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The Urgency of Community Service Imposed as Punishment on Juvenile Delinquents: A Study of al- Shatibi's *Maqhasid al-Syariah* Concept

Krismiarsi Krismiarsi*

Universitas 17 Agustus 1945 Semarang, Indonesia

Rayno Dwi Adityo

Universitas Islam Negeri Maulana Malik Ibrahim Malang, Indonesia

*Corresponding author: krismiarsi@untagsmg.ac.id

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Abstract:

This study examines community service punishment in the context of law enforcement and the protection of children's rights and explores its objectives based on syariah or legal principles. This normative juridical research adopts statutory and conceptual approaches. Primary, secondary, and tertiary legal materials were used and processed descriptively and analytically. The research findings indicate that the imposition of community service punishment aligns with the objectives of criminal law under the theory of relative purposes, emphasising the rehabilitation of the behaviour of offenders. Juvenile delinquents are required to perform social activities for the community. In criminal law, community service punishment involves important aspects, including law enforcement's obligation to implement it and the recognition of children's rights. From the perspective of *maqashid al-syariah* by Al-Shatibi concept, this punishment aligns with the primary and urgent goals of Islamic law (*ad-dharuriyat*) by fulfilling three of the five essential elements that must be safeguarded according to syariah: the protection of religion (*hifz ad-din*), life (*hifz an-nafs*), and intellect (*hifz al-aql*). These elements suggest that enforcing community service as punishment is an urgent matter to enforce the law and protect children's rights.

Keywords: community service punishment; children's Rights; *maqashid al-syariah*.

Introduction

Society and social interactions are inseparable in everyday life. From the social sciences perspective, society is constructed from multilayer elements, ranging from

Indigenous communities and neighbourhoods to industries.¹ Legal problems continue to evolve while criminal cases rise. In some crimes, children are involved. Juvenile delinquents, according to Raihana in her research, are defined as children or teenagers with bad or wicked behaviour. Social neglect or rejection often makes them demonstrate deviant behaviour against the norms.²

The National Criminal Information Centre (Pusiknas) of the Indonesian National Police (POLRI) reported that in 2024, over 1,000 children became criminal suspects each month. Their data reveals that 40,079 children have conflicted with the law, with the highest recorded figure in May 2024, reaching 1,481 child suspects.³ Meanwhile, an independent media platform, *goodstaats.id*, tracked the trend of child prisoners in Indonesia from 2020-2024. Based on data processed as of 23 October 2024, the highest fluctuation occurred in 2023, with 1,639 children rehabilitated in correctional institutions.⁴ According to the latest data from the Directorate General of Corrections of the Ministry of Law and Human Rights, cases of children in conflict with the law tended to increase from 2020 to 2023. As of August 26, 2023, there were nearly 2,000 children in conflict with the law. A total of 1,467 children are in detention and still undergoing judicial processes, while 526 children are serving sentences as convicts. The children in detention are placed in various correctional facilities. Currently, child detainees are housed in Juvenile Correctional Institutions totaling 1,190. There are also 234 young offenders put in correctional institutions, approximately 53 in state detention centres, and seven in women's correctional institutions. This trend continues to rise at an alarming rate in Indonesia.⁵

It seems that imprisonment remains the primary option for criminal sentencing. When a child commits a criminal act, considering the child's rights remains paramount, while imprisonment should be a last resort. Before the provision of imprisonment as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 71, paragraph 1 letter (e) set out the provision asserting that young offenders should be placed in a juvenile correctional institution.⁶ However, placing a child in a correctional facility where adults serve their jail

¹ Rayno Dwi Adityo, "Interpretation of Public Figures in Indonesian Law Number 7 Of 2012 Concerning Handling Social Conflicts in The Perspective of Legal Certainty," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 5, no. 1 (June 29, 2022): 13–25, <https://doi.org/10.24090/volksgeist.v5i1.6402>.

² Raihana, "Kenakalan Anak (Juvenile Delinquency) Dan Upaya Penanggulangannya," *SISI LAIN REALITA* 1, no. 1 (June 15, 2016): 72–83, [https://doi.org/10.25299/sisilainrealita.2016.vol1\(1\).1400](https://doi.org/10.25299/sisilainrealita.2016.vol1(1).1400).

³ Pusiknas Bareskrim Polri, "Tiap Bulan, Lebih 1.000 Anak Jadi Tersangka Kejahatan," 2024, https://pusiknas.polri.go.id/detail_artikel/tiap_bulan_lebih_1.000_anak_jadi_tersangka_kejahatan.

⁴ Anonymous, "Menelusuri Tren Jumlah Tahanan Anak Di Indonesia Tahun 2020-2024," 2024, <https://data.goodstats.id/statistic/menelusuri-tren-jumlah-tahanan-anak-di-indonesia-tahun-2020-2024-ldbDb>.

⁵ Yohanes Advent Krisdamarjati, "Meningkatnya Kasus Anak Berkonflik Hukum, Alarm bagi Masyarakat dan Negara," *kompas.id*, August 28, 2023, <https://www.kompas.id/baca/riset/2023/08/28/meningkatnya-kasus-anak-berkonflik-hukum-alarm-bagi-masyarakat-dan-negara>.

