

## PROTECTION OF CHILDREN FROM DOMESTIC VIOLENCE: A COMPARATIVE STUDY OF ISLAMIC LAW AND POSITIVE LAW IN INDONESIA

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### Abstract

**Purpose** - This study aims to examine and compare the principles of child protection in Islamic law and positive law in Indonesia, focusing on the handling and prevention of violence against children within the family. The significance of this research lies in the increasing number of child abuse cases, particularly within the household, which indicates a gap between existing legal norms and social reality.

**Method** - This study uses a qualitative approach with a normative juridical method. Data were collected through a literature review, including primary sources (the Qur'an, Sunnah and Statutory regulation) and secondary sources (classical books and scholarly journals).

**Findings** - Islamic law firmly rejects all forms of violence against children through principles contained in the texts and the concept of Maqashid al-Ushrah, which provide guidance for child protection from conception to adulthood. Meanwhile, positive law regulates child protection through Law No. 35 of 2014, which covers investigation, court proceedings, victim rehabilitation, and prevention through education and child protection institutions. The implementation of both legal systems is hindered by differing interpretations and cultural influences.

**Research Contribution/Limitations** - This study provides a comparative overview of the relevance of child protection principles in Indonesia but is limited to literature-based research.

**Originality/Value** - This research enriches child protection studies by integrating Islamic and positive legal perspectives as academic and practical references.

**Keywords:** Child, Islamic Law, Positive Law, Maqashid al-Ushrah, Violence, Family

### Abstrak

**Tujuan** - Penelitian ini bertujuan untuk mengkaji dan membandingkan prinsip perlindungan anak dalam hukum Islam dan hukum positif di Indonesia, dengan fokus pada penanganan dan pencegahan kekerasan terhadap anak dalam keluarga. Signifikansi penelitian ini terletak pada meningkatnya angka kekerasan anak, khususnya dalam lingkup rumah tangga, yang menunjukkan adanya kesenjangan antara norma hukum yang ada dengan realitas sosial.

**Metode-**Penelitian ini menggunakan pendekatan kualitatif dengan metode yuridis normatif. Data dikumpulkan melalui kajian pustaka yang mencakup sumber primer (al-Qur'an, Sunnah dan Perundang-undangan) serta sumber sekunder (kitab-kitab dan jurnal ilmiah)

**Temuan-**Hukum Islam secara tegas menolak segala bentuk kekerasan terhadap anak melalui prinsip yang termuat dalam nash dan Maqāṣid al-Ushrah meliputi panduan perlindungan anak sejak dalam kandungan hingga dewasa. Sementara itu, hukum positif mengatur perlindungan anak melalui Undang-Undang nomor 35 Tahun 2014 yang meliputi proses penyelidikan, pengadilan, rehabilitasi korban, serta pencegahan melalui pendidikan dan lembaga perlindungan anak. Hambatan implementasi kedua sistem hukum muncul akibat perbedaan interpretasi dan budaya masyarakat.

**Kontribusi/Keterbatasan Penelitian-**Penelitian ini memberikan gambaran komparatif tentang relevansi prinsip perlindungan anak di Indonesia, namun terbatas pada kajian literatur.

**Keaslian/Nilai-**Penelitian ini memperkaya kajian perlindungan anak dengan mengintegrasikan perspektif hukum Islam dan hukum positif sebagai rujukan akademik dan praktis.

**Kata kunci :** Anak, Hukum Islam, Hukum Positif, Maqashid Ushrah Kekerasan, Keluarga

## INTRODUCTION

Violence against children is a serious problem. The World Health Organization (WHO) states that around 1 billion children worldwide have experienced violence, whether in the form of physical, emotional, or sexual abuse (WHO, 2022). In Africa, about 50 percent of children are estimated to have experienced or witnessed physical, sexual, or emotional violence (APEVAC & ACPF, 2021). Similar to Africa, violence against children in Indonesia has reached an emergency level. Data released by the Online Information System for the Protection of Women and Children show that violence against children continues to increase every year.

In 2020, there were 12,425 cases of violence against children, which sharply increased to 15,972 in 2021 (Ramadhan, 2022). Data released by the Ministry of Women's Empowerment and Child Protection in 2022 showed that 21,241 children were victims of various types of violence (Pratiwi, 2023). Kompas reported that in 2024, there were 19,626

cases of child violence, of which 52% occurred within the household and 21% were perpetrated by parents (Kompas, 2025).

Child abuse takes many forms, with sexual violence ranking first, affecting 9,588 children. This was followed by psychological violence, with 4,162 victims. Physical violence ranked third, with 3,746 children, followed by neglect, with 1,269 victims; trafficking in persons, with 219 children; exploitation, with 216 children; and other forms of violence, with 2,041 children (Pratiwi, 2023). Data from the PPA show that 57.3% of all victims of violence are children (Kemenpppa, 2023). According to data from the Online Information System for the Protection of Women and Children (Simfoni-PPA), families, which should be the safest place for children, are the highest cluster for child violence (Fathiyah, 2022).

Many parents unknowingly commit violent acts against their children. However, many deliberately ignore cases of child abuse, considering such

behavior normal and part of the disciplinary process. The view that positions children as the property of their parents, who can be treated as they please without considering their feelings and well-being, is misguided. Moreover, if it is assumed that children have no rights and only need to obey their parents absolutely, then this is a morally and legally wrong view. In addition to the superiority of parents over children, violence against children is also triggered by several other factors, including low family income, patterns of violence passed down from generation to generation, social pressure, social isolation, and unsupportive family structures. Furthermore, parents' lack of knowledge about good and proper parenting patterns is very likely to be a cause (Fathiyah, 2022).

