

A Comparative Study of the Regulation of Liability for Criminal Acts of Child Bullying Perpetrators Causing the Victim's Death According to Islamic Criminal Law and Positive Criminal Law in Indonesia

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Abstract. *Bullying is a form of violence that causes serious physical and psychological effects and has become a global problem, including in Indonesia. Although often considered trivial, bullying often has traumatic effects and can even cause the death of victims, as in the case in South Kalimantan. The contributing factors include economic differences, gender, seniority, and the perpetrator's desire for social influence. Legally, child perpetrators receive special treatment under the Child Protection Act and the Child Criminal Justice System Act (UU SPPA), which emphasizes restorative justice and diversion. However, in cases resulting in death, there is a dilemma between the need for justice for the victim and protection for the perpetrator, who is still a child. In Islamic criminal law, bullying is classified as a crime and may be subject to qisas punishment if it causes death, or ta'zir if it causes injury or psychological trauma. However, children who have not reached puberty are not subject to qisas punishment, but rather rehabilitation, and responsibility can be transferred to a guardian. The objectives of this study are: 1) to determine how the criminal responsibility of child perpetrators of bullying that results in the death of the victim is regulated under Islamic criminal law; 2) To determine how the criminal responsibility of children who commit bullying that results in the death of the victim is regulated in the perspective of positive criminal law in Indonesia, 3) To determine the similarities and differences regarding the regulation of criminal responsibility for children who commit bullying that results in the death of the victim between Islamic criminal law and positive criminal law in Indonesia. The research method used in this study is normative legal research, with a descriptive-comparative research specification. The data collection method used is library research, while the data analysis method used in this study is descriptive analysis. The research results show that the criminal liability of children who commit bullying that results in the death of the victim according to Islamic law is that children who have not reached puberty are not subject to severe criminal punishment but may be subject to ta'zir sanctions to educate and prevent repetition of the act. Liability is also transferred civilly to the child's guardian in the form of diyat payment to the victim's family. According to positive criminal law in Indonesia, actions by children that result in the victim's death are still being processed legally, but with a proportional and educational approach. There are fundamental similarities and differences. Both agree that children cannot be treated like adults and prioritize the protection, education, and guidance of*

children through a restorative and educational approach. However, there are similarities and differences. Both agree that children cannot be treated like adults and prioritize the protection, education, and guidance of children through a restorative and educational approach. However, there are differences in the age of criminal responsibility, types of punishment, case handling systems, and legal sources. Islamic law emphasizes maturity based on puberty and recognises diyat as a form of accountability, while positive law uses an age limit of 12–18 years and does not recognize diyat, but rather criminal penalties or corrective measures.

Keywords: Accountability; Comparative; Criminal; Study.

1. Introduction

Violence is an act that causes discomfort, suffering, or harm to another person, either physically or mentally. Violence is not limited to physical acts, but can also involve psychological pressure that seriously impacts the victim's emotional well-being. In educational settings, this type of violent behavior is better known as bullying, which often occurs repeatedly and systematically against weaker individuals. Modern developments accompanied by technological advances and the rapid flow of information have had a significant impact on social behavior, particularly among children and adolescents. One increasingly prevalent social phenomenon is bullying.¹

Bullying, once considered merely a form of childish mischief, has now evolved into a serious form of violence that can even be life-threatening. Several cases in Indonesia demonstrate that physical, verbal, and psychological bullying can result in death from physical injuries, severe mental distress, and even suicide.²

Bullying is a form of aggressive behavior that has become a global problem, including in Indonesia. Although often dismissed as trivial and normal by some parents, especially when perpetrated by children, the reality is that bullying can have serious negative impacts, both physically and psychologically, on its victims. Victims are usually quiet children or those who find it difficult to socialize. Factors causing bullying include economic differences, religion, gender, traditions of seniority, jealousy, and the perpetrator's desire for popularity. The impact of bullying on children can be long-term and cause deep trauma.³

The phenomenon of bullying among children and adolescents has become an increasingly concerning social issue, not only because of the increasing number of cases but also because of the serious consequences, including deaths. Bullying, whether physical, verbal, or

¹Handayani, T. (2020). The Impact of Bullying on Mental Health: A Case Study in Middle School. *Journal of Clinical Psychology*, p. 45

²Ramadhani, R. (2022). Criminalization of Children in Islamic Law and Positive Law: A Comparative Study, *Pustaka Pelajar*, Yogyakarta. Page 10

³Bagong Suyanto, 2010, *Children's Social Problems*, Kencana Prenanda Media Group, Jakarta, p. 102.

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psychological, has become a serious crime involving minors, posing unique challenges in terms of legal accountability.⁴

Bullying in Indonesia has become a systemic phenomenon that not only threatens the educational environment but also calls into question the effectiveness of the legal system in responding to child perpetrators. Data from the Indonesian Child Protection Commission (KPAI) shows that 67% of children in Indonesia have experienced bullying, with 15% of these experiencing severe, potentially life-threatening physical violence.⁵ Furthermore, according to data from the Ministry of Women's Empowerment and Child Protection (KPPPA), there were 24 cases of bullying in schools in 2023. Fifteen cases involved female students and nine cases involved male students. This represents a decrease from 2022, when 15 cases of bullying involved female students and 15 cases involved male students.

While the figures for female students remain unchanged, the significant decrease among male students suggests a possible improvement in the situation or a shift in social dynamics within the school environment. However, the persistent figures for female students indicate the need for a more specific approach to female victims.

Some cases of bullying among students that have been in the spotlight recently are acts of bullying that occurred in South Kalimantan, where bullying was carried out by children which resulted in the victim's death. As a result of the bullying, the teenager with the initials MA (18) felt depressed and ended his life by hanged one self. The brief chronology is the victim, while still in junior high school, was frequently bullied by her peers about a year and a half ago. This allegedly caused the victim to experience tremendous psychological stress, leading to her fear of seeing other people. She spent her days confined to her home. Under Islamic criminal law, this punishment would be qisas (retribution).