⁶ Nurini Aprihandi and Liza Agnesta Krisna, "Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warning)," *Jambura Law Review* 5, no. 1 (November 27, 2022): 1–20, <https://doi.org/10.33756/jlr.v5i1.15936>.



sentence is reserved for cases where the child's actions pose a threat to society. In Indonesia, juvenile correctional institutions are very limited, particularly in each province at the regency and city levels. Currently, there are only 33 such institutions for 38 provinces,⁷ and the capacity of these institutions is often insufficient. Arif Rahman, the head of the Juvenile Correctional Institution in Kutoarjo, said on www.rri.co.id that these correctional institutions are overcrowded. For instance, the Class 1 Juvenile Correctional Institution in Kutoarjo has to accommodate 137 children, exceeding its standard capacity, which should only take 65.⁸ This situation is problematic as it increases the likelihood of children being placed in adult penitentiaries, although they are separated from adult inmates. However, the shared environment may still expose children to negative influences.

On the other hand, imprisonment for children can lead to stigma. Labelling a child as "bad" can significantly impact their mental and emotional development. When sentencing children, judges must consider the reasons behind the criminal act, which may stem from internal factors within the child or external circumstances.⁹ The lack of adequate infrastructure is a significant challenge, alongside internal factors of the children themselves, which also affect rehabilitation success at the facility. According to the 2020 Annual Report of the Ministry of Women's Empowerment and Child Protection on the Implementation of the Juvenile Criminal Justice System, many juvenile correctional institutions still lack child-friendly facilities and ideal infrastructure. Many children are still detained and imprisoned due to the absence of alternative placements to avoid imprisonment. Not all children in conflict with the law receive recreational services or skill development programs in juvenile correctional institutions or Child Social Welfare Institutions. Moreover, implementing court orders for vocational training is challenging in areas without training centres. Female child inmates are sometimes placed in women's penitentiaries, further highlighting the inadequacy of current facilities and systems to support the rehabilitation of children in conflict with the law.

Children are the successors of the nation's aspirations and a vital human resource for national development. Therefore, continuous guidance is necessary to ensure their survival, physical growth, and mental and social development. Protection from potential threats that could harm them and the nation in the future is also paramount. Similarly, handling children in conflict with the law must prioritise the best interests of the child. Juvenile delinquents are entitled to legal protection. Despite many obstacles in realising this, all rights of juvenile inmates or detainees must still be fulfilled. The 1989 Convention on the Rights of the Child ensures the protection and rights of all children worldwide without discrimination. Specifically, Article 37 explicitly guarantees protection and rights for children in conflict with the law. The guarantees provided include, first and foremost,

⁷ Kementerian Pemberdayaan Perempuan dan Perlindungan Anak RI, "Kemen PPPA Bersama LPKA Perkuat Perlindungan Anak Berhadapan Dengan Hukum," September 19, 2024, <https://www.kemenpppa.go.id/page/view/NTM5Nw==>.

⁸ Fitratun Komariah, "Lembaga Pembinaan Khusus Anak Dihadapkan Persoalan Kelebihan Kapasitas," rri.co.id - Portal berita terpercaya, September 29, 2024, <https://www.rri.co.id/nasional/988398/lembaga-pembinaan-khusus-anak-dihadapkan-persoalan-kelebihan-kapasitas>.

⁹ Makhrus Munajat, *Hukum Pidana Anak di Indonesia* (Bandung: Sinar Grafika, 2023).



prohibiting inhuman treatment or punishment of children. Arrest or detention of children must comply with the law and should only be used as a last resort and for the shortest possible duration.¹⁰

The concept of enforcing criminal law through non-penal measures has yet to develop optimally in the resolution of criminal cases in Indonesia. This approach is often perceived as inefficient and unable to deliver justice.¹¹ However, non-penal sanctions can be prioritised as the main form of sentencing. The Juvenile Criminal Justice System Law provides opportunities for alternative sanctions that emphasise rehabilitation over retribution. Based on this premise, non-penal sentencing emerges as a primary alternative to imprisonment for young offenders. This approach aims to secure the child's future and shield them from the stigma of being a convict. It also seeks to foster awareness in the child, encouraging remorse for their actions. Community service punishment is one promising form of non-penal sentencing discussed in this study. Community service punishment entails activities that benefit society, such as assisting in government institutions or social welfare organisations. Examples include helping the elderly, individuals with disabilities, and orphans or performing administrative tasks in local government offices. This form of punishment benefits the community and provides a constructive and rehabilitative experience for the child.

