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Restorative Justice Against Child Crime In the Perspective of Islamic Law at the Bengkulu City Police Station

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Abstracts: This study raises the issue of the process of restorative justice in crimes committed by children at the Bengkulu City Police and the perspective of Islamic law on the application of restorative justice to juvenile crimes. To answer this problem, empirical juridical research was used with direct interviews with investigators on the protection of women and children (PPA) at the Bengkulu City Police. After the data can then be analyzed based on normative descriptive analysis. The results of the study show that: (1) The process of implementing restorative justice for crimes committed by children at the Bengkulu City Police can be carried out in 2 ways; (a) restorative justice can be carried out outside the police office. (b) Restorative justice can be carried out at the police office. (2) The application of restorative justice to juvenile crimes in the perspective of Islamic law prioritizes peace or forgiveness through mediation, reconciliation between perpetrators, victims, law enforcers and the wider community directly participating in solving problems. Islamic law is aligned in law enforcement against children who are in conflict with the law.
Keywords: Restorative Justice, Child Crime.

Abstrak : Penulisan menjelaskan tentang proses restoratif justice pada tindak pidana yang dilakukan anak di Polresta Kota Bengkulu dalam perspektif hukum Islam. Untuk menjawab permasalahan ini digunakan penelitian yuridis empiris dengan wawancara secara langsung kepada penyidik perlindungan perempuan dan anak (PPA) pada Polresta Kota Bengkulu. Hasil penelitian menunjukan bahwa: (1) Proses pelaksanaan restoratif justice pada tindak pidana yang dilakukan anak di Polresta Kota Bengkulu dapat dilakukan 2 cara; (a) restorative justice dapat dilakukan di luar. (b) Restorative justice dapat dilakukan di kantor kepolisian. (2) Penerapan restoratif justice terhadap tindak pidana anak dalam perspektif hukum Islam lebih mendepankan perdamaian atau pemaafan dengan mediasi, rekonsliasi antara pelaku, korban, para penegak hukum dan masyarakat luas ikut secara langsung berpartisipasi dalam menyelsaikan permasalahan. Hukum Islam selaras dalam penegakan hukum terhadap anak yang berhadapan dengan hukum.
Kata kunci: Restoratif Justice, Tindak Pidana Anak**.**

Introduction

In its development, *restorative justice* is a new dimension that needs to be studied in theoretical and practical aspects. According to Moh. Mahfud MD, restorative justice is a recent shift from the models and mechanisms that work in handling criminal cases today. The restorative justice approach is emerging as a new paradigm to respond to dissatisfaction with the working of the existing criminal justice system. The principle of restorative justice, which is basically an attempt to divert from the criminal justice process to deliberative resolution, cannot be applied to all types or levels of crime. In certain crimes, the application of this principle can be said to be more effective than conventional criminal justice processes.[1]

[1] Moh. Mahfud MD, "Restorative Justice in Law Enforcement", (Opinion), Saturday, July 27,

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Restorative Justice does not only aim to determine a decision about who is the winner and who is the loser as well as in criminal proceedings in district courts that have a winning or losing system so as to cause a feud or race to win the results of the judge's decision, because in the process of upholding restorative justice, the priority is to find the best solution in solving a case What is happening involves all aspects affected by the event to the community as a whole. This includes a process of mediation or deliberation in which all parties who feel the cause and effect of the events that occur with the aim of finding the best way out or solution so that the events that occur can be resolved peacefully and do not cause similar events in the future.

