

## **Juvenile Criminal Responsibility in Al-Mughni: A Hanbali Perspective on Graduated Liability**

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### **Abstract**

*This study examines the basis and gradation of juvenile criminal responsibility in Islamic criminal law through Ibn Qudamah's Al-Mughni, particularly in relation to the tension between child protection and accountability for serious offenses. Using normative legal research, the study employs statutory and conceptual approaches to conduct a doctrinal and textual analysis of Al-Mughni, the Qur'an and Hadith, the Convention on the Rights of the Child, and Indonesia's Juvenile Criminal Justice System Law, with particular attention to qisas, hadd for theft, and diyat within the aqilah mechanism. The findings demonstrate that criminal responsibility in Al-Mughni is determined not merely by the prohibited act or chronological age, but by legal capacity (ahliyyah), discernment (tamyiz), and maturity. Children lacking full legal capacity are exempt from qisas and hadd, while their conduct may generate compensatory consequences through diyat and educative responses such as ta'dib for those possessing discernment. The novelty of this study lies in identifying a doctrinal model of graduated juvenile responsibility in Al-Mughni that separates punitive liability from compensatory responsibility and calibrates legal consequences according to developmental capacity. This framework provides a conceptual bridge between classical Hanbali jurisprudence and contemporary child-centred justice by integrating child protection, proportionality, rehabilitation, restorative justice, and victim interests.*

**Keywords:** Al-Mughni; Juvenile Criminal Law; Religious Understanding

## **1. INTRODUCTION**

Children are individuals who are not yet mature physically, mentally, and especially socially.<sup>1</sup> Because children are human beings, respecting children's human rights is tantamount to respecting human rights. Unfortunately, the facts still show that children are among the groups most vulnerable to violence. Every child has human rights, just as adults do, yet few people think about and are willing to take concrete steps to protect children's rights.

Children are part of their families and are also a trust and a gift from God Almighty. They must always be protected and have their inherent dignity, honor, and rights as human beings. In addition, children are an inseparable part of human survival and the continuity of a nation and state.<sup>2</sup>

However, in reality, various concerning things threaten children, interfering with their physical and psychological growth. It is common to see the dark portrait of children's lives in media reports, such as inadequate education, parental neglect, involvement in various types of work that negatively impact their physical and mental health, and malnutrition. In many cases, children also become victims of violence and sexual exploitation. Apart from becoming

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<sup>1</sup> D. Afriyanti, J. Fahira, and A. Prasetyo, "Analysis of Domestic Violence under Islamic Criminal Law (Jināyah): A Qiṣāṣ and Ta'zīr Perspective," *Syariat: Akhwal Syaksyah, Jinayah, Siyash and Muamalah* 1, no. 2 (2024): 115–123, <https://doi.org/10.35335/wr1y8v96>.

<sup>2</sup> Rika Apriani Minggulina Damanik, "Hukum Pertanggungjawaban Pidana Anak Dalam Batasan Usia: Analisis Hukum Pidana Islam Dan Undang-Undang Nomor 11 Tahun 2012," *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam* 1, no. 3 (2020): 274–302, <https://doi.org/10.58836/al-qanun.v1i3.7536>.

victims, there have also been reports that children commit the crimes that adults usually commit, such as drug abuse, fraud, theft, robbery, fighting, murder, sexual harassment, and rape, which can bring them into conflict with the law or lead to their arrest. There is an increase in the involvement of children in criminal activities and detention situations in various regions of the world. There is a need for a method that can properly handle children who become perpetrators of crime as an alternative solution. This is explained in *Al-Mughni*, which has a stricter approach to juvenile crimes: children approaching puberty can be subject to *ta'zir* punishment that approaches *qisas* punishment.

Islam states that any act that results in harm to another person or society can be considered a crime, whether it involves harming bodily parts, taking one's life, damaging property, hurting one's feelings, or threatening one's security. The violation of Islamic religious commands and prohibitions is also categorized as a crime, whether the violation results in worldly or eternal punishment. According to Islamic law, children who commit crimes are not subject to criminal liability, whether *hudud*, *qisas/diyat*, or *ta'zir* punishments. However, if a child approaching puberty (*muraḥiq*) commits a serious crime, it is permissible to impose a more severe *ta'zir* punishment, although it must be according to the judge's discretion and the child's level of understanding of the consequences of their actions. This aims to provide them with education and create a deterrent effect, which are hoped to improve their well-being in the long run.

The problem often lies in the tension between formal and substantive equality in addressing contemporary cases involving children in conflict with the law. One of the contemporary challenges in juvenile justice concerns the limitations and unresolved dimensions of existing approaches to juvenile offending. These approaches are generally based on the view that children are inherently vulnerable and should therefore not be punished or treated in the same manner as adults within the legal process. However, this approach may create a gap between formal and substantive justice, particularly in cases involving children who commit grave offenses. In such circumstances, the exclusive emphasis on rehabilitation may be perceived as insufficient to address the seriousness of the offense and the interests of victims and society. This issue raises the question of whether a more balanced approach can be developed by considering Islamic jurisprudence, particularly the theory of *al-Mughni*, which provides for certain conditions and considerations in determining an appropriate legal response to serious offenses committed by juveniles.

One country that has implemented harsh penalties for child criminals is Iran. At least four child offenders were executed in 2020, and to date, more than 85 people have reportedly been sentenced to death.<sup>3</sup> Apart from Iran, China, Pakistan, Saudi Arabia, the USA, and Yemen also implement the death penalty on children. In contrast to the *Hanbali* school of thought, the Iranian legal system is strongly influenced by the *Ja'fari* school of thought (Shia Imamiyah), which adheres to *hudud* and *qisas* laws in serious crimes. Children who are considered psychologically mature enough to understand the crimes they have committed can be punished like adults, including the death penalty.<sup>4</sup>

<sup>3</sup> United Nations Human Rights, "Iran: UN Experts Urge Iran to Halt Execution of Child Offender," OHCHR, 2021.

<sup>4</sup> N. Aghtaie and J. Staines, "Child Execution in Iran: Furthering Our Understanding of Child Execution as a Form of Structural Violence," *Critical Criminology* 30, no. 2 (2022): 387–402, <https://doi.org/10.1007/s10612-022-09605-4>.