This tragedy presents a legal dilemma: on the one hand, child perpetrators must be held criminally accountable for the actions that caused the death; on the other, their status as legally minors demands a rehabilitative approach. This conflict between the principles of retributive justice and child protection has become a critical point in the study of Islamic criminal law and Indonesian positive law.

Child protection is specifically regulated in Law Number 35 of 2014 concerning Child Protection. In the context of bullying cases, perpetrators can be subject to sanctions based on the provisions of this law. The law states that everyone is prohibited from placing, allowing, committing, ordering, or participating in acts of violence against children. Violations of this provision can be subject to criminal sanctions in the form of imprisonment for a maximum of 3 years and 6 months and/or a fine of up to Rp 72,000,000,000.⁶

⁴Indonesian Child Protection Commission (KPAI), 2023, KPAI Annual Report 2023: Violence against Children and the World of Education, KPAI, Jakarta, p. 45.

⁵Indonesian Child Protection Commission (KPAI). 2023, Monitoring Report on Bullying Cases in Educational Environments. Jakarta

⁶Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

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Sociologically, bullying is often triggered by structural factors such as social discrimination, economic disparity, and the degradation of moral education. Ramadhani's study showed that 65% of bullying cases in schools involve differences in the victim's economic or physical status.⁷ In the context of Islam, this behavior is contrary to the principle of *ukhuwah insaniyah* (universal brotherhood) which is emphasized in QS Al-Hujurat: 13:

فَأُولَئِكَ هُمُ الظَّالِمُونَ God willing God bless you يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُ قَوْمٌ مِّنْ قَوْمٍ

Meaning: "O mankind! Indeed, we have created you from male and female, and made you into nations and tribes so that you may know one another...". Bullying actions that involve physical or psychological violence are included in *jinayat* (criminal acts) which can be classified as *ta'zir* (discretionary punishment) if they result in mental trauma, or *qisas* if they cause injury or death.⁸

The integration of Islamic criminal law and national law in dealing with child offenders still faces challenges. For example, the Juvenile Justice and Child Protection Law does not explicitly adopt the concept of *diyat* (payment of compensation), while Islamic law lacks a clear instrument for diversion. This study aims to analyze the convergence and divergence between the two legal systems and propose a holistic treatment model that combines restorative sanctions, moral education, and victim compensation. This is expected to create policies that not only reduce bullying but also build ethical awareness among the younger generation.⁹

In the context of positive criminal law in Indonesia, children as perpetrators of crimes are treated specially as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which emphasizes restorative justice and diversion as the primary efforts in handling juvenile cases. On the other hand, if the result of the bullying results in death, a dilemma arises between the protection of the child perpetrator and the right to justice for the victim. Therefore, it is important to understand the limits of juvenile criminal liability in the national legal system, especially when the crime committed has fatal consequences.

Meanwhile, Islamic criminal law also has strict provisions regarding the accountability of children in criminal acts, including in cases of murder or unintentional death. Islamic criminal law recognizes the concepts of *jinayah*, *qisas*, and *diyat*, but still takes into account the age, maturity, and ability to distinguish between right and wrong (*tamyiz*) of the perpetrator. In many views, children who have not reached puberty cannot be subject to *qisas* or *hadah* punishments; instead, they are subject to guidance measures or responsibility transferred to their guardians or family.¹⁰ This shows that Islamic law also has special treatment for child

⁷Ramadhani, R. (2022). *Criminal Responsibility of Children in Islamic Law and Positive Law*, Pustaka Pelajar. Yogyakarta, p. 10

⁸Al-Zuhaili, W. (1989). *Al-Fiqh Al-Islami wa Adillatuhu*, Dar Al-Fikr, Damascus

⁹Nurdin, F. (2021). *Bullying from an Islamic Law Perspective: Impact Analysis and Preventive Solutions*. Journal of Islamic Law Studies

¹⁰Amir Syarifuddin, 2013, *Outlines of Islamic Jurisprudence*, Kencana, Jakarta, p. 88.

perpetrators of crimes, although within a different framework from the Indonesian positive legal system.

2. Research Methods

Legal research methods are systematic approaches used to analyze and understand legal phenomena, including the norms, rules, and practices that apply within a legal system. These methods aim to answer research questions about how law is applied, interpreted, and influenced by various social, political, and economic factors. In general, legal research methods can be divided into two main categories: normative methods and empirical methods.¹¹ Normative methods focus on the analysis of legal texts, legal principles, and doctrines, while empirical methods are more oriented towards case studies and empirical data related to the application of law in practice. The normative method, often referred to as the doctrinal method, involves analyzing legal sources such as statutes, regulations, court decisions, and legal doctrine. This approach aims to evaluate the consistency, validity, and applicability of legal norms within the context of legal theory and practice. This research typically involves an in-depth review of legal literature and an evaluation of existing legal interpretations and applications. The normative method is particularly useful for identifying weaknesses and strengths in a legal system and providing recommendations for improvement or revision. On the other hand, empirical methods in legal research refer to the collection and analysis of practical data, such as case studies, surveys, interviews, and observations. These methods aim to understand how the law is applied and accepted in everyday practice, as well as how the law influences and is influenced by society.¹²

3. Results and Discussion

3.1. Regulations on Criminal Liability for Child Bullies Who Cause the Victim's Death According to Islamic Criminal Law

Islamic Criminal Law, known in Islamic jurisprudence as Jinayat Law or Jarimah, refers to the legal rules governing criminal acts from the perspective of Islamic law. The term jarimah comes from Arabic (جرime), which etymologically means sin or criminal act. In Islamic legal terminology, jarimah is defined as any act prohibited by Islamic law and subject to sanctions by Allah SWT. These sanctions can be in the form of hudud, which are punishments whose provisions have been clearly stipulated in the Qur'an and Hadith, or ta'zir, which are punishments whose form and degree are left to the discretion of a judge or competent authority based on considerations of public interest.¹³

