

The Application of Sanctions for Minors Involved in Robbery: A Comparative Study of Positive Law and Islamic Criminal Law

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Abstract: Robbery with violence, commonly referred to as *begal*, is a criminal act involving the forcible seizure of another person's property, often accompanied by violence and, in some cases, resulting in the loss of life. Alarming, such crimes are increasingly being committed by minors. According to Article 1 point 3 of the Juvenile Criminal Justice System Law (UU SPPA), a child in conflict with the law is defined as an individual who is at least 12 years old but not yet 18 years old and is suspected of having committed a criminal offense. This study aims to examine and compare the application of criminal sanctions to minors who commit robbery with violence, from the perspectives of Indonesian positive law and Islamic criminal law. The research is conducted through a library-based approach using normative juridical and comparative legal methods. Data are collected from statutory regulations, legal literature, the Qur'an, and relevant scholarly journals and articles. The findings show that, under Indonesian positive law, robbery committed by a minor is classified as violent theft as stipulated in Article 365 paragraph (2) of the Indonesian Penal Code. In such cases, minors are sentenced to a period of development at the Special Guidance Institution for Children (LPKA), with a criminal sentence of one year and one month. In contrast, Islamic criminal law classifies robbery with violence as *jarimah hirābah* (armed robbery), which falls under the category of *jarimah hudūd* as described in Surah Al-Mā'idah verse 33. The corresponding sanctions may include the death penalty, crucifixion, amputation of opposite limbs, or exile, depending on the severity of the crime. This comparative analysis reveals significant differences in legal approaches and the types of sanctions imposed. Islamic law emphasizes deterrence and strict punishment to prevent further harm, while Indonesian positive law adopts a rehabilitative approach focused on the education and guidance of minors.

Keywords: Juvenile crime; Robbery with violence; Sanctions for robbery.

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INTRODUCTION

The concept of a state governed by law, also referred to as a state of law, as opposed to a state governed by power, is commonly discussed in political, legal, and governance discourse. These ideas are often framed within the terms *Rechtsstaat* and rule of law, in contrast to *Machtstaat*, or a state based solely on power. A state of law is ideally a system that is capable of resisting personal and group ambitions that may undermine the representation of the majority of citizens in the formulation and implementation of public policy. Such a state is governed according to the principles of law and democracy, upholds the principle of legality, and guarantees equality before the law.¹

Indonesia is a state based on law, as stipulated in Article 1 paragraph 3 of the 1945 Constitution, which states, "The State of Indonesia shall be a state based on law." This means that Indonesia adheres to legal principles in making objective decisions involving both the government and its citizens. As a legal state, Indonesian society is bound by various legal regulations, including both private and public law. Private law, or civil law,

¹ Nurul Qamar, *Negara Hukum Atau Negara Kekuasaan (Rechtsstaat Or Machtstaat)* (Makassar: CV Social Politic Genius, 2018).

governs relationships between individuals, with an emphasis on personal interests. An example of this is civil law. In contrast, public law, or state law, regulates the relationship between the state and individuals as citizens.

Public law consists of constitutional law and administrative law. Constitutional law governs the form and structure of a state's government, as well as the distribution of power among its various institutions, and the relationship between the central government and the autonomous regions. Meanwhile, administrative law regulates the functioning of government or state administration. It focuses on the procedures and methods through which the state's organs exercise their authority and carry out their duties.²

As a state governed by law, Indonesia regulates the lives of its citizens across various aspects of society. The aim is to ensure that the rights of individuals and groups are fulfilled appropriately without causing harm to one another. This objective aligns with the rationale of the Draft of the New Criminal Code (RKUHP), which emphasizes that the substance of national criminal law must be adjusted to reflect the country's legal policy, current conditions, and the evolving dynamics of national life in all its dimensions. This includes addressing criminal offenses such as robbery with violence.³

