



The Role of Indigenous Peoples, Social Workers, and the Syar'iyah Court in Diversion of Children Perpetrators of Jinayah

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Abstract: The juvenile justice system as a legal enforcement to guarantee the rights of children who conflict with the law. The mechanism for the criminal justice system against children is carried out through diversion involving judicial officials. However, problems arise in enforcing the criminal justice system for children engaged in Jinayah cases. It is because the Jinayah case must obey the qanun implemented in Aceh. The punishment given to the perpetrators of Jinayah can be in the form of flogging or imprisonment. For a child, that punishment can be traumatic for the child's mental health. Therefore, this research will examine various efforts to minimize the impact of this punishment on the psychological development of children who become perpetrators of Jinayah. The problem of this study is how a child can maintain his psychological health after becoming a perpetrator of Jinayah. This research is essential to protect children's psychological development as perpetrators of Jinayah. The purpose of this study is to find various efforts to maintain the mental development of children as perpetrators of Jinayah. Thus, the research method used to answer these problems is qualitative with a normative approach and literature study. The normative research will analyze various legal regulations regarding criminal and Jinayah acts. Then, it will support a literature study to gain a comprehensive and depth understanding of the topic of study. The results are that children as perpetrators of Jinayah have a risk of psychological trauma, and juvenile criminal law needs to be strengthened. Strengthening this law can be in the form of harmonizing the diversion of children with the Jinayah law. The cooperation of various parties, namely, law enforcement officials, social workers, and indigenous peoples, can minimize the risk of child psychological trauma.

Keywords: children, court, diversion, jinayah, indigenous people

Abstrak: Sistem peradilan pidana anak merupakan upaya hukum untuk memberikan jaminan perlindungan terhadap hak-hak anak yang berhadapan dengan hukum. Mekanisme proses hukum pidana terhadap anak dilakukan melalui upaya diversifikasi yang melibatkan para aparat penegak hukum. Akan tetapi, muncul permasalahan dalam penegakan sistem peradilan pidana anak yang terlibat dalam perkara jinayah. Hal ini dikarenakan perkara jinayah tunduk pada qanun yang telah berlaku di Aceh. Hukuman yang diberikan untuk para pelaku jinayah dapat berupa cambuk ataupun penjara. Bagi seorang anak, hukuman tersebut dapat menjadi trauma bagi kesehatan mental anak tersebut. Oleh sebab itu, penelitian ini akan mengkaji berbagai upaya untuk meminimalisir dampak hukuman tersebut terhadap perkembangan mental anak yang menjadi pelaku jinayah. Dengan fokus permasalahan yang akan dibahas adalah bagaimana seorang anak dapat terjaga kesehatan mentalnya setelah menjadi pelaku jinayah?. Penelitian ini penting untuk dilakukan agar diperoleh kajian secara mendalam untuk memberikan perhatian dan perlindungan terhadap perkembangan mental anak sebagai pelaku jinayah. Tujuan dari penelitian ini adalah untuk menemukan berbagai upaya yang dapat dilakukan untuk menjaga perkembangan mental anak sebagai pelaku jinayah. Dengan demikian, metode penelitian yang digunakan untuk menjawab permasalahan tersebut adalah kualitatif dengan pendekatan normatif dan studi pustaka. Pendekatan normatif digunakan untuk menganalisis berbagai peraturan hukum yang berlaku tentang tindak pidana maupun jinayah. Kemudian didukung dengan studi pustaka untuk memperoleh pemahaman yang komprehensif dan mendalam terhadap topik kajian. Hasil yang diperoleh adalah anak sebagai pelaku jinayah memiliki resiko trauma psikis serta perlu ada penguatan hukum pidana anak. Penguatan hukum ini dapat berupa penyelarasan diversifikasi pidana anak dengan hukum jinayah. Kemudian upaya untuk meminimalisir resiko trauma psikis anak dapat dilakukan dengan kerja sama dari berbagai pihak yaitu, aparat penegak hukum, pekerja sosial dan masyarakat adat.