In the study of Islamic criminal law, three main terms are commonly used, one of which is jarimah. Terminologically, criminal law in Arabic is referred to as jarimah or jinayah. The word jarimah comes from the root words jarama-yajrimu-jarimatan, which etymologically mean "to do" or "to cut." In the context of Islamic criminal law, this term is used specifically to refer to "sinful acts" or "reprehensible actions." Furthermore, the term jarimah is also related to the

¹¹ Sunggono Bambang, 2017, Legal Research Methods, 1st ed, PT Raja Grafindo Persada, Jakarta

¹² Amirudin, 2010, Introduction to Legal Research Methods, 1st ed. PT Rajawali Press, Jakarta

¹³ Suanrto, The Concept of Islamic Criminal Law and Its Sanctions from the Perspective of the Qur'an, 2020

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verb ajrama-yujrimu, which implies committing an act that deviates from the values of truth, justice, and the provisions of the sharia of Allah SWT.¹⁴

Islamic jurists (fuqaha) use the term jinayah to refer to a term equivalent to jarimah (crime). Etymologically, jinayah is the masdar form of the word jana, meaning to commit a sin or mistake. In the context of Islamic law, jinayah is understood as an act that violates sharia norms and results in certain sanctions or punishments. This term aligns with the concept of a crime or criminal act in positive law, namely an act prohibited and punishable by law because it is deemed detrimental or dangerous to society or individuals.¹⁵

The term ma'shiyat refers to any form of action that is forbidden or prohibited, both by Islamic law and positive law. Thus, ma'shiyat encompasses elements of actions that are prohibited according to legal provisions, whether derived from sharia or human rules.¹⁶

Based on this understanding, Islamic criminal law can be defined as law based on the values contained in Islamic teachings. Islamic law as a whole is a set of rules that govern human behavior in relation to Allah SWT, fellow human beings, and the universe, all based on the principle that everything is His creation. In Islamic criminal law, types of crimes are divided into three main groups: hudud, qisas, and ta'zir, with the following explanation:

1) Hudud

Hudud is a category of criminal offenses (jarimah) in Islamic criminal law that is subject to punishment in the form of hadd. Etymologically, the word had means a boundary or separation between two different things so that they do not mix. In the context of Islamic law, hadd refers to a type of punishment that has been determined by Allah SWT, both in form and degree, as explicitly stated in the Qur'an and Hadith. Hadd punishment is seen as a right of Allah (haqq Allah) that aims to maintain the public interest and uphold social order by preventing serious criminal acts.¹⁷

According to Abdul Qadir Audah, hudud is defined as "a crime that is threatened with hadd punishment, namely a sanction whose type and size have been determined by sharia and is the prerogative of Allah." The legal basis for hudud is found in various verses of the Qur'an, one of which is in Surah An-Nisa verse 13, which states:¹⁸

God willing يُدْخِلُهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۚ وَذَٰلِكَ الْفَوْزُ الْعَظِيمُ

Meaning: "He will admit them into gardens beneath which rivers flow, where they will abide forever. And that is the great triumph."

¹⁴Fathurahman Jamil, *Philosophy of Islamic Law*, (Jakarta: Logos Waca Ilmu, 1999), 11

¹⁵Fuat Thohari, *Hadith Ahkam: Study of Hadiths on Islamic Criminal Law (Hudud, Qishash, Ta'zir)*, (Yogyakarta: Deepublish, 2018), 4

¹⁶Zulkarnai Lubis, *Bakti Ritonga, Basics of Criminal Procedure Law*

¹⁷Islamul Haq, *Fiqh Jinayah*, (South Sulawesi: IAIN Parepare Nusantara Press, 2020), 55.

¹⁸Ministry of Religious Affairs of the Republic of Indonesia. *The Qur'an and its Translation*. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019.

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Ta'zir is a form of criminal punishment in Islam, the type and severity of which are left to the discretion of the ruler or judge. *Ta'zir* encompasses all criminal acts not specifically regulated under the *hudud* or *qisas* categories.

Because the form and extent of *ta'zir* punishments are not explicitly stipulated in the Quran and Hadith, rulers or judges are given the freedom to determine punishments deemed just and in accordance with sharia principles. *Ta'zir* aims to safeguard the public interest and prevent crime by providing a deterrent effect to perpetrators. Therefore, crimes for which sanctions are not specifically outlined in sharia texts are left to the discretion of judges or the government through *ta'zir* laws.²¹

In Islamic criminal law, the position of the victim is very important. Victims have the right to *qisas*, *diyat* (compensation), and *ta'zir* (punishment based on the judge's decision). According to Wahbah Az-Zuhaili, victims (*maqtul* or *mazhlum*) in Islamic law have the right to demand adequate retribution for the suffering they have experienced, either through *qisas* (appropriate punishment), *diyat* (compensation), or forgiveness. Allah SWT says in the Qur'an Surah Al-Baqarah verse 178:

الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عَفَىٰ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعْ بِالْمَعْرُوفِ وَأَدَاءٍ إِلَيْهِ بِإِحْسَنٍ ۚ ذَٰلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۚ فَمَنِ اعْتَدَىٰ بَعْدَ ذَٰلِكَ فَلَهُ عَذَابٌ أَلِيمٌ

Meaning: "O you who believe! *Qisas* is prescribed for you regarding those who are killed; free man and free man, slave and slave, woman and woman. But whoever gets forgiveness from his brother, then let (the one who forgives) follow in a good way, and (the one who is forgiven) pay *diyat* (blood ransom) to the one who forgives well. This is relief from your Lord and a mercy. Whoever transgresses the limit after that, then for him is the punishment that comes." painful."

