

Criminal Responsibility for Premeditated Murder Committed by Minors from the Perspective of Islamic Law and Positive Law

Fatikha Nurul Inayah¹⁾ & Taufan Fajar Riyanto²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: Inayahnurul99@std.unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: taufanfajariyanto@unissula.ac.id

Abstract. Settlement of premeditated murder cases committed by minors is a complex legal problem, both in Islamic law and positive law in Indonesia. Premeditated murder is an act carried out with prior planning, which reflects the evil and deliberate intent of the perpetrator. In positive law in Indonesia, which is regulated in the Criminal Code (KUHP) and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children under the age of 18 are subject to special treatment, which focuses on recovery, rehabilitation, and education, not just punishment alone. However, if the child is old enough to understand the consequences of his actions, then he can be subject to criminal sanctions by considering his mental and psychological condition. Meanwhile, in Islamic law, criminal responsibility for minors related to premeditated murder is determined based on the level of maturity of reason and awareness of his actions. Islam recognizes that children who have not reached puberty cannot be subject to hudud or qisas punishments, although in some situations they can be subject to ta'zir (alternative punishment) which is educational and instructive. This study aims to analyze criminal liability for premeditated murder committed by minors from the perspective of Islamic law and positive law, with a focus on the differences in views and handling of the two legal systems. To achieve this goal, the research method used is a normative research method with a comparative approach.

Keywords: Islamic; Murder; Premeditated.

1. Introduction

Premeditated murder is a very serious crime and has a major impact on individuals, families, and society as a whole. This crime is identified through elements of careful planning, which means that the perpetrator has planned and thought about the deliberate act of taking another person's life. In Indonesian positive law, premeditated murder is regulated in the Criminal Code (KUHP), with the threat of very severe punishments, including the death penalty, life imprisonment, or temporary imprisonment.¹

However, what is of concern in the context of criminal law is when premeditated murder is committed by a minor. Children who commit crimes, especially premeditated murder, raise profound questions about how they should be treated in the criminal justice system. Minors are considered not yet mature enough in terms of psychology and intellectually, which has an impact on how their intentions and awareness of the legal consequences of their actions².

In Indonesia, the juvenile criminal justice system has different rules than adults. In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), minors involved in criminal acts are not tried in the same way as adults. The main objective of this justice system is to prioritize rehabilitation and recovery for children, not merely to provide repressive punishment. However, in cases of premeditated murder, which require full awareness and careful planning, the question of to what extent minors can be held criminally responsible for their actions becomes increasingly complex.³

It is important to understand that from a psychological perspective, minors have different levels of mental development, depending on age and influencing environmental factors. Therefore, there are differences in how children understand the consequences of their actions, including in criminal acts such as premeditated murder. This is the basis for different treatment in the legal system both in Indonesia and in international law.

Premeditated murder is one of the most serious crimes in the legal system, both in positive law and in Islamic law. This crime involves elements of intent and planning, which indicate the perpetrator's intention to end another person's life in a premeditated manner. Premeditated murder is a form of crime that has a major impact on society, both socially and legally.⁴

¹ Khotimah, H., Dewi, K., Lubis, LKLU, Prayogo, MDA, Viridi, S., & Khoiriah, SU (2023). Analysis of the Root Causes of Murder in Indonesian Society: Durkheim's Anomie Theory Perspective. *Jispendiora Journal of Social Sciences, Education and Humanities*, 2(3), 155-177.

² Turnip, JM, Sagala, JPD, Sembiring, HB, & Siburian, SMP (2024). Legal Analysis of Premeditated Murder Crimes Committed by Minors. *Ilmu Hukum Prima (IHP)*, 7(1), 118-124.

³ Mulyadi, DL, & SH, M. (2023). *The face of the Indonesian juvenile criminal justice system*. Alumni Publisher.

⁴ Mustaming, M., & Juniar, M. (2020). Criminological Review of Criminal Acts Against the Decision of Premeditated Murder Case in the Perspective of Islamic Law (Case Study of Decision of Case No. 523/Pid. B/2017/PN. PLP). *Datuk Sulaiman Law Review (DaLRev)*, 1(1), 39-50.