Consciously or unconsciously, children often become victims of violence committed by those closest to them, especially their family members. Violence committed by families against children causes tremendous adverse effects on both the physical and psychological well-being of children, such as trauma, depression, physical injuries (bruises), and even loss of reason and life (Ariani & Asih, 2022). Violence causes disturbances and affects all levels of a child's personality development, emotions, cognitive abilities, and behavior (Al Majali & Alsrehan, 2019). Reflecting on the existing problems and their consequences, children who are victims

of violence certainly need comprehensive and truly applicable legal protection.

In Indonesia, human values and legal norms are derived from two sources: positive law and Islamic law. Islam has provided a comprehensive explanation of the procedures for caring for children from the womb to adulthood and regulating legal protection provisions for children. In Islam, violence is prohibited (Alfiani et al., 2023). As a country based on the rule of law, Indonesia has legal regulations established by authorities with the power to form laws to protect its people. To protect children's rights and prevent violence against them, especially within the family, the government has enacted various laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, ratifying the Human Rights Convention through Law No. 39 of 1999 on Human Rights, Law No. 23 of 2002 on Child Protection, and Law No. 23 of 2004 on the Elimination of Domestic Violence.

All the above regulations are positive laws that contain provisions for child protection and legal guarantees for child victims of violence. These laws clearly show that legal protection for children is well regulated. Unfortunately, the number of cases of violence against children continues to increase every year. This phenomenon has become an academic concern that requires in-depth study to identify the root causes of

violence against children and alternative solutions that can be implemented to reduce such cases. Studies on violence against children have been conducted by several researchers, such as Rozak (2013), Markuat (2020), and Kadir (2020). Rozak specifically examined the legal provisions for child protection under Islamic law. According to him, Islamic law strictly prohibits all forms of violence against children, but he also explains that there are certain tolerances that are permitted in the effort to educate children.

Markuat (2020) specifically highlights the legal protection of children who are victims of psychological abuse in the household. In his conclusion, he states that the challenge in providing legal protection for children who are victims of psychological abuse in the family is the lack of evidence. In addition to the nature of psychological abuse, children who are victims of psychological abuse in the household also tend to be afraid to report the abuse they experience. Unlike Rozak and Markuat, Kadir (2020) focuses more on the role and function of parents in the family so that things that can cause violence against children are avoided. Based on these studies, the researcher specifically compares the legal provisions in Islamic Law and Positive Law to explore the extent to which both provisions can be applied and attempts to offer solutions based on international practices that are considered successful, thereby providing

a new perspective on child protection efforts.

## **METHOD**

This study was qualitative and adopted a normative legal approach. This approach was chosen because the focus of the study lies in the analysis of legal texts and applicable norms rather than field data. The research process was conducted through library research, which involved collecting and reviewing various relevant literature sources. The primary data sources include legal texts such as the Qur'an, Sunnah, and laws and regulations related to child protection in Indonesia. Secondary data sources include classical books, law books, accredited scientific journals, and other supporting documents that discuss similar topics. The obtained data were analyzed using a comparative approach. This approach aimed to compare two legal perspectives, namely Islamic law and positive law, by examining the similarities, differences, and relevance of each legal system in the context of child protection, particularly in handling cases of domestic violence. The analysis was conducted systematically to identify commonalities and fundamental differences, as well as to evaluate the extent to which the two legal systems can complement each other in the practice of child protection in Indonesia.

## RESULTS AND DISCUSSION

### Children in Islamic Law and Positive Law

Generally, the word “child” is used to refer to a human being who is still young or immature, or as a term used to refer to an object that is under the care or control of another object. Children are often considered as objects that know nothing and have nothing; therefore, their entire lives must be regulated by adults. In fact, the legal recognition that children have human value from the moment of conception is stipulated in Article 28B, paragraph (2) of the 1945 Constitution and Law No. 35 of 2014 concerning Child Protection. In both regulations, children must be considered full legal subjects, not merely objects under the authority of their parents. Similarly, in Islamic law, the principles of *hifz al-nafs* (protection of life) and *hifz al-nasl* (protection of offspring) mandate the protection of children's rights, even before birth.

In the Indonesian legal system, children are defined differently in various regulations. For example, in Law No. 35 of 2014 concerning child protection, Law No. 39 of 1999 concerning human rights, Law No. 1 of 1974 concerning marriage, and Law No. 44 of 2008 concerning pornography, “child” is “a person who is not yet 18 (eighteen) years old, while in Article 1 paragraph (2) of Law Number 4 of 1979 concerning child welfare, it is stated that a child is a person who has not reached

the age of 21 and has never been married.

Law Number 11 of 2012 on the Juvenile Justice System states that children are those who are 12 years old but not yet 18 years old. The Criminal Code defines children as those under 16 years of age. In customary law, children are those who have not yet developed clear and convincing physical signs of adulthood (Marsaid, 2015). Another source states that, according to custom, a person is no longer considered a child when they are able to work and are strong enough to do so (Hidayat 2014).

Unlike positive law, Islamic law does not limit the definition of children by chronological age but by the age of puberty (*mumayyiz*). The signs of puberty in Islam include reaching the age of 15 for both males and females, the emission of semen after the age of 9 for both males and females, and menstruation for girls (Al-Hadlrami 2009). Islam views children as a trust from Allah SWT to their parents and as heirs to the teachings of Islam. In the Qur'an, Allah refers to children using various terms, including adornment (*zīnatun*), comfort for the heart (*Qurrotu a'yun*), enemy to parents (*'Aduwwan lakum*), and tribulation.