Kata Kunci : anak, pengadilan, diversifikasi, jinayah, masyarakat adat

Introduction

Criminal acts, or in Islam called *jarimah* in Jinayah law can happen to anyone and can be committed by anyone with varying age ranges, both men, women, and children. What needs attention is when the child is a criminal or has violated the law of Jinayah. Children's conflict with the law is not a simple problem because it can affect not only the children but also their families, communities, and society.¹ Although the juvenile justice system is a child-friendly law, its implementation in the real world has many practical challenges. It undermines the juveniles' legal, social, educational, and health benefits.²

It is often thought that treating juveniles similarly to adults is ineffective and detrimental to juvenile offenders.³ The law prioritizes the diversion process for children through judges' considerations. Thus, detention or imprisonment is no longer the first choice for resolving cases against children who are criminals. Diversion follows Islamic law regarding forgiveness.⁴ The concept of forgiveness is what becomes a reference for solving cases committed by children.

¹ Lubna Rawanda and Mohammad Idrees, "Issues and Problems Faced by Children in Conflict with Law during and after Their Detention," *Sri Lanka Journal of Social Sciences* 44, no. 2 (2021): 213–226.

² Gupta Snehil and Rajesh Sagar, "Juvenile Justice System, Juvenile Mental Health, and the Role of MHPs: Challenges and Opportunities," *Indian Psychiatric Society* 42 (2020): 304–310.

³ Malika Galib Shah, "Children of Conflict: An Analysis of the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013," *Indian Law Review* 4, no. 1 (2020): 105–119, <https://doi.org/10.1080/24730580.2019.1703490>.

⁴ Syaibatul Hamdi, M. Ikhwan M. Ikhwan, and Iskandar Iskandar, "Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia," *MAQASIDI: Jurnal Syariah dan Hukum* 1, no. 1 (2021): 74.

This diversion process applies to the Jinayah law, implemented in Aceh through some qanuns. In Qanun Jinayat Aceh Number 6 of 2014 concerning the law of Jinayah, article 67 has regulated the category of Jarimah in the Jinayah law and what the sanctions are. Table 1 below shows the number of Acehnesse children who conflict with the law as perpetrators.

Table 1. Acehnesse Children's Conflict With The Law

Year	Acehnese Children as Perpetrators
2017	55
2018	56
2019	23
2020	28

Source: <https://atjehwatch.com/2019/08/24/hingga-juli-277-anak-aceh-berhadapan-dengan-hukum/> (accessed on September 29th, 2022)

The table above shows that the number of Acehnesse children who became criminals experienced a significant decrease in 2019. In 2019 the number of child criminals decreased by more than half. Although, in 2020, there was a slight increase compared to 2019. If we look closely, Figure 1 and Figure 2 have something in common: a decrease in cases of children as criminal offenders in 2019. It shows that there are indicators of successful diversion of the juvenile case in Aceh, which is also reflected nationally from the data above. In Figure 2, it can also be assumed that cases of children as criminals in Aceh are not high when viewed from Aceh Province, which has 23 districts/cities. On average, children as criminal offenders in Aceh are around 1 to 2 cases per district. Although the number of cases of children as criminal offenders in Aceh is not large, the government must still protect the human rights of children who become criminals.

The case of children as criminal offenders in Aceh is interesting to study, especially on violations of the qanuns that regulate the law of Jinayah in Aceh. It is because the province of Aceh, the only region that seeks to enforce Islamic law, only has a particular courtroom for children in the district court. The procedure also refers to the applicable positive law. Meanwhile, at the Syar'iyah Court, no special court can resolve cases of children violating the Jinayah law's provisions. The Syari'iyah Court is an Islamic Shari'ah judiciary with absolute authority covering all aspects of Islamic Shari'ah, the regulation of which is stipulated in qanun. Although there is no particular courtroom for children at the Syar'iyah Court, implementing the law on children must still meet the provisions for handling child criminal cases. Thus, managing children's issues must be sought first so that the child does not come face to face with the court or, in this case, the Syar'iyah Court. When viewed from the trial process, children who conflict with the law have the right to be accompanied by their parents/guardians or the closest person to the child who can assist during the trial process. It aims to maintain the child's psyche and guide the child during the trial.