Robbery with violence, or *begal*, is often committed in society with various criminal motives, frequently involving threats or acts of violence. This form of crime is widely recognized as being closely associated with coercion, where the perpetrator forces the victim to surrender valuable possessions. Robbery is typically carried out by individuals or groups who forcibly seize property from others in public spaces. Such acts are often driven by lifestyle pressures that arise from the demands of modern times and the influence of globalization, which contribute to the increase of crimes such as robbery with violence. In today's millennial era, this type of crime, which was once predominantly committed by adults, is now increasingly perpetrated by teenagers and even children. Theft itself is no longer a rare phenomenon. It has become a familiar issue in society and is frequently encountered in everyday life.⁴

Robbery with violence is an act of forcibly seizing property in public spaces, typically by stopping the victim while they are traveling. Such incidents usually occur in isolated or less populated areas and are often carried out by criminals such as highway robbers or armed assailants. According to Article 1 point 2 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), a child in contact with the law refers to a child who is either in conflict with the law, a victim of a criminal act, or a witness to a criminal act. Furthermore, Article 1 point 3 of the same law defines a child in conflict with the law as a person who is at least 12 years old but not yet 18 years old and is suspected of having committed a criminal offense. Robbery with violence involves the unlawful seizure of property that does not belong to the perpetrator, carried out through force or even physical harm, such as assaulting or killing the victim.⁵

² Sri Wariyati, *Memahami Dasar Ilmu Hukum Konsep Dasar Ilmu Hukum* (Jakarta: Prenada Media, 2018).

³ Lukman Hakim, *Penerapan Dan Implementasi "Tujuan Pemidanaan" Dalam Rancangan Kitab Undang-Undang Hukum Pidanan (RKUHP) Dan Rancangan Kitab Undang-Undang Hukum Acara Pidana (RKUHP)* (Jakarta: Deepublish, 2020).

⁴ Mustafa Kamal, *Fikih Islam* (Jakarta: Deepublish, 2005).

⁵ Fajar Rachmad Dwi Miarsa, *Diskrepansi Asas Peradilan* (Jakarta: Deepublish, 2012).

Article 330 of the Indonesian Civil Code states that a person is considered a minor if they have not reached the age of 21 and have not been married. Therefore, a child is defined as anyone who is under 21 years of age and has not entered into marriage. If a person marries before the age of 21 and later becomes divorced or widowed before reaching the age of 21, they are still regarded as an adult and not as a child.

A robbery incident once occurred involving a father and his underage child on Saturday, October 23, 2023, at 2:30 a.m. on South Street, Talang Putri Subdistrict, Plaju District, Palembang City. As a result of the child's actions, financial losses were incurred. The child, together with two individuals listed as fugitives, committed the offense, which caused the victim to suffer a total financial loss of IDR 15,000,000 (fifteen million rupiah). Indeed, such actions are clearly prohibited in Islam. Allah has explicitly forbidden them in Surah Al-Māidah, verses 33 to 34, as follows:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ۚ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي
الْآخِرَةِ عَذَابٌ عَظِيمٌ

“The punishment of those who wage war against Allah and His Messenger and strive upon earth to cause corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is their disgrace in this world, and for them in the Hereafter is a great punishment.”

METHOD

The type of research used in this study is normative qualitative research. The data were obtained directly from publicly available news reports related to robbery with violence committed by minors. In addition, the researcher examined the application of sanctions imposed on minors who committed such offenses. The data sources used in this study are categorized based on their origin. Primary data refer to information directly obtained by the researcher from court decisions involving robbery cases committed by underage offenders.

Secondary data refer to information obtained from existing sources such as books, journals, research reports, and other related materials. Data collection was conducted by the researcher through reading and taking notes on all matters relevant to the study, including primary legal sources such as regulations concerning robbery, the Qur'an, Hadith, formal legal provisions, and other related references such as news reports on robbery cases involving minors and the corresponding legal enforcement efforts. The data were analyzed using a descriptive qualitative approach.

RESULTS AND DISCUSSION

The Application of Sanctions for Minors Who Commit the Criminal Act of Robbery with Violence

All legal rules aim to create a harmonious environment within social interactions, whether in smaller communities or broader society. The purpose is to establish order, legal certainty, and overall coherence in community life. However, one

distinct characteristic of criminal law that sets it apart from other branches of law is its intentional imposition of legal consequences in the form of *bijzondere leed*, or specific suffering, as punishment. These consequences are directed at individuals who have violated prescribed obligations or prohibitions, with the objective of enforcing accountability through legally sanctioned penalties.