From this interpretation, it can be understood that the law provides certainty but often does not reflect psychological developments or social conditions that influence an individual's maturity. Many adults are still ignorant of their understanding of children.

Parents, in particular, tend to view children as their offspring, their rights, and their power, so that the meaning of children as human beings with inherent dignity and as legal subjects who must be protected, cared for, and nurtured to achieve their welfare is often ignored.

Sociologically, recognizing children as whole human beings with dignity aims to change the paradigm of society, which has tended to position children as parties who must always submit and can be treated as adults see fit. This view encourages society to see children as members of the community with equally important rights, thereby building more egalitarian and welfare-oriented family relationships than in traditional societies. Placing children as whole human beings who have rights from the womb is an important foundation of the child protection system.

This concept ensures that children are no longer viewed as small objects that can be controlled arbitrarily but rather as legal subjects whose lives must be guaranteed, whose dignity must be protected, and whose growth and development must be supported by their families, communities, and the state. This is in line with the philosophical view that child protection is not merely a legal obligation but also a moral and humanitarian mandate. Children are viewed as moral subjects with natural rights; therefore, any form of treatment that degrades their dignity is contrary to universal human values and the purpose of the law itself.

## **Violence Against Children and Its Impact**

Soetandoyo Wigiusubroto defines violence as an act committed by a person or group in a position of power against a person or group in a weaker position to cause suffering to the party subjected to violence (Wigiusubroto, 2002). There are at least four basic measures of violence: there is a party who is harmed, there is an element of intent, there is a superior party, and there is damage caused (Nurjanah, 2018).

Article 1, point 15 a of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law No. 23 of 2002 on Child Protection states that violence is any act against a child that results in physical, psychological, sexual, and/or neglectful suffering or distress, including threats to commit acts, coercion, or deprivation of liberty against the law.

Violence against children takes various forms, including physical, psychological, and sexual violence, neglect, economic exploitation, cruel treatment, mistreatment, and injustice. Physical violence includes kicking, hitting, choking, and all other physical actions intended to cause physical harm to a child. Furthermore, psychological violence is emotionally violent and makes children feel afraid, worried, and uneasy. Sexual violence is any form of violence committed to harm a child's reproductive organs, thereby disrupting their physical, psychological, and social development. Sexual violence can take

the form of rape and similar acts of violence.

Neglect is a form of violence that involves abandoning children and ignoring their basic physical and spiritual needs, causing them to experience difficulties in their physical, intellectual, emotional, social, and spiritual development. Furthermore, economic exploitation is the act of exploiting children economically for the benefit of oneself or others. Examples of economic exploitation include forcing children to beg and encouraging children to beg. Another form of violence is cruel treatment, which is the act of being unjust, vicious, or merciless.

Cruel treatment can be exemplified by doing things that are out of control and inhumane. Examples include locking children in the bathroom for hours and punishing them without mercy. Injustice is also a form of violence, such as favoritism among children. Favoritism can also be interpreted as showing affection or love to only one child or paying attention only to one child or certain children. Based on the above explanation, it can be seen that violence against children is not only physical but can also take the form of things that are invisible and unconscious, such as discrimination against children, ignoring children, and other things that can hurt children.

Domestic violence is defined as physical, sexual, or psychological violence or threats of violence committed against an individual by

another individual with whom they have a marital or family relationship (Howell et al., 2022). The perpetrators of domestic violence against children are parents or other family members, often under the pretext of discipline. Sadly, physical punishment is carried out or occurs continuously, resulting in many negative effects on children's development.

In South Africa, a study found that one-third of child murder victims were killed by their mothers, and one in five were killed by their fathers or other family members. As mentioned above, domestic violence is prevalent in Indonesia. It is not uncommon to hear news about the murder of children by their parents, whether it be their mother, father, or other family members. Kompas reported that of the 19,626 cases of child abuse in 2024, 15,240 victims were girls, and 6,406 cases involved boys. These acts of violence were committed against children, resulting in the deaths of several victims. Of these figures, 52% of the violence cases occurred within the household, and 21% of the violence was committed by parents (Kompas, 2025).

Every 5 min, a child dies from violence. Children who are victims of violence or threats or fear of violence experience long-term trauma because their development is threatened or permanently disrupted. Violence damages children's health and prevents them from growing up safely or receiving an education that will prepare

them for the future (Unicef, 2023). Children have the right to feel safe in their homes. A UNICEF survey shows that when children around the world are asked what makes them feel safe and happy, their most common answer is "being with family." However, this is not the case for all children because, for many other children, violence starts early and begins at home.

Children are highly vulnerable to high levels of emotional, sexual, and physical violence, including harsh punishment, neglect, and abandonment. Many parents consider physical punishment to be part of discipline, but few realize its future impact. A UNICEF survey shows that one in six children is a victim of physical punishment. The most severe cases occur in Uganda, where children are punished by being burned or injured with hot knives by their parents.

Violence is often seen as an acceptable (even necessary) approach to teaching children to behave well, but research shows that experiences of violence in early childhood contribute to a range of negative consequences for physical, cognitive, developmental, and mental health throughout life and increase the risk of children committing or experiencing violence later.

Violence against children in the family can also be experienced indirectly, such as witnessing domestic violence experienced by their mother, older siblings, or anyone else in the home. Children are greatly harmed by

being exposed to violence experienced by others in their family, especially when their mother, brother, or sister is abused. Parents or caregivers involved in violent relationships may believe that arguments do not affect their children. However, even children who do not witness domestic violence are affected by conflict within their families. These issues are often overlooked and unrecognized by parents or caregivers. Consequently, children do not receive the help they need.