Deaths due to bullying that cause psychological harm and suffering can be categorized as one of the above types of death, depending on the intent and the means used. Allah SWT says in the Qur'an, Surah Al-Isra', verse 33:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۚ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ ۚ إِنَّهُ مَنصُورٌ

Meaning: "And do not kill a soul which Allah has forbidden (killing), except for a righteous reason. Whoever is killed unjustly, then indeed We have given the guardian (victim) power to exact revenge. So let him not exceed the limit in killing, for indeed he has help (from Allah)."²²

²¹Ali Abu Bakar, Zulkarnai, Aceh's Criminal Law, (Jakarta: Kencana, 2019), 5

²²Ministry of Religion of the Republic of Indonesia. The Qur'an and its Translation. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019, Surah Al-Isra' [17]: Verse 33.

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According to Wahbah Az-Zuhaili, the death of a person as a result of another person's actions, whether intentional or not, will give rise to criminal responsibility in the form of qisas, diyat (compensation), or ta'zir.²³

In Islamic criminal law, criminal responsibility (taklif) is highly dependent on two main requirements: aqil (reasonable) and baligh (legal maturity). A child who has not reached puberty cannot be subject to full criminal penalties such as hudud, qisas, or diyat. However, Islam still recognizes a form of educational sanction, namely ta'zir, for children who commit crimes, including bullying that results in the victim's death. Taklif does not apply except to individuals who are puberty and sane, because only such individuals can understand the legal consequences of their actions.²⁴

In bullying that results in the death of the victim, the act can be classified as one of three forms of murder in Islamic law:

- a. *Qatl 'Amd* (intentional murder) – if the perpetrator consciously and intentionally commits violence with the aim of killing.
- b. *Qatl Syibh al-'Amd* (semi-intentional murder) – when the perpetrator does not intend to kill but uses a tool or method that has the potential to cause death.
- c. *Qatl Khatha'* (negligent homicide) – when death occurs accidentally, without any intention or direct action that causes death.

In cases of children, the murder is generally classified as Qatl Shiibh al-'Amd or Khatha', depending on the means and intent that can be proven.

*"Children are not subject to hudud and qisas punishments because they are not mukallaf, but ta'zir can be imposed for the sake of public interest."*²⁵

Even though a child who has not yet reached puberty cannot be held accountable in the form of hudud or qisas punishment, the child's parents or guardians can be held civilly responsible (diyat) for losses resulting from the child's actions.

In addition, the sharia judge (qadhi) can determine ta'zir sanctions, such as guidance, supervision, or other disciplinary measures, as a form of moral and social education for the child so that he does not repeat his actions.

Cases of children who engage in bullying that results in death demonstrate an element of violation of life, one of the most fundamental rights in the maqashid al-syari'ah (Islamic law). Islam highly values the protection of human life, as stated in QS. Al-Ma'idah: 32:

جَاءَتْهُمْ **God willing** الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَجَلٍ ذَٰلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَٰئِيلَ **God willing** رُسُلَنَا بِالْبَيِّنَاتِ ثُمَّ مَنَّاهُمْ بِذَٰلِكَ فِي الْأَرْضِ لَمُتْرَفُونِ

²³Wahbah Az-Zuhaili, 1989, Al-Fiqh Al-Islami wa Adillatuhu, Juz 6, Dar al-Fikr, Damascus, p. 269.

²⁴Wahbah az-Zuhaili, 2002, al-Fiqh al-Islami wa Adillatuhu, Juz 6, Dar al-Fikr, Beirut, p. 517

²⁵Abdul Qadir Audah, 1995, At-Tasyri' al-Jinai al-Islami, Volume II, Dar al-Kitab al-Arabi, Beirut. p. 243.

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It means

"Therefore, We decreed for the Children of Israel that whoever kills a human being, not in retaliation for killing another human being, or for spreading corruption on earth, it is as if he had killed all mankind. And whoever saves the life of a human being, it is as if he had saved the life of all mankind. And indeed, Our messengers came to them with clear proofs. But many of them after that went beyond all bounds in spreading corruption on earth."
(QS. Al-Mā'idah: 32)

Therefore, acts of bullying that result in the death of the victim, even if carried out by a child, still require accountability in the form of ta'zir for the perpetrator and diyat by the family.

From an Islamic legal perspective, bullying is strictly prohibited because it violates the principles of justice, compassion, and respect for human dignity. Bullying is considered a form of injustice (ẓulm) that can cause physical and psychological harm to the victim.²⁶

Prohibitions in the Qur'an: The Qur'an strictly prohibits behavior that humiliates or hurts other people. In Surah Al-Hujurat verse 11, Allah SWT says:²⁷

**يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُ قَوْمٌ مِّنْ قَوْمٍ
الظَّالِمُونَ** **God willing** **God bless you** **God willing** **God willing** **God**
bless you

It means:

"O you who believe, let not a people ridicule another people, for perhaps they (those being ridiculed) are better than them (those who ridicule) And do not criticize yourselves and do not call each other by bad names."

This verse shows that Islam prohibits all forms of insults, ridicule, and giving bad nicknames that can hurt other people's feelings.

The Islamic legal approach to dealing with child perpetrators reflects the principle of proportional justice and is oriented toward improvement, not solely retribution. In this regard, this approach aligns with child protection values in modern law, which also prioritize rehabilitation and restoration over harsh punishment. Therefore, in cases of child abuse resulting in death, Islamic law balances the protection of the victim with the moral and social responsibility of the perpetrator and their family.