This punishment aims to educate children and enhance their awareness of positive activities, as outlined in Article 76 of the Juvenile Criminal Justice System Law. The alternative punishment of community service considers two aspects: the state's obligation to provide security for its citizens and the easier preservation of children's rights, viewed from the perspective of *maqashid al-syariah* as conceptualised by al-Shatibi. The present study adopts the perspective of al-Shatibi to inform its analysis. Another significant consideration is that his concept of legal discovery remains highly pertinent and applicable to the research object, and it is simpler than the *maqashid al-syariah* of other scholars, such as Jasser Auda. Several prior studies focus on issues concerning children in conflict with the law. The first is research conducted by Marsaid, titled Legal Protection for Juvenile Offenders from the Perspective of *maqashid al-shariah* (A Case Study on Handling Juvenile Offenders at the Jambi Correctional Facility), which appears to have been further developed into a book.¹² The similarities with the current study lie in the analysis based on *maqashid al-syariah*. However, the differences and novelty in this research are as follows: 1) This study focuses specifically on one small aspect of community service punishment, whereas Marsaid's research examines the overall legal protection for juvenile offenders as stipulated in regulations; 2) The *maqashid al-syariah* perspective in this study is limited to the specific views of al-Shatibi, while the previous research incorporates perspectives from other scholars, such as al-Ghazali in his works; 3)

¹⁰ Debora Laksmi Indraswari, "Anak Berkonflik dengan Hukum, Berhak Mendapat Perlindungan dan Pembinaan," *kompas.id*, August 27, 2023, <https://www.kompas.id/baca/riset/2023/08/28/anak-berkonflik-dengan-hukum-berhak-mendapat-perlindungan-dan-pembinaan>.

¹¹ Virginia Garcia, "The Enforcement of Restorative Justice in Indonesian Criminal Law," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (April 10, 2020), <https://doi.org/10.22219/ljih.v28i1.10680>.

¹² Marsaid Marsaid, *Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam (Maqasid Asy Syari'ah)*, ed. Muhammad Sadi Is, vol. Cet.II (Palembang: NoerFikri Offset, 2015), <https://repository.radenfatah.ac.id/6831/>.



While the earlier study adopts an empirical approach, this research utilises a juridical-normative methodology.

Second, the article by Sudarno, Community Service Punishment as an Alternative Form of Punishment in Achieving Juvenile Criminal Law Reform, shares similarities with this research in its focus on community service punishment and the use of a normative juridical approach. However, the differences lie in the depth and scope of the studies. Sudarno's research delves into the aspects of the state's positive law and the characteristics of alternative sentencing.¹³ In contrast, this study not only examines positive law but also integrates Islamic law, particularly *maqashid al-syariah* as conceptualised by al-Shatibi, as an analytical tool to assess both the enforcement of the law and the protection of children's rights within the framework of the objectives of Sharia. Third, the research by Pratiwi Handayani et al., titled The Effectiveness of Correctional Centers in Monitoring the Implementation of Community Service Orders (An Analysis of Court Decision No. 4/Pid.sus-Anak/2023/PN Pwt), also differs from this study.¹⁴ Pratiwi's research is based on an empirical juridical approach, analysing specific court decisions related to community service actions and focusing on positive law. In contrast, this research adopts a normative juridical approach, does not specifically analyse court decisions, and incorporates the perspective of *maqashid al-syariah* as elaborated by al-Shatibi. However, both studies address the issue of community service punishment.

The primary advantage of this study lies in its integration of positive criminal law as *ius constitutum* with Islamic legal methods, considering children as part of family law. Its limitation is the lack of an empirical basis and direct observation, which hinders a comprehensive understanding of the concrete implementation of community service punishment. To address this shortcoming, the study relies on extensive references from other scholarly articles to provide a complete picture. This research analyses community service punishment concerning juvenile offenders, focusing on law enforcement and the fulfilment of children's rights from the perspective of *maqashid al-syariah* by al-Shatibi. The findings aim to contribute to future research and provide insights for legal practitioners concerned with issues surrounding children in conflict with the law (CICL). Additionally, it serves as a reference for law enforcers to impose sanctions on juvenile offenders that, as much as possible, avoid imprisonment.

Method

This study employs a normative juridical approach, utilising secondary data obtained through document analysis rather than direct interaction. This data model aligns with the characteristics of normative research. The legal materials consist of the following: 1) Primary legal materials consisting of the Juvenile Criminal Justice System Law and other relevant laws and regulations; 2) Secondary legal materials comprising articles from legal and non-legal journals related to the topic, as well as

¹³ Sudarno, "Pidana Pelayanan Masyarakat Sebagai Alternatif Bentuk Pidana Dalam Mewujudkan Pembaharuan Hukum Pidana Anak," *Paulus Law Journal* 3, no. 2 (March 22, 2022): 88–101.

¹⁴ Pratiwi Handayani and Setya Wahyudi, "Efektivitas Balai Pemasyarakatan Dalam Pengawasan Pelaksanaan Putusan Tindakan Pelayanan Masyarakat (Analisis Pelaksanaan Putusan Nomor 4/Pid.Sus-Anak/2023/PN Pwt)," *Soedirman Law Review* 6, no. 3 (August 13, 2024): 159–77, <https://doi.org/10.20884/1.slr.2024.6.3.16079>.



legal literature, supplemented by case examples such as juvenile sentencing rulings; 3) Tertiary legal materials serving as supporting and supplementary resources to primary and secondary materials, including legal scientific dictionaries, general scientific dictionaries, articles from electronic or online mass media, and non-journal websites.¹⁵ The study adopts statutory and conceptual approaches. The statutory approach utilises applicable regulations in Indonesia, while the conceptual approach examines community service punishment from the perspective of *maqashid al-syariah* as articulated by al-Shatibi. The collected data was analysed using a descriptive-analytical method, breaking down and describing phenomena or symptoms through narrative data. This data was further analysed to identify causal patterns and draw conclusions from the data variables. Additionally, limited excerpts from interviews with informants were included to reinforce the research findings.

