he faced (Kusuma et al., 2023).

Based on the facts that occurred revealed in the trial that, Zainal was in a state of threat and there was a threat of rape against Vivin by Misnan and Mamat, the defense actions taken by Zainal were considered valid. In the context of noodweer exes, the main requirement is that there is no other way to avoid the attack, and the defense taken by Zainal is considered the best step to protect himself and others. About criminal law, this element of noodweer exes requires that overreaching defense measures must be considered the only option to avoid the attack. The sociological approach in the judge's consideration, as expressed by Ahmad Rifai, emphasizes the cultural values prevailing in society as a basis for imposing a decision (Rifa'i, 2014). What this means is that the judge in this case should have tried to achieve justice and provide benefits to the defendant, especially considering that the defendant was 17 years old. This opinion is in line with the sociological school which states that the law comes from society and for society. On this basis, judges are allowed to combine legal facts, legal norms, legal morals, and legal doctrine into a decision to create justice and order in society (Manggalatung, 2014).

The facts, theories, and practices contained in Decision Number 1/Pid.Sus-Anak/2020/PN.Kpn is in line with Article 49 of the Criminal Code which states that a person is not convicted if he commits an act of forced defense to protect himself or others, honor, decency, or property because there are unlawful attacks and threats. Based on the analysis that has been explained, the defendant should be declared free from all charges (Ontslag Van Alle Rechtsvervolging). This is based on the fact that the public prosecutor failed to prove that the defendant committed the crime of maltreatment causing death. Therefore, the defendant's actions



were deemed not to constitute a criminal offense due to the existence of justification in the form of excessive force.

The judge in considering the pledoi in the decision stated that Zainal and the Legal Counsel had presented facts from the trial that showed that Zainal's actions could not be considered as emergency measures that went beyond the limit. There were several opinions in the panel of judges, first, stated that there was no obstacle for Zainal and the Witness Child to escape because Misnan and Mamat did not carry weapons or dangerous tools, and there was not even physical touching or detention of Zainal and the Witness Child by Misnan and Mamat. Secondly, Misnan and Mamat's request for intimate relations was not accompanied by physical action. Instead, they attempted to negotiate with the Witness Child for three hours without touching or physically abusing her. Thirdly, it considers that Zainal did not experience any mental shock while committing his acts, showing calmness in picking up the knife and waiting for the right time to carry out his actions. Fourth, stated that because the maltreatment committed by Zainal caused death, the element of maltreatment resulting in death has been fulfilled. Fifth, considering that all the requirements of Article 351 paragraph 3 of the Criminal Code are met, Zainal is legally and convincingly guilty of the criminal offense charged by the Public Prosecutor. Therefore, the panel of judges stated that Zainal's actions could not be considered as an emergency defense or an excessive emergency defense as described in Article 49 of the Criminal Code.

The results of the analysis of the judge's consideration in the Kepanjen District Court Decision Number: 1/PID.SUS-ANAK/2020/PN.KPN shows that the basis for the judge's consideration is primarily juridical. The judge considers the facts revealed in the trial, the chronology of the case, the testimony of witnesses, and the testimony of the defendant as an adequate basis for making a decision. In this process, judges only consider legal factors, without including philosophical and sociological considerations that should reflect justice in the decision. The concept of justice in the judge's decision includes legal, moral, and societal justice, and is based on criminological theory, especially the theory of anomie which explains that crime can arise due to deviation or deviation from social norms. However, in this case, there was no tendency for the judge to appropriately consider the elements of excessive force defense so that the act was considered not a criminal offense due to the justification of excessive force defense.

Legal Protection for Perpetrators of Begal Offenses about Self-Defense and Others from the Perspective of Criminal Law and Islamic Law

Perpetrators in criminal acts do not always commit these acts solely for criminal purposes but are sometimes influenced by urgent needs, orders from other parties, or as an effort of self-



defense. Legal protection is defined as a norm that provides guarantees and protection for the human rights of individuals who are victims and involves the entire community. In the context of a robbery case, the perpetrator wants to seize the victim's property and damage the honor of a woman, so the victim feels threatened and defends himself. The act of self-defense by the victim in an emergency is used as a basis by R. Soesilo so that it can be recognized as an act that cannot be punished (Soesilo, 1995).

The protection of children in all aspects of life aims to ensure that children receive appropriate treatment according to their needs. The basis of this protection is the principles of children's rights, namely those aged 12 to 18 years, which include respect, fulfillment, and protection of children's rights, as stipulated in Law No. 35/2014. These rights will always be attached to the child even if the child is a person who is proven to have committed a criminal offense that is usually committed by an adult. He/she is entitled to all legal rights in every stage of the court process. This shows that the best interests of the child must always be prioritized, especially by law enforcement officials and other parties involved.