Previous research stated that some sanctions that can be given to children as perpetrators; according to the study,⁵ Include a) handover back to parents/guardians, b) doing rehabilitation at social welfare organization or the rehabilitation care, or c) revocation of driving License. However,

⁵ Timor Fero Sibaran and Aditya Gumelar Sobri, "Analisis Penegakan Hukum Terhadap Pelaku Tindak Pidana Pencabulan Ditinjau Dari Perspektif Hak Asasi Manusia (HAM)," *Journal of Muslim Societies* 4, no. 1 (2022): 29–37.

the study found that at the time of the trial, it was still found that children had to undergo the judicial process without being accompanied by Social Workers or psychologists. At the same time, examining children through several questions from judges tends to cause trauma to children.⁶ Then the previous research also states that rehabilitating children is a long process.⁷ The importance of rehabilitation for criminals is essential for the perpetrators to feel deterred, regret their actions, and not want to repeat the act; in addition to whipping, the judge must also provide additional punishment, namely coaching by the state, in the form of reliability.⁸

In addition to diversion efforts with assistance and rehabilitation, enforcement and resolution of legal problems for children as perpetrators can be carried out by returning to the existing legal construction in an area, namely customs law. Research on customary justice in juvenile crime said that community customs had become part of people's lives so that they are considered capable of providing a positive value to the settlement of children's cases with dignity.⁹ In this case, the settlement of children's issues is carried out using the perpetrators being tried through a legal process, then involving traditional leaders to carry out customary deliberations to set sanctions. In villages in Aceh, the mechanism for handling children who are perpetrators of Khalwat and Ikhtilath is carried out by applying customary law, which is the sanctions would be fines or even marriage.¹⁰

This paper will complement the concept of resolving child criminal cases regarding social assistance or rehabilitation to protect children's rights to life and support legal strengthening in children's issues. Based on a review of previous research, this paper will complement previous studies in the discussion of rehabilitation for children as perpetrators of Jinayah in terms of the role of social workers, customary institutions, and courts. In addition, another thing to be achieved is to harmonize the three crucial functions of the Syar'iyah Court as a judicial institution with social institutions in the field of child protection and welfare, as well as indigenous peoples.

Islamic Overview of Child Custody in Responding to Children in Conflict with the Law

Children as criminal offenders are still entitled to guidance and care for their future life. The judge can consider three possibilities as a place for education or fostering children as part of granting custody rights to the child as the perpetrator.¹¹ Possible places for such fostering include: a) handing over or returning the child to his parents without being sentenced to any punishment or to another person who is deemed capable so as not to repeat the act that is considered unlawful, b) surrendering it to the state, or in social institutions that exist or are appointed to educate children who have violated the law, and) to punish him.

⁶ Khairani, "Mekanisme Penanganan Anak Pelanggar Qanun Jinayat Tentang Khalwat Dan Ikhtilat," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 1 (2018): 1-22.

⁷ Binoy Paul and Victor Paul, "Factors Of Reintegration Of Children In Conflict With Law," *Journal of Dharma* 1, no. March (2020): 105-124.

⁸ Muhadi Khalidi and Arifin Abdullah, "Dayah Dan Rehabilitasi Akhlak Pelaku Jarimah: Perspektif Qanun Aceh Nomor 6 Tahun 2014," *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum* 11, no. 1 (2022): 65.

⁹ Analiyansyah and Syarifah Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia Dan Peradilan Adat Aceh)," *Gender Equality: Internasional Journal of Child and Gender Studies* 1, no. 1 (2015): 51-68.

¹⁰ Khairani, "Mekanisme Penanganan Anak Pelanggar Qanun Jinayat Tentang Khalwat Dan Ikhtilat."

¹¹ Fadhilah, "Tindak Pidana Pelecehan Seksual Oleh Anak Di Bawah Umur Menurut UU No. 35 Tahun 2015 (Kajian Kasus Di Mahkamah Syar'iyah)," *Syariah Journal of Islamic Law* 2, no. 2 (2020): 88-119.

The fiqh also explains that children who are perpetrators of adultery are considered not yet mature and are not subject to sanctions. Small children do not have a clear purpose or intent for their crimes. After all, their minds are not perfect. Their awareness and understanding of the nature of crime are not complete. Therefore, children are not subject to criminal sanctions. Even though he was not sentenced to a criminal sentence, most fiqh scholars believe that in a murder case, the child as the perpetrator is charged with unintentional or mistaken murder.

Then the concept of punishment imposed on children who commit crimes in fiqh Jinayah is included in the Ta'zir category as a form of warning and disciplinary process against the child. The intended Ta'zir sanction is to give the Waly al-Amr (ruler) the right to determine the punishment according to his views. He is giving the right to the ruler (judge) to determine the punishment so that he can choose the appropriate punishment for minors at every place and time. The judge can impose a sentence by hitting the child, reprimanding or criticizing him, or submitting it to the Waliy al-Amr or a child rehabilitation place with special supervision.¹² Therefore, a special court and a special judge are appointed to handle children's cases in managing children's issues. In its implementation, the judge's accuracy is needed in determining the punishment for children who have committed crimes.