Results And Discussion

The Objective of Criminal Law in Educating Offenders

The application of criminal law is inseparable from its objectives, which, according to Leden Marpaung, can be categorised into two main theories: 1) Absolute Theory: Punishment is imposed solely as retribution against offenders for committing crimes that harm others; 2) Relative Theory: This theory focuses on the purpose of punishment, emphasising the goal of rehabilitating offenders. The rehabilitation involves treatment or education provided during the sentence, hoping that the offender will not re-offend, will regret their actions, and will reintegrate into society.¹⁶ Wirdjono Prodjodikoro highlights that criminal law aims to educate or reform individuals who have committed crimes, transforming them into people of good character who can contribute positively to society.¹⁷ In addition to these theories, there is also the Mixed Theory, which combines elements of retribution for the offender to protect society.¹⁸

Rivanie and her team, in their research, referenced Karl O. Christian's perspective on the relative theory of criminal law, particularly its focus on rehabilitating offenders. This approach views punishment not merely as retribution but as serving specific beneficial purposes. However, Hermien Hadiati noted a weakness in this theory, stating that it often overlooks societal satisfaction and is particularly challenging to implement, especially for repeat offenders.¹⁹ This perspective aligns with the Utilitarian School of Thought, with Jeremy Bentham as one of its key proponents. According to Bentham, the objective of law is to ensure the greatest happiness for the greatest number of people.²⁰ In practice, the application

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, Cetakan Ke-15 (Jakarta: Kencana Ilmu, 2021).

¹⁶ Leden Marpaung, *Asas-Teori-Praktik Hukum Pidana*, Cetakan Pertama (Jakarta: Sinar Grafika, 2005).

¹⁷ Wirdjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Edisi Ketiga (Bandung: Refika Aditama, 2008).

¹⁸ Fitriani Fitriani, "Penjatuan Pidana Mati Kepada Pelaku Tindak Pidana Ditinjau Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *SENTRI: Jurnal Riset Ilmiah* 2, no. 8 (August 5, 2023): 3016–24, <https://doi.org/10.55681/sentri.v2i8.1327>.

¹⁹ Syarif Saddam Rivanie et al., "Perkembangan Teori-teori Tujuan Pemidanaan," *Halu Oleo Law Review* 6, no. 2 (September 28, 2022): 176–88, <https://doi.org/10.33561/holrev.v6i2.4>.

²⁰ Oksidelfa Yanto, *Negara Hukum: Kepastian, Keadilan Dan Kemanfaatan Hukum Dalam Sistem Peradilan Pidana Indonesia* (Bandung: Pustaka Reka Cipta, 2020).



of criminal law should ideally consider legal policies within their specific context. Criminal law policies are derivative efforts to protect society and achieve societal welfare.²¹ Given this explanation, within the context of juvenile justice, the juridical and philosophical objectives of criminal law—focused on educating or rehabilitating offenders—are particularly appropriate and should be prioritised. The criminal offenders refer to children in conflict with the law and form of rehabilitative activities, such as helping the elderly, individuals with disabilities, and orphans. This punishment is rehabilitative for the children concerned and benefits the community.

Community Service Sentences and the Best Interests of the Child

Juvenile criminal law falls within the classification of special criminal law (*lex specialis*) for criminal cases involving children. The current juvenile criminal law in Indonesia is governed by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. As a legal policy, this law represents an integral part of criminal law policy, which, according to Soedarto, involves creating and formulating effective and just criminal legislation.²² Within this framework, the law introduces community service sentences as an alternative type of punishment. Despite its inclusion, community service as a form of punishment is not widely recognised or prioritised by law enforcement. As part of the criminal law policy for crime prevention, community service sentences serve as a non-penal enforcement tool, particularly critical for juvenile offenders, to avoid incarceration. However, such sanctions are often overlooked in favour of more conventional punitive measures.

Law No. 11 of 2012 strongly emphasises the principle of justice, as reflected in Article 5(1) and Article 8(1), which embed philosophical affirmations within the juvenile justice system. Article 2 outlines key principles, including protection, justice, non-discrimination, the best interests of the child, respect for the child's views, survival, growth, and development of the child, rehabilitation and guidance, proportionality, punishment and deprivation as a last resort, and avoidance of retribution. Community service is classified as a principal penalty under Article 71(1)(8)(2), with the duration further specified in Article 76(3), stipulating a minimum of 7 hours and a maximum of 120 hours for juveniles.

One example of a criminal case involving a community service sentence is the decision of the Pulang Pisau District Court in a case of violation under Article 363 of the Indonesian Penal Code (KUHP). In this case, the panel of judges sentenced the juvenile offender (ABH) to 50 hours of community service at the Maluku Police Sector, Pulang Pisau Regency, under the supervision of the Palangka Raya Probation Office.²³ Furthermore, based on the author's interview with a probation officer (PK) from Class I Semarang Probation Office, identified as VV, it was stated that the urgency of community service sentences, when applied by judges, proves more

²¹ Indrawan and Rayno Dwi Adityo, *Reformasi Hukum Dan Pembuktian Kasus Korupsi Gratifikasi Di Indonesia*, Cetakan Pertama (Yogyakarta: Deepublish Publisher, 2024).