Criminal law has developed into a branch of public law, as its enforcement lies almost entirely in the hands of the sovereign government, with only limited exceptions. One such exception involves complaint-based offenses, which require a formal complaint or objection from the injured party before the government may initiate prosecution and adjudicate the matter.⁶

Criminal law does not only cover substantive criminal law but also procedural criminal law. Although both are components of the broader field of criminal law, their core functions are different and must be clearly understood. Understanding the distinction between the two is essential. Procedural criminal law specifically addresses the mechanisms of law enforcement, including the processes of investigation and prosecution.

Investigation is a component of procedural criminal law, as defined in Article 1 point 2 of the Indonesian Code of Criminal Procedure (KUHAP). Investigation refers to a series of actions carried out by an investigator in accordance with procedures established by law, with the aim of collecting and examining evidence that can clarify the occurrence of a criminal act and assist in identifying the suspect.⁷

The distinction between substantive criminal law and procedural criminal law lies in their respective functions. Substantive criminal law contains provisions and definitions of criminal offenses, the conditions under which a person can be held criminally liable, the identification of individuals who may be punished, and the types of punishments that may be imposed. In essence, it determines when a person can be punished, who can be punished, and under what circumstances punishment may be applied. On the other hand, procedural criminal law governs the process by which the state, through its authorized institutions, exercises its right to prosecute and impose sanctions. This includes the rules and procedures of criminal proceedings, such as the investigation and trial process.

Substantive criminal law (*ius poenale*) refers to a set of legal rules that contain prohibitions, obligations, or mandates, the violation of which is subject to criminal sanctions imposed on those who commit such acts. Procedural criminal law, also known as the law of criminal procedure, outlines the procedures through which the state exercises its authority to enforce criminal sanctions. It is sometimes referred to as *criminal law in concerto* because it provides the framework for translating *in abstracto* provisions of substantive criminal law into actual enforcement *in concreto*. In simpler terms, substantive criminal law establishes which acts are punishable, who may be held criminally responsible, and what types of criminal sanctions may be imposed. An example of this is found in the Indonesian Penal Code (KUHP).

⁶ Ruslan Renggong, *Hukum Pidana Khusus Memahami Delik-Delik Di Luar KUHP* (Jakarta: Kencana, 2016).

⁷ Rudy Cahya Kurniawan, *Pengaturan Kewenangan KPK Dan Polri Dalam Penyidikan Tindak Pidana Korupsi Di Indonesia* (Jakarta: Deepublish, 2021).

Procedural criminal law is defined as a set of legal rules that regulate the criminal justice process. It may also be understood as the body of criminal law established to uphold and enforce substantive criminal law. An example of this is the Indonesian Code of Criminal Procedure (KUHAP).

Children are an integral part of the continuity of human life, as well as the future of a nation and state. In order to become responsible members of society who can contribute to national development, every child must be given the widest possible opportunity to grow and develop optimally in physical, mental, and social aspects. Therefore, efforts must be made to ensure the protection and welfare of children by guaranteeing the fulfillment of their rights without any form of discrimination.

The term "child" carries a variety of meanings, especially when combined with other words such as descendant, citizen, and others. A child represents the sons and daughters of the nation's future. Therefore, children require proper guidance and nurturing to ensure their balanced development, both physically and spiritually.⁸

According to the Indonesian Dictionary (KBBI), a child is defined as a human being who is still young. Other sources describe a child as a young individual in a normal stage of human development, who is in the process of forming their identity and whose emotional state is still unstable, making them highly susceptible to environmental influences.