Globally, estimates show that as many as 275 million (one in seven) children witness domestic violence in their homes. This causes deep wounds because children experience trauma due to the suffering of family members and often feel guilty about the violence because they feel they cannot do anything to prevent it (UNICEF, 2023).

The direct impact of violence on children varies significantly. A Michigan study found that children who have been exposed to family violence suffer from symptoms of post-traumatic stress disorder, such as bedwetting or nightmares, and are at greater risk than their peers for allergies, asthma, digestive problems, headaches, and colds (Graham-Bermann & Seng, 2005). Violence against children also profoundly impacts their emotional development. Children who experience violence are likely to find it difficult to develop skills, cope with and manage their emotions, and are vulnerable to

confusion about the emotional reactions of those around them.

In addition, children who experience violence usually find it difficult to assess themselves properly; they tend to judge themselves harshly. Ariani explains that children who experience violence in the form of abuse become insecure and feel inferior (Ariani & Asih, 2022). Other studies report that the impact of violence also affects children's educational performance and achievements, which in turn has a significant long-term economic impact, including poverty (UNICEF, 2014).

Children who experience childhood trauma, including witnessing domestic violence, are at a greater risk of serious adult health problems, including tobacco use, substance abuse, obesity, cancer, heart disease, depression, and a higher risk of unwanted pregnancies (Anda et al., 2003). A personal history of childhood violence also increases the likelihood of experiencing or engaging in violence in the future (Özer et al., 2023). In this case, children who experience violence in their families are very likely to become perpetrators in the future. This chain must be broken. Efforts to protect children must start at home, not the other way around.

Physical abuse during childhood increases the risk of future victimization for women and more than doubles the risk of future abuse by men (Whitfield et al., 2003). In addition to the impacts mentioned above, the worst impact of violence against children is death itself. Apart from violence that leads to murder, many children who are depressed because they are victims of violence from their families choose to end their lives. This is in line with research findings that show a relationship between violence against children and the main causes of death in adulthood (Hillis et al., 2016).

The impact of violence against children not only violates human rights but also undermines the values of *maqāṣid as-syariah*. In Islam, one of the objectives of Sharia law is to protect the soul, which can generally be interpreted as protecting human values and dignity. Therefore, a normative review of positive and Islamic law is essential in cases of violence against children. Efforts to resolve cases of violence against children include providing them with protection. Child protection can be defined as efforts to protect children from violence and identify and stop violence that may have already occurred (Al-Sheha, 2001). In general, the impact of violence against children in the family can be seen in the following table:

**Table 1. Types of Violence and Their Impacts**

Type of Violence	Form of Violence	Examples of Short-Term Effects	Examples of Long-Term Effects
Physical	Anything that causes physical harm, such as hitting, kicking, and choking	Bruises, broken bones, bleeding, chronic pain	Permanent disability, growth disorders, susceptibility to

Type of Violence	Form of Violence	Examples of Short-Term Effects	Examples of Long-Term Effects
			disease and abuse. Depression, PTSD (MA & GK, n.d.)
<b>Psychological/ Emotional</b>	Any behavior that makes a child feel afraid, worried, or uneasy, such as exclusion, insults, threats.	Fear, anxiety, low self-esteem, sleep disorders	Depression, PTSD, chronic anxiety, difficulty forming healthy relationships
<b>Sexual</b>	Any behavior that harms a child's reproductive organs, such as touching a child's body, especially sensitive parts, rape, exhibitionism, etc.	Anxiety, fear, guilt, sleep disturbances, and psychological problems	Depression, PTSD, chronic anxiety, self-harm, reproductive disorders, etc.
<b>Neglect</b>	Neglecting children, ignoring their basic physical and spiritual needs so that they experience difficulties in their physical, intellectual, emotional, social, and spiritual growth	Malnutrition, stunted growth, etc.	Chronic depression, chronic illness, and risk of premature death
<b>Economic exploitation</b>	Using children for begging, encouraging children to beg	Fatigue, malnutrition, hindered education. (Fuseini & Daniel, 2020)	Chronic depression, chronic illness, risk of stunted growth
<b>Cruel Treatment</b>	Repeated physical and emotional abuse such as locking children in the bathroom for hours, punishing children without mercy	Distracted concentration, declining school performance	Excessive trauma, chronic depression, chronic illness, and stunted growth
<b>Injustice</b>	Favoritism or showing affection to one child, or paying attention only to one child or a specific child	Aggressive behavior, sadness, etc.	Excessive trauma, chronic depression, long-term lack of self-confidence

### Violence Against Children from an Islamic Legal Perspective

Islam views children as blessings and adornments of the world. Unlike what is referred to as Western neontocracy,

Islam does not view children as a burden, let alone a source of problems, but rather as a source of happiness and joy in worldly life. This is emphasized in the QS. Al-Kahfi verse 46, which means:

“Wealth and children are the adornment of worldly life...” (Al-Sheha, 2001). On this basis, the presence of children is a mandate that carries moral, spiritual, and social consequences that must be fulfilled by parents (Asyrof, 2016).

Theoretically, children receive protection and guarantees under the Islamic law. In Islam, the protection of children is not only juridical but also ontological and theological. One of the most well-known principles of Islam is the prevention of harm (Al-Sheha, 2001). This can be seen in *fiqh*, fatwas, and tafsir (Nasution 2016). Children's rights in Islam include (1) the right to life, (2) the right to recognition of lineage, (3) the right to a good name, (4) the right to breastfeeding, (5) the right to care and

nurturing, (6) the right to financial support, (7) the right to teaching and education, and (8) the right to be treated fairly (Sholihah, 2018).