²² Krismiyarsi, *Politik Hukum Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 2020).

²³ Bapas Palangka Raya, "PK Bapas Palangka Raya Berhasil Upayakan Pidana Pelayanan Masyarakat Bagi Anak," Ditjenpas, August 15, 2020, <https://www.ditjenpas.go.id/pk-bapas-palangka-raya-berhasil-upayakan-pidana-pelayanan-masyarakat-bagi-anak>.



beneficial.²⁴ However, prosecutors rarely demand community service sentences. Community service has many positive effects compared to imprisonment, as it can change the child's attitudes and behaviour. By performing community service, children can feel needed and receive more attention, which helps reduce selfishness and self-centredness and fosters tolerance and care for others, such as those they serve. It can also encourage politeness and civility. For children from affluent backgrounds, it helps cultivate humility and prevent arrogance. An interesting but somewhat challenging fact arises regarding the time management issue for children. While serving a community service sentence, they must also attend school. With the current school schedule being five days a week, children often struggle to balance school commitments with completing their community service hours in the afternoons. This situation highlights a tension between law enforcement and the child's rights, particularly their education rights.

The author also obtained information from a child law expert at the UPT PPA (Technical Service Unit for the Protection of Women and Children) in Karimun Regency, Riau Islands, identified as IDN, via WhatsApp communication on December 22, 2024. According to IDN, cases involving minor criminal offences with sentences of less than seven years are more likely to result in a successful resolution. In such cases, judges can opt to replace imprisonment with community service, provided that it is deemed the best course of action for the child. This decision is made by considering inputs from various parties, such as social workers, probation offices, UPTD PPA (Regional Technical Service Unit for the Protection of Women and Children), and other relevant elements. The fundamental principle in handling children in conflict with the law is prioritising what is best for them, whether it involves the offender or the victim.²⁵

The resolution of cases involving children in conflict with the law through non-penal means is outlined in Article 6. This aligns with the objectives of criminal law under the relative theory, emphasising personal rehabilitation or the improvement of offenders. This principle is evident in points (c) and (e) of the article, which highlight the avoidance of depriving the child of liberty and the inculcation of a sense of responsibility in children who conflict with the law. The author views that the decision to involve community service as the punishment imposed on children conflicting with the law is better, considering that it trains them to no longer commit a crime.

Community Service Sentencing for Children in Conflict with the Law from the Perspective of *Maqashid al-Syariah* According to al-Shatibi

The position of community service sentencing in positive law is well-defined. However, how does Islamic law view this matter, particularly through the lens of *maqashid al-syariah* as conceptualised by al-Shatibi? To explore this, it is essential to briefly introduce al-Shatibi and the Islamic legal methodology of *maqashid al-syariah*. al-Shatibi was a prominent Islamic philosopher from Spain who adhered to the Maliki school of thought. His full name was Abu Ishaq Ibrahim bin Musa bin

²⁴ An interview with VV, a counsellor in a Class I Correctional Facility in Semarang, via telecommunication media on 25 November 2024.

²⁵ An interview with IDN, a legal expert in a service unit of Child and Woman Protection of Karimun Regency, Riau Islands, 22 December 2024.



Muhammad al-Lakhmi al-Shatibi. He passed away on 8 Sha'ban 790 AH (equivalent to 1338 CE) and was buried in Granada, Spain. According to Abu al-Ajfan, Al-Shatibi mastered the sciences of essential methods and ultimate objectives (*ulum al-wasu'il wa 'ulum al-maqashid*). His legacy is most notably recognised in the concept of maqashid syariah, which he elaborated on in his seminal work, Al-Muwafaqat.²⁶ Linguistically, *maqashid syariah* comprises two words: *maqashid*, meaning "objectives" or "goals," and *syariah*, which implies "a path to the source of water." Symbolically, this represents a path to the essence of life itself. According to Al-Shatibi, syariah aims to realise human welfare (*maslahah*) in this world and hereafter.²⁷ This purpose can be discerned by analysing the Qur'anic verses and the teachings of Prophet Muhammad (peace be upon him)²⁸, either literally or by examining the values contained within these two primary sources. The meaning of goodness, both in general and specific terms, includes, in general, the principles of syariah related to the foundations of Islamic law, while specifically, it encompasses the rulings and regulations within syariah.²⁹ Al-Shatibi divided the objectives of law into two categories: the objectives of God, which consist of four aspects: (1) the initial purpose of the sharia for the benefit of mankind; (2) sharia as something that must be understood; (3) sharia as *taklif* law (the imposition of obligations on individuals that entails demands to do or refrain from something); (4) the purpose of sharia to bring humanity under the protection of law.³⁰

The concept of al-Shatibi is congruous with Indonesian Islamic legal thought because the pattern of Islamic legal thought in Indonesia is *sunni* and al-Shatibi has a *sunni*, even his major discipline is the school of thought of *Maliki*. This school of thought—Mazhab—is one of four Islamic legal scholars recognised by *ahlusunnah* scholars. Although Muslims adhere to Shafi'i in Indonesia,³¹ the methods and considerations of Islamic law still accommodate the imams of four schools of thought, including Maliki. For example, the Indonesian Council of Ulama (MUI) uses the four-*sunni* mazhab approach as a method.³²

²⁶ Milhan Milhan, "Maqashid Syari'ah Menurut Imam Syatibi Dan Dasar Teori Pembentukannya," *Al-Usrah: Jurnal Al Ahwal As Syakhshiyah* 9, no. 2 (October 31, 2022), <https://doi.org/10.30821/al-usrah.v9i2.12335>.

