

CHILD PROTECTION IN INDONESIA IN THE PERSPECTIVE OF NATIONAL LAW AND ISLAMIC LAW

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Abstrak

This qualitative research discusses child protection in terms of regulations in force in Indonesia and Islamic law. Child protection is a particular discussion because it is an integral part of the nation; protecting children means protecting the nation's generation. In Indonesia itself, there are various formulations of laws and regulations that regulate child protection. Meanwhile, efforts to protect children in Islamic law are part of implementing maqasid sharia, which upholds human values. To realize this, severe sanctions have been stipulated in national and Islamic law for perpetrators of acts of violence against children, aiming to provide a deterrent and deterrent effect on perpetrators of child crimes. However, these sanctions are still being debated in the community. Regardless of all that, efforts to guarantee child protection in preventing violence against children must continue whenever and wherever.

Keywords: *Child protection in Indonesia, National law, Islamic law.*

A. Background

The number of cases of violence against children has been increasing every year, as evident from data provided by KPAI (Komisi Perlindungan Anak Indonesia/Indonesian Child Protection Commission). In 2011, there were 261 cases, while in 2012, the number rose to 426. Subsequently, in 2013, there were 1,615 cases reported. The year 2014 saw 622 reported cases of violence against children. Child sexual abuse cases encompass physical, psychological, and sexual violence. One such case of child sexual violence occurred at Jakarta International School (JIS) in March 2014, after a parent reported the incident to the Jakarta Metropolitan Police. According to the police investigation, the sexual violence was suspected to have been committed by educational staff and several janitors at JIS.¹

All children are vulnerable to violence and sexual exploitation. The increasing socio-economic pressure and family tension, sometimes exacerbated by family conflicts, contribute to the overall rise in violence. This indicates that all children in emergency situations require different support and strategies to ensure their protection. The negative impacts on children caused by violence and exploitation are numerous and varied, making recovery difficult and having a dramatic effect on the child involved.²

Children, being part of the younger generation and one of the nation's valuable resources and future bearers of its aspirations, have a strategic role with unique characteristics and qualities. They need guidance and protection to ensure their physical, mental, and social

¹ Meirina Fajarwati, *Pengaturan Sanksi Pidana Terhadap Kekerasan Seksual pada Anak Sebagai Bentuk Perlindungan Anak*, Prodigy, Jurnal Perundang-Undangan Vol. 2 No, Desember 2014, h. 237

² Stephanie Delaney, *Melindungi Anak-anak dari eksploitasi seksual dan kekerasn dalam situasi bencana dan gawat daurarat* (terj. Ramlan, Medan: Restu Printingtahun 2006), h.21-22

development in a complete, harmonious, balanced, and aligned manner.³ Providing this guidance and protection requires strong and adequate institutional and legal support; hence, specific provisions regarding the conduct of juvenile courts are essential. Children are entrusted by Allah to their parents, and it is the parents' duty to educate, safeguard, and nurture them well. Child-rearing continues until the child becomes an adult and can live independently.⁴ Child protection is an effort to create conditions where every child can exercise their rights and responsibilities for their normal physical, mental, and social development.⁵

Child protection is already regulated by various existing laws, including the fundamental principle that both parents have an equal obligation to care for the child, both physically and emotionally. The government, in providing care and protection for children, is obliged to ensure and assist that children can freely participate, express their opinions, and think in accordance with their conscience and religion.⁶ Children should receive age-appropriate and developmentally suitable oral or written information, have the right to associate and assemble, rest, play, engage in recreational and artistic activities, and have access to playing facilities that meet health and safety standards.⁷

B. Problem Identification

Based on the background presented, the fundamental question in this research is how national law (positive law) and Islamic law (as one of the living laws) regulate child protection in Indonesia to ensure that their rights and basic needs are fulfilled and protected?

C. Research Methodology

The research adopts a qualitative approach using normative legal studies technique, which involves examining various existing literature and complemented by interviews with relevant parties.

D. Research Findings and Discussion

1. Understanding Child Protection

Child protection or care in Arabic is referred to as *hadhanah*. In the Arabic language, "hadhanah" means placing something close to the rib or lap. It is because a mother, while breastfeeding her child, places the child on her lap as an expression of love and care to protect and nurture the child. Thus, *hadhanah* has been used as a term for educating and nurturing a child from birth until they become self-sufficient. *Fiqh* scholars define "hadhanah" as the act of protecting young children, both boys and girls, or those who have grown but are not yet *mumayyiz* (able to distinguish right from wrong).⁸ This includes

³ M. Taufik Makarao dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah Tangga*, (Jakarta: Rineka Cipta, tahun 2013), h. 1

⁴ Wardah Nuroniyah, *Pembaharuan Hukum Perkawinan Islam di Indonesia Studi Terhadap Kontruksi Ushul Fikih dalam KHI*, (Disertasi: Konsentrasi Syariah Fikih-Ushul Fikih Prodi Pengkajian Islam SPs UIN Jakarta, 2016, h. 153

⁵ Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan pidana Anak di Indonesia*, (Bandung: Refika Aditama cet. 3 2013), h. 33

⁶ Yaswirman, *Hukum Keluarga: Karakteristik dan Prospek Doktrin Hukum Islam dan Adat Dalam Masyarakat Matrilinear Minangkabau*, Depok: Rajagrafindo Persada Cet. 2 2013, h. 245-246

⁷ Ahmad Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Jakarta: Raja Grafindo Persada, tahun 2008, h. 80-81

⁸ Abdul Rahman Ghozali, *Fikih Munakahat*, (Jakarta: Kencana, cet. 5 tahun 2012), h.176-178

providing what is beneficial for them, guarding them from harm and corruption, and educating them physically, spiritually, and intellectually, so they can eventually stand on their own and take on responsibilities. Therefore, in this context, child protection is an effort to guide the family, including the child, to develop the child's mental resilience and virtuous character.⁹