The Iranian government implements *ta'zir* as a punishment for drug-related crimes. Even for juveniles, the most severe criminal punishment is the death penalty, a decision that is left to the discretion of the court. Iran implemented this regulation due to a worrying trend of drug use among its youth, including opium, heroin, and methamphetamine. A study published in the Iranian Journal of Psychiatry revealed that in recent years, there has been an increase in the use of heroin, crystal methamphetamine, and ecstasy by Iranian youth, with a figure of 8.4% among high school children aged 15-17 years. Worldwide, it was estimated that 16,080 children were detained in 2023.<sup>5</sup>

Previous research related to this study was written by Muttaqin (2016), a study comparing the concepts of the age of a child and criminal liability under Indonesian positive criminal law (Law No. 3 of 1997 on Juvenile Justice) and Islamic criminal law in general, without reference to any specific Islamic school of thought (*madhhab*).<sup>6</sup> The conclusion affirms that under Islamic law, a child who has not reached puberty (*baligh*) is typically defined as under 15 or 18 years of age, depending on scholarly opinion. They are not subject to principal criminal penalties but rather to *ta'zir* punishments intended for educational purposes. Conversely, Indonesian positive law recognizes age thresholds of 8, 12, and 18 years, each carrying distinct legal consequences. The distinction between this study and the previous research lies in their scope: the present study offers a general comparison between Indonesian positive law and Islamic jurisprudence broadly (across various schools of thought), whereas the current research conducts a specific, in-depth analysis of the *Hanbali* school's perspective, which draws on Ibn Qudamah's *Al-Mughni* and covers three technical aspects (*qisas*, *hadd* for theft, and the *diyat/aqilah* mechanism) that are not addressed by Muttaqin.<sup>7</sup>

Another previous study was conducted by Damanik (2020).<sup>8</sup> It analyzes the age threshold for juvenile criminal liability under Law No. 11 of 2012 on the Juvenile Criminal Justice System, which sets a minimum age of 12 and a maximum of 18. It provides a comparison with the perspective of Islamic criminal law, which stipulates that age alone is insufficient grounds for imposing punishment, requiring an assessment of the child's cognitive and mental-spiritual maturity. This information is already known. The distinction and limitation of Damanik's research is important due to the fact that his work stops at a normative comparison between the Law on the Juvenile Criminal Justice System and the general principles of Islamic criminal law. Meanwhile, the current study goes further by proposing a conceptual solution derived from *Al-Mughni*, which is specifically the category of *muraḥiq* (a child approaching puberty), who may be subject to *ta'zir* penalties akin to *qisas* if they comprehend the consequences of their actions. This author's research filled the gap as an alternative to address the limitations of the Juvenile Criminal Justice System Law's rigid age-based approach, while also linking the

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<sup>5</sup> Vanja Bajović, "Lowering the Age of Criminal Responsibility: A Different View on the Eternal Dilemma," *Crimen (Beograd)* 15, no. 1 (2024): 82–105, <https://doi.org/10.5937/crimen2401079b>.

<sup>6</sup> Imam Muttaqin, "Batas Usia Anak Dan Pertanggungjawaban Pidananya Menurut Hukum Pidana Positif Dan Hukum Pidana Islam," *Asy-Syari'ah: Jurnal Hukum Islam* 2, no. 1 (2016): 51–84, <https://doi.org/10.55210/assyariah.v2i1.239>.

<sup>7</sup> S. Aminah and M. A. Kurniawan, "Pendekatan Normatif Dalam Penelitian Hukum Pidana Di Indonesia," *Jurnal Ius Constituendum* 7, no. 2 (2022): 145–158, <https://doi.org/10.26623/jic.v7i2.4567>.

<sup>8</sup> Damanik, "Hukum Pertanggungjawaban Pidana Anak Dalam Batasan Usia: Analisis Hukum Pidana Islam Dan Undang-Undang Nomor 11 Tahun 2012."

issue to contemporary concerns, such as the execution of minors in Iran and global trends in juvenile crime.

Another previous study by Fatmawati (2023) focuses on a specific homicide case committed by a youth who had just turned 18, comparing criminal liability under Article 338 of the Indonesian Criminal Code with liability under Islamic criminal law.<sup>9</sup> The findings indicate that at the age of 18, both the Criminal Code and Islamic criminal law impose full criminal liability, as the individual is deemed to have reached the age of intellectual maturity. The distinction and limitation of this research are important, as the difference between the previous study and the current one lies in the approach: Fatmawati examines the crime of homicide on a case-by-case basis through the lens of general *fiqh jinayah* (Islamic criminal jurisprudence) without reference to a specific *madhhab* (school of thought). Meanwhile, the current study provides a textual analysis of *qisas* (retribution) for minors from the *Hanbali* school's perspective as outlined in *Al-Mughni*. This research also addresses complex scenarios (such as two minors each killing a parent) and situates the issue within the framework of global juvenile criminal law (referencing the Convention on the Rights of the Child, variations in minimum age requirements across nations, and the case of Iran).<sup>10</sup> This research filled the limitation of Fatmawati's research with textual identification of the relevant discussions in *Al-Mughni* concerning the criminal responsibility of children, specifically in the context of *qisas* for murder, *hadd* for theft, and the *diyat* or *aqilah* mechanism.

Regarding the research gap, the authors find that previous research articles have generally addressed juvenile criminal responsibility through general Islamic criminal law or Indonesian positive law, whereas the present article specifically examines the internal legal reasoning of *Al-Mughni*. This research is conducted to find theoretical or doctrinal insight possible through a more specific inquiry. Based on the above reality, *Al-Mughni* has a stricter approach, which declares that children approaching puberty can be subject to *ta'zir* punishment that approaches *qisas* punishment if they have understood the consequences of their actions. This article aims to describe the development of global juvenile criminal law and the criminalization of children from *Al-Mughni*'s perspective.