In addition to the above principles, Jamaluddin At-Thiyah also offers the concept of *Maqāṣid al-Ushrah*, which is an extension of the concept of *Maqāṣid as-Syariah*. *Maqāṣid al-Ushrah* are the objectives of Sharia law relating to the formation and maintenance of families, including the protection of children in the spiritual, moral, social, and psychological aspects (Athiyah, 2003). The following are the concepts of *Maqāṣid al-Ushrah* and their relevance to child protection.

**Table 2. The concept of *Maqāṣid al-Ushrah* and its relevance to child protection**

<b>Maqāṣid al-Ushrah</b>	<b>Relevance to Child Protection</b>	<b>Legal Basis</b>
<b>Hifẓ al-Dīn (Preserving Religion)</b>	In caring for a child, parents are not only obliged to provide physical and spiritual sustenance, but also to instill religious values from an early age, guiding them to grow up with the right beliefs and morals so that they avoid environments and behaviors that destroy faith. This is not enough with words alone, but must also be accompanied by concrete examples. For example, by performing congregational prayers together and so on.	QS. At-Tahrim [66]:6 “O you who believe! Guard yourselves and your families from the fire of Hell...”
<b>Hifẓ al-Nafs (Protecting the Soul)</b>	Prohibition of physical violence, neglect, or cruel treatment such as confining children for hours. Guaranteeing the rights to life, health, security, and safety of children.	Q.S. al-An`ām [6]: 151 “...and do not kill your children for fear of poverty. We will provide sustenance for you and for them...”

Maqāṣid al-Usrah	Relevance to Child Protection	Legal Basis
<b>Hifẓ al-'Aql (Preserving the Mind)</b>	Providing proper education, protecting children from economic exploitation that hinders their education, and preventing exposure to information or behavior that damages cognitive development.	QS. Al-'Alaq [96]:1-5 "And read in the name of your Lord who created you..."
<b>Hifẓ al-Nasl (Protecting the Lineage)</b>	Creating a fair and loving family environment without favoritism, so that children grow up with self-esteem, identity, and healthy social relationships.	QS. An-Nisa [4]:9 "And let those fear (Allah) who leave behind them weak offspring..."
<b>Hifẓ al-Māl (Preserving Wealth)</b>	Meeting the economic needs of children without exploiting them for personal gain (e.g., forcing them to beg or work excessively), and ensuring that their inheritance and maintenance rights are protected.	QS. An-Nisa [4]:10 "Indeed, those who consume the wealth of orphans unjustly are consuming fire into their bellies..."

Source: Compiled by the author

Based on the table above, Allah guarantees the protection of children within families. Children are a trust from Allah SWT; therefore, they must be protected, cared for, provided for, and their physical and spiritual needs must be met. In addition to the verses of the Qur'an, there is also a hadith of the Prophet Muhammad SAW narrated by Bukhari that on one occasion, the Prophet was served food and drink, while on his right side was a child and on his left side were adults. The Prophet then asked the child, "May I give this drink to the adults first?" The child replied, "No! By Allah, I do not want to give my share to them," so the Prophet gave the drink to the little child. (Al-Bukhari, n.d.).

From an Islamic perspective, children's rights and their need to be

protected from danger and violence are included in the greater objectives of Sharia (*Al-Maqāṣid Al-Kubra*) (Al-Sheha 2001). There are various concepts of child protection in Islam. Some refer to the protection of children as *ḥaḍānah*, others as *kafalah*, and still others as *wilāyah*. These three terms essentially have the same meaning.

First, *ḥaḍānah* comes from the word "*al-ḥiḍn*," which means "*janb*" (womb or rib). *Ḥaḍānah* is a *masdhar* form of the word meaning "to nurture and educate children". From the two meanings above, we can derive the meaning "a mother who becomes a *hādhinah* (protector) gathers children in her womb (lap)." *Ḥaḍānah* is defined as caring for small children, protecting the weak, caring for the insane and the like. The protection, care, and guardianship referred to include fulfilling basic needs,

education, health, and all other forms of needs to ensure a prosperous and better life for children.

Second, *kafālah* is defined as guaranteeing and taking responsibility for a matter. *Kafālah* is synonymous with caring for orphans, adopted children, or children without families (Burhanudin, 2024). Conceptually, *Kafālah* and *Hadhañah* have the same meaning: to care for and educate children or take responsibility for them. However, in practice, *kafālah* tends to refer to caring for or raising other people's children.

Third, there is *wilāyah*. In *fiqh*, guardianship is referred to as *al-walāyah* or *al-wilāyah* (a person who manages or controls something). *Wilāyah* can include guardianship over the needs of children, the rights and responsibilities of children, or property, such as managing the property of children. This guardianship is explained in the Qur'an, Surah An-Nisa, verse 5, which means: "*And do not give authority over your wealth to those who are incapable...*" In this verse, Allah forbids anyone from giving authority to those who are incapable, especially regarding financial management. In such cases, financial management must be entrusted to parents or guardians.

If we explore further, the terms mentioned above are a concrete manifestation of Islamic teachings on the protection of children. All three have similar meanings: caring for children, being responsible for their needs, and safeguarding their property. Reflecting

on these teachings, Islam prohibits all forms of violence against children.

The purpose of implementing Islamic law is to create a safe, peaceful, and prosperous society. Islamic law does not allow any room for criminal acts, destruction, or violence (Az-Zuhaili, 2011). Islamic criminal law regulates all rules related to criminal acts and their legal sanctions (Mardani, 2013), including the punishment of perpetrators of violence against children.