On the other hand, the definition of child protection as stated in Article 1 number 2 of Law No. 23 of 2002 on Child Protection, is all activities aimed at ensuring and safeguarding children and their rights, so they can grow, develop, and participate to the fullest extent in accordance with human dignity, as well as being protected from violence and discrimination. Child protection can also be understood as all efforts aimed at preventing, rehabilitating, and empowering children who have experienced abusive treatment, exploitation, or neglect, to ensure their survival and well-rounded physical, mental, and social development.¹⁰

2. Age of Children in Indonesian Legislation and Islamic Law

In Indonesia, the age limit for children varies in regulations related to children, including the following:

- a. Civil Code (Kitab Undang-Undang Hukum Perdata - BW): According to Article 330 paragraph (1), the boundary between minors and adults is 21 years, except if the child has married before reaching the age of 21 and obtained emancipation (*vania aetatis*, Article 419 KUHPer).
- b. Criminal Code (Kitab Undang-Undang Hukum Pidana - KUHP): The KUHP does not explicitly define the term "child." In Article 45 and 72, the age limit for a child is 16 years, while in Article 283, it is 17 years.
- c. Law No. 8 of 1981 on Criminal Procedure Law (Kitab Undang-Undang Hukum Acara Pidana - KUHP).
- d. Law No. 1 of 1974 on Marriage: According to Article 47 paragraph (1) and Article 50, a child is defined as someone who has not yet reached 18 years of age or has not been married.
- e. Law No. 4 of 1979 on Child Welfare: Article 1 paragraph (2) defines a child as someone who has not yet reached 21 years of age and has not been married.
- f. Law No. 12 of 1979 on Correctional Institutions: Article 1 number 8 letters a, b, and c state that the maximum age for a child to be educated in juvenile correctional institutions is 18 years.
- g. Law No. 39 of 1999 on Human Rights: Article 1 subsection 5 states that a child is any person under 18 years of age and not married, including a child in the womb if it is for the child's interest.¹¹
- h. Law No. 23 of 2002 on Child Protection: Article 1 point 1 defines a child as someone who has not yet reached 18 years of age, including a child in the womb.¹²

⁹ Huzaemah T. Yanggo, *Hukum Keluarga Dalam Islam*, h. 143

¹⁰ Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan pidana Anak di Indonesia*, (Bandung: Refika Aditama cet. 3 2013), h. 34

¹¹ Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, cet. 1 tahun 2011, h. 3-7

¹² Ruslan Renggong, *Hukum Pidana Khusus: Memahami Delik-delik di luar KUHP*, Jakarta: Prenada Media, Cet.1 tahun 2016, h. 265-266

- i. Government Regulation No. 2 of 1988 on Child Welfare Efforts for Children with Problems: According to this regulation, a child is someone who has not yet reached 21 years of age and has not been married.
- j. Customary Law and Jurisprudence of the Supreme Court of the Republic of Indonesia: The age limit to be considered an adult is pluralistic. Different terms are used to indicate when someone is no longer considered a child and has become an adult, such as "kuat gawe," akil balig, menek bujang, alin, and others. For example, according to Yurisprudensi Mahkamah Agung oriented towards Balinese customary law, the age is below 15 years (Putusan MA RI No. 53 K/Sip/1952). In Jakarta, it is 20 years (Putusan Mahkamah Agung RI No: 601 K/Sip/1976).¹³
- k. Law No. 1 of 1974: Article 7 paragraph (1) initially set the marriage age at 16 for females and 19 for males, but currently, the marriage age for both genders is aligned to 19 years, as stated in Article 7 paragraph (1) of Law No. 16 of 2019.¹⁴
- l. In Islamic Law (Kompilasi Hukum Islam - KHI), a child is considered an adult after reaching 21 years of age.¹⁵

Meanwhile, in the primary sources of Islamic law, both the Qur'an and the Sunnah, the age of a child is not specifically mentioned. It is only generally stated that a child is someone who has not reached the age of baligh (maturity). This has led to differences among scholars of various madhhabs (Islamic schools of thought) in determining the age of a child. For instance, according to the Hanafi madhhab, a male child is considered baligh if he has experienced a nocturnal emission (ihtilam), while a female child reaches maturity through menstruation, or at the age of 12 for boys and 9 for girls. According to the Maliki madhhab, the natural signs of a child reaching adulthood include menstruation and pregnancy for girls, while the emission of semen, the growth of pubic hair, changes in body odor, and the deepening of the voice are natural signs of maturity experienced by both males and females. The Shafi'i madhhab, on the other hand, considers the age of non-adulthood to be under 15 years.

According to the majority of fuqaha (scholars of Islamic jurisprudence) from the Hanafi, Maliki, and Hanbali madhhabs, a child is considered an adult when they possess intelligence, such as understanding how to grow their wealth, using it for beneficial purposes, and refraining from spending it on frivolous matters. According to Imam Shafi'i, a child is considered an adult when they have demonstrated good adherence to their religious teachings, display fairness, and can manage their wealth properly.¹⁶ In the Compilation of Islamic Law (Kompilasi Hukum Islam - KHI), it is mentioned that the age at which a child can stand on their own or reach adulthood is 21 years, as long as the child is not physically or mentally impaired and has not been married.¹⁷

3. Rights of Children in Islam and Legislation

¹³ Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, Jakarta: Raja Grafindo Persada, cet. 1 tahun 2011, h. 3-7

¹⁴ Salinan Pengesahan Undang-undang No. 1 Tahun 1974 dan Undang-undang No. 16 tahun 2019

¹⁵ Wardah Nuroniyah, *Pembaharuan Hukum Perkawinan Islam di Indonesia*, (SPs UIN Syarif Hidayatullah Jakarta: Disertasi Tahun 2016), h. 153