In a general sense, the concept of a child receives attention not only in the field of science but also from the broader, central perspective of human life. A child is a trust from Allah, endowed with inherent dignity and worth as a complete human being who must be protected and nurtured. A child represents the potential seed and the future generation of the nation. A child is also the result of parental love, a source of comfort and joy in the household, a continuation of family aspirations, and a guardian for their parents, especially as the child grows older and the parents reach old age.⁹

In the course of life, children also possess rights. The first right of a child in Islam is the right to protection, particularly in un-favorable situations or conditions that may lead to neglect or cause the child to grow into a person deserving of divine displeasure. Upon birth, Islamic teachings instruct parents to recite the call to prayer (adhan) in the baby's right ear and the second call (iqamah) in the left ear, as recorded in the hadith narrated by Imam Ahmad, Abu Dawud, and Al-Tirmidhi. Furthermore, parents are encouraged to give the child a good name. Another form of protection includes registering the child's birth with the relevant government authorities so that the child obtains a birth certificate, which is essential later in life.

According to Romli Atmasasmita, a child is someone who is still underage, not yet an adult, and has not yet married. A child is defined as a person born from the union of a man and a woman, and is still considered a child even if the parents were never legally married. A child is the foundation for the emergence of a new generation and serves as the successor to the ideals of the nation's founding figures. Meanwhile, R.A. Kosnan defines a child as a young human being, both in age and in spirit, who is still on their life journey and is highly influenced by their surrounding environment due to their youth.¹⁰

⁸ Darwan Prints, *Hak-Hak Anak Dalam Hukum Islam* (Jakarta: Bangsa Press, 2003).

⁹ Ridwan, *Pendidikan Karakter* (Jakarta: Bumi Aksara, 2016).

¹⁰ R.A. Koesnan, *Susunan Pidana Dalam Negara Sosialis Indonesia* (Bandung: Sumur, 2005).

According to Law of the Republic of Indonesia Number 4 of 1979 on Child Welfare, a child is defined as a person who has not yet reached the age of 21 and has never been married. The age limit of 21 is applied based on considerations related to social welfare efforts, as well as the personal and mental maturity that is typically achieved at that age. A child is viewed as both a potential asset and the successor of the nation, whose foundation has been laid by previous generations. From a psychological perspective, a child is an individual undergoing various phases of emotional development, each marked by distinct characteristics. The classification of a child can be understood through these developmental stages. Generally, a child experiences three major phases: childhood, adolescence, and early youth.

1. Childhood is divided into three stages:
 - a. Infancy, from birth to 2 years old.
 - b. Early childhood, from 2 to 5 years old.
 - c. Late childhood, from 5 to 12 years old.
2. Adolescence, ranging from 13 to 20 years old, is a period marked by rapid changes in all aspects of life.
3. Young adulthood, between 21 and 25 years old, is generally still considered part of the younger generation.

The developmental phases experienced throughout a child's life provide insight into the psychological perspective for determining the boundaries of childhood. These boundaries may be based on chronological age or on the stages of emotional and psychological growth. From this standpoint, an individual is classified as a child if they are within the stages ranging from infancy to early adolescence, typically around the ages of 16 to 17.¹¹

According to Sugiri, as cited in a book by Maidi Gultom, a person is still considered a child as long as their body continues to grow and develop. One only reaches adulthood when the processes of physical growth and development are complete. Therefore, the boundary of childhood is marked by the onset of adulthood, which, according to this view, is 18 years of age for females and 21 years for males.¹²

Enforcement of Sanctions Against Minors Committing the Crime of Mugging in the Perspective of Islamic Criminal Law

The term *begal* refers to a bandit or highway robber, whereas *pembegalan* denotes the act, method, or process of committing robbery. Conceptually, *begal* can be understood as a form of criminal behavior that involves forcibly seizing property through acts of violence. This offense is typically characterized by the use of sharp weapons and motorized vehicles, and in some instances, may escalate to the fatal assault of the victim. Most frequently, the targets of such attacks are motorcycle riders.

According to the Theft Act in England and Wales, an act qualifies as robbery when theft is committed using force or intimidation intended to instill fear in the victim. Louise E. Porter elaborates that robbery may be aimed at acquiring commercial goods, which are often obtained through planned and large-scale operations, or at seizing personal

¹¹ Marsaid, *Perlindungan Hukum Anak Pidana Dalam Persepektif Hukum Islam (Maqasid Arssyari'ah)* (Palembang: NoerFikri, 2015).