Violence against children is strongly condemned in Islam. This can be traced back to the words of Allah SWT in QS. Al-A'raf verse 33, which means: "*My Lord only forbids immoral deeds, both apparent and hidden, and sinful deeds, violating human rights without a valid reason...*" In this verse, Allah explains that violence against humans, which can be interpreted to include children, is forbidden. Forbidden itself is defined as something that, if done, will result in sin, and if abandoned, will result in a reward.

Furthermore, the Word of God in QS. Al-Qasas (28) verse 77 means: "*And do not cause corruption on earth. Indeed, Allah does not like those who cause corruption.*" This verse emphasizes that humans are forbidden from causing corruption in this world. In this context, corruption can be interpreted as anything that causes harm to oneself or others.

In another verse, Allah says, "*Indeed, the sin is upon those who wrong others and transgress without right on the earth. They will have a painful punishment.*" (Q.S. asy-

Syurâ [42]:42). Islam strongly upholds the principles of mercy and anti-oppression. These principles form the basis of social relations in human life. Therefore, all acts of violence by one person against another are forbidden.

The above verse is also supported by a hadith of the Prophet Muhammad, which forbids his followers from harming themselves and others: “*Lā ḍarāra wa-lā ḍirār.*” The prohibition against violence and harm was commanded by the Prophet Muhammad in a hadith narrated by Imam Malik in the book *al-Muwathā*. In another hadith narrated by Imam al-Bukhari, the Prophet also said, “*Man lā yarḥam lā yurḥam,*” which means: Whoever does not love will not be loved. In this hadith, the Prophet emphasizes that all human beings, regardless of age, must love one another.

The punishment imposed on anyone who violates Islamic law can be in the form of *ḥadd* or *taʿzīr*. (Syarbaini, 2019) The punishment for perpetrators of violence against children in the family can be in the form of *taʿzīr*. *Taʿzīr* punishment is a punishment whose form and severity are determined by state policy, in this case, by the judge. This is because there is no specific text that mentions punishment for perpetrators of violence against children within the family.

Abd al-Qadir Audah explains that the principle of *taʿzīr* punishment is not to destroy, but only to teach. However, for most other *fiqh* scholars, *taʿzir* can also

take the form of the death penalty if this is desired by the general public or if the problem cannot be resolved without imposing the death penalty (Ibrahim et al., 2022). Based on the above description, *taʿzir* punishment in cases of violence against children is entirely left to the discretion of the presiding judge, without diminishing the essence of the principle of punishment.

The existence of *taʿzīr* punishment serves as a guideline for all Muslims that Islam is a religion that firmly combats violence against children. In Islam, children are considered a gift to be loved, cherished, and provided for. Islam strictly prohibits violence against children and punishes anyone who commits it, including the parents.

Conceptually, the principles of Islamic law place the welfare and protection of children as a top priority. However, its implementation has shown various variations. This is influenced by differences in cultural interpretations and local socioeconomic and political contexts. These variations often lead to selective enforcement, a condition that reflects the similar challenges faced in various regions (Abdullah et al., 2025).

## **Violence Against Children: A Positive Law Perspective**

Child protection in Indonesian positive law has a strong foundation in various legal instruments, ranging from the Constitution to specific laws that provide detailed regulations. From a legal perspective, Article 28B, Paragraph

(2) of the 1945 Constitution of the Republic of Indonesia explicitly guarantees the rights of children to live, grow, develop, and obtain protection from all forms of violence and discrimination (Zuhriah et al., 2024). This guarantee is constitutional in nature, making it the highest legal basis for all regulations.

At the operational level, these constitutional principles are reinforced by Law No. 39 of 1999 on Human Rights, which recognizes children as human beings with inherent rights from birth, without discrimination based on age, gender, religion, or social status. Furthermore, Law No. 35 of 2014 on Child Protection provides more specific regulations, including an explicit prohibition of child abuse and clear criminal sanctions for perpetrators. The Child Protection Law also states that parents are responsible for caring for, protecting, and nurturing their children until they reach adulthood (Rohmah et al., 2024). The Child Protection Law was drafted to ensure the protection of children's rights, provide them with a sense of security, and protect them from violence.

Article 4 of the Child Protection Law states that: *"Every child has the right to live, grow, develop, and participate in a manner consistent with human dignity, and has the right to protection from violence and discrimination."* Violence against children is strictly regulated under Article 76, letter C, which explicitly prohibits all forms of violence against children.

Meanwhile, the penalties for perpetrators of violence against children are listed in Article 80, which stipulates a maximum prison sentence of 3 years and 6 months or a maximum fine of 72 million rupiah. If the violence results in serious injury to the child, the perpetrator can be punished with a maximum of five years imprisonment or a fine of up to 100 million rupiah, as stated in Article 80, paragraph 2.

Article 80, paragraph 3, further explains that if the child who is the victim of violence dies, the perpetrator can be punished with a maximum imprisonment of 15 years or a fine of up to 3 billion rupiah. If the perpetrator of violence is a parent, the punishment imposed will be increased by 1/3 of the previously mentioned punishment.

Meanwhile, Law No. 23 of 2004 on the Elimination of Domestic Violence expands the scope of protection through rapid response mechanisms, reporting procedures, and criminal sanctions that vary according to the severity of the violence. The PKDRT Law plays a very important role in protecting children from violence that occurs within the family because children who witness domestic violence are at risk of experiencing adverse physical, emotional, and mental effects, which can be either short- or long-term (Yanti, Agustina, and Kes, 2022).