The Institution Guide of Child is different from the Correctional Institution, which contains adults, and also differs in the way of coaching. Thus, children who receive prison sentences are prioritized to be placed in the Institute Guide of Child. Then, children who receive rehabilitation sentences must be in social institutions responsible for organizing social welfare activities. If the child as the perpetrator is back to the family, then the family must re-educate the child so that he does not repeat his actions and is responsible for directing him to the straight and right path.

Alignment of Child Criminal Diversion with Jinayah Law

Reviewing children who conflict with the law has often become an interesting topic. As stated in the qanun, children proven to have committed a crime can be sentenced to 1/3 of the adult sentence.¹³ The Child Criminal Justice System Law prefers the diversion program as a form of restorative justice to try young criminals who commit criminal acts of criminal corruption. The legal rules in the juvenile justice system in Jinayat are not too different. In this case, Qanun Jinayat, concerning Jarimah and Uqubat for Children. From Qanun Number 7 of 2013, a child carried out the trial of the Jarimah case in the court's law based on the laws and regulations in the Juvenile Court. The Sharia Court that has authorized to handle Jinayah cases should refer to the Child Criminal Justice System Act to examine child criminal cases. Table 2 below shows the diversion in the Jinayah case.

¹² Sumardi Efendi, "Tinjauan Yuridis Terhadap Jarimah Zina Oleh Anak Di Bawah Umur Menurut Hukum Positif Dan Fiqh Jinayah," *Jurnal Syarah* 8, no. 1 (2019): 115–136.

¹³ Salman Abdul Muthalib, "Analisis Kepentingan Terbaik Bagi Anak Dalam Hukum Jinayat," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* (2021): 416.

Table 2. Diversion in The Jinayah Case¹⁴

No	Diversion in The Jinayah Case
1.	Diversion in the case of Jarimah can be carried out: a) threatened with Uqubat flogging under 84 (eighty-four) times or a maximum fine of 840 grams of pure gold or imprisonment for less than 84 (eighty-four) months, b) not a repetition of a crime.
2.	Types of criminal acts that are threatened: the act of Jarimah contained in the Qanun concerning Jinayah Law;
3.	In case the threat of punishment after the diversion did not work, the case was continued in the examination of the juvenile court.

Source: authors elaboration (2022)

The provisions referred to have been regulated in Aceh, an effort must do to carry out restorative justice through the diversion of children who do Jarimah. Then the judges who handle children's cases are judges who certified by the legislation's provisions. Every child has a growth that differs from one another because each child lives in a diverse community environment. Therefore, law enforcement officers and judges must have legal and psychological knowledge to support sharp analysis and legal considerations in imprisonment or confinement. It is also for the judge, as the case breaker, can provide a sense of justice for the community.¹⁵ The judge's ability to decide and adjudicate children's cases as perpetrators of criminal acts should have standardized skills, namely taking certified education.

The protection of children's rights has been reflected in legal regulations with the issuance of Law Number 23 of 2002 concerning Child Protection, later amended by Law Number 35 of 2014. Thus, the sentence given by the judge must still pay attention to aspects of child protection. In addition, sentencing children must refer to Law concerning Child Protection. The judicial process for juvenile offenders can be a frightening situation for children, according to ¹⁶ Because a) the judicial process is a foreign, unknown, and unusual process for children, b) the reasons children are included in the judicial process are often not clear, c) the justice system is made for and implemented by adults, is not oriented to the interests of children, and is not "child friendly," and d) the judicial process causes stress and trauma to children. Therefore, there is a need for legal guarantees for child right's protection. The law concerning the juvenile justice system discusses various forms of protection for children. Based on this article, criminal penalties, especially imprisonment for children, can still be applied with the provisions of an *Ultimum Remedium*.¹⁷

Aceh Customary Criminal Court in the Guidance and Supervision of Children as Perpetrators of Jinayah Cases

Customary criminal justice in Aceh was incarnated from Qanun Number 9 of 2008 concerning the Guidance of Customary Life and Customs and Qanun Number 10 of 2008 concerning Customary

¹⁴ Assyafiq Anugrah Putra, "Penyelarasan Diversi Dalam Sistem Peradilan Pidana Anak Dan Penerapannya Pada Hukum Jinayat Di Aceh" (Jakarta, 2022).