Based on the actions of the perpetrator who has fulfilled all the elements described in the legislation, several reasons can result in the exclusion or justification of the perpetrator in the imposition of criminal sanctions. There are two categories of reasons that can result in the elimination of punishment, namely excuse and justification reasons. The excuse is the basis for removing the punishment from the individual perpetrator, which is related to the personal aspect of the perpetrator. On the other hand, justification is the basis for criminal expungement related to the actual unlawful act committed by the perpetrator. Both types of reasons are given to a person due to the appearance of remorse or willingness to voluntarily admit guilt. Thus, the prosecution cannot be continued, and automatically the reason becomes the basis for the elimination of punishment.

In Book I of the Criminal Code which discusses General Rules, there are criminal acts that fall into the category of reasons for criminal expungement. There are two aspects of forced defense which are regulated in Article 49 of the Criminal Code:

First of all, the concept of Forced Defense as stipulated in Article 49 paragraph (1) of the Criminal Code can be interpreted as an action taken by an individual to violate or violate the law but carried out in response to threats or attacks. This article gives a person the right to act decisively to protect himself, others, honor, and property both his own and others. The important point to note is that the act of forced defense must be limited to necessity and necessity, so it must not exceed the level of threat or attack faced. In this context, Article 49 paragraph (1) of the Criminal Code confirms that the enforceability of forced defense cannot be used as a pretext for



actions that are excessive or involve disproportionate violence. Therefore, the principles of fairness and balance are strongly emphasized, where acts of forced defense are considered valid as long as they comply with the provisions stipulated in the legislation. This right provides legal protection for individuals who feel threatened or attacked, by ensuring that their reaction is appropriate to the threat faced, without exceeding the limits set by law.

Secondly, in Article 49 paragraph (2) of the Criminal Code, overreaching forced defense can be explained as a condition in which a person engages in defense actions that exceed the level of threat faced. This article details that although the act of forced defense has similarities with the defense efforts made by the perpetrator, the difference lies in the excessive response to the level of threat that could have been overcome by proportional defense actions. This situation is often triggered by emotional disturbances or mental shocks that are being experienced by the perpetrator, so that the defense carried out becomes unbalanced with the situation at hand.

Article 49 paragraph (2) of the Criminal Code provides a specific legal basis for assessing whether or not a forced defense exceeds the limit. This assessment not only considers the physical aspects of the threat faced but also takes into account psychological factors that may influence the perpetrator's reaction. As such, this article underscores that in situations of forced defense, the proportionality of the response to the threat must be the primary consideration. This aims to prevent the abuse of the right of necessitous defense which may result in actions that go beyond what is necessary and harm other parties involved in the situation.

Article 49 of the Criminal Code serves as a legal basis that provides legal protection for individuals who commit acts of self-defense or forced defense. This legal provision affirms that a person who commits a criminal offense can be exempted from prosecution if it can be proven that his actions meet the elements of forced defense, which involves: (1) the existence of an act, (2) the unlawful nature of the act, (3) the ability to take responsibility, and (4) the threat of punishment. The trial process is key in proving the grounds for criminal acquittal, where the judge assesses whether the suspect qualifies for exemption from criminal charges. As a public prosecutor, the prosecutor needs to pay attention to the rights of the suspect regulated in Article 50 to Article 68 of the Criminal Code.

When a child is involved in a criminal offense, the enforcement of punishment is carried out with due regard to child protection laws, especially Law No. 23 of 2002. The law confirms the commitment to guarantee rights for children and protect children from various actions that can interfere with their growth and development, that can tarnish their honor, and also that can injure their dignity as human beings. When examining children involved in criminal offenses, the court



must find an alternative solution called diversion. Diversion is an attempt to divert the resolution of children's cases from the criminal court process to channels outside the criminal justice system. For children involved in legal conflicts, sanctions can be given in the form of punishment or action. However, the imposition of punishment for children must be the last option after other main options have been first pursued. Children who can be given punishment are only those who are over 14 years old up to 18 years old, while if they are still under 4 years old, then they can only be subjected to non-criminal actions such as being returned to their parents. Judges, who are part of the 4 pillars of law enforcement in Indonesia, have an important role during the legal process of children in conflict with the law. He/she is charged with a great responsibility to be able to provide the best decision that still prioritizes the values of justice and at the same time does not interfere with the interests of the child. This goal will be easier to achieve if all authorities work together to achieve optimal and comprehensive law enforcement.