However, in practice, there are often cases where the perpetrators of premeditated murder are minors. This raises questions about the criminal responsibility given to children involved in serious crimes such as premeditated murder. From the perspective of positive Indonesian law, minors are considered not fully responsible for their actions because they are considered not mature enough to understand the consequences of their actions. The juvenile criminal justice system also provides different treatment for children in conflict with the law, with the aim of educating and providing opportunities for them to grow and develop into better individuals.⁵

On the other hand, in Islamic law, the treatment of children who commit premeditated murder depends on their age and intellectual ability to distinguish between right and wrong. In the Islamic view, even though a child has not reached puberty, if the child is able to understand the actions he has taken, then he can be held accountable. Islam places great emphasis on the importance of intention and awareness in every action, including in determining whether someone should be held criminally responsible.⁶

Therefore, in this study, the criminal liability of children who commit premeditated murder will be discussed both from the perspective of positive law in Indonesia and from the perspective of Islamic law. This discussion will provide further understanding of how the two legal systems view the criminal liability of children and the differences between the two. In addition, this study also aims to explore more deeply the challenges faced by the legal system in handling criminal cases involving minors, especially in cases of premeditated murder.

2. Research Methods

This study aims to analyze criminal liability for premeditated murder committed by minors from the perspective of Islamic law and positive law, with a focus on the differences in views and handling of the two legal systems. To achieve this goal, the research method used is a normative research method with a comparative approach.

a. Approach Method

This approach is used to compare various legal provisions in Indonesian positive law with Islamic law regarding criminal liability for minors who commit premeditated murder. This approach allows researchers to identify differences and similarities in the principles, rules, and law enforcement applied in both legal systems.

b. Research Specifications

⁵ Jos, MA (2022). Application of Criminal Sanctions for Minors Who Commit Negligence Resulting in Death. *Lex Administratum*, 10(4).

⁶ Kertamuda, MA (2015). Golden age-successful strategy to form golden character in children. *Elex Media Komputindo*.

This research is included in the category of normative research, which means that this research aims to analyze the applicable legal norms, both in Indonesian positive law and in Islamic law. This research is more directed at studying laws and regulations, legal theories, and fatwas related to the criminal responsibility of children who commit premeditated murder. This research can also include case studies as part of a comparative analysis of the application of law in real cases, both in Indonesia and in the application of relevant Islamic law.

c. Data Collection Methods and Data Analysis Methods

The primary data sources in this study are the laws and regulations in force in Indonesia related to the juvenile criminal justice system, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), the Criminal Code (KUHP), and other relevant regulations. In addition, other primary data sources are Islamic legal texts, such as the Qur'an, Hadith, and the views of scholars regarding criminal liability for children in the context of crime. Secondary data sources include books, scientific journals, articles, and research results related to premeditated murder, juvenile criminal liability, and the application of Islamic law and positive Indonesian law in handling cases of children involved in crimes.

The data in this study were obtained through literature study, by collecting various relevant literature on criminal liability in positive law and Islamic law. The researcher will examine the laws and regulations, legal doctrines, and the views of scholars in the available literature. Legal documents such as laws, government regulations, fatwas of scholars, and relevant court decisions will be analyzed to deeply understand the application of applicable law in cases of premeditated murder involving minors.

The researcher will conduct a comparison between the mechanisms of criminal responsibility in Indonesian positive law with the provisions in Islamic law related to crimes committed by minors. This analysis will cover how both legal systems treat children involved in premeditated murder, as well as factors that influence criminal responsibility, such as age, mental capacity, and legal awareness.

3. Results and Discussion

3.1 The Concept of Children in Law and Provisions on Age Limits for Children

1) Definition of Child

Children in positive law are defined as people who are not yet adults, namely categorized as people who are still minors or underage and are referred to as children because they are still under the supervision of a guardian. The definition of a child itself according to law can vary according to place, time and for what purpose because this can affect the limits used to determine the age of the child. This definition of a child is very important because it is related to efforts in formulating the limits of criminal liability efforts for a child who, if they commit a

criminal act, at what age can a child who commits a crime be held responsible for his actions.⁷