## 2. METHOD

This research is legal research, which is classified as normative legal research. It employs a normative legal research method, which examines law as a system of norms. This research uses the statute approach to examine relevant legal instruments, such as the Convention on the Rights of the Child (CRC), and national juvenile justice regulations, such as Indonesia's Law Number 11 of 2012 on the Juvenile Criminal Justice System, which are used as comparative references to contemporary positive law. Second, the conceptual approach is employed to explore doctrines and legal concepts within classical Islamic jurisprudence as elaborated in *Al-*

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<sup>9</sup> Deva Fatmawati, "Pertanggungjawaban Pidana Anak Sebagai Pelaku Pembunuhan Dalam Perspektif Hukum Pidana Islam," *Jurnal Al-Jina'i Al-Islami* 1, no. 1 (2023): 43–52, <https://doi.org/10.15575/jaa.v1i1.408>.

<sup>10</sup> Mia Amiati, Taufik Rachman, and R.B. Muhammad Zainal Abidin, "Urgency of Falsum in Indonesian Criminal Justice System as Basis for Revision; An Islamic Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024): 303–328, <https://doi.org/10.19105/al-lhkam.v19i2.13141>.

*Mughni* by Ibn Qudamah al-Maqdisi within the Hanbali school of thought. This is to identify points of convergence and divergence between the normative systems.<sup>11</sup>

This research was conducted using secondary data and library materials as the main data source, which were then classified into three categories of legal materials. Primary legal materials include the Qur'an; the Hadith of the Prophet Muhammad (peace be upon him); the text of *Al-Mughni* by Ibn Qudamah, especially *qisas* in Juz XII, *hadd* for theft in Juz IX, and *diyah/aqilah* in Juz XII; the Convention on the Rights of the Child; and Law Number 11 of 2012 on the Juvenile Criminal Justice System. Secondary legal materials consist of books, journal articles, and prior research findings relevant to juvenile criminal law from both Islamic and positive law perspectives, as referenced throughout this article. Tertiary legal materials include legal dictionaries and encyclopedias of Islamic criminal law, which were used to clarify technical terminology.<sup>12</sup> The collected data were analyzed using a qualitative method through legal capacity, maturity, criminal responsibility, sanction, victim compensation, and relevance to contemporary juvenile justice, combined with deductive and comparative reasoning. The authors conducted textual identification of the relevant discussions in *Al-Mughni* concerning the criminal responsibility of children, specifically in the context of *qisas* for murder, *hadd* for theft, and the *diyat* mechanism within the *aqilah* system.<sup>13</sup>

### 3. RESULTS AND DISCUSSION

#### 3.1 Global Development of Juvenile Criminal Law

Child criminal laws in the world are based on the principles contained in the Convention on the Rights of the Child (CRC). It requires every participating country to guarantee the fulfillment of children's rights to live, grow, develop, and participate optimally in accordance with human dignity and honor, and to receive protection from all forms of violence and discrimination.<sup>14</sup>

One of the important issues in global juvenile criminal law is the determination of the minimum age of criminal responsibility. This age varies from country to country, depending on the respective legal systems, traditions, and socio-cultural considerations. Comparing various countries, it can be seen that the minimum age of criminal responsibility for children ranges from 7 to 18 years. Some countries, such as Ireland and Pakistan, set the age at 7, while Belgium and Luxembourg set the age at 18. Countries such as Indonesia, the Netherlands, Greece, and Turkey set the age at 12, while Iran even sets the age at 9 for girls and 15 for boys, referring to the concept of *baligh* in the Ja'fari school of thought.<sup>15</sup>

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<sup>11</sup> Sanja Čopić, "Snižavanje Starosne Granice Krivične Odgovornosti – Večita Dilema?," *Crimen (Beograd)* 14, no. 3 (2023): 235–247, <https://doi.org/10.5937/crimen2303235C>.

<sup>12</sup> M. R. Duncan, "Too Young for the System: What the United States Can Learn from International Law on the Minimum Age of Criminal Responsibility," *Indiana International & Comparative Law Review* 32 (2022): 601–630, <https://doi.org/10.18060/26854>.

<sup>13</sup> Abdul Basit, Ridwan Bahrudin, and Muhamad Noval Arahman, "Perlindungan Anak Dari Grooming Seksual Dalam Perspektif Hukum Islam Dan Hukum Positif: Kajian Yuridis-Normatif Komparatif," *Al Mikraj: Jurnal Studi Islam Dan Humaniora* 6, no. 1 (2025): 1112–1123, <https://doi.org/10.37680/almikraj.v6i1.8478>.

<sup>14</sup> T. Efrillia, L. Y. Krisnalita, and R. E. S. Sulasih, "Pertanggungjawaban Pidana Anak Dalam Tindak Pidana Pembunuhan Berencana: Analisis Yuridis Putusan Nomor 3/Pid.Sus-Anak/2022/PN.Bnt.," *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 7, no. 1 (2024), <https://doi.org/10.37893/krisnalaw.v7i1.1035>.

<sup>15</sup> Nurini Aprilianda, Ansori Ansori, and Febrianika Maharani, "Excusing Child Offenders: A Victim Justice Perspective," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 433–452, <https://doi.org/10.22219/ljih.v32i2.33937>.

Based on this comparison, the age of 18 can be said to have become a kind of international customary law as the highest age for criminal responsibility of children. This determination aligns with the recommendation of the UN Committee on the Rights of the Child, which encourages all member states not to set the age limit higher than 18.