²⁷ Totok Jumanthoro and Samsul Munir Amin, *Kamus Ilmu USHUL FIKIH*, Cetakan Pertama (Jakarta: AMZAH, 2005).

²⁸ Abd. Rahman Dahlan, *Ushul Fiqh*, Cetakan Kedua (Jakarta: AMZAH, 2011).

²⁹ Nabila Zatadini and Syamsuri Syamsuri, "Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 4, no. 1 (June 13, 2019), <http://dx.doi.org/10.30651/jms.v4i1.2111>.

³⁰ Achmad Siddiq et al., "Restrictions on Hajj Pilgrimage for Indonesian Congregation from the Perspective of Sadd Al-Dzari'ah," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, June 2, 2024, 35–51, <https://doi.org/10.24090/volksgeist.v7i1.9701>; Rumi Suwardiyati et al., "Sharia and Human Rights Compatibility in Determining the Age of Marriage in Indonesia," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 2 (2021): 263–74, <https://doi.org/10.19109/nurani.v21i2.9840>.

³¹ Anny Nailatur Rohmah and Ashif Az Zafi, "Jejak Eksistensi Mazhab Syafi'i di Indonesia," *Jurnal Tamaddun: Jurnal Sejarah dan Kebudayaan Islam* 8, no. 1 (May 12, 2020), <https://doi.org/10.24235/tamaddun.v8i1.6325>.

³² Zainal Azwar and Farid Afif Rinaldi, "Consistency of the Indonesian Ulama Council in Using Istia'flāñ á, ¥ as a Method for Legal Istibath," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 1 (May 30, 2024): 1–24, <https://doi.org/10.29240/jhi.v9i1.7680>.



Furthermore, in terms of *maqashid al-Syariah* the objectives of *mukallaf* (those who have been given the obligation and command to follow the law in Islam) can be realised if the five essential elements, or some of them are preserved: (1) protecting religion (*hifdzu ad-din*); (2) protecting life (*hifdzu an-nafs*); (3) protecting lineage (*hifdzu an-nasl*); (4) protecting intellect (*hifdzu al-'aql*); and (5) protecting wealth (*hifdzu al-maal*). In efforts to preserve these five fundamental elements, Shatibi divided them into three levels of *maqasid* or objectives of sharia. These five elements fall under one of these levels: first, *al-dharuriyyah*, which is primary and relates to preserving the essential five elements mentioned above—religion, life, lineage, intellect, and wealth. Second, *al-hajiyyat* is secondary and encompasses human needs that facilitate, ease, reduce burdens, and alleviate difficulties in life. Third, *at-tahsiniyah*, which is tertiary or complementary, focuses on the needs that make human life comfortable, easy, and expansive; its position does not override the primary level (*dharuriyyah*) as the most important.³³ The reason why this study adopts the perspective of Al-Shatibi's *maqasid al-syariah* is that his method of legal discovery is still highly relevant and contextual to the research object and is less complex compared to the *maqashid al-syariah* of other scholars, such as Jasser Auda. There are several differences between Al-Shatibi's and Jasser Auda's approaches, one of which is in the core elements. While Al-Shatibi identifies five core elements, Jasser Auda adds another element: the protection of honour (*hifdzu al-'irdh*), making it six core objectives. Jasser Auda is a contemporary Islamic scholar born in Egypt in 1966 and has studied at the Islamic American University.³⁴

³³ Sholahuddin Al-Fatih et al., "Academic Freedom of Expression in Indonesia: A Maqashid Sharia Notes," *El-Mashlahah* 13, no. 2 (December 31, 2023): 203–24, <https://doi.org/10.23971/el-mashlahah.v13i2.7573>; Abbas Arfan et al., "The Implementation of Maqashid Sharia: Heterogeneity of Scholars' Fatwas towards Islamic Banking Contracts," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (March 14, 2024): 105–28, <https://doi.org/10.22219/ljih.v32i1.32170>; Muhammad Aziz et al., "Reconstruction of Maqashid Shari'ah Perspective Muhammad Thahir Ibn 'Assyria: Efforts to Re-Discuss Sharia with Reality," *Jurnal Hukum Islam* 17, no. 2 (December 2, 2019): 231–49, <https://doi.org/10.28918/jhi.v17i2.2396>; Syaiful Bahri, "The Construction of Indonesian Political Fiqh: Maqasid Al-Shariah Perspective and Ahmad Ar-Raisuni's Thoughts," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (June 2, 2020): 35–52, <https://doi.org/10.21154/justicia.v16i1.1671>; Abdi Wijaya et al., "The Implementation of E-Commerce Consumer Option Rights (Khiyar) in Realizing Transaction Justice: A Study of Maqasid Al-Shariah," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (May 4, 2023): 69–82, <https://doi.org/10.24090/mnh.v17i1.7673>; Mellya Embun Baining et al., "Finding The Maqashid Al-Syariah Performance Model on Syariah Management Accounting Information System Values," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (December 30, 2024): 87–104, <https://doi.org/10.30631/alrisalah.v24i2.1642>.