Thus, Islamic law not only provides for the protection of victims but also considers the child's ability to understand the consequences of their actions. This principle demonstrates that in Islamic law, criminal liability is subjective, contextual, and prioritizes the maqasid al-syari'ah (the principle of Islamic law), particularly in safeguarding the soul (hifzh al-nafs) and protecting the younger generation (hifzh al-nasl) from moral and social harm.

²⁶https://berita.apripusat.or.id/perundangan-dalam-pandangan-islam-mengapa-kekerasan-verbal-dan-fisik-bertentangan-dengan-nilai-nilai-agama?utm_source=chatgpt.com

²⁷Ministry of Religious Affairs of the Republic of Indonesia. The Qur'an and its Translation. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2019.

In Islamic criminal law, the responsibility of children for criminal acts, including bullying that results in death, is regulated by a moral and sharia approach that takes into account the perpetrator's age, puberty, and intent. Based on the theory of criminal responsibility, a person can only be held legally accountable if they have the capacity to be morally and legally responsible, which in Islam is linked to reaching the age of taklif (legal obligation). Children who have not reached puberty are not burdened with full criminal responsibility because they are considered not yet mentally and morally mature enough to understand the legal consequences of their actions. In this case, if a child commits bullying that results in death, then the guardian is responsible for diyat or compensation sanctions, while the child is exempt from qisas because they are not mukallaf.²⁸

Meanwhile, based on the theory of jinayah (Islamic criminal law), acts of bullying that cause the death of the victim are categorized as jarimah against the soul (jinayah 'ala al-nafs), and the sanctions determined can be in the form of qisas, diyat, or ta'zir, depending on the element of intent and the status of the perpetrator. However, in the context of children, Islamic law provides an exception. A child who kills, whether intentionally or not, is not subject to qisas punishment, as emphasized in the hadith of the Prophet that "the pen (record of sins) is lifted from three people: children until they reach puberty, the sleeping person until they wake up, and the insane person until they come to their senses."²⁹ Therefore, although according to Islamic jurisprudence, a child's actions can be classified as murder (qatl), the criminal sanctions imposed are different from those imposed on adults. If the murder is committed intentionally by a child, Islamic law still requires payment of a diyat (reparation) by the child's guardian, and the child may be subject to ta'zir punishment by the judge as a form of moral and social development.³⁰

Thus, Islamic criminal law emphasizes the principles of restorative and educational justice in addressing juvenile criminal responsibility. Its approach is non-retributive, rejecting retaliatory punishment for perpetrators who have not yet converted to Islam, but still provides compensation and guidance mechanisms through diyat (religious compensation) and ta'zir (religious restitution). This demonstrates that under Islamic law, children who perpetrate bullying that results in death are still viewed as limited legal subjects, whose moral and financial responsibility is transferred to their parents or guardians. This approach aligns with the values of child protection and the child's best interests as echoed in contemporary legal principles.

Islamic criminal law balances child protection with justice for victims. Children who have not yet reached puberty are not subject to severe criminal penalties, but may be subject to ta'zir sanctions to educate and prevent recurrence. Liability is also transferred through civil proceedings to the child's guardian in the form of diyat payments to the victim's family.

²⁸Sayyid Sabiq, *Fiqh al-Sunnah*, Juz 2 (Beirut: Dar al-Fikr, 2000), p. 446.

²⁹Abu Dawud, *Sunan Abi Dawud*, Kitab al-Hudud, no. 4399.

³⁰Wahbah al-Zuhaili, 1989, *Al-Fiqh al-Islami wa Adillatuhu*, Juz 6, Damascus: Dar al-Fikr, p. 535–537.

3.2. Criminal Liability of Child Bullies Who Cause the Victim's Death According to Positive Criminal Law

Although no specific cases of child abuse resulting in death were found in Banjarmasin, data shows a significant increase in cases of violence against children in the city. The Banjarmasin City Women's Empowerment and Child Protection Agency (DP3A) recorded 128 cases of child abuse from January to July 2024, up from 136 cases in all of 2023. The spike in cases occurred in June and July, coinciding with the long school holidays. Types of violence reported included juvenile violence, bullying, harassment, and sexual violence.³¹ A similar case occurred in Malang City, where five children who were involved in bullying that resulted in the victim's death were found guilty by the Malang City District Court. One of the perpetrators was sentenced to three years in prison in a special juvenile prison, while the other four were given criminal sanctions in the form of counseling at a Child Welfare Institution.³²

In Indonesia's national criminal law system, children as perpetrators of crimes occupy a unique legal position and require special treatment. This is in line with the principles of child protection as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which emphasizes restorative justice and diversion as alternative solutions for resolving juvenile criminal cases. However, when the acts committed by children are considered serious, such as cases of bullying resulting in death, positive law still allows for criminal accountability, with limitations on the age and level of awareness of the perpetrator.

A victim of a crime is a person or group who suffers physical, psychological, social, or economic harm as a result of an act that violates criminal law. According to Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, a victim is: A person who experiences physical, mental, and/or economic suffering caused by a crime. Victims can be classified into several types:

- a. Direct victim: A person who directly experiences suffering as a result of a crime (e.g., a child who is killed in a serious bullying incident).
- b. Indirect victim: A party who is affected by the suffering of the direct victim (e.g.: the victim's family).

Legally, "death" in criminal law is defined as the loss of a person's life due to an unlawful act (either intentional or unintentional). In a criminal context, death is a consequence that can increase the potential for a perpetrator's sentence. According to the Great Indonesian Dictionary, death means "death or passing away," meaning the state of a person who has permanently lost their biological function. In law, particularly in violent crimes, death is a crucial element in determining the offense and criminal responsibility.