¹⁵ Munandar, "Kedudukan Anak Sebagai Jinayah Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayah," *Syiah Kuala Law Journal* (2017): 226.

¹⁶ Khairani, "Mekanisme Penanganan Anak Pelanggar Qanun Jinayat Tentang Khalwat Dan Ikhtilat."

¹⁷ Mansari and Ahmad Fikri Oslami, "Uqubat Terhadap Jarimah Zina Yang Melibatkan Anak," *Jurnal Yudisial* 14, no. 3 (2021): 375-393.

Institutions. In practice, a case will be processed under customary law at the Gampong apparatus level if a case has been reported to the Gampong apparatus, either to the Keuchik, Tuha Peut, Tengku Imum, or Gampong secretary. Reports that are processed by the Gampong apparatus are usually very urgent or crucial issues such as murder, persecution, and other public order.¹⁸ Customary courts prioritize the aspect of deliberation to resolve each case. Regular courts want each case to be resolved amicably and produce a collectively accepted decision. In Aceh's customary law, Restorative justice is also known to create peace with a win-win solution decision.¹⁹

Indigenous community in Indonesia has long been practice restorative justice without involving judicial apparatus for criminal act that occurs by its citizen.²⁰ Regarding the procedure for resolving cases, the following must be considered, such as:²¹ a) the identity of the child is kept confidential, b) the child offender before 12 years of age is returned to his parent or guardian and involved children in education, coaching, and guidance programs for a maximum of 6 (six) months, c) must be accompanied by parents and people trusted by children, and this is done at every level of examination, and d) get consideration or advice from religious leaders and educators.

In the process of examining cases resolved by custom institutions, several principles, including:²²

- 1) The judiciary is carried out by collegial judges, which are carried out by customary functionaries who are given the position of judges, consisting of Keuchik, Tengku Meunasah, and Tuha Peut. They act as judges in resolving cases and officials at the Gampong level who run the wheels of government;
- 2) The law must be enforced and paid attention to avoid societal divisions;
- 3) The settlement of criminal cases is solving formally and materially.

The corridor for administering punishment to the Aceh customary court refers to the Joint Decree of the Governor of Aceh, the Head of the Aceh Regional Police, and the Chair of the Aceh Customary Council Number: /677/2011, 1054/MAA/X11/2011, B/121/1/2012. It concerning the Implementation of Gampong Customary Courts and Mukim or other names mentioning the implementation of Gampong in making decisions are prohibited from imposing corporal sanctions that are contrary to the law. Determination of the weight or lightness of this sanction depends on the mistakes made by the perpetrator.²³ In addition, in its development, the Gampong government must form a Child

¹⁸ Analiyansyah and Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia Dan Peradilan Adat Aceh)."

¹⁹ Isnatul Rahmi and Rizanizarli, "Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Pencurian Oleh Anak Dalam Perspektif Adat Aceh," *Syiah Kuala Law Journal* 4, no. April (2020): 11-20.

²⁰ Nur Rochaeti and Pujiyono Pujiyono, "Implementation Study of Restorative Justice for Juvenile Criminal Justice System by Customary Court in Mainland Sulawesi," in *IOP Conference Series: Earth and Environmental Science*, vol. 156, 2018, 0-7. namely the existence of legal protection for them and the existence of special protection aimed at children who violate the law. Act No.11 of 2012 on the Juvenile Criminal Justice System requires restorative justice efforts as a form of protection for children, which emphasizes restoring the harm caused or incurred by criminal acts. Restorative justice has long been practiced in indigenous community of Indonesia, i.e. where a criminal act occurs by its citizens (including juvenile delinquency

²¹ Analiyansyah and Rahmatillah, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum (Studi Terhadap Undang-Undang Peradilan Anak Indonesia Dan Peradilan Adat Aceh)."

²² Muhammad Ikhsan, "Peran Dan Aksi Tuha Peut Gampong Dalam Pendampingan Anak Yang Berhadapan Dengan Hukum Di Kabupaten Aceh Utara," *Journal of Islamic Communication and Media Studies* 1, no. 1 (2021): 38-52.