Chapter VI on protection explains that the police are required to provide temporary protection to victims of domestic violence within 24 hours of the

violence being reported or discovered. This temporary protection aims to reduce the risk to the victim before further action is implemented. Subsequently, the police are obligated to investigate the case. Violence against children in the household, which is a special issue, is regulated by Article 27. This article states that if the victim of violence is a child, the report can be filed by the parents, guardian, caregiver, or even by the child themselves if they are old enough to report it.

Criminal provisions for perpetrators of domestic violence are regulated in detail in Chapter VIII of the law. Ten articles regulate criminal sanctions for perpetrators of domestic violence, with penalties ranging from light to severe, depending on the level of violence committed. Perpetrators of domestic violence can be sentenced to imprisonment ranging from four months to 20 years, as well as fines ranging from 5 million to 500 million rupiah. This is a legal effort to provide a deterrent effect and protect victims from further abuse. In addition, in cases where the violence causes serious physical injury or even death, the perpetrator receives a heavier punishment in accordance with the severity of their actions (Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence).

This reflects the need for special attention and protection for children who are victims of domestic violence so that they can receive protection in

accordance with their rights. However, even though the Child Protection Law has detailed provisions on penalties for perpetrators of violence against children, including if the perpetrator is a parent, in practice, cases of violence against children continue to increase. This indicates that, although the law exists, its implementation has not been fully effective in addressing this problem.

Several factors contribute to the high rate of violence against children, including a lack of understanding of children's rights among the public, limited access to effective child protection systems, and low public awareness of the need to report violence. In addition, there are obstacles to law enforcement, with cases of violence against children often not being taken seriously or even reported.

Therefore, even though the Child Protection Law provides a clear legal basis for handling violence against children, further steps are needed to ensure that these regulations are implemented more effectively. This includes raising public awareness of the importance of child protection, strengthening training for law enforcement officials, and ensuring that child protection systems are more accessible to the public. Without these measures, even though the existing laws are quite comprehensive, the protection of children remains a major challenge.

Philosophically, regulations on child protection are based on the principle of humanity, which recognizes that

children are human beings with dignity and the same fundamental rights as adults. The concept of child protection is not only oriented towards fulfilling physical needs but also ensuring the balanced emotional, mental, and social development of children. Philosophically, children should be viewed as the future of the nation and as a key asset for continuing the legacy of nationhood and statehood. Therefore, the state guarantees the growth, health, and legal protection of children (Lestari, 2017). The basic principle of justice is the recognition that every human being has the same dignity, rights and obligations. The equality of this basic principle is in

line with the attitude of not discriminating against a person's age, gender, ethnicity, religion, or social status (Wasiati, 2020). Therefore, children must be viewed as whole human beings who have the right to be protected.

### Comparison of Laws Addressing Violence Against Children in the Family

Based on the analysis conducted, the following is a comparison of the legal provisions of Islamic law and positive law in addressing violence against children in the family.

**Table 3. Comparison of Islamic Law and Positive Law on Violence Against Children**

Aspect	Positive Law (Indonesia)	Islamic Law
<b>Definition of Child</b>	A human being who is under 18 or 21 years of age, including those still in the womb and unmarried. The definition may vary depending on the rules.	A human being who has not reached puberty.
<b>Legal Basis</b>	Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, Child Protection Law, Criminal Code, and others.	The Qur'an (surah Al-Baqarah 233, An-Nisa 1, Al-Isra 23) and the Hadith of the Prophet Muhammad SAW which regulate the protection and rights of children.
<b>Handling Violence</b>	Violence against children in the family is regulated in the PKDRT Law and the UUPA. Acts of violence against children are punishable by imprisonment and fines.	Islam prohibits all forms of violence against children, punishing perpetrators and emphasizing loving education.
<b>Child Protection</b>	Children who are victims of domestic violence have the right to protection from the state and society, either through social or legal institutions.	Children have the right to protection from violence, but Islam emphasizes the obligation of parents to educate and care for their children with love.

Aspect	Positive Law (Indonesia)	Islamic Law
<b>Sanctions against Perpetrators</b>	Perpetrators of violence against children can be sentenced to imprisonment for between 4 months and 20 years or fined between 5 million and 500 million rupiah, depending on the case.	Islam does not specify specific penalties for violence against children, but emphasizes moral and spiritual punishment, as well as the obligation of parents to educate their children properly. In addition, perpetrators of child abuse within the family are punished through <i>ta'zir</i> .
<b>Role of Parents</b>	Parents are responsible for the protection and welfare of children, with an obligation to report violence to the authorities.	Parents are responsible for the education and welfare of children, with a duty to educate children in good moral and religious values.
<b>Community Involvement</b>	The community, social institutions, and government have an important role in protecting children, with an obligation to report suspected violence.	Islam also teaches the community to care for the welfare of children and to provide social support and protection for abused children.
<b>Regulated Acts of Violence</b>	Physical, psychological, and sexual abuse, as well as child neglect, are clearly regulated in Indonesian positive law.	Islam prohibits all forms of violence, whether physical, mental, or sexual, against children and teaches that children should be protected and treated gently.

This table shows the main differences between positive law in Indonesia and Islamic law in addressing violence against children in the family. Positive law emphasizes strict and procedural sanctions, whereas Islamic law focuses more on the principles of loving education and parental responsibility towards children.

### Integration of Islamic Law and Positive Law in the Protection of Children from Domestic Violence

In general, both Islamic and positive laws regulate the prevention of violence against children, especially within the family environment. Islam, through the Qur'an, Sunnah, and the principle of *Maqashid al-Ushrah*, emphasizes the importance of compassion, education, and the protection of children from the womb to adulthood. Meanwhile, positive law, through Law Number 35 of 2014, provides a clear legal framework

for prevention, case handling, victim rehabilitation, and sanctions against perpetrators.