The mention of the term restorative justice in Islam in the case of children basically already exists in Islamic law, this can be seen by the concepts of *qisas, diyyah,* and forgiveness. In Islamic Law this form of restorative justice can be compensation, conciliation, and forgiveness. This is so that the perpetrator can be responsible for the losses caused by him to the victim and the community.[2]

In principle, restorative justice holds to the process of forgiveness from victim to perpetrator. In this regard, it can be found that the concept of forgiveness in Islam can be found easily in the *qisas diyyah jarimah*. Islam recognizes a system of reconciliation involving the victim / guardian / guardian of the perpetrator together with qhadi, This is a peace system as Umar bin Khattab once said in the *Treatise of* -. The legitimacy of peace in resolving criminal cases is commonplace. Considering that Islam expressly recognizes the existence of individual rights in addition to the rights of Allah (community rights) in a particular criminal case. This is what distinguishes the criminal justice system in Islam from other legal systems.[3]

In this case, the author focuses on the role of the police in applying *restorative justice* to child crimes, because the police as an institution that carries out government functions are given an authority, namely discretion, where in its application the police use their own assessment of a crime, whether it needs to be followed up until the trial process, or the perpetrator is simply released. An authority that can be applied to children of criminal offenders, so that children who commit crimes are not necessarily put in prison but can be released with the application of discretion itself, because children are still vulnerable to their physical and psychological conditions. [4]

In terms of promoting the principle of *restorative justice* which emphasizes restoration to its original state and the balance of protection and the interests of victims and perpetrators of criminal acts that are not criminally oriented is a legal need in society, the National Police issued National Police Regulation of the Republic of Indonesia Number 08 of 2021 concerning Handling Criminal Acts based on Restorative Justice.

The National Police Regulation on Handling Criminal Acts based on Restorative Justice is a new concept in criminal law enforcement that accommodates norms and values that apply in society as a solution while providing legal certainty, especially the benefits and sense of justice of the community, in order to answer the development of community legal needs that meet the sense of justice of all parties, which is a manifestation of the authority of the National Police in accordance with Article 16 and Article 18 of

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2013, accessed from https://ditreskrimsuspoldakalsel.blogspot.co.id/2013/07/ restorative justice in-enforcement.html on November 21, 2022 at 13:00 WIB.

[2] Sukardi, *The Existence of the Concept of Restorative Justice in the Criminal Law System in Indonesia*, (Jakarta: Legal Pluralism, 2016), p, 41.

[3] Sukardi, *The Existence of the Concept of Restorative Justice* ... p. 42

[4] Satjipto Rahardjo, *Police Perpetrators and Thinkers*, (Jakarta: Gramedia Pustaka Utama, 1999), p. 34

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Law No. 02 of 2002 about the National Police of the Republic of Indonesia.

The handling of criminal acts based on Restorative Justice must meet general and specific requirements. General requirements apply to the activities of carrying out the functions of Criminal Investigation, investigation, or investigation, while special requirements only apply to criminal acts based on Restorative Justice in investigation or investigation activities. [5]

General requirements, handling criminal acts based on Restorative justice include material and formal. Material requirements include: a) not causing unrest and/or rejection from the community; b) does not impact social conflict; c) does not have the potential to divide the nation; d) no radicalism and sparatism; e) is not a repeat offender based on a court decision; and f) not criminal acts of terrorism, crimes against state security, criminal acts of corruption, and crimes against the lives of persons. [6] While the general requirements in the form of formal requirements include: a) peace from both parties as evidenced by a peace agreement and signed by the parties, except for narcotics crimes; b) fulfillment of the rights of victims and responsibilities of perpetrators, in the form of returning goods, indemnifying, reimbursing costs incurred from the consequences of criminal acts and / or replacing damages incurred due to criminal acts. Evidenced by a statement letter in accordance with the agreement signed by the victim (except for narcotics crimes). [7]

[5] See Article 2 and Article 3 of the Indonesian National Police Regulation No. 8 of 2021 concerning *Handling Criminal Acts Based on Restorative Justice*

[6] See Article 5 of the Indonesian National Police Regulation No. 8 of 2021 concerning *Handling Criminal Acts Based on Restorative Justice*

[7] See Article 6 of Indonesian National Police Regulation No. 8 of 2021 concerning *Handling Criminal Acts Based on Restorative Justice*

Based on the background above, the settlement of child crime cases through the inside is carried out according to the concept of restorative justice through the Indonesian State Police Regulation No. 8 of 2021 concerning *the Handling of Criminal Acts Based on Restorative Justice* opens up space to be resolved family-wide.