The international legal basis that regulates comprehensive child protection is the Convention on the Rights of the Child, which was ratified by the UN General Assembly on November 20, 1989. This convention contains basic principles of child protection, including the right to special care and assistance, the right to grow up in a loving environment, as well as the right to be raised in a spirit of peace, respect, tolerance, freedom and solidarity.<sup>16</sup>

The principles underlying legal protection for children in these international instruments include: non-discrimination, the best interests of the child, respect for the child's views, as well as the right to life, survival, and development. These four principles form a universal foundation that must be accommodated by every national legal system, including legal systems based on religious values.<sup>17</sup>

### 3.2 Criminal Law on Children from an Islamic Perspective

Islamic criminal law (*al-fiqh al-jina'i*) divides crimes into three main categories based on the type of sanctions imposed. First, *hudud* crimes, namely crimes for which sanctions have been determined precisely and firmly by the texts of the Qur'an and Hadith.<sup>18</sup> This includes *zina* (adultery), *qadzaf* (accusing of adultery), *sariqah* (theft), *hirabah* (robbery), *riddah* (apostasy), and *khamr* (drinking alcohol). Second, *qisas/diyat* crimes, namely crimes against life and limbs for which sanctions are in the form of retribution (*qisas*) or financial fines (*diyat*). Third, *ta'zir* crimes, namely crimes for which sanctions are left to the discretion of the judge (*qadi*) by considering the interests of the perpetrator and society.<sup>19</sup> This is a theoretical and doctrinal bridge for *al-Mughni* because, regarding the criminal liability of children, Islamic law has a very fundamental principle, namely the concept of *taklif* (legal burden). An individual can only be subject to legal burden (*mukallaf*) if they have fulfilled the following requirements: having a sound mind (*'aqil*) and having reached adulthood (*baligh*). This is very important, or the core study of *Al-Mughni*.<sup>20</sup>

Based on this *Al Mughni* principle, Islamic jurisprudence scholars generally agree that children who have not reached puberty cannot be subject to *hudud* or *qisas* punishments. This is based on the hadith of the Prophet Muhammad (peace be upon him), which states that the pen (*taklif*) is lifted from three groups: a sleeping person until he wakes up, a child until he reaches puberty,

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<sup>16</sup> F. Farham, A. M. Erfandi, and M. Billah, "Analisis Sanksi Pembunuhan Dengan Tersangka Anak Di Bawah Umur Dalam Perspektif Fikih Jinayat," *Journal of Islamic Constitutional Law* 1, no. 1 (2024).

<sup>17</sup> Asea Gašparić, "The Minimum Age of Criminal Responsibility Across Central Eastern European Countries," *Revija Za Kriminologiju i Krivično Pravo* 62, no. 3 (2024): 45–67, <https://doi.org/10.47152/rkkp.62.3.3>.

<sup>18</sup> Fatmawati, "Pertanggungjawaban Pidana Anak Sebagai Pelaku Pembunuhan Dalam Perspektif Hukum Pidana Islam."

<sup>19</sup> Julisa Aprilia Kaluku et al., "Juvenile Criminal Responsibility in Muslim-Majority States: Between Sharia, State Law, and Restorative Justice," *De Jure: Jurnal Hukum Dan Syar'iah* 18, no. 1 (2026): 191–210, <https://doi.org/10.18860/j-fsh.v18i1.32848>.

<sup>20</sup> Farkhani Farkhani et al., "Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 215–232, <https://doi.org/10.24090/mnh.v17i2.7897>.

and an insane person until he recovers (Narrated by Abu Dawud and Tirmidhi). However, this lack of full criminal responsibility does not mean that children are free from all legal consequences for their actions.<sup>21</sup>

There is a special category recognized in Islamic jurisprudence, namely "*muraḥiq*," which refers to children approaching puberty but who have not yet fully entered adulthood. For *muraḥiq* who commit serious crimes, scholars permit the application of more severe *ta'zir* punishments, depending on the judge's considerations and the child's level of understanding of their actions' consequences.<sup>22</sup> This demonstrates that Islamic law accommodates gradations of responsibility based on the child's level of psychological and moral maturity, in line with internationally recognized principles of child protection.<sup>23</sup>

### 3.3 Juvenile Criminal Law from *Al-Mughni's* Perspective by Ibnu Qudamah

The *Al-Mughni* Book is an encyclopedia of the Hanbali school of jurisprudence compiled by Ibn Qudamah al-Maqdisi (541-620 Hijra). This book is known as one of the most comprehensive references to Islamic jurisprudence, which not only explains the opinions of the Hanbali school of thought but also scientifically discusses and compares the opinions of various other schools of thought.<sup>24</sup> In the context of juvenile criminal law, *Al-Mughni* contains very relevant discussions covering three main aspects: the law of *qisas* for children who commit murder, the law of *hadd* for children who steal, and the *diyat* mechanism in relation to young children as part of *aqilah*.<sup>25</sup>

This principle of *al Mughni* asserts that a person can only be held criminally liable if two fundamental conditions are met: a child must have already reached the age of puberty (or *baligh*) and possess sound intellect (or *aql*). In other words, a child who has not yet reached puberty does not fall into the category of a legally accountable person or *mukallaf*, and consequently, neither *hudud* nor *qisas* punishments can be imposed upon them. This position is affirmed by the majority of scholars, who agree that a child's status before puberty is merely that of a potential *mukallaf*. In this case, potential means that *hadd* is a part of it, but they are not fully responsible for their actions. Ibn Qudāmah explicitly states in *al-Mughnī: Lā ḥadda 'ala ṣ-ṣabiyy* (there is no *hadd* punishment for a young child), because the conditions for legal accountability or *taklīf* have not yet been met. This view is further reinforced by a *hadith* of the Prophet (PBUH) narrated by Abū Dāwūd: The *diyat* blood money for the killing committed by a young child is borne by the *āqilah* (the family group responsible for paying compensation).” This provision demonstrates that even if a child commits a serious crime such as homicide, Islam does not impose direct punishment upon the child; instead, it shifts the responsibility to

<sup>21</sup> D. Husak, "The Role of Mens Rea in Mediating the Scope of Prohibitions," *Criminal Law and Philosophy* 18 (2023), <https://doi.org/10.1007/s11572-023-09684-6>.

<sup>22</sup> Suci Dini Lubis and Syaddan Dintara Lubis, "Regulations on Diversion in the Settlement of Children in Conflict with the Law: A Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Adalah* 9, no. 2 (2024): 208–223, <https://doi.org/10.30863/ajmpi.v9i2.7021>.

<sup>23</sup> M. Hajiyeva, "Protecting Children in Criminal Justice: A Comparative Analysis of Legal Frameworks and Best Practices," *Amazonia Investiga* 13, no. 82 (2024): 264–275, <https://doi.org/10.34069/AI/2024.82.10.21>.