³⁴ M. Noor Harisudin and Muhammad Choriri, "On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 471–95, <https://doi.org/10.22373/sjhk.v5i1.9159>; Mohammad Fauzan Ni'ami and Bustamin Bustamin, "Maqāsid Al-Syari'ah Dalam Tinjauan Pemikiran Ibnu 'Āsyūr Dan Jasser Auda," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 1 (June 21, 2021): 91–102, <https://doi.org/10.31958/juris.v20i1.3257>; Ihwan Sormin and Zezen Zainul Ali, "The Comparative Study of the Protection of Women's Rights in Article 463 of the New Criminal Code with Law Number 36 of 2009 Concerning Health Perspective of Jaser Auda," *MILRev: Metro Islamic Law Review* 2, no. 2 (November 16, 2023): 187–98, <https://doi.org/10.32332/milrev.v2i2.7824>; Royan Utsany, Afrizal Tw, and Khamim Khamim, "Women's Rights and Gender Equality: An Analysis of Jasser Auda's Thoughts and His Contribution



Community service punishment, which prioritises non-penal punishment and avoids the deprivation of children's freedom, also helps children develop a sense of responsibility, reflecting the goals of criminal law under the relative theory aimed at reforming the character of the offenders. It especially emphasises education, which, according to Bloom's taxonomy, should ideally form a good personality by covering three aspects: cognitive (thinking domain), affective (value or attitude domain), and psychomotor (practice or implementation domain). As Article 76, paragraph 1 of the Child Justice Act outlines, community service focuses on empowering or engaging children in conflict with the law to serve in social welfare institutions, such as orphanages, homes for the elderly, or disabled individuals. Through direct interaction and hands-on involvement, it is hoped that young offenders will be impacted in their cognitive, affective, and psychomotor aspects and become better individuals who are less likely to repeat criminal behaviour.

When analysed through the perspective of Al-Shatibi's *maqashid al-syariah*, the purpose of community service punishment can be classified within the *dharuriyat* (necessities) level in the *maqashid al-mukallaf* (purpose of obligation) because the child's growth and development take precedence. Criminal behaviour is often influenced by several factors such as economic disparities, family conflicts, peer influence, lack of educational access, and involvement in crime³⁵. Even within a family, improper upbringing can lead to deviant behaviour. In Islam, children hold a strategic position, and Allah commands parents to provide proper education, teach good morals, and protect them from unlawful actions. These messages are reflected in the Quran, in Surah Luqman, verses 13 to 15.³⁶

Implicitly, child protection is set out in Article 1, paragraph 2 of Law No. 35 of 2014 concerning Child Protection. Children receive protection supported by various parties. Article 20 states that the state, government, local governments, communities, families, parents, and guardians are obligated and responsible for implementing child protection.³⁷ Although children's rights are safeguarded and guaranteed, to maintain social stability, provisions allow children who commit certain crimes to be punished. However, punishment is considered a last resort (*ultimum remedium*) and is often alternative in nature.³⁸ Law functions as a tool of social control to create a harmonious, safe, and prosperous society.³⁹ In Islam, while protecting children's rights, it also emphasises the objectivity of law enforcement. There is a well-known

to Renewal of Islamic Family Law in Indonesia," *Journal of Islamic Law* 3, no. 1 (February 7, 2022): 54–73, <https://doi.org/10.24260/jil.v3i1.530>.

³⁵ Marcos Oliveira, "More Crime in Cities? On the Scaling Laws of Crime and the Inadequacy of per Capita Rankings—a Cross-Country Study," *Crime Science* 10, no. 1 (December 1, 2021): 27, <https://doi.org/10.1186/s40163-021-00155-8>.

³⁶ Khairul Muttaqin, "Pendidikan Akhlak Dalam Perspektif Qs. Luqman: 13-15," *Jurnal Ilmiah Edukatif* 5, no. 2 (2019): 153–61, <https://doi.org/10.37567/jie.v5i2.68>.

³⁷ Erma Hari Alijana et al., "Peran Masyarakat Dalam Undang-Undang Perlindungan Anak," *BHAKTI HUKUM Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (March 7, 2022), <https://openjournal.unpam.ac.id/index.php/JBH/article/view/17824>.

³⁸ H. Hamdan, Alwi Jaya, and Elvi Susanti Syam, "Batasan Perlindungan Hukum Bagi Anak yang Dapat Dipertanggungjawabkan sebagai Pelaku Kejahatan," *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 1 (May 26, 2021): 53–67, <https://doi.org/10.56087/aijih.v24i1.62>.

³⁹ Ashadi L. Diab, "Peranan Hukum Sebagai Social Control, Social Engineering Dan Social Welfare," *Al-'Adl* 7, no. 2 (July 1, 2014): 53–66, <https://doi.org/10.31332/aladl.v7i2.219>.



historical account where the Prophet Muhammad (PBUH) stated that if his own daughter committed theft, he would personally enforce the punishment. This account, related to his daughter Fatimah, demonstrates that enforcement of community service as punishment under the Juvenile Justice System Law can align with both law enforcement and the protection of children's rights within established boundaries.⁴⁰ These objectives can coexist as priorities, aligning with the *maqashid al-syariah* (objectives of syariah) within the category of *dharuriyat* (primary or essential goals).