However, differences in the interpretation of religious teachings and cultural diversity often pose obstacles to the implementation of these rules. In addition, the application of punishment in handling cases of violence often tends to favor the perpetrator, especially since, in many cases, the perpetrators of violence against children are parents or other family members. Therefore, the effectiveness of protecting children from violence in the family can be improved by harmoniously integrating the principles of Islamic and positive law. Both legal systems have a strong foundation for protecting children's rights but differ in their approaches and sources of law.

The integration of Islamic law and positive law to protect children from violence in the family can be achieved through the following:

1. Harmonizing legal norms by aligning positive law provisions with Sharia principles so that policies and regulations do not conflict with each other, for example, by incorporating the values of *rahmah* (compassion) and *hifz al-nasl* (protection of offspring) into technical regulations on child protection.
2. Strengthening child protection institutions by encouraging synergy between state institutions (KPAI, courts) and religious institutions

(MUI, Islamic boarding schools, *majelis taklim*) to provide education, mediation, and advocacy in accordance with religious values and the state law.

3. Educating and raising awareness among parents and the community through a religious and positive legal approach to minimize violence and encourage more effective reporting.
4. Child protection education should be provided to children and adolescents so that they can manage the risks and challenges of facing or witnessing incidents and acts of domestic violence. Support services for children should be provided by introducing them to professionals who can help them.

Educating parents and the community is important. Various studies have shown that some, or at least 28%, of parents in Muslim families still apply authoritarian parenting styles, which prioritize strict discipline without considering the feelings of children, and sometimes all of this is wrapped up in religious justification (Lutfia, 2025). A religious justification that is often misunderstood is the hadith that encourages parents to instruct their children to pray from the age of seven and to give them a light beating if they have not done so by the age of ten. However, many scholars emphasize that this beating is symbolic and not serious violence (Imron, 2012).

Educating parents about the importance of good parenting from a religious perspective can positively impact child development. Dwinandita explores how integrating Islamic values into child-rearing practices can strengthen family resilience among Muslim families in Southeast Asia. Her findings revealed that integrating Islamic principles, such as *wasatiyyah* (moderation), encourages tolerance among religious communities and promotes harmonious living among diverse communities (Dwinandita, 2024).

Another study conducted by UNICEF showed that a parenting education program in Turkey successfully reduced physical punishment by 73 percent over a two-year period through the Early Enrichment Project. The program is a three-year parenting study of underprivileged mothers and their children aged 3 to 5 years. In this program, mothers participated in weekly one-hour discussions about child development and parenting, led by a coordinator. The coordinator then visited the participants at their homes every two weeks and provided training on practical parenting techniques.

After two years, the evaluation results showed that mothers who participated in the training were able to communicate better with their children, and their children became more obedient, thereby reducing previous problematic behaviors in the children. After training, the use of physical punishment also

decreased dramatically by 73 percent, as explained earlier. A follow-up study in 2009 found that the majority of children with mothers who received training or attended preschool reported significant improvements in educational attainment, career success, and age of entry into the workforce.

Subsequently, the project was formalized with the establishment of the Mother and Child Education Foundation (ACEV), with Aysen Özyegin as its founding director. In 1993, ACEV partnered with the Turkish Ministry of Education to create the Mother and Child Education Program, which was based on the ACEV methodology. Since 1993, ACEV has partnered with various organizations in 13 countries: Bahrain, Belgium, Bosnia and Herzegovina, France, Germany, Jordan, Lebanon, Mexico, Saudi Arabia, Switzerland, the Netherlands, Turkey, and the United Kingdom. By 2013, the program had reached more than 800,000 women and children (UNICEF, 2014).

Learning from the above program, Indonesia also needs to raise awareness among parents/guardians and the entire community about the importance of protecting children's rights. Violence against children in families is a shared responsibility of the government and the community. To protect children from the threat of violence, the entire community needs to be educated so that they can recognize and report suspected cases of violence against children, such as physical abuse, sexual abuse, neglect,

and psychological violence that may occur within the family unit. Equally important is the participation of young people and survivors in addressing this violence (Wong & Smarrelli, 2024).

The government, together with all elements of society, including health service providers, mental health workers, educators, legal practitioners, and the judicial system, must collaborate to handle cases of domestic violence against children and provide the necessary support.

## **CONCLUSSION**

Based on the above study, it can be concluded that both Islamic law and positive law explicitly prohibit all forms of violence against children in the family. Both legal frameworks emphasize the importance of fulfilling and protecting children's rights, especially in their immediate environment, namely the family, as the first social unit that shapes a child's personality. Although they share similarities in terms of protection principles, they also show several differences, including the definition and age limit of children, the approach to punishment for children, and the enforcement of sanctions against perpetrators.

Weaknesses in the implementation of both legal systems include a lack of policy dissemination, weak public understanding of children's rights, and cultural constraints that often interpret harsh measures as a form of education.

This reinforces the urgency of comprehensive and structured education at all levels of society on the care, protection, and prevention of violence against children. This study is expected to provide a comparative framework that can serve as the basis for developing integrative child protection policies that combine universal values in Islamic law with positive legal norms in Indonesia. This research also adds to the academic knowledge regarding the importance of reinterpreting religious teachings to align with modern child protection principles, as well as offering practical directions for strengthening parenting education in accordance with Islamic values and national law. Thus, the results of this study can serve as a reference for academics, policymakers, child protection agencies, and the general public in reducing the rate of violence against children at the family level.

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