<sup>24</sup> Marlina and Mahmud Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh," *Cogent Social Sciences* 10, no. 1 (2024), <https://doi.org/10.1080/23311886.2024.2347410>.

<sup>25</sup> Namira Khaulani et al., "Meninjau Nilai Keadilan Yang Terkandung Dalam Jarimah Qishas Dan Diyat," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023), <https://doi.org/10.5281/zenodo.10262028>.

the guardian or family through the mechanism of *diyat*, and this is an essence of *al Mughni*. *Apart from that, exemption from retributive punishment does not necessarily eliminate all legal consequences of the child's conduct.*

Ibn Qudamah, in *Al-Mughni*, Volume XII, pages 88-90, asserts that there is no difference of opinion among scholars (*ijma'*) that children and insane people are not subject to *qisas* punishment if they both commit the crime of murder. This provision also applies to anyone who loses their mind due to sleep, epilepsy, and the like.

The legal basis for this provision is the hadith of Rasulullah (PBUH) narrated by Abu Dawud and Tirmidhi, which reads: Ali ibn Abi Talib reported: The Messenger of Allah, peace and blessings be upon him, said, “*The pen is lifted from three people: a sleeping person until he awakens, a child until he becomes an adult, and an insane person until he regains his sanity.*” This hadith is the principal basis that children who have not reached puberty cannot be held fully criminally responsible for their actions.<sup>26</sup>

Furthermore, Ibn Qudamah explained that *qisas* is a very severe punishment. Therefore, this punishment cannot be imposed on small children who have not yet reached puberty and people who have lost their minds, as both of them are also exempt from *hadd* punishment. This is because neither of them had a valid will (*iradah shahihah*), so their actions were equated with the status of *khatha'* (accidental) murder. The legal consequence is that the perpetrator is not subject to *qisas*, but the obligation of *diyat* still applies and is borne by the *aqilah* (family of the perpetrator).

Furthermore, *Al-Mughni* also discussed the issue of proving age in criminal disputes. If there is a difference of opinion between the perpetrator of *jinayat* and the guardian of *qisas* regarding the perpetrator's age at the time of the act, the perpetrator's sworn statement will be used as the benchmark, provided the circumstances support the confession. This is based on the principle that a person is presumed not to have reached puberty and is free from *qisas* charges until evidence to the contrary is presented.<sup>27</sup>

Ibn Qudamah also includes a more complex case in *Juz XII*, page 102, namely the case of two children who each killed a different parent (one killed the father, the other killed the mother). In this case, if both parents were still married at the time of the first murder, then the law of *qisas* applies only to the perpetrator of the second murder. However, if both parents are no longer married, then each child has the right to demand *qisas* from his/her sibling. If one of them forgives and converts to *diyat*, then both parties take into account the value of the *diyat*, and the excess *diyat* becomes the right of the other party. This case shows that even though a child is not subject to *qisas* as a perpetrator, he can still be a *qisas* guardian and has full rights in the criminal resolution mechanism.<sup>28</sup>

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<sup>26</sup> Munawaroh Munawaroh, Muhammad Rizal, and Zuraidah Zuraidah, “Aplikasi Hukum Pidana Islam Dalam Penanggulangan Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak Di Desa Menanga Tengah Kec. Semendawai Barat Kab. OKU Timur,” *Ta'zir* 8, no. 1 (2024), <https://doi.org/10.19109/ta'zir.v8i1.22705>.

<sup>27</sup> Muhammad Nafidul Mafakhir, “Pertanggungjawaban Pidana Anak Di Bawah Umur Dalam Kasus Pencurian (Perbandingan Hukum Islam Dan Hukum Positif),” *Al-Mazaahib: Jurnal Perbandingan Hukum* 4, no. 1 (2022): 103–146, <https://doi.org/10.14421/al-mazaahib.v4i1.2849>.

<sup>28</sup> Muttaqin, “Batas Usia Anak Dan Pertanggungjawaban Pidananya Menurut Hukum Pidana Positif Dan Hukum Pidana Islam.”

From the perspective of sharia, criminal responsibility is established based on two fundamental elements: the individual's capacity to understand and be aware of the criminal act, and their voluntary intention to commit it. Speaking of punishment for crimes committed by children, it is based on the developmental phase they are currently on, starting from the day of birth, to a phase where they fully understand and are aware of the consequences of their actions, and their intention in committing the act. Criminal responsibility is determined by the stage of the criminal act at which the offender is involved when the crime is committed. If someone is in a phase where he could not understand his actions (*ghayr mumayyiz*), he will not have any responsibility for whatever he does. However, if someone commits a crime when he fully understands it (*mumayyiz*), he will be punished with *ta'dib* (a lesson). Also, if someone commits a crime when he is already at the peak level of understanding and maturity (*rusyd*), he is fully responsible for the crime he committed.

Based on *al-Mughni*, the fundamental criterion for criminal responsibility is the possession of intellect ('*aql*'). Accordingly, a person who possesses the capacity to understand and distinguish right from wrong may be held responsible for the criminal acts they commit, regardless of their status as a master or servant, Muslim or non-Muslim. However, this principle must be considered alongside specific legal conditions applicable to different categories of persons, particularly *Ghayr mumayyiz*. A *mumayyiz* in this case will only be punished with *ta'dib*, as it is the only suitable punishment for him. When a child reaches puberty, their intellect and maturity are complete. The natural signs of puberty are the occurrence of wet dreams in males and menstruation in females; pregnancy may also serve as a clear indication of sexual maturity. If the child shows no natural signs, then maturity will be determined by age, which is 15 years old for males and females, based on the opinion of the majority of the scholars. Meanwhile, it is 18 years old for men and 17 years old for women. When a mature person commits a crime, he is fully responsible for it, regardless of whether it involves *hudud*, *qisas*, or *ta'zir*.<sup>29</sup>

### 3.3.1 Criminal Law for Children Who Commit Theft

The discussion of the law on theft involving children in *Al-Mughni* Juz IX has raised significant debate among scholars. Abu Yusuf of the Hanafi school of thought thinks that the punishment of amputating hands cannot be imposed in cases of theft involving children, just as a similar punishment cannot be imposed in cases of theft against a slave, whether adult or child.