2) Child Age Limit

A child can be punished for what he/she does, both in positive law and in Islamic law, if it can be said that he/she is capable, this can be classified in the criteria of baligh, adult and sane can be used as a benchmark to get the consequences of an unlawful act. A sane person must have known his/her behavior. However, the provisions of baligh (adult) must be studied first.⁸ Islamic jurisprudence scholars have differences in determining the condition of a person being said to be an adult, namely the first opinion stating that a person is said to be an adult if semen has been released either because of a dream or because of something else in accordance with QS An-Nur; 24;59. The second opinion is if hair grows around the genitals. The third opinion is reaching a certain age limit. In this case, the Syafi'i and Hambali schools of thought state that the age of puberty is 15 years, while the Maliki school of thought states that it is 18 years for men and 17 years for women. While in positive law the provisions of the age limit for children who can be subject to criminal penalties are 18 years. as explained in Law No. 11 of 2012 concerning the juvenile criminal justice system.⁹

3.2 Legislation on Premeditated Murder

In Indonesia, laws governing premeditated murder committed by minors can be found in several legal regulations, including the Criminal Code (KUHP) and the Child Protection Law. Here are some important aspects of the law related to premeditated murder committed by minors:¹⁰

1) Criminal Code (KUHP)

Article 340 of the Criminal Code: Premeditated Murder

Article 340 of the Criminal Code regulates premeditated murder as a crime that has heavier sanctions because it is carried out with careful planning. The following is the text of Article 340 of the Criminal Code:¹¹

⁷ Nurwahyuni, NW, Kusumah, RR, & Hasanah, DA (2023). Strategy and Implementation of Providing Digital Legal Aid to Children in Conflict with the Law in Indramayu Regency. *Suara Hukum Journal*, 5(2), 32-54.

⁸ Mughniyah, M.J. (2015). *Five Schools of Fiqh: Ja'fari, Hanafi, Maliki, Syafi'i, Hanbali*. Intensive Peace.

⁹ Damanik, RAM (2020). Criminal Liability Law for Children Within Age Limits: Analysis of Islamic Criminal Law and Law Number 11 of 2012. *Al-Qanun: Journal of Social Studies and Islamic Law*, 1(3), 274-302.

¹⁰ Sembiring, A. (2024). *Legal Review of Criminal Acts of Premeditated Murder Committed by Minors (Case Study of Decision Number 3/Pid. Sus-Anak/2022/PN/BUNTOK)* (Doctoral dissertation, Indonesian Christian University).

¹¹ Kurniawan, YS, Chandra, TY, & Basuki, B. (2024). Legal Certainty of Proving Motives in Premeditated Murder in Indonesian Criminal Law. *ARMADA: Multidisciplinary Research Journal*, 2(8), 680-690.

"Anyone who intentionally plans to murder another person shall be punished for premeditated murder with life imprisonment or a maximum imprisonment of 20 years."

However, for children involved in premeditated murder, the Indonesian legal system does not only refer to the ordinary criminal provisions contained in the Criminal Code, but also pays attention to the principle of child protection.

2) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Law Number 11 of 2012, which regulates the Juvenile Criminal Justice System (UU SPPA), has an important role in regulating the legal treatment of children involved in criminal acts, including premeditated murder. Several important things from the SPPA Law related to children who commit premeditated murder:¹²

a. Article 1 Paragraph 1 of the SPPA Law– Definition of Child

The child referred to in this law is a person who is under 18 years of age, who is facing problems with the law.

b. Article 5 of the SPPA Law– Child Protection Principles

This law emphasizes the principles of child protection which include; Protection of the rights of children in conflict with the law and prioritizing a restorative approach, namely focusing on rehabilitation and recovery, not just on punishment alone.

c. Article 71 of the SPPA Law– Diversification Approach

Diversion is the transfer of the settlement of a child's case from the criminal justice process to outside the court, which involves deliberation between related parties (such as victims, perpetrators, and authorities). Diversion aims to prevent children from the negative impacts of the criminal justice process, and provide an opportunity for recovery through a more humane resolution. Diversion is more intended for children who commit minor crimes or non-violent crimes, but in cases of premeditated murder, diversion may not always be applied, depending on the seriousness of the case.

d. Article 74 of the SPPA Law– Criminal Threats

Based on the SPPA Law, although children who commit premeditated murder can be subject to criminal penalties, the threat of punishment for minors is not the same as for adults. Sanctions for children can be:¹³

a) Prison Sentence

Children who commit premeditated murder can still be sentenced to prison, but the duration of the sentence can be lighter than that of adults.

¹² Mulyadi, DL, & SH, M. (2023). The face of the Indonesian juvenile criminal justice system. Alumni Publisher.