³¹<https://radarbanjarmasin.jawapos.com/hukum-Peristiwa/1974938157/kasus-kekerasan-anak-di-banjarmasin-meningkat-paling-banyak-terjadi-selama-liburan-sekolah?utm> Accessed May 29, 2025

³²<https://www.kompas.tv/regional/522723/5-anak-pelaku-perundungan-hingga-korbannya-tewas-divonis-bersalah?utm> Accessed May 29

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In criminal law, death is often the result of an unlawful act committed by the perpetrator. Death can occur due to:

- a. Murder (intentional)
- b. Severe abuse leading to death
- c. Negligence or indirect action

Article 3 of the Juvenile Justice and Child Protection Law states that the juvenile criminal justice system prioritizes child welfare, restorative justice, and diversion. However, if the consequences of the act are very serious, such as causing death, then diversion may not be carried out as regulated in Article 7 paragraph (2) of the Juvenile Justice and Child Protection Law, particularly for crimes that are punishable by imprisonment of more than 7 years.

The crime of bullying can be subject to articles in the Criminal Code (KUHP), for example:

Article 351 of the Criminal Code concerning assault. If it results in death, then Article 351 paragraph (3) applies:

"If the act results in death, the guilty party is threatened with a maximum prison sentence of seven years."

Or Article 359 of the Criminal Code, if death occurs due to negligence:

"Anyone who, through his mistake (negligence), causes the death of another person, shall be punished by a maximum imprisonment of five years..."

If the perpetrator is a child, then under Article 81 of the Child Protection Law, the decision regarding a child must take into account the child's age and capacity to assume responsibility. Children can be sentenced to the maximum penalty imposed on them as adults and may be subject to criminal penalties or other measures.

In the context of bullying cases that result in the death of the victim, even though the perpetrator is still a child, the act has caused serious consequences, namely the loss of a person's life. In positive criminal law: There is an element of intent or at least fault (*dolus* or *culpa*) in the perpetrator's actions. Bullying acts not only violate social norms but also cause serious harm, death. Therefore, children can be held criminally responsible through a special process in accordance with the Child Protection Law. However, the legal process remains oriented towards development, not revenge, in accordance with the principle of child protection in Article 3 of the Child Protection Law and Article 64 paragraph (1) of Law No. 35 of 2014 concerning Child Protection.

The regulation of criminal liability for child perpetrators of bullying that causes the victim's death in Indonesian positive law is based on the principle that everyone who commits a crime must be held accountable for their actions, including children, but with a specific and different approach from adults. In this context, the theory of criminal responsibility is used, which emphasizes that a person can only be held criminally responsible if they fulfill the elements

of the ability to be responsible (toerekeningsvatbaarheid), the existence of fault (schuld), and a causal relationship between the act and the resulting consequences.³³

Children who carry out bullying that results in the death of the victim can be subject to criminal responsibility if they have reached the age of 12 years, as stipulated in Article 1 number 3 and Article 21 of Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA Law).³⁴The law stipulates that although children as perpetrators of crimes can still be held legally accountable, the handling system is directed at restorative justice and a developmental approach, not solely punishment. Criminal provisions for children still take into account the psychological condition and level of awareness of the child in understanding the consequences of their actions. However, in cases that result in death, child perpetrators can still be subject to criminal sanctions, including imprisonment that is reduced from the maximum penalty for adults as stipulated in Article 81 of the SPPA Law, which states that children can only be sentenced to a maximum of 1/2 of the maximum prison sentence imposed on adults.³⁵In the context of the theory of responsibility, this shows that the Indonesian criminal law system applies the principle of diminished responsibility towards children, namely that children remain responsible, but with a lighter burden due to the limitations of their moral and intellectual capacity.³⁶Thus, Indonesian positive law seeks to balance the protection of children with the need to uphold justice for victims, especially in serious cases such as bullying that results in death.

Positive criminal law in Indonesia allows for child perpetrators of bullying who cause the victim's death to be held criminally responsible. However, this system prioritizes the principles of restorative justice, child development, and protection, as stipulated in the Child Protection and Child Protection Law. A child's actions that result in the victim's death are still prosecuted, but with a proportionate and educational approach.

3.3. Similarities and Differences Regarding the Regulation of Criminal Liability for Child Bullies Who Cause the Victim to Die Between Islamic Criminal Law and Positive Criminal Law in Indonesia.

The issue of child responsibility for committing crimes, particularly bullying resulting in the victim's death, is a complex issue involving legal, moral, and philosophical dimensions. In the Indonesian legal system, which adheres to a mixed legal system (civil law with influences from customary law and religious law), the regulation of children in conflict with the law has received special attention, both from the perspective of positive criminal law and Islamic criminal law. Both legal systems share similarities in terms of special treatment for children, particularly in considering the child's age and psychological and moral capacity for responsibility.

However, there are also fundamental differences in the philosophical basis, forms of accountability, and types of sanctions imposed. Indonesian positive criminal law, as regulated

³³Moeljatno. (2002). Principles of Criminal Law. Jakarta: Rineka Cipta, p. 70.

³⁴Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 number 3 and Article 21.

³⁵Ibid., Article 81.

³⁶Muladi, 1995. Criminal Responsibility. Bandung: Refika Aditama, p. 45

in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), emphasizes a restorative and non-punitive approach. Islamic criminal law, on the other hand, emphasizes moral and religious responsibility, where a child's criminal responsibility is highly dependent on *tamyiz* (the ability to distinguish between right and wrong) and the age of puberty. Comparing these two systems is important to understand the common ground and differences in ensuring justice and protection, both for children as perpetrators and for victims who lose their lives due to bullying.