Problem Statement

1. How is the restorative approach applied in handling crimes involving children at the Bengkulu City Police Station?
2. What is the perspective of Islamic law on the use of *restorative justice* in dealing with crimes involving children?

Research Objectives

1. To know and describe the restorative approach applied in handling crimes involving children in the Bengkulu City Police Station.
2. To know and describe the perspective of Islamic law on the use of *restorative justice* in dealing with criminal acts involving children.

Research Methods

This paper uses empirical research that is descriptive analytical. Data were obtained through direct observation and interviews with informants investigating PPA Bengkulu City Police as well as supporting data from quoting literature books and laws and regulations, all of which are related to the object of research. After the data can then be analyzed in a normative descriptive manner.

Discussion and Research Results

***Restorative Justice* Process on Crimes Committed by Children at the Bengkulu City Police Station**

Handling children who face the law is one of the responsibilities of the police, in conducting investigations, investigations into the arrest and detention of the child. This implementation process was carried out by investigators from the Criminal Investigation Unit for the Protection of Women and Children of the Bengkulu City Police. In the application of the juvenile justice system, it is stated that investigators

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who handle child crimes must seek transfer, especially through the relationship between the perpetrator and the victim and kinship between the victim's family, in order to resolve the criminal case.

Arrangements for handling criminal acts through restorative justice in previous police regulations were regulated by the Circular Letter of the Chief of Police of the Republic of Indonesia No: SE/8/VII/2018 concerning the Application of *Restorative Justice* in the Settlement of Criminal Cases concerning *restorative justice*. In article 12 of the Regulation of the Chief of Police of the Republic of Indonesia No. 6 of 2019 concerning Criminal Investigation. That is, in the investigation process, restorative justice can be carried out, if material conditions are met, namely: does not cause feelings in the community, does not cause social conflicts, statements from the parties involved not to object and all parties make statements. And the formal conditions are: the parties make a letter of application and declaration of peace, the investigator makes additional minutes and exercises a special title, and the perpetrator does not object to all damages.

Then in August 2021 the Chief of National Police signed a regulation specifically regulating restorative justice, namely the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. This Perpol will be ratified which will always be used by police investigators as a legal basis in carrying out criminal investigations to resolve through restorative justice settlements.

In order to apply *restorative justice* in criminal cases, there are requirements that must be met such as; 1) There must be an intention or intention of the parties. This intention arises from the conscience to forgive the perpetrator of a criminal act. Without the intention of all parties, Restorative Justice is impossible to realize, 2) The perpetrator of the crime is truly remorseful and promises not to repeat his actions. The perpetrator in this case must apologize to the victim and his family., 3) The form of peace runs in a balanced manner that makes the victim or his family will no longer sue the perpetrator., 4) The form of settlement between the perpetrator and the victim or his family is acceptable to both parties. [8]

Before investigators carry out *restorative justice* on child crime cases, the PPA Unit investigators first look at how old the suspects are. Because based on Article 2 of PERMA Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System, it states that diversion is applied to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or have reached the age of 12 (twelve) years even though they have been married but not yet 18 (eighteen) years old, who are suspected of committing a crime." After all is deemed sufficient, the investigator summons the parties and carries out the *restorative justice* process. And the result achieved is to agree that the perpetrator reimburses the cost of compensation. The first thing to do is to make peace minutes, minutes of agreement, make a restorative decree to be submitted to the Chief of Police to get a retraction of the report.[9]

There are two ways in the process of applying *restorative justice* for children who face the law. First, *restorative justice* can be carried out outside the police station, in this case the investigator only receives a peace letter from both parties then the whistleblower withdraws the report, the two investigators can be a mediator with various considerations so that in order for a peace agreement to be realized by both parties after peace occurs, the complaint report can be withdrawn.

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[8] Interview, Ipda Arnita Nainggolan, SH, PPA Investigator of Bengkulu Police, January 3, 2023.

[9] Interview, AKP Welliwanto Malau, S.Ik., M.H as Head of Reskrim Polresta Bengkulu, January 3, 2023.