The *dharuriyat* level must be assessed based on the elements it seeks to preserve. In the context of community service punishment, if chosen as the primary option, several *dharuriyat* elements can be well-maintained. Three key elements include: 1) Preservation of religion (*hifdzu ad-din*): By involving religious figures, the religious aspects of children can be better safeguarded. For example, in a case in Madura, a religious leader (kyai) was involved in guiding a child in conflict with the law, ensuring their religious obligations were fulfilled⁴¹. This approach can also apply to children of non-Islamic faiths by involving their respective religious leaders, reflecting the universal nature of this legal principle; 2) Preservation of life (*hifdzu an-nafs*): The well-being and safety of the child are better ensured outside prison. Life in prison can be harsh and prone to violence⁴², especially in facilities lacking adequate support, which is common in Indonesia. Such conditions endanger the survival of a child, particularly if they are housed near or with adult inmates. Community service punishment, therefore, provides a safer alternative for the child's well-being; 3) Preservation of intellect (*hifdzu al-'aql*): Community service punishment keeps children out of prison, allowing their psychological condition to remain healthier. A child's mental health is a critical need, and by avoiding incarceration, their intellectual and emotional development can be better preserved⁴³.

From the overall explanation above, the choice of imposing community service punishment should be a priority. Within the framework of *maqashid al-syariah* as outlined by Al-Shatibi, this falls under the *dharuriyat* level, fulfilling three out of the five essential elements: preserving religion (*hifdzu ad-din*), preserving life (*hifdzu an-nafs*), and preserving intellect (*hifdzu al-'aql*). Consequently, this alternative form of punishment proves beneficial for children (humans) in achieving the objectives of *mukallaf* according to syariah. Additionally, it aligns with the goals of criminal law, particularly in rehabilitating the behaviour of offenders, which is especially relevant

⁴⁰ Sofiatun Khasanah, "Kontekstualisasi Pemahaman dan Hukuman Gratifikasi dalam Perspektif Hadis," *Jurnal Riset Agama* 2, no. 2 (May 19, 2022): 204–20, <https://doi.org/10.15575/jra.v2i2.16959>.

⁴¹ Syaiful Bahri, "Peran Kyai Dalam Mediasi Untuk Penyelesaian Konflik Pasca Pernikahan Dini Di Madura," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 (June 1, 2020): 18, <https://doi.org/10.19105/al-manhaj.v2i1.3419>.

⁴² Andrew Day et al., "Interventions to Prevent Prison Violence: A Scoping Review of the Available Research Evidence," *The Prison Journal* 102, no. 6 (December 1, 2022): 745–69, <https://doi.org/10.1177/00328855221136201>.

⁴³ Lee A. Underwood and Aryssa Washington, "Mental Illness and Juvenile Offenders," *International Journal of Environmental Research and Public Health* 13, no. 2 (February 2016): 228, <https://doi.org/10.3390/ijerph13020228>; Syafruddin Syafruddin, "Settlement of Juvenile Offenders Based on Restorative Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 3 (December 26, 2022): 571–80, <https://doi.org/10.29303/ius.v10i3.1018>.



for children in conflict with the law. By looking at the analysis of al Shatibi's *maqhasid syariah*, it can be drawn to the core of the large line that the punishment of service to society for a conflicted child by law is an urgent need and contains good benefits or *maslahah* for community society to ensure this complacency and justice.

Conclusion

The imposition of community service punishment reflects the essence of criminal law objectives, particularly aligning with the rehabilitative theory. This theory highlights the education and reform of the behaviour of child offenders in conflict with the law or juvenile delinquents, requiring them to engage actively in social service activities within the community. Although there is a slight dilemma due to potential disruption to their formal school education, both aspects still align with the educational goals for young offenders. Community service punishment is classified as a principal penalty, as stipulated in Article 71(1)(8)(2), which refers to community service, with the duration further specified in Article 76(3) to be no less than 7 hours and no more than 120 hours. From the perspective of law enforcement implementing the law and the rights of children in conflict with the law, community service punishment, as viewed through the lens of Al-Shatibi's *maqashid al-syariah*, is positioned at the level of *maqashid ad-dharuriyat* (primary and urgent objectives).

It fulfils three of the five essential elements that must be maintained and preserved by Islamic law (*shari'ah*), namely *hifdzu ad-din* (preservation of religion), *hifdzu an-nafs* (preservation of life), and *hifdzu al-'aql* (preservation of intellect). So, it benefits society and children as juvenile delinquents while the children's human rights remain protected. However, this research identifies limitations regarding the real-world application, such as the availability of statistical data on the extent to which community service punishment is imposed in cases involving children in conflict with the law, the effectiveness of community service implementation in institutions collaborating with correctional facilities, and the willingness or refusal of formal or informal institutions to participate in rehabilitating these children. The extent of the application and the positive change in the children imposed with the punishment are not yet supported by sufficient and quantitative data. Therefore, as mentioned in this conclusion, future research focusing on other aspects of community service punishment in criminal law would be highly encouraged.

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