¹⁶ Chindya Pratiwi Puspa Dewi, *Restoratif Justice Pada Hukum Pidana Anak di Indonesia Dalam Perspektif Hukum Islam*, Depok: Indie Publishing, tahun 2014, h. 25-26

¹⁷ Ahmad Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Jakarta: Raja Grafindo Persada, tahun 2008, h. 80

According to Mukhoirudin's writing, as cited by M. Nasir Djamil, the rights of children in Islam are based on the objectives of Islamic law (maqasid al-shari'ah), which include the preservation of the rights to religion (hifzh al-din), life or dignity (hifzh al-nafs), intellect (hifzh al-aql), wealth (hifzh al-mal), and lineage (hifzh al-nasl). According to Mukhoirudin, some of the teachings regarding children's rights are as follows: receiving good treatment, assurance and protection of health, being born into a family with good conduct, whether female or male, being well cared for during pregnancy and after birth, being given a good name, receiving proper education, obtaining a suitable and equal position, being breastfed, not being subject to criminal punishment until the age of 15, and acquiring a religion¹⁸ based on the following *hadith*:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «كُلُّ مَوْلُودٍ يُوَلَّدُ عَلَى الْفِطْرَةِ، فَأَبَوَاهُ يُهَوِّدَانِهِ، أَوْ يُنَصِّرَانِهِ، أَوْ يُمَجِّسَانِهِ، كَمَثَلِ الْبَهِيمَةِ تُنْتَجُ الْبَهِيمَةُ هَلْ تَرَى فِيهَا جَدْعَاءَ»¹⁹

Meaning: Abu Hurairah (may Allah be pleased with him) narrated that the Prophet Muhammad (peace be upon him) said: "Every newborn is born in a state of fitrah (Islamic nature), and then their parents make them Jewish, Christian, or Magian." (Narrated by Bukhari)

Regarding the rights of children and their protection, they are mentioned in various laws and regulations, elaborated and adjusted according to applicable provisions, including:²⁰ In the field of law, there is Law No. 3 of 1997 concerning Juvenile Justice; In the field of health, Law No. 9 of 1960 concerning Basic Health, regulated in Article 1, Article 3 paragraph (1), and Article 9 paragraph (2); In the field of education, Article 31 paragraph (1) of the 1945 Constitution and Law No. 12 of 1954 concerning the Fundamentals of Education and Teaching in schools, regulated in Article 19 and Article 17; In the field of labor; In the field of Social Welfare, there is Law No. 4 of 1979 concerning Child Welfare; In Law No. 23 of 2002 concerning Child Protection.

4. Child Protection within the Framework of Family, Society, and State

Ibn Qayyim Al-Jauziyah stated in his book that a child will not be corrupted without the negligence of their parents in educating them.²¹ Furthermore, in the Muqaddimah of Ibn Rushd, it is mentioned that the upbringing of children is a collective obligation (fardhu kifayah) that becomes the responsibility of the community. A child should not be left abandoned without someone responsible for their care and rights, which may lead to sickness or even death if they have lost their parents or their parents are incapable due to their unfortunate fate. If there is someone who takes care of all their needs, they can represent others. The responsibility for a child's upbringing lies with their parents, and if their parents are no longer present, the community must shoulder this responsibility.²² Mahmud Ali al-Shartawi, as cited by Wardah Nironiyah, also emphasized that the care of a

¹⁸ M. Nasir Djamil, *Anak Bukan untuk di Hukum*, Jakarta: Sinar Grafika, Cet. 2 tahun 2013, h. 16-20

¹⁹ Muhammad bin Ismail Abu Abdillah al-Bukhari al-Ja'fi, *al-Jami' al-Musnad ash-Shahih al-Mukhtashar*, hadis no. 1385, (Mesir: Dar Thuq an-Najah, 2001), h. 100

²⁰ Wigiaty Soetodjo, *Hukum Pidana Anak*, Bandung: Refika Aditama, 2006, h. 67-68

²¹ Ibnu Qayyim al-Jauziyah, *Tuhfatul almaududi fi Ahkami al-Mauludi* (Kado Menyambut si Buah Hati, Penerj. Mahfud Hidayat), Jakarta: Pustaka Al-Kautsar Cet. 2 2007, h. 395

²² Yusuf Azazi, *Hukum Islam Tentang Wanita dan Anak Dalam Perspektif Undang-Undang No.1 Tahun 1974*, Tesis SPs UIN Jakarta Tahun 2001, h. 35-36

child is a collective obligation (fardhu kifayah). If the child's parents are unable to care for them, it becomes the responsibility of the capable community, and if the child is neglected, it becomes a sin for the entire community.²³

As mentioned in Law No. 23 of 2002 concerning Child Protection, the accountability of parents, family, society, government, and the state is an ongoing activity aimed at safeguarding the rights of children. This series of activities must be continuous and focused on ensuring the child's physical, mental, spiritual, and social growth and development. These actions are intended to create the best life for the child, as they are expected to be potential, resilient successors of the nation, embodying noble ethics and Pancasila values, with a strong determination to preserve national unity and harmony.²⁴

Society must play a role in child protection, as stated in Article 72 of Law No. 23 of 2002 concerning Child Protection: (1) Society has the right to have the widest possible opportunity to play a role in child protection. (2) The role of society, as referred to in paragraph (1), is carried out by individuals, child protection institutions, social and community institutions, civil society organizations, educational institutions, religious institutions, businesses, and the mass media. Meanwhile, Article 73 states that the role of society is implemented in accordance with the provisions of the applicable regulations.²⁵