¹³ Mandagie, AS (2020). Legal Process for Criminal Acts of Murder Committed by Minors Reviewed from Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System. Lex Crimen, 9(2).

b) Education and Rehabilitation

Children who commit crimes are more often given punishment in the form of rehabilitation, psychological recovery, or education in special correctional institutions for children.

c) Regulations on the Development of Children in Correctional Institutions

Children who commit premeditated murder can be sentenced to a special correctional institution for children (a children's correctional institution or Special Child Development Institution - LPKA). This institution is designed to educate and rehabilitate children in conflict with the law, not just to punish them.

d) Psychological and Social Considerations

In cases of juveniles committing premeditated murder, courts often take into account the child's psychological and social conditions. If the child shows signs of mental or behavioral disorders resulting from certain factors (for example, domestic violence or psychological problems), the sentence imposed may prioritize rehabilitation over imprisonment.

The juvenile criminal justice system is a justice network that regulates criminal rules for the purposes of primary means of both substantive criminal law and criminal procedure law and criminal behavior which has several objectives including;¹⁴

- a. Prevent someone from becoming a victim of crime;
- b. Resolve criminal cases that occur so that the public believes the law has been confirmed and found guilty;
- c. Make sure that they do not repeat the crimes they have committed before.

According to Law No. 11 of 2012 Article 1 number 1 concerning the Juvenile Criminal Justice System, it is explained that the Juvenile Criminal Justice System is a system concerning the process of resolving cases of children in conflict with the law. Regarding "Children in conflict with the law" according to Article 1 number 2 of Law No. 11 of 2012, it consists of:¹⁵

- 1) Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of committing a crime (Article 1 number 3);
- 2) Children who are victims of criminal acts, hereinafter referred to as child victims, are children under 18 (eighteen) years of age who experience physical, mental and/or economic suffering caused by criminal acts (Article 1 number 4);
- 3) A child who becomes a witness to a criminal act, hereinafter referred to as a child witness, is a child who is under 18 (eighteen) years of age who can provide

¹⁴ Syahrin, MA (2018). Application of Restorative Justice Principles in the Integrated Criminal Justice System. National Law Magazine, 48(1), 97-114.

¹⁵ Hambali, AR (2019). Application of Diversion for Children in Conflict with the Law in the Criminal Justice System. Journal of Legal Studies, 13(1), 15-30.

information for the purposes of investigation, prosecution and examination in court regarding a criminal case that he/she has heard, seen and/or experienced himself/herself (Article 1 number 5).

3.3. Factors Influencing Premeditated Murder

According to the interview, Aipda Zaenal Mustofa said that murder is abuse against someone that results in the death of a person or another person. Murder is divided into 2 (two), namely ordinary or instant murder and premeditated murder.¹⁶

The Criminal Code (KUHP) has actually regulated provisions regarding criminal sanctions for perpetrators who commit crimes, but in reality these crimes still occur. To realize the success of law enforcement in eradicating criminal acts, it is very necessary to strengthen serious coordination of cooperation from the police, prosecutors and judges in court. Here are some factors that influence:¹⁷

1) Psychological Factors

a. Mental disorders

Perpetrators with mental disorders or psychopaths may plan murder due to a lack of empathy or control over aggressive urges.

b. Anger or Revenge

Personal motives such as deep anger or long-held resentment can be the trigger for planning a murder. For example, someone who feels insulted or hurt by someone else may plan a murder as a form of revenge.

c. Self Image and Self Esteem

Feelings of being unappreciated or feeling unable to cope with problems can motivate someone to plan murder as a form of venting or solving problems.

2) Social and Environmental Factors

a. Conflict Resolution by Violence

In some social environments, especially among individuals who frequently interact in physical or verbal confrontations, the use of violence as a means of resolving problems can lead to premeditated murder.

b. Unhealthy Relationship Patterns

In a toxic or abusive personal relationship (such as a romantic or family relationship), a person may plan murder as a way to end suffering or gain control.

c. Alcohol or Drug Abuse

¹⁶ Lukitosarie, FAA, & Laksana, AW Legal Review of the Implementation of Investigation of Premeditated Murder Crimes Committed by Children. Proceedings of the Scientific Constellation of Unissula Students (KIMU) Law Cluster.