However, Ibn Qudamah presented a more detailed opinion by differentiating the context of theft. According to him, anyone who steals another person's property whose value has reached the *nisab* (minimum limit) can, in principle, be punished by having their hand amputated, as is the case with animal theft. The difference between stealing from a free person and a slave lies in the inherent value: a free person cannot be classified as property with a sale value, while a slave can be valued in money and bought and sold.<sup>30</sup>

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<sup>29</sup> Jerry Pratama, "Restorative Justice in Resolving Criminal Cases of Child Abuse From an Islamic Legal Perspective," *Al-Hurriyah: Jurnal Hukum Islam* 8, no. 2 (2023): 124–133, <https://doi.org/10.30983/al-hurriyah.v8i2.7307>.

<sup>30</sup> Yolisha Singh, "Old Enough to Offend but Not to Buy a Hamster: The Argument for Raising the Minimum Age of Criminal Responsibility," *Psychiatry, Psychology, and Law* 30, no. 1 (2023): 51–67, <https://doi.org/10.1080/13218719.2022.2134229>.

In the context of a child as a perpetrator of theft, the applicable principle is the same as the general principle of Islamic criminal law: a child who has not reached puberty is not subject to the *hadd* punishment of amputation of the hand, because the main requirement for the implementation of *hadd* is *taklif* (maturity and reason). However, *Al-Mughni* presents two opinions concerning the theft of property belonging to an adult who is asleep or mentally incapacitated. According to the first opinion, the thief is not subject to the *hadd* punishment of hand amputation, because the stolen property does not meet the relevant legal requirements for the application of *hadd*. The second opinion, however, holds that hand amputation remains applicable because the stolen property possesses recognized economic value.<sup>31</sup>

From this debate, it can be concluded that in *Al-Mughni*, Ibn Qudamah prioritizes an approach that considers the legal capacity (*ahliyyah*) of the perpetrator, not solely the act itself. Children who have not yet reached puberty are considered to lack the full *ahliyyah al-ada'* (legal capacity) and therefore cannot be subject to permanent and irreversible *hadd* sanctions.<sup>32</sup>

If a child committed a theft directly or indirectly, will he receive the same punishment? If a child was involved directly in a theft and the loot is on *nishab* (minimum for *jinayat*), the *fuqaha* such as Maliki and Shafi'i opine that if it is a deliberate theft, then the adult culprit will be punished with *jinayat*, while the kid will need to have his hand cut off as a punishment if the child is fully *mumayiz*. According to *al-Mughni*, the child will not be punished with *jinayat*, but will need to give back the stolen goods instead and be punished with *ta'zir* as a lesson, and this only happens if the child is *Ghayr mumayiz*.

### 3.3.2 The Mechanism of *Diyat* and the Position of Children in the *Aqilah* System

The discussion of *diyat* in *Al-Mughni* Juz XII, pages 419-420, provides a very interesting perspective regarding the position of young children in the Islamic collective accountability mechanism. Ibn Qudamah quoted the view of Abu Al-Qasim al-Kharqi, who stated that poor people, women, small children, and people of unsound mind who are in the ranks of the *aqilah* are not subject to the obligation to pay *diyat*.

Ibn Qudamah further quoted Imam Ibn Al-Mundhir, who stated that the scholars have unanimously agreed that women and children who are included in the ranks of the *aqilah* are not required to pay *diyat*. This agreement is also supported by Imam Malik, Imam Ash-Shafi'i, and the scholars of *ra'yi*. The only difference of opinion arises from some narrations from Imam Malik and Imam Abu Hanifah, as well as one narration from Imam Ahmad, who argues that even poor *aqilah* are still required to pay *diyat*.<sup>33</sup>

Doctrinal concepts are essential to understanding Ibn Qudamah's position. These doctrines constitute the essence of *al-Mughni* and provide the foundation for understanding its legal

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<sup>31</sup> I Ketut Arjuna Satya Prema, Masruchin Ruba'i, and Nurini Aprilianda, "Pembatasan Usia Pertanggungjawaban Pidana Anak Dalam Peraturan Perundang-Undangan," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2019): 232–241, <https://doi.org/10.17977/um019v4i2p232-241>.

<sup>32</sup> Hafizh S. Ismallah, "Perlindungan Terhadap Korban Dalam Situasi Pembunuhan Dan Penganiayaan Menurut Hukum Islam Serta Kaitannya Dengan Keadilan Restoratif," *SAMLON: Samudra Law Journal* 1, no. 1 (2024): 12–26, <https://doi.org/10.62952/samlon.v1i1.21>.

<sup>33</sup> Abdul Rohman, Eni Zulaiha, and Wildan Taufiq, "Analisis Tafsir Maqāṣidī Muḥammad Ṭāhir Bin 'Āsyūr Pada Ayat Qiṣās," *Al-Dzikra: Jurnal Studi Ilmu Al-Qur'an Dan Al-Hadits* 17, no. 1 (2023): 1–22, <https://doi.org/10.24042/al-dzikra.v17i1.13195>.

framework. In particular, distinguishing between criminal responsibility—especially in cases involving children—educational or corrective measures for offenders, and financial liability toward victims is crucial to understanding Ibn Qudamah’s legal reasoning and the broader legal concepts presented in *al-Mughni*. Ibn Qudamah then explained the reasons underlying the majority opinion: payment of *diyat* by *aqilah* is essentially *ta’awun* (mutual help and assistance) or collective compensation, rather than punishment, and this *diyat* by *aqilah* is actually an act of victim restoration. Therefore, this obligation cannot be imposed on people who are poor, just as zakat is not required for poor people. *Diyat* is a burden carried by the perpetrator’s family as an effort to lighten the perpetrator’s obligations. Thus, this burden should not be borne by other parties who do not commit *jinayat*. Furthermore, Ibn Qudamah emphasized that children, the insane, and women deserve help, and therefore must not be burdened. This principle reflects the spirit of protection for vulnerable groups in the Islamic legal system, a value highly relevant to modern human rights principles, and this responsibility is distributed amongst the perpetrator’s family in case he or she is poor.