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Based on the policy formulation in Law No. 2 of 2002 concerning the police, it appears that the authority of the police in the context of the implementation of restorative justice, namely the police is authorized to stop investigations and is authorized to carry out other actions according to responsible law, and with the duty of the police to provide protection, protection and services to the community in this case in the context of the police's duty to provide assistance to the community, Then the police can act according to their own judgment. In the function of the police as protectors, protectors and servants of the community, and in the function of the police in law enforcement.

It can be understood that *restorative justice* settlement still depends on the wishes of the parties, namely victims and perpetrators without any element of coercion or intimidation to make peace in the settlement of the case. In other words, the settlement of theft cases committed by children outside the court is a manifestation of the will of the parties based on the willingness and awareness of each party, especially the perpetrator who is aware of his mistake and wants to take responsibility for his mistake by admitting and apologizing to the victim and his family.

In an effort to apply diversion through a *restorative justice* approach to delinquency committed by children, it is different from the law enforcement process in general. *Restorative justice* has been regulated in article 8 paragraph 1 (one) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explaining that the diversion process is carried out through deliberation involving the child and the victim's parents/guardians, children and parents/guardians of the perpetrator, community counselors, and professional social workers based on the Restorative approach.

In essence, restorative justice is an approach to justice based on the philosophy and values of responsibility, openness, trust, hope, healing and "*inclusiveness",* which focuses on reparation for losses caused by Crime, in addition to trying to encourage perpetrators to be responsible for their actions, through providing opportunities for parties directly affected by crime, namely victims, perpetrators and the community, by identifying and paying attention to their needs after the occurrence of evil, and seeking a solution in the form of healing, reparation and reintegration and preventing further harm . [10]

Restorative justice aims to realize the restoration of the condition of crime victims , perpetrators, and interested communities (*stakeholders*) through a case resolution process that does not only focus on prosecuting and punishing perpetrators. The restorative criminal justice process holds the view that realizing justice is not only a matter for the government and perpetrators of crimes, but more than that it must provide justice in totality that cannot ignore the interests and rights of victims and society. On the other hand , in the conventional criminal justice process, the interests of victims seem to have been represented or represented by the State or Government through the Prosecutor's Office and the Police.[11]

In the case of Children Facing the Law, even though the child has the status of a Child Facing the Law, he still has to go to school and get his human rights in accordance with the*The Beijing Rules* (UN Standard Minimum Rules on the Administration of Justice for Children) so that they can welcome a bright future, because neglect of children's rights is also a disregard for the future of the nation and state. Child delinquency, even if it falls within the realm of law, Children Facing the Law must be dealt with specifically without

[10] Muladi, *Restorative Justice in the Criminal Justice System and Its Implementation in Resolving Crimes Committed by Children, Paper presented in* FGD-BPHN, Jakarta, 2014, p. 14

[11] Varia Judiciary Magazine , Year XXII No. 26 September 2007, IKAHI, Malang, 2007, p. 8

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taking away the rights possessed by a child. [12]

Thus, it can be concluded that restorative justice is the resolution of criminal acts by involving perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a just solution through peace by emphasizing the restoration of the original situation. [13]

In the view of restorative justice, crime is not just a violation of the law, but is fundamentally a violation of human relations. Therefore, restorative justice emphasizes the restoration of damage caused by crime, through material as well as symbolic restitution, rebuilding the self-esteem of perpetrators, and returning them to society. Furthermore, it is emphasized that restorative justice facilitates community restorers by affirming the values undermined by criminals. [14]

Application of ***Restorative Justice*** **to Child Crime in the Perspective of Islamic Law**

In case resolution there are two paradigms known to Islam, namely, litigation and non-litigation cases. The litigation paradigm is a fundamental view and belief that the only literal tradition is to be able to resolve cases through the courts. Meanwhile, the non-ligitation paradigm starts from the basic assumption that it is not always resolved cases through legal channels and courts. The method of settlement carried out outside the court is part of an effective way because it can solve the problem of the case without putting ongoing hurt and grudges. This method is said with a restorative justice approach.