1) Equalization of Criminal Liability Regulations for Child Bullies Who Cause the Victim's Death

Islamic Criminal Law and Indonesian Positive Criminal Law share fundamental similarities in treating children as legal subjects distinct from adults, particularly in the context of criminal liability for acts of bullying resulting in death. Indonesian Positive Criminal Law, as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), emphasizes that children in conflict with the law must be processed through a special mechanism that emphasizes the principles of restorative justice and protection.³⁷ This law stipulates that children can only be held criminally responsible if they have reached the age of 12 years and are proven to have sufficient mental capacity.³⁸ Meanwhile, in Islamic Criminal Law, the principle of criminal responsibility is based on the concept of *taklif*, namely that a person can only be held accountable if he has reached puberty, is of sound mind, and possesses moral awareness—three criteria that children do not yet possess.³⁹

Therefore, in cases of bullying resulting in death, children under puberty in Islam are not subject to *qisas* punishment but can be subject to *ta'zir* sanctions that are educational and corrective. As explained by Hasanuddin and Fatwa in a recent study, although there is no explicit juvenile justice system in classical Islamic jurisprudence, the Islamic legal system provides rehabilitative space through *ta'zir* to guide children to prevent repeat offenses.⁴⁰

In the context of bullying resulting in death, both legal systems qualify the act as a serious offense. In the Indonesian Criminal Code, bullying resulting in death can be categorized as serious abuse resulting in death (Article 351 paragraph (3)) or even as an act of murder based on the element of intent (Article 338 of the Criminal Code), although law enforcement remains subject to the SPPA Law which prioritizes a non-punitive approach for children.⁴¹ Meanwhile, in Islamic criminal law, bullying that results in death is included in *jinayah qatl*, whether *'amd* (intentional), *syibh al-'amd* (semi-intentional), or *khatha'* (unintentional), and the treatment is very dependent on the age and reason of the

³⁷Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law).

³⁸Laily Fitriyah, 2021, "An Islamic Legal Review of the Criminal Liability of Children in Murder Cases," *Al-Ahwal: Journal of Islamic Family Law*, Vol. 14, No. 1

³⁹Zarkasyi, A, 2020, Criminal Responsibility of Children from an Islamic Law Perspective. *Al-Ahkam Journal*, 30(1), 15–29

⁴⁰Hasanuddin & Fatwa, A, 2022, Development of Children Perpetrating *Jinayah* Crimes from the Perspective of Fiqh and the Islamic Criminal System. *Indonesian Journal of Islamic Law*, 10(2), 230–245.

⁴¹Syafruddin, A. (2023). Bullying from the Perspective of Criminal Law and the Child Protection Act. *Indonesian Journal of Criminology*, 14(1), 45–61

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perpetrator. If the perpetrator is a child who is not mukallaf, then criminal responsibility is transferred to the guardian or the state, and the perpetrator can only be given guidance through ta'zir.⁴²

Both legal systems reflect societal values that view children as individuals still in the process of moral formation, and therefore cannot yet be held fully accountable as adults. In Indonesia's pluralistic and religious society, the approach to juvenile crime is always linked to living cultural and religious values, both through the concept of diversion in positive law and ta'zir in Islamic law. A sociological study by Sari and Abdullah found that society favors a rehabilitative approach to child perpetrators of violence because it is considered more humane and in line with the principles of social justice.⁴³ These two approaches have the same goal: resocialization and protection of children's future, which is also in line with the principles of the Convention on the Rights of the Child (CRC 1989) which Indonesia has ratified through Presidential Decree No. 36 of 1990.

When analyzed through comparative theory, both Islamic criminal law and positive criminal law recognize the need for a special approach to children who commit crimes. Neither system necessarily imposes maximum penalties, but instead emphasizes the need for legal protection and rehabilitation. In Indonesian positive law, this approach is evident in the principles of diversion and restoration. Whereas in Islamic law, children under puberty are not subject to fixed penalties (ta'ziran applies flexibly), and in some cases, responsibility can be transferred to their guardians through the payment of diyat (reparation).⁴⁴

Meanwhile, based on the jinayah theory, children who have not yet met the criteria for mukallaf (puberty and sane) are not subject to hudud or qisas punishments. However, if their actions cause harm, such as in the case of bullying resulting in death, it is still recognized as a criminal act with consequences, so the state or guardian is obliged to provide compensation through the diyat mechanism, and the child can be guided through educational ta'zir punishments.⁴⁵ This aligns with positive law, which focuses not on corporal punishment but rather on guidance and education as part of child protection. Therefore, the fundamental similarity between the two legal systems is that both place children in a position of legal responsibility, yet recognize the need for legal intervention that is proportionate, educational, and protects the best interests of the child and the victim.

2) Differences in the Regulations on Criminal Liability for Child Bullies Who Cause the Victim's Death

In the Indonesian legal system, Positive Criminal Law and Islamic Criminal Law have different approaches to regulating the accountability of children as perpetrators of serious crimes, such

⁴²Mahfudz, A, 2024, Legal Protection for Children of Jinayah Qatl Perpetrators in Fiqh. *Al-Qadha Journal*, 11(1), 55–7

⁴³Sari, R., & Abdullah, M. (2022). Social Responses to Child Perpetrators of Violence: A Sociology of Law Perspective. *Journal of Sociology of Law*, 9(1), 81–94.

⁴⁴Abd. Shomad, *Islamic Law: Normation of Sharia Principles in Indonesian Law*, (Jakarta: Kencana, 2017), p. 211.

⁴⁵M. Quraish Shihab, *Insight into the Qur'an: Maudhui Interpretation of Various Problems of the Ummah*, (Bandung: Mizan, 2000), p. 317.