Humans must be protected from any harm. Anyone who harms someone by causing death, disability, or injury will be punished. If the harm was intentional without any ambiguity (*syubhat*), Allah had fixed the type of punishment: “And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution” (Qur’an, Chapter *al-Ma’idah* [The Feast]: 45). The type of punishment stated in the verse is for crimes committed by adults with perfect intellect. However, what if children commit harm that causes disability? What punishment will be executed?<sup>34</sup>

According to Ibn Qudamah in *al-Mughni*, if the harm is unintentional, the family must pay *diyat* to the victim (*aqilah*). However, if the harm was intentional, there are opinions that if the harm was committed by a child intentionally but did not cause death or disability, it is considered semi-deliberate (*al-Qatl al Khata’*). Hence, the family is the one that needs to pay *diyat*. However, if the harm was unintentional, the perpetrator can be punished with *ta’dib* (lesson) as a form of restorative justice. According to the *az-Zahiri* school of thought, crimes that were committed by children are dismissed, as children are categorized into the group of people who will not be punished in Islam. Hence, they will not be imposed with any punishment for their wrongdoings.<sup>35</sup>

In cases of theft committed by children, a clear distinction should be drawn between the majority juristic position, divergent opinions from various schools of thought, and Ibn Qudamah’s own reasoning. The majority of jurists maintain that the *hadd* punishment for theft cannot be imposed on a child who has not attained full legal capacity, because the application of a fixed criminal sanction presupposes maturity and complete responsibility. Differences among the schools of thought primarily concern the form of non-*hadd* response that may be

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<sup>34</sup> Maya Sri Novita, “Pertanggungjawaban Hukum Terhadap Tindak Pidana Kekerasan Terhadap Anak Yang Dilakukan Oleh Orang Tua (Toxic Parents) Berdasarkan Hukum Positif Di Indonesia,” *Jurnal Mitra Indonesia : Jurnal Pendidikan, Sosial, Humaniora, Dan Kesehatan* 2, no. 3 (2023): 137–41.

<sup>35</sup> M. Yusuf and T. Rahardjo, “Teknik Analisis Bahan Hukum Dalam Penelitian Hukum Normatif,” *Jurnal Yudisial* 15, no. 2 (2022): 233–248, <https://doi.org/10.29123/jy.v15i2.874>.

applied to a child, particularly where the child has reached the stage of *mumayyiz*, namely, the capacity to distinguish between right and wrong.

Such a child may be subjected to an educative or disciplinary measure, but this must be distinguished conceptually from *hadd*: *ta'zir* refers to a discretionary sanction imposed outside the fixed punishments, whereas *ta'dib* emphasizes the educative and corrective function of that intervention. Ibn Qudamah's position is more specifically grounded in the absence of complete legal capacity (*ahliyyah*) before puberty. Therefore, the commission of the material act of theft alone does not justify the imposition of the *hadd* of amputation. His reasoning thus places legal maturity and capacity at the center of criminal responsibility, rather than the mere occurrence of the prohibited act.

Accordingly, in Ibn Qudamah's framework, a minor is exempt from the *hadd* punishment for theft, while a *mumayyiz* child may still be subject to an appropriate educative or discretionary response aimed at correction rather than retribution. This distinction is significant for contemporary juvenile justice because it reflects the principles of differentiated responsibility, proportionality, and rehabilitation based on the child's level of maturity.

### **3.4 The Relevance of *Al-Mughni's* Thoughts to the Contemporary Juvenile Justice System**

The phenomenon of crimes committed by children is becoming more alarming by the day. These criminal acts by children require very rigid handling from various parties and authorities. *Fiqh* has discussed the division of the age phases for children who commit crimes. Different age phases of delinquents will be given different verdicts of the sanction. Regarding the criminal acts by children in the age category of minors, the *Fuqaha* have divided them into two phases, namely the age phase of *ghayr mumayyiz* and the age phase of *mumayyiz*. For children in the age phase of *ghayr mumayyiz*, any criminal acts committed would not be subject to the punishment of *Qisas*, *Hudud*, or *Ta'dib*. However, if the punishment for the criminal act involves financial consequences, the criminals who are at the age of *ghayr mumayyiz* still hold the responsibility to fulfill the financial obligation towards the victim. As for children who are in the age phase of *mumayyiz* who have committed criminal acts in regard to the punishment of *Qisas* and *Hudud*, the type of punishment that could be imposed is the punishment of *Ta'dib* (education). In this case, the severity and type of punishment are determined by the *Qadi*. Such perpetrators would also be obliged to bear the material losses as a result of their actions.

A study of Ibn Qudamah's thought in *Al-Mughni* reveals a spirit of Islamic law that is substantively aligned with the principles of modern juvenile justice. At least three key values can be identified and compared with contemporary legal systems. The relevant doctrine in *Al-Mughni* concerning juvenile criminal responsibility is grounded in the distinction between children who lack legal and cognitive maturity and those who have begun to acquire the capacity to distinguish right from wrong, reflected in the categories of *ghayr mumayyiz* and *mumayyiz*.

Ibn Qudamah's reasoning rests on the principle that full criminal liability presupposes sufficient legal capacity (*ahliyyah*), rational discernment, and maturity. Consequently, a child who has not reached puberty cannot be treated in the same manner as a legally competent adult

and is therefore exempt from retributive punishments such as *hudud* and *qisas*. Nevertheless, the absence of personal criminal liability does not eliminate the legal consequences of the harmful act, because financial compensation, particularly *diyat*, may remain payable through the *aqilah*, while a *mumayyiz* child may be subjected to *ta'dib*, an educative and discretionary measure determined by the *qadi* in accordance with the child's level of maturity and the circumstances of the offense. The legal consequence of this doctrine is therefore a graduated system of responsibility in which punishment is not primarily retributive but is adjusted to the child's cognitive and psychological development, while the interests and losses of the victim remain legally recognized.