Parents and family are responsible for safeguarding the health of children even when they are still in the womb. In cases where parents and family are unable to fulfill the responsibility of maintaining the health and caring for the child in the womb, the government must fulfill this obligation. The implementation of this government obligation is carried out in accordance with the applicable laws and regulations. The state, government, family, and parents are obliged to ensure that the newborn child is protected from life-threatening diseases or disabilities. Children with physical and/or mental disabilities are provided with equal opportunities and accessibility to receive both regular and special education.²⁶ Children within and around the school environment must be protected from violence perpetrated by teachers, school administrators, fellow students, and other relevant educational institutions. Meanwhile, the responsibility for children is a shared responsibility between parents and the government, with both playing their respective roles. The presence of children requires parental role models to ensure their proper growth and development. To create a harmonious family, parents should pay attention to the child's development in various aspects,²⁷ including physical, spiritual, social, and other aspects, as in a good family, parents and children have different roles and responsibilities that complement each other.²⁸

5. The Urgency of Religious Education for Child Protection

²³ Wardah Nuroniyah, *Pembaharuan Hukum Perkawinan Islam di Indonesia Studi Terhadap Kontruksi Ushul Fikih dalam KHI*, (Disertasi: Konsentrasi Syariah Fikih-Ushul Fikih Prodi Pengkajian Islam SPs UIN Jakarta, 2016, h. 155

²⁴ Rosdelima Dalimunthe, *Konsep Adopsi Anak Dalam Regulasi di Indonesia Perspektif Hukum Islam*, Magelang: PKBM "Ngudil Ilmu", tahun 2014, h. 132

²⁵ M. Taufik Makarau dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, (Jakarta: Rineka Cipta, Cet. 1 Tahun 2013), h. 157

²⁶ Ahmad Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Jakarta: Raja Grafindo Persada, tahun 2008, h. 78

²⁷ Zaitunah Subhan, *Pornografi dan Premanisme*, (Jakarta: el-Kahfi cet.2005), h. 152-155

²⁸ Huzaemah T. Yanggo, *Hukum Keluarga Dalam Islam*, Palu: Yayasan Masyarakat Indonesia Baru tahun 2013, h. 125

In matters of child education, the primary focus should be on religious and moral education, as nowadays many young generations are involved in alcohol consumption, drug abuse, promiscuity, violence, brawls, and even murder. To address and eradicate violence, crime, pornography, and other similar acts, there is a need for legal awareness in society, in addition to having laws that prevent such actions. Legal awareness can be achieved through public education and religious lectures, both in places of worship and through electronic media.²⁹

Islam places full responsibility on parents for providing detailed Islamic education to their children and instilling them with strong moral values. Therefore, parents must always pay attention to their children, monitor their education, guide them in choosing books, magazines, friends, hobbies, schools, teachers, and sources of information that influence the formation of their character, mental development, soul, and faith. Moreover, parents should always provide guidance and supervision to ensure a smooth educational process.³⁰ If parents have limited time, and religious education at school is insufficient, hiring a good religious teacher is a suitable option, and parents should provide religious books.

According to Zaitunah Subhan, another important aspect closely related to religion is sexual education. She believes that sexual education is best given by parents to their children from a young age, especially after they physically mature, marked by menstruation for girls and ejaculation for boys. With proper and good sexual education, it will greatly support the perfection of worship and serve as a powerful defense against negative (deviant) behaviors prohibited by religion, such as the influence of pornography and other violent behaviors.³¹

6. Child Protection in Islamic Law

Parents are given the responsibility by Allah to raise their children and develop their positive potentials. Allah wants every child/human to be born and grow in the best possible physical and psychological form.³² According to the perspective of Ibnu Anshori, child protection in Islam includes, *firstly*, non-discrimination (fitrah), which means treating children equally in providing basic protection, regardless of their origin, ethnicity, religion, race, gender, and other social statuses. *Secondly*, the best interests of the child, meaning that all actions concerning children undertaken by parents, family, society, government, and the state must prioritize the child's best interests. Throughout Islamic history, both during the time of the Prophet Muhammad and afterwards, there were numerous events that demonstrated Islam's concern for the best interests of children, both in worship and in societal matters.³³ As the Prophet Muhammad (peace be upon him) said:

حَدَّثَنَا عَلِيُّ بْنُ الْجَعْدِ، أَخْبَرَنَا شُعْبَةُ، عَنْ سَيَّارٍ، عَنْ ثَابِتِ بْنِ النَّبَائِي، عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ: «أَنَّه مَرَّ عَلَى صَبِيَّانٍ فَسَلَّمَ عَلَيْهِمْ» وَقَالَ: «كَانَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَفْعَلُهُ»

²⁹ Huzaemah Tahido Yanggo, *Perempuan: Antara Idealita dan Fakta Kekinian*, Jakarta: BMOIWI , tahun 2004, h.37-38

³⁰ Muhammad Ali al-Hayisimi, *Jati Diri Muslim* (Penerj. Abdul Ghoffar E. M, Jakarta: Pustaka Al-Kautsar 1999), h. 96

³¹ Zaitunah Subhan, *Pornografi dan Premanisme*, Jakarta: el-Kahfi cet.2005, h.156

³² Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementrian Agama RI, *Tafsir Tematik Al-Qur'an Seri 2 tentang Tanggung Jawab Sosial*, (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2011), h. 79

³³ Ibnu Anshori, *Perlindungan Anak Dalam Agama Islam*, Jakarta: KPAI, tahun 2006, h. 21-31

*"Ali bin Ja'd narrated to us, who was informed by Syu'bah, from Sayyar, from Tsabit al-Bunani, from Anas bin Malik (may Allah be pleased with him): He passed by a group of young children. He greeted them and said, 'The Prophet (peace be upon him) also did the same.'"*³⁴