Resolving cases in non-legitimacy can be done on the basis of the thoughts of each party concerned can also include a third person or hakam. Hakam acts as a mediator, reconciling from both parties or more parties who are having a case. Resolving cases in a benevolent manner is an institution that has long been embedded in Arab society even before Islam came into existence. After Islam came into existence, the theory was strengthened by an invitation to always bring peace and harmony to society.[15]

The theory that Islam has developed in resolving cases is by resolving cases peacefully and deliberation between parties who have cases without having to go through legal channels and courts. The problem that is lacking from the conventional justice system in Indonesia, has actually long been realized in Islam not to rush to bring cases to court, because it is the basis for achieving one's devotion according to the teachings of forgiveness. Therefore, each case can be resolved in a good and peaceful way for the parties to the case.

It is the position of the theory of forgiveness in Islamic Law that is currently accepted as a form of preference for solving cases by achieving the most conceptual goals of punishment. By going through the institution of forgiveness, resolving cases can result in equal justice between perpetrators, victims, and society. The desire for punishment to be realized in a *restorative justice* approach.

The implementation of *restorative justice* can be seen in a concentrated manner in the implementation of qisas and diyat. A new perspective contained in the implementation of qisas is that the process

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[12] Strong Puji Prayitno, *Application of the Concept of Restorative Justice in Indonesian Justice ,* (Yogyakarta: Genta Publishing, 2012), p. 2

[13] National Police Regulation of the Republic of Indonesia No. 8 of 2021 concerning *Handling of criminal acts based on restorative justice*

[14] Rudy HAN, Dissertation Summary: The concept of mediation in the settlement of criminal cases outside the court by police investigators, Jakarta: Jayabaya Doctoral Program in Law, 2016, pp. 32-33.

[15] Nor Soleh, "Restorative Justice in Islamic Criminal Law" Journal of Islamic Legal Studies, Vol. 2 No. 2, 2015, p. 126

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of prosecuting qisas law is still the right of the victim's family, for example is a murder case. The fuqaha consider that the act of murder can be called *a civil wrong*. Solving this case depends on the agreement between the perpetrator and the victim's family. However, the power to decide the punishment of qisas rests only with the judge.

To enforce the law qisas certainly does not abandon the policy or method of establishing the law. In addition, this qisas punishment can be lost if the perpetrator dies, is forgiven by the victim's family, or has made peace between the two parties, namely between the perpetrator and the victim's family.

The establishment of procedural methods in enforcing qisas law shows that there is a renewal in the Islamic Law system. The scholars apply the rules of qisas recorded in the Qur'an at the level of practice to be able to set an example for the qadhi in carrying out his duties. Although fiqh is the result of individual ideology, its formula is fundamental for the focus of implementing Islamic teachings by society or the State. Changes in renewal values make Islamic Law an applicable legal system and not left behind with the times. [16]

The response to the solution to child delinquency does not rule out the possibility that a child also still violates the law, in various forms of crime so that law enforcers must directly deal with the actions of children who are against the law in the form of crimes coded in criminal law, especially the concept of restorative justice in Law No. 11 of 2012 concerning the Juvenile justice system that is entangled with the law, Here we have explained how the method of handling cases that ensnare teenagers or children who are not yet eligible to be sentenced to an equivalent sentence as adults. Likewise, in the perspective of Islamic Law, how to find peace values between the two parties concerned so as to create justice.

In Islam peace is strongly advocated. As contained in the Qur'an Surah Al-Hujaraat Verse 9, which means: "*If there are two classes of believers fighting, reconcile both. If one of the two persecutes the other, fight the persecutor, so that the group returns to God's command. If the faction has returned (to God's command), reconcile the two justly. Be fair! Surely God loves those who are just*."

In terms of forgiveness in the concept of Islamic Law, the author finds that *restorative justice* in the Juvenile Criminal Justice system is in accordance with what is the basis of Islamic Law. This policy makes reference in the case of child delinquency entangled in the law with the concept of forgiveness.