²³ Nur Rochaeti and Nurul Muthia, "Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia," *International Journal of Criminology and Sociology* 10 (2021): 293-298. that everyone has the right to just recognition, guarantee, protection, and legal certainty as well as equal treatment before the law, namely that the State is obliged to protect every citizen regardless. The problem in this paper is how is the socio-legal study of restorative justice in the Juvenile Criminal Justice System in Indonesia. The method used in this research is a socio-legal research approach. This study found that the customary institution in Padang, West Sumatra is factually recognized in its existence in the customary criminal law of the Dua Puluah Customary Law. Moreover, the results showed that particularly in regulating the provisions of the material criminal law, in the Salapan Law (eight

Protection Committee in conflict with the law. The purpose of this institution is to supervise and control the implementation, protection, and handling of those dealing with the rule until it ends.²⁴

Rehabilitation for Child As Jinayah Perpetrator by Social Workers

Diversion is made through consultations involving the child and parent/guardian, community mentors, and professional social workers based on a restorative justice approach. It may involve social welfare personnel and the community.²⁵ Diversion puts forward the aspect of imprisonment as the last alternative in the criminal justice process for children dealing with the law. The youth justice system represents a separate and distinct system of justice for children.²⁶

Putting children in prison and hanging out with adult inmates causes new social problems for children and is not a solution to solving children's cases. The Juvenile Justice System law mandates that social workers implement social services for children as perpetrator in the Social Welfare Organization. The social workers are the forefront of mediating, advocating, lobbying, counseling, linking, and referring children to the best institutions and organizations to assist them (self-help).²⁷

Normatively, the government has issued some regulations to protect children's rights. Although there are some challenges to fulfill children right's protection. The challenges which is faced are: 1) the issue of politics and power; 2) the problem of how children's rights are interpreted; and 3) the issue of children's participation.²⁸ At the social service office of Aceh Province, it has a social welfare organization structure as a manifestation of the implementation of law concerning the Juvenile Criminal Justice System, as well as the Minister of Social Affairs Regulation Number 9 of 2015 concerning Guidelines for the Social Rehabilitation of Children in Conflict with the Law by the Social Welfare Organization. It stated explicitly that social rehabilitation is a process of re-functionalization and development to enable a person to carry out his social functions in community life properly. Meanwhile, social reintegration prepares children in conflict with the law, child victims, and child witnesses to return to the family and community environment.²⁹

Indonesia needs to learn from the Philippines, which has a law called Juvenile Justice and Welfare Act. They have system that provide programs and services for prevention, diversion, rehabilitation, reintegration, to ensure the development of children that became perpetrator.³⁰ Indonesia can make the same efforts to protect children in conflict with the law through the role of social workers. Social

²⁴ Ikhsan, "Peran Dan Aksi Tuha Peut Gampong Dalam Pendampingan Anak Yang Berhadapan Dengan Hukum Di Kabupaten Aceh Utara."

²⁵ MJ Alputila, MA Tajuddin, and Kahar, "Diversion Approach as an Alternative Case Resolution Son of the Conflict with the Law on Child Criminal Justice System (Case Study of Merauke)," in *ICROEST*, 2019, 1-8.

²⁶ Raymond Arthur, "Recognising Children ' s Citizenship in the Youth Justice System," *Journal of Social Welfare and Family Law* 37, no. 1 (2015): 21-37.

²⁷ Khairani, "Mekanisme Penanganan Anak Pelanggar Qanun Jinayat Tentang Khalwat Dan Ikhtilat."

²⁸ Tara M. Collins and Laura H.V. Wright, "The Challenges for Children's Rights in International Child Protection: Opportunities for Transformation," *World Development* 159 (2022): 106032, <https://doi.org/10.1016/j.worlddev.2022.106032>. whether protection efforts are working, and how we are carrying them out. Many scholars have noted the apparent conflict between the idea of children's rights as universal and the particular realities of local contexts, understandings, and experiences. Some argue that the failures of child protection are due to the structure of the children's rights framework itself. However, we contend that the issues lie in traditional child protection systems and frameworks, and how children's rights are (or are not

²⁹ Khairani, "Mekanisme Penanganan Anak Pelanggar Qanun Jinayat Tentang Khalwat Dan Ikhtilat."