This framework is significant for contemporary juvenile justice because it substantially corresponds with modern principles of rehabilitation, restorative justice, proportionality, family participation, and differentiated criminal responsibility embodied in instruments such as the Convention on the Rights of the Child and Indonesia's Juvenile Criminal Justice System, particularly its emphasis on diversion and restorative justice. Although classical *fiqh* determines maturity mainly through physical and developmental signs and modern legal systems generally employ fixed chronological age limits, Ibn Qudamah's approach demonstrates that the essential concern of *Al-Mughni* is the protection of children from disproportionate punishment while preserving accountability for harm, thereby providing a substantive foundation for contemporary juvenile justice policies that seek to operationalize psychological and cognitive maturity as the basis for graduated liability and child-oriented sanctions.

First, the principle of non-punitiveness toward minors (not punishing children retributively). In *Al-Mughni*, children who have not reached puberty are consistently exempted from *hadd* and *qisas* punishments. This aligns with the spirit of the UN Convention on the Rights of the Child and juvenile justice systems in various countries that prioritize rehabilitation over retribution. Indonesia, through Law Number 11 of 2012 on the Juvenile Criminal Justice System, adopted a similar approach by setting a minimum age of 12 as the requirement for criminal responsibility.

Second, the spirit of restorative justice is embedded in the *diyat* mechanism. The concept of *aqilah* in Islamic law reflects the collective responsibility of the family, not the individualization of punishment. Exempting a minor from the obligation of *diyat* does not mean that the crime is left without consequences; rather, the consequences are transferred to those who can bear them. This spirit is similar to the modern restorative justice approach implemented in Malaysia through the family conference mechanism in the juvenile justice system, where families are actively involved in resolving cases.

Third, the principle of gradation of responsibility based on maturity. Although *Al-Mughni* does not explicitly discuss the concept of *murahiq* (children approaching puberty) at length, this gradation principle is reflected in his discussion of age verification and the validity of oaths as evidence. This concept parallels the Saudi Arabian legal approach, which considers a child's psychological maturity in determining the level of criminal responsibility, as is also adopted in the Iranian legal system, albeit with a different school of thought.

The challenge in implementing *Al-Mughni* values in the contemporary era lies in the operationalization of the concept of puberty, which in classical *fiqh* is determined by physical signs, while modern law tends to use a definite age limit. Indonesia has bridged this gap through the Law on the Juvenile Criminal Justice System, which sets the age limit of 12-18 years as the category of children who can be held accountable, while still prioritizing the diversion approach and restorative justice as the primary mechanisms.

The struggle between Islamic legal principles and UNCRC norms in dealing with children in conflict with the law creates a complex legal landscape. While both have the noble goal of protecting and nurturing children, there are potential points of contact and disruption, especially in terms of defining the age of criminal adulthood, the types of sanctions (e.g., corporal punishment or the death penalty for children), and legal procedures. How Muslim-majority countries adapt the UNCRC while maintaining sharia values is a core question that needs to be answered.

Overall, Ibn Qudamah's thinking in *Al-Mughni* demonstrates that classical Islamic law has formulated child protection principles that are substantially aligned with universal human rights values. The differences lie in the sources of normativity and technical mechanisms, not in their underlying purpose and spirit. This opens up space for productive dialogue between Islamic law and modern positive law in a joint effort to protect the rights of children in conflict with the law. From the perspective of *fiqh*, Islamic scholars have explained this through the science of *fiqh* and *usul fiqh*, where children are classified into two groups, namely *mumayiz* and *ghairu mumayiz*. *Mumayiz* is a child who can distinguish between the good and the bad with full understanding, even if he or she is underage. Meanwhile, *ghairu mumayiz* is a child who cannot yet distinguish between good and bad, even if he or she has approached maturity.<sup>36</sup>

According to the science of *usul fiqh*, *Ghayr mumayiz* is the period of *al-tufulah*, namely a small child who is not yet able to distinguish between what can benefit or harm him until puberty. In general, a *mumayiz* child is considered capable of distinguishing between right and wrong, as well as between actions that may bring benefit or cause harm. At this stage, although the child's intellectual capacity and ability to exercise judgement have begun to develop, they remain incomplete. This is because the child has not yet developed the maturity and foresight necessary to fully comprehend the long-term consequences of his/her actions.<sup>37</sup>

Basically, for a child, the initial limit of the *mumayiz* period is the final limit of the *al-tufulah* period. Even so, this is difficult to determine precisely and definitely. In addition to its changing and different nature, this is also caused by the impression of the child's psychological development, which is different from one another. In seeking a concrete answer about the initial limit of *mumayiz*, scholars have studied and explored this problem through the science of *fiqh*.

#### 4. CONCLUSION

This study concludes that juvenile criminal responsibility in Islamic law is not determined solely by the commission of a prohibited act, but by the child's legal capacity (*ahliyyah*),

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<sup>36</sup> Yusuf and Rahardjo.

<sup>37</sup> Muttaqin, "Batas Usia Anak Dan Pertanggungjawaban Pidananya Menurut Hukum Pidana Positif Dan Hukum Pidana Islam."

discernment (*tamyiz*), and maturity. The analysis of *Ibn Qudamah's Al-Mughni* demonstrates that children who have not attained sufficient legal capacity are exempt from retributive sanctions such as qisas and hadd, while the consequences of their conduct may remain relevant through compensatory mechanisms, particularly diyat through the aqilah, and through educative measures such as ta'dib for children possessing discernment. The study's principal novelty lies in identifying *Al-Mughni* as providing a doctrinal basis for a graduated model of juvenile responsibility that distinguishes punitive responsibility from compensatory responsibility and calibrates legal responses according to cognitive and developmental capacity rather than relying exclusively on chronological age. This formulation provides a conceptual bridge between classical Hanbali jurisprudence and contemporary child-centred justice, particularly the principles of proportionality, rehabilitation, restorative justice, and differentiated responsibility reflected in modern juvenile justice frameworks. Accordingly, the findings suggest that contemporary juvenile justice policy can draw on this graduated-liability framework to balance child protection with accountability for harm, while avoiding disproportionate punishment and preserving victims' interests. Further research should examine how this doctrinal model can be operationalized within contemporary statutory and judicial frameworks without undermining international child-rights standards.

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