The content of this hadith illustrates the gentle treatment of young children, being patient with their behavior, and not punishing them because they are not accountable (not yet obligated to follow religious duties).³⁵ Three survival and development, the right to survival in Islam is inherent in every child, and it is an absolute foundation to provide them with sustenance and protection for their lives, as well as ensuring their development through education. The education given to children should be comprehensive, aiming to develop their intellectual, mental, and spiritual capabilities. The Prophet Muhammad (peace be upon him) said:

حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدِّمَشْقِيُّ قَالَ: حَدَّثَنَا عَلِيُّ بْنُ عَيَّاشٍ قَالَ: حَدَّثَنَا سَعِيدُ بْنُ عَمْرَةَ قَالَ: أَخْبَرَنِي الْحَارِثُ بْنُ النُّعْمَانَ قَالَ: سَمِعْتُ أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَكْرَمُوا أَوْلَادَكُمْ وَأَحْسِنُوا أَدَبَهُمْ»

*"Abbas bin Walid al-Dimasyqi narrated to us, who was informed by 'Ali bin 'Ayyasy, who narrated from Sa'id bin 'Umarah, who was informed by al-Harits bin Nu'man, saying: I heard Anas bin Malik speaking, quoting the Prophet Muhammad (peace be upon him) as saying, 'Honor your children and teach them good manners.' (Hadith reported by Ibn Majah)"*³⁶

The fourth principle is respect for the views of the child. In every decision-making process that affects the child's life, the child's opinion must be respected and considered. This principle must be observed by all those involved in child protection, including parents, family, community, and government.³⁷ In Islam, the attitude of respecting children has been exemplified by the Prophet Muhammad. As shown in the following hadith:

Narrated by 'Aisha, she said, "A Bedouin Arab came to the Prophet Muhammad (peace be upon him) and asked, 'Do you kiss your children?' The Prophet replied, 'Yes, I do.' The Bedouin said, 'We do not kiss them.' The Prophet said, 'What can I do if Allah has removed mercy from your heart?'" (Hadith reported by Bukhari and Muslim)³⁸

7. Child Protection Institutions in Indonesia

In Indonesia, there are several child protection institutions that serve as platforms to address child protection issues, some of which are as follows:

³⁴ al-Bukhari al-Ja'fi, *al-Jami' al-Musnad ash-Shahih al-Mukhtashar*, hal. 359, no. 6247

³⁵ Abu 'Abdillah M. Luqman M. As-Salah, *Syarah Al-Adab al-Mufrad Jilid I* (Jakarta: Griya Ilmu, cet. VI tahun 2016), h. 373

³⁶ Abu Abdullah Muhammad bin Yazid al-Qazwaini, *Sunan Ibnu Majah*, (Libano n: Darul Fikri, 2004), juz. 2, , no. 3671, h. 1211

³⁷ Ibnu Anshori, *Perlindungan Anak Dalam Agama Islam*, h. 38-39

³⁸ Abu 'Abdillah M. Luqman M. As-Salah, *Syarah Al-Adab al-Mufrad Jilid I* (Jakarta: Griya Ilmu, cet. VI tahun 2016), h. 114

a. Indonesian Commission on Child Protection/ Komisi Perlindungan Anak Indonesia (KPAI) ³⁹

The establishment of KPAI is based on Article 74 of Law No. 23 of 2002 on Child Protection. The purpose of forming KPAI is to enhance the effectiveness of child protection implementation. KPAI is an independent institution with a status equivalent to a State Commission, established based on Presidential Decree 77/2003 and Article 74 of Law No. 23 of 2002 to improve the effectiveness of child protection in Indonesia. KPAI's vision is to enhance the effectiveness of child protection implementation in order to achieve quality, virtuous, and prosperous Indonesian children. KPAI's missions are as follows: (1) Conducting socialization of all regulations related to child protection, (2) Collecting data and information about children, (3) Receiving public complaints, (4) Conducting studies, monitoring, and evaluation of child protection implementation, (5) Supervising child protection implementation, and (6) Providing reports, recommendations, inputs, and considerations to the President for the purpose of child protection."

b. Indonesian National Commission on Child Protection/Komisi Nasional (Komnas PA) ⁴⁰

The principles and foundations of Komnas PA are based on Pancasila and the 1945 Constitution. Komnas PA's vision is to achieve optimal child protection conditions in creating competent, quality, and forward-thinking children towards a prosperous and independent society. Its mission is to enhance child protection efforts by increasing public awareness, knowledge, and capacity, as well as improving the quality of the environment that provides opportunities, support, and freedom for child protection mechanisms. The tasks of Komnas PA include: (1) Implementing mandates/policies set by the National Forum for Child Protection, (2) Elaborating on the national agenda for child protection in annual programs, (3) Establishing and strengthening collaboration networks in child protection efforts, with NGOs, civil society, government agencies, as well as international governmental and non-governmental institutions, (4) Mobilizing resources and funds to support child protection efforts, and (5) Managing administrative and personnel affairs to support the agency's child protection programs.

Furthermore, Komnas PA functions as an official institution: it serves as an observer and complaint center for child-related issues, provides legal assistance for court proceedings to represent children's interests, advocates and lobbies for child protection, acts as a reference for child recovery and reunification, conducts policy and legislative studies related to children, provides education, awareness, and dissemination of information about children's rights, and lastly, monitors the implementation of children's rights.