Islam advocates resolving problems peacefully by emphasizing the concept of forgiveness between both parties, both victims and perpetrators. The purpose of Islamic Law in the concept of forgiveness is in line with the Juvenile Justice System, which is a method of settlement outside the court channels involving the parties concerned. The concept of forgiveness is implemented in accordance with the regulatory policies in Islamic Law as well as in the juvenile justice system.

In Islamic doctrine, as Marcel A. Boisard affirms: justice is central to the movement of core moral values[17]Justice in Islam is therefore one of the most important fundamental principles. Justice in Islam includes individual justice (al-is al-fardiyyah) and social justice (*al-is al-ijtimaiyah*). Justice in Islamic law always considers morality, social and individuality, not just the application of *legal justice*.

[16] Randy Pradityo, "Restorative Justice in the Juvenile Criminal Justice System", in Journal of Law and Justice, Bengkulu, Vol. 5 No. 3, 2016,, p. 128

[17] Muhammad Tahir Azhari, The State of Law*: A Study of Its Principles in terms of Islamic Law, Its Implementation in the Period of the State of Medina and the Present* 4th cet., (Jakarta: Kencana Prenada Media Group, 2010), p. 121

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One example is what Omar bin Khattab once did by releasing punishment on thieves. As a type of hudud crime, theft is Allah's right, which means the state cannot be involved in deciding its release. However, with his intelligence, Umar released the *udzq* (date palm thief) taking into account the famine that occurred at that time.[18]Umar's story shows that justice cannot be understood as *legal justice* alone. However, it must still consider moral justice, societal justice and individual justice in accordance with the conditions and cases that occur. Umar's practice in the context of modern law today can also be known as the application of discretion and diversion.

Islam emphasizes towards the door of forgiveness and expediency. In terms of expediency, the verse above is an effort by the victim or the victim's family who do not have a sense of revenge. Islam does not like retaliation, but rather by resolving problems peacefully by implementing the concept of forgiveness between both parties, both victims and perpetrators. The purpose of the concept of forgiveness in Islam is in line with the *restorative justice justice* system, which is not to make settlements inside the court but outside the court involving victims, perpetrators and the community. The concept of forgiveness is carried out according to the policy of regulations in Islamic law.

From this explanation we can understand between the correlation between the implementation of *restorative justice* and the perspective of Islamic Law, very harmonious so that in law enforcement these two concepts must always be a reference in the treatment of crime cases that ensnare minors, especially in delinquency that is currently quite rife or often occurs to the perpetrator of a child.

Conclusion

The restorative approach applied in handling criminal acts involving children at the Bengkulu City Police Station can be done in 2 ways: a) *Restorative justice* can be done outside the police station which can be done by victims and perpetrators accompanied by their respective families mediated by Rukun Neighbor (RT), or Rukun Masyarakat (RW), or Religious Leaders, and / or Community Leaders who can be used as mediators. After the results of the deliberations are agreed upon by both parties, then make a peaceful statement, then the whistleblower makes a letter to the investigator that there has been peace to withdraw the report and if the deliberation does not find a word of peace between the two parties, then the report from the Reporter will still be processed by the investigator to the Court, b) *Restorative justice* can be done at the police station. In this case, the investigator as a facilitator and mediator brings the victim and the perpetrator (suspect) together in a meeting to talk. In the meeting, the police, namely the investigator in the PPA unit as a mediator, provided an opportunity for the perpetrator of the victim to provide a clear picture and the reason. After peace has occurred, the investigator can make a report to the Chief of Police that there has been a peace agreement and the whistleblower withdraws the report.

The Islamic legal perspective on the use of *restorative justice* in dealing with criminal acts involving children prioritizes peace or forgiveness by mediation, reconciliation between perpetrators, victims, law enforcers and the wider community directly participating in solving problems. Islam has based this concept on surah Al-Baqarah (2): 178-179. So that *restorative justice* and Islamic Law, very harmonious in law enforcement, these two concepts must always be a reference in the treatment of crime cases that ensnare minors, especially in delinquency that is currently quite rife or often occurs to the perpetrator of a child.

[18] Ibn Qayyim Al-Jauyiyah, *Guide to Islamic Law*... p. 430

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