From an Islamic perspective, there are effective punishment provisions that still take into account the rights of children, especially when applied to juvenile offenders. The Qur'an and hadith provide universal moral guidelines to ensure the safety and well-being of children. As stated in the Qur'an, surah Al-Luqman (31) verse 1. Islamic teachings require adherents to provide strong protection for children. This protection involves a series of activities that aim to ensure and protect the rights of children so that they can continue to grow and contribute responsibly to upholding the values of justice and peace. Islam strictly prohibits degrading and harming children, as explained in Surah Al-An'am (6): 140, which describes the cruelty and moral negligence of people who kill their children. In the Islamic context, this verse condemns the act of killing children as a form of crime and ethical negligence committed by those who commit such acts. In more detail, the verse states that those who kill their children unjustly, without a clear reason or adequate knowledge, will be losers in this world and the next. The ignorance that is the cause of killing such children is strongly condemned, as it sacrifices innocent lives that cannot defend themselves.

In addition, this verse also alludes to the practice of forbidding the sustenance that Allah grants to these children by making up lies against Allah. This can be interpreted as the act of prohibiting or hindering the favors that Allah has bestowed on children for false reasons.

This verse shows that the act of killing children is unreasonable and goes against the provisions of Allah who judges every act of life. Therefore, those who commit such acts are considered misguided and unguided. More generally, this verse teaches the importance of respecting the rights and values of life, especially the rights of children in Islam.



Children are part of the younger generation who are the successors of the nation's ideals. They need guidance and protection to grow and develop fully, balanced, and harmonized in physical, mental, and social aspects. Because they cannot yet distinguish between actions that are allowed and those that are not, the consequences of their actions must be faced with the law. Children involved in criminal offenses, who are not yet able to protect their rights, need supervision from adults, especially parents, and also need legal assistance during the judicial process.

In Islamic criminal law, a child will not be subject to harsh punishment for the crimes they commit. This is because there is no responsibility for the punishment of children, whether they are still young or have reached the age of puberty. The judge only has the authority to reprimand the child's mistake or impose some restrictions to correct him and prevent him from committing the mistake again in the future (Rahman, 1992).

In Islamic criminal law, a child's criminal responsibility is determined by their ability to think and choose. This responsibility is divided into three stages: the period of inability to think, when cognitive abilities are not fully developed; the period of weak inability to think, when thinking ability begins to develop but remains limited; and the period of full inability to think, when the child has full cognitive abilities and can make choices with full awareness. The punishment position of a minor varies based on their developmental stage within these periods.

Qisas, Diyat, and Tazir are integral concepts in Islamic criminal law. Qisas involves retaliation, where the punishment matches the harm caused to the victim. Diyat allows the offender to compensate the victim's family to avoid corporal punishment. Tazir is discretionary punishment by authorities without specific Islamic law references. These concepts aim to balance justice and mercy, ensuring fair individual rights in line with Islamic values. Qisas specifically addresses acts of persecution, applying punishment through methods like *bughat* and *hirabah* when no specific provisions exist in Islamic texts.

In Islamic Shari'ah, the criminal responsibility of minors aligns with modern legal concepts. Roman law, a precursor to contemporary European law, also acknowledged the distinction between children and adults, setting a clear age limit of seven years for criminal responsibility. If a child is seven years or older, they may be held accountable for their actions. Conversely, for those under seven, criminal liability doesn't apply unless engaged in acts intending harm to others, subject to legal provisions. This approach considers age and intent, providing a comprehensive perspective on child liability (Hanafi, 1990). At the examination stage in the court



session, Islamic procedural law provides the following guarantees for the defendant (Nikmah, 2014):

1. Right to self-defense

The basis of Islamic law in self-defense from the authority of others has a strong basis in the Qur'an and Hadith of the Prophet Muhammad, namely surah Al-Baqarah verse 194. This right has great significance because, through self-defense, the accused can reject the accusations against him by providing a rebuttal to the overwhelming evidence or presenting evidence to prove innocence. The importance of the right of self-defense becomes apparent when we realize that when a person does not respond to or rebut the accusations against him, it can be taken as an indication of his guilt. Related rights and practical aspects of the right of self-defense are:

- a. The accused is entitled to be informed about the charges and presented with detailed evidence in the case, covering aspects that impact the overall situation. This right ensures the accused has a comprehensive understanding of the charges, enabling them to prepare a robust defense and promoting a fair judicial process.
- b. The defendant must possess the capacity to defend themselves. According to the Hanafi school, individuals unable to speak should not face hudud punishment, highlighting the importance of a comprehensive defense. This perspective aims to guarantee a fair chance for every defendant to present their case effectively in the legal proceedings.
- c. The accused is entitled to engage a lawyer for assistance in their defense, ensuring both practical support and the fundamental right to a fair self-defense. This legal representation helps address any lack of understanding of procedures and effective strategies, ensuring a balanced position against the prosecutor during the trial.
- d. The accused has the right to present his/her defense and to have the opportunity to communicate privately with his/her legal counsel. In addition, the accused also has the right to confront the prosecution and cross-examine witnesses who provide adverse testimony. This right includes the right to speak openly and directly with legal counsel, and to attend the trial with the confidence that it will be fair and transparent.