8. Special Protection for Children

Children are beings who require protection as they are unable to defend and take responsibility for themselves. Therefore, parents must be responsible for providing

³⁹ M. Taufik Makarau dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, (Jakarta: Rineka Cipta, Cet. 1 Tahun 2013), hal. 160-161

⁴⁰ M. Taufik Makarau dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga*, (Jakarta: Rineka Cipta, Cet. 1 Tahun 2013), hal. 162-164

protection and ensuring the rights to life, growth, development, and achievement optimally in accordance with human dignity. However, the reality is that the home or domestic sphere is not always a safe place for children. Instead, children often experience violence from adults who should be providing protection and a safe environment for them. Especially in the case of girls, they may find themselves in a vulnerable position within the family, under the control of adults who hold authority and power that determines their lives, such as parents, older and stronger siblings, who are supposed to provide affection and education in a wise manner. Unfortunately, this authority is sometimes abused, making children vulnerable to violence within the family.⁴¹

Every citizen has the right to feel safe and be free from all forms of violence, in line with the ideology and constitution of the Indonesian nation. Any form of violence, crime against human dignity, and discrimination must be eliminated. Victims of violence, torture, or any degrading treatment must receive protection from both society and the state.⁴² This is in accordance with Article 1 paragraph 2 of Law No. 23 of 2002 on Child Protection, which defines child protection as all efforts aimed at preventing, rehabilitating, and empowering children who have experienced abuse, exploitation, or neglect, to ensure their survival and well-rounded growth, encompassing physical, mental, and social aspects.⁴³ This is in accordance with Article 1, paragraph 2 of Law No. 23 of 2002 on Child Protection, which states that child protection encompasses all efforts aimed at preventing, rehabilitating, and empowering children who experience mistreatment (child abuse), exploitation, or neglect, in order to ensure their survival and normal physical, mental, and social development.⁴⁴

Meanwhile, special protection for children who are exploited economically or sexually is the responsibility of the government and society. Such special protection for economically and sexually exploited children is carried out through various means: firstly, by disseminating or promoting awareness of regulations related to child protection from economic and sexual exploitation. Secondly, through monitoring, reporting, and imposing sanctions. Thirdly, by involving various government agencies, companies, labor unions, non-governmental organizations, and communities in eradicating economic and sexual exploitation of children.⁴⁵

9. Crimes Against Child Protection

Sexual violence in Indonesia is currently in a critical condition, with violence often involving both perpetrators and victims, and unfortunately, children are frequently among the victims. According to WHO, violence is the use of physical force and power, threats, or actions against oneself or others, either individuals or groups, resulting in bruises/trauma, death, psychological harm, developmental disorders, or deprivation of rights. Surveys

⁴¹ Tateki Yoga Tursilarini, *Inses: Kekerasan Seksual dalam Rumah Tangga Terhadap Anak Perempuan*, (Yogyakarta: B2P3KS, Jurnal Penelitian Kesejahteraan Sosial Vol. 15 No. 2 Tahun 2016) h. 167
⁴² M. Taufik Makarao dkk, *Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah Tangga*, (Jakarta: Rineka Cipta, tahun 2013, h. 1
⁴³ Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan pidana Anak di Indonesia*,(Bandung: Refika Aditama cet. 3 2013), h. 34
⁴⁴ Maidin Gultom, *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan pidana Anak di Indonesia*,(Bandung: Refika Aditama cet. 3 2013), h. 34
⁴⁵ Ahmad Kamil dan M. Fauzan, *Hukum Perlindungan dan Pengangkatan Anak di Indonesia*, Jakarta: Raja Grafindo Persada, tahun 2008,H. 83-84

conducted by the Ministry of Women Empowerment and Child Protection, the Ministry of Social Affairs, and the Central Bureau of Statistics in 2013 showed that around 30 percent of children aged 13 to 17 had experienced at least one form of violence, whether physical, sexual, or psychological. In the 18 to 24 age group, it was found that 50 percent or one out of two males had experienced some form of violence, and for females, 16.40 percent or one out of six had undergone similar experiences. Sexual violence against children, particularly related to pornography and child molestation, holds the highest prevalence among various forms of violence.

Forms of violence against children are typically perpetrated by individuals within their surroundings, using physical (sexual violence), verbal (including insults), and psychological (harassment) means. In cases of sexual abuse by a family member, whether mild or severe, it remains harmful to the child. Sexual violence against children involves certain elements, including sexual acts; male perpetrator and female victim; physical and non-physical forms of abuse; and lack of consent.⁴⁶

Sexual harassment, assault, violence, and rape experienced by adult women and children are traumatic experiences.⁴⁷ Sexual violence causes psychological trauma more than physical trauma, leading to a condition known as post-traumatic stress disorder (PTSD). In cases of rape, especially those involving children, it is essential to not only focus on the perpetrator but also pay attention to the victim. Psychiatric examinations (psychiatric evaluation) should be conducted on victims, crucial for judges to deliver appropriate and fair sentences to the perpetrators. Additionally, the legal framework needs to be updated and adapted to modern developments. Disturbingly, in some cases, the perpetrators of sexual violence are known to the victims, and in some instances, even part of the victim's close family. This is highly concerning because the family, which should be the primary protector of children from any harm, may end up being the source of danger for the child. In such cases, chemical castration should be considered as a sanction for the perpetrator.⁴⁸ Pedophilia or child molestation refers to the sexual relationship between an adult and a child, with the victim being a child under the age of 12 or someone who has not yet reached puberty.