¹⁷ Lukitosarie, FAA, & Laksana, AW Legal Review of the Implementation of Investigation of Premeditated Murder Crimes Committed by Children. Proceedings of the Scientific Constellation of Unissula Students (KIMU) Law Cluster.

The influence of alcohol and illegal drugs can worsen aggressive or impulsive behavior, and in some cases, may increase the risk of planning a homicide.

3) Economic Factors

a. Financial Difficulties

In some cases, economic pressures and financial difficulties, such as unpaid debts or job loss, may drive a person to plan a murder to gain financial gain through inheritance, insurance, or retaliation against those deemed responsible.

b. Economic or Material Motives

Some premeditated murders are motivated by the intention to obtain property or material gain, as in the case of murder to inherit someone's wealth.

4) Cultural Factors and Social Values

a. Violence Norms

In some cultures or social groups, violence is considered an acceptable solution to solving problems. Premeditated murder may be more acceptable or more common in environments where violence is highly normalized.¹⁸

b. Fatalist or Nihilist Thought

In some societies, the view that life is worthless or the belief that killing is a means of achieving justice or retribution may influence an individual's decision to plan a murder.

5) Environmental Factors and Social Influences

a. Influence of Peers or Criminal Groups

Sometimes individuals are influenced by social groups or peers who have values or ideologies that tend to support violent acts. Groups involved in criminal activity, for example, may encourage someone to plan a murder as part of loyalty or revenge.

b. Family Factors

A disharmonious family environment, such as domestic violence, neglect, or abuse, can trigger feelings of frustration or hopelessness in individuals, which in turn can lead them to plan murder as an escape from problems or for revenge.

6) Legal Factors and Security Systems

a. Existence and Effectiveness of the Legal System

If the legal system or law enforcement is perceived as weak or unfair, a person may feel that killing is the only way to get justice or achieve a desired goal. For example, if a person feels that the law will not deal fairly with their problems, they may decide to take matters into their own hands.

¹⁸ Sumarlin, A., Sulistyawati, S., & Setyawan, I. (2019, October). Analysis of factors that can cause people to commit murder. In *Proceedings of the National Seminar on Research Results* (Vol. 2, No. 2, pp. 1376-1385).

b. Lack of Supervision and Social Control

In areas with less social control or a weak security presence, levels of violence, including premeditated killings, can be higher.

7) Technology Factors

Technological advances, such as access to weapons or the use of the internet to plan or coordinate murders, can make planning violent acts easier. For example, perpetrators can use online information to plan the execution of a murder more carefully and effectively.

3.4. Criminal Responsibility in Indonesian Positive Law

In Indonesian positive law, criminal responsibility for children who commit premeditated murder is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and the Criminal Code (KUHP).

According to the SPPA, a minor is someone who is under the age of 18. However, in relation to criminal responsibility, the age of the child is an important factor that influences the extent to which they can be held accountable for their actions. The juvenile criminal justice system aims to educate children involved in criminal acts, not merely punish them. Therefore, children in conflict with the law are not tried in the same way as adults.¹⁹

In the criminal justice system for minors, according to Abdul Qadir Audah, children who are not yet adults are only subject to ta'bidi punishment, namely punishment that is intended to provide a lesson without affecting the child's psyche. In this case, as with other laws, in the juvenile justice system, Islamic law has principles and principles that are used as the main pillars for the implementation of the law, including:²⁰

- a. The Principle of Tawhid is a principle that affirms that all humans are under the decree of Allah SWT. This principle positions and requires that the appropriate law is the law that Allah has revealed.
- b. Principle of Justice This principle is the principle that gives rise to rules which state that in practice, Islamic law can act in accordance with space and time.
- c. The principle of Amar Ma'ruf Nahi Mungkar This principle aims to motivate humans to achieve good and right goals in accordance with the pleasure of Allah SWT.
- d. The Principle of Freedom, namely the principle of freedom, in Islamic law is defined as freedom that aims to spread religion or Islamic law without coercion, but on the basis of explanation, demonstration and argumentation.

¹⁹ Syakirin, A. (2018). Formulation/model of the juvenile criminal justice system in Indonesia. MIMBAR YUSTITIA: Journal of Law and Human Rights, 2(2), 121-141.