2. Right to a court hearing

In Islam, the right to a judicial hearing serves as a crucial safeguard for individual rights against potential executive power abuses. This concept advocates transparency and open trials as essential mechanisms for ensuring fairness in legal matters. Emphasizing justice and equality, Islam strives for a just judicial system that aligns with Islamic law principles. Open hearings are seen as a preventive measure to mitigate the risk of injustice or executive abuse. Within the human



rights context, Islam upholds the right to open trials, reflecting its commitment to safeguarding individual rights and ensuring fairness through community involvement in the judicial process.

3. Right to a fair and impartial trial

The principle of the right to a fair and impartial trial is a central focus in Islamic teachings to achieve justice and equality among individuals. Judges are mandated to carry out their duties with fairness and impartiality in deciding cases.

4. Right to seek redress for wrongful conviction

The right to seek compensation for wrongful conviction provides additional protection to the accused in Islam. If the judge unintentionally gives an erroneous verdict, the defendant is entitled to receive compensation from the Baitul Maal (state treasury). However, if the judge is deliberately unjust, the judge can be dismissed and the defendant is entitled to compensation from the judge.

5. Conviction as the Basis of Proving a Crime

Conviction as the basis for proving a crime reflects the principle of presumption of innocence in Islamic law. Islam emphasizes that doubts that have not been dispelled should be to the advantage of the accused. This principle asserts that punishment should be enforced based on firmness and conviction. An accuser cannot convict someone in the absence of real and sufficient evidence. This view is reinforced by the example of the Prophet and the Khulafa Rashidun, who regarded accusations without clear evidence as an inadequate basis for sentencing the perpetrator of a criminal offense.

Basically, it can be understood that both criminal law and Islamic law both agree that children can be held accountable for the criminal acts they commit even though the form of punishment given is clearly different from adults. The punishment imposed on children who commit the crime of maltreatment that causes death by criminal law must be processed through a juvenile criminal court based on the provisions of the legislation on the juvenile criminal justice system in which it prioritizes case resolution with restorative justice without eliminating the values of justice which simultaneously also pays attention to the best interests of the child. As for the persecution carried out on the basis of forced defense, the child cannot be sentenced.

The above is also in line with what is desired by Islamic law. With the status of the child that is still attached to the child, then he cannot be sentenced to criminal punishment considering that there is a requirement of adulthood in the imposition of punishment according to Islam. Therefore, children who commit maltreatment that causes death cannot be immediately punished with qisas. Moreover, in the case of murder, if the victim's family gives forgiveness, then the qisas



punishment is waived. This forgiveness even applies to adults. If only adults can get forgiveness, then of course children are much more entitled to forgiveness which is in line with the concept of restorative justice in criminal law. Especially if the persecution that caused the death was carried out for reasons of forced defense (Mahendra & Fauziyyah, 2022).

Unfortunately, Court Decision Number 115/Pid/B/2021/PN Stb still does not reflect the values of justice desired by criminal law and Islamic law. Judges as God's representatives on earth should be able to judge more wisely, especially for problems involving children as the perpetrators. Therefore, this research is expected to be a criticism for law enforcement officials, especially for judges in handling cases of assaults that cause the death of begal by minors. Cooperation, thoroughness, and high dedication are needed in handling criminal cases committed by children so that true justice can be achieved.

4. CONCLUSIONS

The judge in decision no: 1/Pid.SusAnak/2020/PN.Kpn has considered that the defendant is guilty of the crime of maltreatment resulting in death. In his consideration, the judge did not find any reason for criminal erasure that could justify the criminal act, be it justification or excuse. Therefore, the panel of judges concluded that criminal action must be imposed. In the context of the facts of the trial, the defendant's actions were related to the excuse as stipulated in Article 49 paragraph (2) regarding excessive force defense (noodweer exces). Although the defendant committed a criminal act, the judge stated that the act had fulfilled the element of overreaching defense, so the defendant could not be convicted or must be acquitted. This is because the defendant's guilt is considered non-existent, even though his actions are considered a criminal offense.

Law No. 11/2012 on the Juvenile Criminal Justice System provides legal protection for children in various stages of the legal process. Article 49 of the Criminal Code is used as a legal basis for legal protection for someone who commits self-defense or forced defense. In Islamic law, children who are seven years old and above are subject to criminal liability, but children who have not reached that age are not unless they commit a criminal offense to harm others. Islamic procedural law guarantees the right to self-defense which has a strong basis in the Al-Quran and Hadith of the Prophet Muhammad, especially in surah Al-Baqarah verse 194. This right is an integral part of legal protection in Islam, covering various aspects of the judicial process to ensure fairness and adherence to the principles of sharia.



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