Pedophilia is the most heinous form of sexual deviation and is punished with severe penalties. Many pedophiles are individuals who were once victims of child sexual abuse themselves.⁴⁹ Pedophilic behavior is closely linked to mental factors and environmental influences that cause someone to exhibit such tendencies. Negative childhood experiences, especially those related to sexuality, can significantly influence a person's mental attitude and behavior, potentially leading to pedophilia. Thirty percent (30%) of child sexual crime victims are abused by family members, and 60 percent are victimized by adults they know.⁵⁰

10. Sanctions Against Violators of Child Protection in Legislation

⁴⁶ Soetji Andari, *Korban Kekerasan Seksual Terhadap Anak*, (Yogyakarta: B2P3KS, Jurnal Penelitian Kesejahteraan Sosial Vol. 15 No. 4 Tahun 2016) h.. 365-366

⁴⁷ Dadang Hawari, *Kekerasan Seksual Pada Anak*, h. 95-97

⁴⁸ Wawancara Pribadi dengan Ibu Retno Adji di Kantor KPAI pada tanggal 05 September 2018 pukul 11.30 WIB

⁴⁹ Frank E. Hagan, *Introduction to Criminology: Theories, Methods, and Criminal Behavior Edition 7* (Penerj. Noor Choliz, Jakarta: Prenadamedia, Cet. 2 2015), h.. 629-632

⁵⁰ Santhos Wachjoe, *Hukuman Kebiri Bagi Pelaku Pedofilia, Suatu Tinjauan Yuridis Sosiologis*, h.. 46

Chemical castration, as stipulated in Law No. 17 of 2016, is aimed at perpetrators of sexual crimes against children (pedophiles). This sanction was implemented by the government with the purpose of deterring sexual offenders and curbing sexual crimes against children, which have been increasing year by year. The law introduces a new era that applies chemical castration as a punishment for rehabilitation purposes. The additional application of this punishment aims to protect children as the nation's future generation from the crimes of pedophiles. This is in line with criminal law, which aims to maintain security and orderly social life.⁵¹

Law No. 17 of 2016 includes controversial articles that have become the subject of debate in some circles in Indonesia, particularly those regarding chemical castration, as stated in Article 81 paragraph 7 and Article 81A as follows:

"Article 81 (7) Perpetrators referred to in paragraphs (4) and (5) may be subjected to measures such as chemical castration and the installation of electronic monitoring devices."

⁵² "Article 81A(1) The measures as referred to in Article 81 paragraph (7) shall be imposed for a maximum period of 2 (two) years and shall be carried out after the convict has served the primary sentence. (2) The implementation of the measures referred to in paragraph (1) shall be periodically supervised by the ministry responsible for legal, social, and health affairs. (3) The implementation of chemical castration shall be accompanied by rehabilitation. (4) Further provisions regarding the procedures for implementing the measures and rehabilitation shall be regulated by Government Regulation."

Meanwhile, according to the National Commission on Human Rights of the Republic of Indonesia (Komnas HAM RI), this sanction is considered a violation of human rights as it is not in accordance with the regulations of the Indonesian law, including stated in Law No. 39 of 1999 Article 33 paragraph (1) which states that everyone has the right to be free from torture, punishment, or cruel, inhuman, degrading treatment and in Article 16 paragraph (1) it is also stated that everyone has the right to form a family and continue their lineage through lawful marriage.⁵³

11. Sanctions Against Perpetrators of Child Sexual Crimes in Islamic Law

Adultery can take the form of sexual crimes against underage children. Therefore, adultery committed by adults, especially against underage children, is a despicable sexual crime. Someone who exhibits psychosexual behavior in the form of incest engages in sexual relations with family members or siblings. In most cases, the perpetrator of incest threatens the victim if they disclose the information to their mother or other family members. Factors that influence psychosexual behavior in incest cases are often triggered by pornography, alcohol, drugs, and enabling environments.⁵⁴

⁵¹ Mahrus Ali, *Dasar-dasar Hukum Pidana*, (Jakarta: Sinar Grafika, tahun 2016), h. 204

⁵² *Isi pasal 4 dan 5 UU No. 17 Tahun 2017 yang berbunyi*: (4) Selain terhadap pelaku sebagaimana dimaksud pada ayat (3), penambahan 1/3 (sepertiga) dari ancaman pidana juga dikenakan kepada pelaku yang pernah dipidana karena melakukan tindak pidana sebagaimana dimaksud dalam Pasal 76D. (5) Dalam hal tindak pidana sebagaimana dimaksud dalam Pasal 76D menimbulkan korban lebih dari 1 (satu) orang, mengakibatkan luka berat, gangguan jiwa, penyakit menular, terganggu atau hilangnya fungsi reproduksi, dan/atau korban meninggal dunia, pelaku dipidana mati, seumur hidup, atau pidana penjara paling singkat 10 (sepuluh) tahun dan paling lama 20 (dua puluh) tahun.

⁵³ Interview penulis dengan Ibu Fauziah Rasad selaku Devisi Pemajuan (Riset) Hak Asasi Manusia di Kantor Pusat Komnas HAM RI, Menteng Jakarta Pusat pada penelitian tesis tahun 2018

⁵⁴ Dadang Hawari, *Kekerasan Seksual Pada Anak*, (Jakarta: UI Pres, tahun 2013), h. 2-4

Cases of sexual violence against children fall under the category of zina (adultery) or at least qurb al-zina (close to adultery). In the case of qurb zina, adultery may not have occurred. Therefore, the perpetrator can be subject to takzir punishment.⁵⁵ According to the Chairman of the Fatwa Commission of the Indonesian Ulema Council (MUI), Hasanudin AF, chemical castration as a sanction against child sexual offenders or violators of child protection can be categorized as takzir punishment or an additional punishment fully granted by the government.⁵⁶ Similarly KPAI stated that chemical castration in Indonesia serves as an additional punishment. Chemical castration is carried out after the prison sentence has been served.⁵⁷

As for Islamic law itself, there is no specific punishment of chemical castration for perpetrators of sexual crimes against children, as there is no specific evidence explaining this. There is only a hadith that discusses permissibility and prohibition in certain circumstances for companions of the Prophet. This has led to differences of opinion among classical and modern scholars. Classical scholars who prohibit chemical castration argue based on the following hadith of Prophet Muhammad:

عَنْ قَيْسٍ، قَالَ: سَمِعْتُ عَبْدَ اللَّهِ، يَقُولُ: " كُنَّا نَعْرُو مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، لَيْسَ لَنَا نِسَاءً، فَقُلْنَا: أَلَا نَسْتَخْصِي؟ فَهَاتَا عَنْ ذَلِكَ، ثُمَّ رَخَّصَ لَنَا أَنْ نَنْكِحَ الْمَرْأَةَ بِالثَّوْبِ إِلَى أَجْلِ " (رواه مسلم)

Meaning: Qais said: I heard Abdullah say, "We used to fight alongside the Prophet (peace be upon him) while we were not with our wives. Then we asked the Prophet (peace be upon him), 'Can we practice castration?' The Prophet (peace be upon him) forbade us from doing so. Later, he eased the matter for us and allowed us to marry women by giving them dowry in the form of clothing." (Hadith reported by Muslim).⁵⁸

According to Ibn Hajar al-Asqalani in his book, he stated that the punishment of castration for humans has been prohibited by scholars, and in his opinion, this view is not in contradiction with other opinions.⁵⁹ However, contrary to the above opinion, Prophet Muhammad (peace be upon him) explicitly permitted castration under certain conditions. As mentioned in the following hadith:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ، قُلْتُ: يَا رَسُولَ اللَّهِ، إِنِّي رَجُلٌ شَابٌّ، وَإِنِّي أَخَافُ عَلَى نَفْسِي الْعَنْتَ، وَلَا أَجِدُ مَا أَتَزَوَّجُ بِهِ النِّسَاءَ، فَسَكَتَ عَنِّي، ثُمَّ قُلْتُ مِثْلَ ذَلِكَ، فَسَكَتَ عَنِّي، ثُمَّ قُلْتُ مِثْلَ ذَلِكَ، فَسَكَتَ عَنِّي، فَقَالَ النَّبِيُّ (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) : (يَا أَبَا هُرَيْرَةَ، جَفَّ الْقَلَمُ بِمَا أَنْتَ لَاقٍ، فَأَخْتَصَّ عَلَيَّ ذَلِكَ أَوْ ذُرٌّ) (رواه النسائي)

Meaning: Abu Hurairah (may Allah be pleased with him) narrated: "O Messenger of Allah, I am a young man who fears committing sins upon myself, and I do not have the means to marry women. Can I castrate myself?" The Prophet turned away from him, and he repeated his question three times. Then the Prophet (peace be upon

⁵⁵ M. Nurul Irfan, *Gratifikasi dan Kriminalitas Seksual Dalam Hukum Pidana Islam*, (Jakarta: Amzah Cet.1 tahun 2014) , h. 123

⁵⁶<http://www.republika.co.id/berita/nasional/jabodetabek-nasional/16/05/17/o7b9ev354-diduga-hendak-perkosa-wanita-seorang-pria-dikeroyok-warga>, diakses oleh penulis ketika menulis tesis pada tanggal 14 Januari 2017

⁵⁷ Hasil Wawancara penulis ketika penelitian tesis dengan Komisaris KPAI Ibu. Retno Adji di Kantor KPAI pada Tanggal 05 September 2018 pukul 12.30 WIB

⁵⁸ Imam Muslim, *Shahih Muslim*: No. 1404, Bab Nikah Mut'ah, (Beirut, Darl al Fikr, tt.tahun), h. 193, lihat juga: Taqiyuddin al-Nabhani, *al-Nizham al-Ijtima'i fii al-Islam*, h. 164; atau lihat di: *al-Mausu'ah al- Fiqhiyyah*, 19/119.

⁵⁹Ibnu Hajar al-Asqalani, *Fath al-Bāri fii Syarh Shahih al-Bukhari*, h. 27

him) said, "O Abu Hurairah, pen has dried up with what you will encounter, so castrate yourself if you must or refrain from it." ⁶⁰

These two hadiths appear explicitly contradictory because on one hand, Prophet Muhammad (peace be upon him) prohibited his companions from castrating themselves, but on another occasion, he allowed one of his companions to do so. The assumption that can be derived from this contradiction is the existence of specific contexts that underlie the emergence of each text. Therefore, to understand the context, including the social, historical, and hadith traditions, Bahruddin Zamawi, in his research on the issue of castration, considers the axiological interpretation of this hadith important as a consideration in determining additional punishments for perpetrators of sexual crimes against children (pedophiles) in an Indonesian context. ⁶¹

E. Conclusion

Child protection is actually an important and never-ending topic extensively discussed by observers, academics, and practitioners. This has resulted in numerous formulations to create comprehensive child protection, such as through preaching, scientific studies, academic writings, and various forms of child protection legislation. However, it is evident that this issue still needs to be widely echoed to society because child protection violations continue to occur, despite the various formulations mentioned above and even the imposition of severe penalties for violators of child protection. This situation poses an ironic and dilemmatic problem, requiring a more appropriate formulation to address child protection violations. Nevertheless, existing legislation and religious teachings serve as evidence that all components are ready to be present in ensuring child protection endures throughout time.

⁶⁰ Abu ‘Abd al Rahman Ahmad b. Syua’ib b. ‘Ali al-Nasa’i, Sunan al-Nasa’i (Riyad: Maktabah al-Ma’arif li al-Nashr wa al-Tauzi’, t,th), h. 497, lihat juga: Ibnu Hajar al-Asqalani, *Fath al-Bari fii Syarh Shahih al-Bukhari: Juz 9, Kitab al-Nikah Bab Ma Yukrahu Min Al-Tabattul Wa Al-Khisha hadis:5076*, (Dar al-Mishr li al-Thibaa’ah, Tahun 2001), h. 25

⁶¹ Bahruddin Zamawi, *Aplikasi Teori Fungsi Interpretasi Jorge J.E. Gracia tentang Hadith Kebiri* (Maraji’: Jurnal Ilmu Keislaman Kopertais Wil. IV Surabaya Vol. 2. No. 2. Maret 2016), h. 401

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