²⁰ Sani, A. (2015). Child Criminalization According to Islamic Law and Indonesian Criminal Law. Journal of Public Policy, 1(1).

e. Principle of Equality In Islamic law every human being receives equal treatment before the law.

f. The principle of Ta'awun is the principle of helping each other with fellow human beings in matters of goodness and piety.

According to Article 340 of the Criminal Code, premeditated murder is murder committed with prior planning, and the threat of punishment is very severe, namely the death penalty or life imprisonment. In the context of children who commit premeditated murder, the criminal responsibility of minors can be imposed through a juvenile court. However, children who commit premeditated murder can be punished according to the severity of the crime, while still paying attention to the principles of child protection and rehabilitation.²¹.

Although in the SPPA regulations children are given lighter treatment than adults, in cases of premeditated murder, if the child has shown a level of awareness and ability to plan the act, then criminal responsibility can still be imposed by taking into account age factors and the psychological impact.²². The court will usually take into account factors such as mental state and family background to determine a more rehabilitative form of punishment rather than a punitive one.²³.

To determine whether the child's actions fulfill the elements of a criminal act or not, this can be seen through at least 3 (three) perspectives:

a. Subject, meaning whether the child can be brought to the juvenile court? Does the child have the ability to be responsible for what has been done.

b. There is an element of error, meaning whether it is true that the child has committed an act that is punishable or prohibited by law.

c. The accuracy of the evidence submitted by the public prosecutor and the defendant to prove the truth of the indictment. This evidence must be at least two, if not fulfilled, the defendant cannot be convicted (Article 184 of the Criminal Procedure Code).

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially in terms of accountability for criminal acts committed by children, it can be minimized by diversion efforts, this diversion effort is a facility for diverting cases outside the court. The purpose of diversion is to achieve peace between victims and children. Resolving children's cases outside the court process prevents children from being deprived of liberty, encourages society to participate and instills a sense of responsibility towards children. The diversion process is carried out through deliberation involving children and their parents/guardians, victims

²¹ Journalist, W. (2024). Children in Conflict with the Law Reviewed in Legal Accountability According to the Juvenile Justice System. *Journal of Global Innovation*, 2(9), 1186-1198.

²² Sipayung, Y. (2018). Imposition of Sanctions in the Form of Treatment Actions at Social Welfare Institutions (LPKS) Against Children Who Participate in Premeditated Murder.

²³ Putrawan, INA (2024). Legal and Psychological Impacts on Premeditated Murder Perpetrators. *Ipsso Jure*, 1(3), 28-44.

and their parents/guardians, community counselors and professional social workers based on a restorative justice approach.²⁴.

3.5 Criminal Responsibility in the Perspective of Islamic Law

In Islamic law, criminal responsibility for children who commit premeditated murder also refers to the principles of awareness, intention, and mental maturity. Islamic law considers the concept of baligh (puberty) as the main limitation in determining criminal responsibility. Some points found in this study are:²⁵

1. Awareness and Intention

In Islamic law, a person who commits a crime such as premeditated murder will be held accountable based on his/her intention and awareness. Children who have not reached puberty (around 12-15 years old) are considered not fully responsible for their actions, unless the child shows full awareness and sufficient intellectual maturity to understand the consequences of their actions. In this case, if a child who has not yet reached puberty commits premeditated murder, the punishment imposed will be greatly influenced by the child's understanding of his/her actions.

2. Adulthood and Responsibility

According to Islamic law, children who have reached puberty are considered to have legal responsibility. If a child of puberty commits premeditated murder, then he can be punished according to the type of crime committed. In cases of murder, Islamic law provides sanctions that can be in the form of qisas (equivalent retaliation) or diyat (compensation), depending on the agreement between the victim's family and the perpetrator. If the perpetrator is still a minor and has not reached puberty, then the legal process is more focused on rehabilitation and guidance, with the aim of improving the child's behavior and morals.

3. Rehabilitation in Islamic Law

Although in some serious cases such as murder, the punishment imposed can be physical punishment, Islamic law also emphasizes the importance of tazkiyah or self-purification, which in this context can be seen as a form of rehabilitation. Children involved in criminal acts will be given more priority to receive moral and spiritual guidance, with the hope that they can return to the right path after undergoing punishment or guidance.