³⁰ Eltimar T Castro Jr and Alexander A Hernandez, "Developing a Predictive Model on Assessing Children in Conflict with the Law and Children at Risk : A Case in the Philippines," in *IEEE 15th International Colloquium on Signal Processing & Its Applications (CSPA)* (IEEE, 2019), 243-248.

workers provide protection and social assistance in the juvenile criminal justice process and play a role in three phases. It starts with prevention (preventive), recovery (rehabilitative), and preparing children to return to their parents or society (reintegrative). Then the reintegration process has three stages, namely:³¹ 1) Restoration is the first stage to identify the whereabouts of a child, such as a parent, relative, or guardian; 2) rehabilitation is a stage that aims to help individuals regain their normal functions through education and training during the rehabilitation period; 3) Reintegration is the formation or development of a complete personality.

Optimizing the implementation of rehabilitation can be done with cooperation or partnership to become an effective strategy for achieving the institution's goals. Social workers carry out their functions as case managers who play a role in coordinating, communicating, and connecting the source system for the implementation of juvenile criminal justice that is responsive to children's rights. The social services to children who are criminals are carried out covering several fields of study, namely: a) legal aspects are carried out by assisting and enforcing the rights of children; b) psychological aspects, psychological assistance, counseling, and monitoring & recovery of children; c) political aspects of Socio-Economic and Cultural (Poleksosbud), socialization, and advocacy of children's rights in society; d) networking, institutional empowerment, and referrals and partnerships with other parties; e) law enforcement apparatus, socialization of fulfillment, enforcement, respect, protection of the rights of children in conflict with the law to law enforcement officials, and monitoring of the fulfillment of rights; f) control of rights enforcement and socialization of children's to the press.

Social workers are involved in three juvenile justice system areas: primary, secondary, and tertiary levels. Primary prevention is concerned with strategies to address the root causes of juvenile crime to create a protective environment for all children. Social workers influence each other in the primary realm by helping families and children to address the root causes of crime. At the secondary level, it emphasizes strategies that target children who are considered to be at high risk of conflict with the law to eliminate the tendency to commit violations. At this level, social workers play a role in addressing the risk factors that make children vulnerable to crime, such as a dysfunctional home environment and inconsistent parenting, abuse and neglect, and community and social problems. The last scope at the tertiary level aims to prevent re-infringement by children who have been in conflict with the law and involves programs that offer rehabilitation for child offenders, such as diversion services. Professional social workers rely on three basic principles of practice: knowledge, skills, and values.³²

The rehabilitation model that has been implemented consists of various therapies and training to foster children who conflict with the law, including: 1) Psychosocial therapy is an individual or group counseling service for developing cognitive, affective, conative, and social aspects that aim to change attitudes and behavior towards an adaptive one; 2) Mental and spiritual therapy is an activity of understanding basic religious knowledge, personality ethics, and discipline aimed at strengthening the attitudes/characters and spiritual values adopted by children in dealing with the law; 3) Vocational education and training activities are a form of training for channeling interests and talents and preparing children's independence in dealing with the law after they grow up in the form of work skills or work internships; 4) Dayah-based rehabilitation or Islamic education center.

³¹ Paul and Paul, "Factors Of Reintegration Of Children In Conflict With Law."

³² Atik Rahmawati and Wahyuni Mayangsari, "Peran Pekerja Sosial Koreksional Dalam Rehabilitasi Dan Reintegrasi Sosial Anak Berhadapan Dengan Hukum Di LKSA Bengkel Jiwa Kabupaten Jember," *Rehsos: Jurnal Ilmiah Rehabilitasi Sosial* 4, no. 1 (2022).

Conclusion

Punishing children is expected not to interfere with the child's development process. In the case of adjudicating children as the perpetrator of Jinayah, judges should follow the provisions contained in the Child Criminal Justice System Law. It also regulates diversion, namely the transfer of the settlement of children's cases from the criminal process to a process outside the justice system so that the goal of justice restoration can be achieved. In addition to giving the punishment of flogging to children who commit Jinayah, it is also hoped that additional sentences that are coaching in nature through social rehabilitation can also be given. Social rehabilitation can be carried out optimally through the participation of social workers and customs institutions. The purpose of this social rehabilitation is to prepare children to be ready to return to society through the process of social reintegration. The form of social rehabilitation that is developed can be based on strengthening Islamic values through the role of Dayah, supported by social and psychological therapies needed by children.

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