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as bullying resulting in death. These differences reflect the characteristics of the normative system, the objectives of law enforcement, and the ontological and epistemological basis of each law.

a. Positive Indonesian Criminal Law

Indonesian positive criminal law explicitly stipulates in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) that children who commit crimes are subject to a special justice mechanism. Children who commit bullying that results in the death of the victim can be charged with Article 351 paragraph (3) of the Criminal Code or Article 80 paragraph (3) of the Child Protection Law. However, because the perpetrator is a child, their responsibility is subject to the principles of diversion, restorative justice, and non-criminalization as a last resort (*ultimum remedium*).⁴⁶

Although positive law recognizes the element of intent or negligence in criminal acts, children are still considered legal subjects with limited capacity (diminished criminal responsibility). Therefore, the juvenile justice system in Indonesia focuses on social rehabilitation, not retribution.⁴⁷

b. Islamic Criminal Law

In Islamic criminal law, juvenile liability is based on the principle of *taklif*, which states that a person can only be held criminally responsible (*jinayah*) if he or she has reached puberty, is sane, and has the intention. Therefore, a child who has not reached puberty cannot be subject to *qisas* or *hudud* punishments, even in cases of murder, unless he or she has reached the age of *taklif*. However, criminal acts are still recognized as *jinayah*, and criminal liability can be transferred substantively in the form of *ta'zir* (disciplinary punishment by the authorities) or *diyat* (compensation) borne by the guardian or family.⁴⁸

Apart from that, in *jinayah fiqh*, scholars differentiate between *qatl 'amd* (deliberate killing), *qatl syibh al-'amd* (half-intentional), and *qatl khatha'* (accident). In the case of children, it is usually classified as *qatl khatha'*, and therefore cannot be sentenced to death or *qishas*.⁴⁹

The main legal difference is that positive law still allows for criminal liability for children, albeit with a specific approach and limitations, while Islamic law does not impose full criminal liability on children before they reach puberty. In positive law, the state is the primary actor in restitution; in Islamic law, moral and legal responsibility also rests with the child's family or guardian.

⁴⁶Lestari, I. (2021). Diversion and Restorative Justice in the Juvenile Criminal Justice System. *Journal of Law and Justice*, 10(2), 135-150.

⁴⁷Harahap, MY (2020). Children as Perpetrators of Crime and Social Rehabilitation. *Journal of Legal Studies*, 7(1), 45-58.

⁴⁸Amir, M. (2022). Criminal Responsibility in Islamic Law: A Case Study of Child Criminals. *Journal of Sharia and Islamic Law*, 14(2), 201-215.

⁴⁹Zuhri, A. (2023). *Jinayah Fiqh and its Application to Child Offenders: A Comparative Review of Law*. *Archipelago Islamic Law Journal*, 5(1), 89-105.

The two legal systems' approaches to child criminals also demonstrate differences in social and institutional values. Positive Criminal Law views children as citizens who must be nurtured and protected by the state system through the role of juvenile justice institutions, special correctional institutions for children, and social counseling institutions. Therefore, the sociological focus of positive law is the resocialization of children within modern societal structures, in line with human rights values and international conventions.⁵⁰ Meanwhile, in Islamic Criminal Law, children are viewed as individuals within the social structure of the family and community, collectively responsible for their behavior. Therefore, the sociological approach is more based on a culture of collectivism, spiritual development, and the central role of the family and religious scholars in correcting children's behavior.⁵¹

The main sociological differences lie in the role of state institutions versus the role of families and communities. Positive law relies more on state intervention through the judicial system and rehabilitation; Islamic law prioritizes family-based social responsibility and religious norms. Universal versus particular orientation: Positive law is oriented toward universal standards (children's rights, legal protection), while Islamic law relies on sharia norms that are contextualized with religious teachings and the culture of the community.

4. Conclusion

Regulations on criminal liability for children who commit bullying that results in the victim's death according to Islamic criminal law that is, a child who commits bullying that results in death is not subject to hudud or qisas punishment because he has not yet reached puberty. However, he can still be subject to ta'zir sanctions as a form of guidance, while the diyat (reparation) is borne by his guardian or parents. This act can be classified as homicide (shiihb al-'amd) or khatha', depending on the intent and method used. Islam places great emphasis on protecting life, so even if the perpetrator is still a child, a fair and educational form of accountability is still required. Furthermore, Islamic criminal law strikes a balance between child protection and justice for the victim. Children who have not reached puberty are not subject to severe criminal penalties, but can be subject to ta'zir sanctions to educate and prevent recurrence. Accountability is also transferred through civil law to the child's guardian in the form of diyat payments to the victim's family. The regulations regarding criminal liability for children who bully and cause the victim to die according to positive criminal law are: Children who perpetrate bullying that causes the victim to die can still be held criminally responsible through a special mechanism in Law No. 11 of 2012 concerning the Child Protection and Child Protection System. Although diversion and restorative justice are a priority, actions with serious consequences such as death are still processed legally, taking into account the child's age, psychological state, and ability to take responsibility. Children can be subject to criminal sanctions or actions based on articles of the Criminal Code, such as Article 351 paragraph (3) or Article 359, depending on whether or not there is an element of intent. The process of handling children still prioritizes the principles of guidance and

⁵⁰Yulianti, D. (2020). A Sociological Approach to Children in the Indonesian Criminal Law System. *Socio-Legal Journal*, 9(3), 229-244.

⁵¹Hafidz, M. (2024). The Concept of Ta'zir and Child Protection in Islamic Law. *Al-Adl: Journal of Islamic Law and Civilization*, 15(1), 77-91.

protection, not retaliation, in accordance with the spirit of the Child Protection and Child Protection Law and the Child Protection Law. The provisions on criminal liability for child perpetrators of bullying that results in the victim's death under Islamic Criminal Law and Positive Criminal Law in Indonesia share several fundamental similarities and differences. Both agree that children cannot be treated like adults and prioritize the protection, education, and development of children through a restorative and educational approach. However, there are differences in the age limit for accountability, types of punishment, case handling systems, and legal sources. Islamic law emphasizes maturity based on puberty and recognizes diyat (payment of compensation) as a form of accountability, while Positive Law uses an age limit of 12–18 years and does not recognize diyat, but rather criminal or correctional measures. This comparison is important to enrich the discourse on developing a juvenile criminal justice system that is fair, proportional, and upholds humanitarian values.

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