¹² Maidin Gultom, *Perlindungan Hukum Terhadap Anak* (Bandung: P.T Refika Aditama, 2010).

belongings. Porter notes that perpetrators who target personal possessions tend to be more violent or hostile in their actions.

Muhammad Mustofa explains that the term "begal" has long been associated with criminal activity. Historical accounts reveal that acts of highway robbery, or begal, have occurred since the era of imperial China and the early kingdoms of Indonesia. The term is commonly found in Javanese literature and generally refers to acts of robbery carried out in secluded areas, where perpetrators wait for individuals transporting valuable belongings to pass by. Begal, in this context, is recognized as a form of social deviance closely tied to criminal acts that cause harm to others. Social deviance can occur anywhere and may be committed by anyone. Whether it manifests on a large or small scale, its presence inevitably disrupts the social equilibrium. A behavior is considered deviant when it violates the social values and norms accepted by a community. In other words, deviance encompasses patterns of behavior that fail to align with societal expectations and, in more severe cases, pose a threat to human security.¹³

The subjective element of the criminal offense of theft under Article 362 of the Indonesian Criminal Code lies in the intention to possess the item unlawfully. The first objective element involves the act of taking, which in a narrow sense refers to physically moving the item, such as grasping and relocating it. The second element pertains to the nature of the item taken. Since theft involves causing financial harm to the victim, the item must hold economic value.

The act of taking is not present if the item is handed over to the perpetrator by the rightful owner. If this transfer is induced through persuasion involving deceit or trickery, it constitutes the crime of fraud. If the transfer is the result of coercion involving violence by the perpetrator, it constitutes the crime of extortion. If the coercion takes the form of threats, such as threatening to reveal a secret, then it constitutes the crime of intimidation.

Street robbery, commonly referred to as begal in Indonesia, involves intercepting and forcibly seizing a vehicle, typically by stopping the rider mid-route, often on secluded roads far from public view. The term begal is uniquely used within Indonesian society and does not have an exact equivalent in other legal or linguistic contexts. Since 2015, the phenomenon has gained national attention as motorcycle thefts accompanied by violence surged, alarming the public. The increasing frequency of these crimes, often carried out by organized groups using motorized vehicles, has intensified public anxiety. Violent acts attributed to these begal groups have been reported in multiple urban areas, underscoring the urgent need for a firm response from law enforcement to suppress and deter such criminal activity.¹⁴

Street robbery is a criminal act that inflicts both physical and psychological harm, as it often leaves victims, especially women, deeply traumatized during or after travel. This crime typically involves forcibly seizing someone's possessions through threats or acts of violence. It represents a direct violation of personal safety and property rights. When committed by minors, such acts fall under the category of jarimah hirabah in Islamic criminal law, referring to crimes perpetrated by individuals or groups who create public disorder, commit murder, seize property, or engage in sexual violence. These

¹³ Ramdani, *Hukum Pidana Islam* (Jakarta: Prenada Media, 2019).

¹⁴ Dedi Mulyadi, *Metamorfosis Desa* (Jakarta: Media Sains Indonesia, 2020).

offenses are considered blatant acts of defiance against the rule of law, humanity, and religious principles.

CONCLUSION

The imposition of sanctions on minors who commit criminal offenses must be carried out in proportion to the nature of their wrongdoing. One appropriate legal measure is to place the child in a Special Development Institution for Children (Lembaga Pembinaan Khusus Anak or LPKA) and impose a sentence of one year and one month. Within such institutions, children should be provided with both physical and spiritual education, as well as practical skills training. This approach aims to ensure that, upon release, they are equipped with sufficient knowledge and vocational abilities to support their future and reduce the likelihood of reoffending. In the perspective of Islamic criminal law, the sanctioning of minors involved in acts of robbery or violent theft may be classified under *jarimah hudud*, particularly when the crime involves forcibly seizing property and inflicting harm or even causing death to the victim. Such acts are further categorized as *jarimah hirabah*, a grave offense in Islamic jurisprudence. According to Surah Al-Ma'idah verse 33, the prescribed punishments for such crimes include execution, crucifixion, amputation of opposite hands and feet, or exile from the community. These severe penalties reflect the seriousness with which Islamic law views public disorder, violence, and threats to human life and safety.

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