Criminal liability in Islamic law is the release of an individual from the consequences of an action he/she has committed based on his/her own will, where he/she understands the impact and purpose of his/her action. Criminal liability is imposed on three things, namely:

²⁴ Ariani, NV (2014). Implementation of Law Number 11 of 2012 concerning the juvenile criminal justice system in an effort to protect children's interests. *Jurnal Media Hukum*, 21(1), 16.

²⁵ IRAWAN, I. (2019). Analysis of Islamic Law on Judge's Decision on the Criminal Act of Murder of a Minor (Study of Decision Number 22/Pid. Sus-Anak/2016TJK. Tanjung Karang District Court, Bandar Lampung) (Doctoral dissertation, UIN Raden Intan Lampung).

- a. The existence of a forbidden act;
- b. The act was done of one's own free will;
- c. The perpetrator knew the impact of what he did.

If these three things are present then there is criminal responsibility, but if these three things are not present then there is no responsibility.

3.6. Comparison Between Positive Law and Islamic Law

From the results of the analysis, it can be seen that there are significant differences between Indonesian positive law and Islamic law in terms of criminal responsibility for children who commit premeditated murder:²⁶

1. Age and Mental Maturity

In Indonesian positive law, minors who commit serious crimes such as premeditated murder can still be held accountable, but with a rehabilitative approach, considering their age and level of psychological maturity. On the other hand, Islamic law pays greater attention to baligh (puberty) as the starting point of criminal responsibility, where children who have not reached puberty are not fully held accountable.

2. Punishment and Rehabilitation

In positive law, although children can be given lighter sentences, there is still room for rehabilitation. In Islamic law, in addition to rehabilitation which focuses on spiritual and moral development, the sanctions imposed can differ, depending on whether the child has reached puberty or not.

3. Law enforcement

In practice, Indonesian positive law places more emphasis on a separate juvenile justice system from adults, and is more oriented towards recovery through rehabilitation. Islamic law places more emphasis on moral and spiritual development, as well as a deep understanding of the child's intentions and moral responsibilities.

Cases of attempted murder by children that occur in Indonesia, cannot be denied will emerge and cause much controversy. Not infrequently, children who should be innocent figures and avoid criminal behavior make many parties surprised when news is found about children as perpetrators of criminal acts.

Thus, it can be concluded that criminal responsibility is a mistake. And for there to be a mistake, the defendant must:

- a. Committing a crime
- b. Above a certain age able to take responsibility
- c. Having a form of error in the form of intent or negligence

²⁶ Penanto, RK (2017). Comparative Study of Premeditated Murder Crimes Between Islamic Law and Positive Law.

d. There is no excuse for forgiveness

The application of the law against perpetrators of attempted murder can be held accountable if the perpetrator has fulfilled the objective requirements, namely committing a criminal act and the subjective requirement in the form of a mistake. If these requirements have been met, then the perpetrator of the attempted murder can be held accountable and sentenced to a criminal penalty. The criminal sanctions against perpetrators of attempted murder are regulated in Article 338 in conjunction with Article 53 Paragraph (3) of the Criminal Code (KUHP). After the requirements for responsibility are met by the perpetrator's mental state and the attempted murder has been proven, the perpetrator can be held accountable for his actions with a prison sentence determined by the panel of judges after going through the trial process.²⁷

4. Conclusion

Based on the results of research and discussion on criminal responsibility for premeditated murder committed by minors from the perspective of Islamic law and positive law, it can be concluded that minors who commit premeditated murder can be held criminally responsible with an approach that prioritizes rehabilitation and development. Children under the age of 18 are considered not yet fully mature mentally and psychologically, so that juvenile courts focus on recovery, not merely punitive punishment. However, despite this, children can still be subject to punishments that are in accordance with the severity of the crime committed, taking into account factors of age and the psychological impact on their development. In Islamic law, the criminal responsibility of children who commit premeditated murder depends on puberty as the starting point of legal responsibility. Children who have not reached puberty cannot be fully held criminally responsible, unless they have full awareness and understanding of the consequences of their actions. If the child has reached puberty, then he can be subject to appropriate punishment, which can be in the form of qisas (equivalent retribution) or diyat (compensation), depending on the decision reached by the victim and perpetrator. Islamic law emphasizes moral and spiritual development as part of child rehabilitation.

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²⁷ Dan, MTP, & Peminandaan, S. (2005). Principles of criminal law. Rangkang Education Yogyakarta & PuKAP-Indonesia.

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