

PROTECTION OF CHILD VICTIMS OF VIOLENCE IN THE FAMILY FROM THE PERSPECTIVE OF ISLAMIC FAMILY LAW

AND POSITIVE LAW

(Case Study at the Subang District Attorney's Office, West Java Province)

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ABSTRACT

Cases of violence against children still occur frequently; tragically, in many cases of violence against children, the perpetrators most often come from the family environment or the environment where the child is. The purpose of this study is *first* to explore the occurrence of violence against children in the family, *second* to examine more deeply the legal protection of child victims of violence in the family based on Islamic Family Law and Positive Law at the Subang District Attorney's Office, and *third* to examine more deeply the development of handling child victims of violence in the family based on Islamic Family Law and Positive Law at the Subang District Attorney's Office. The research method used by the author is qualitative, where this research is descriptive and tends to use analysis and theory as a guide so that the study focuses on the facts in the field. The type of research used is *field research*. The research approach used is descriptive. The conclusions obtained are: *First*, the factors that cause violence against children in the family are two things, namely internal factors, including economic factors; factors that are not biological children, educational factors; external factors, including factors of the child's behavior, and social, environmental factors. *Second*, Islam strictly prohibits acts of violence, especially in educating and caring for children. However, this prohibition does not apply in terms of *ubūdiyyah* or *tarbiyyatuddinniyyah*. Child protection, according to positive law, is divided into two, namely, *Preventive* legal protection and *Repressive* legal protection. *Third*, Development in child maintenance, namely parenting, maintaining children, and educating children. The development of handling child abuse in the family at the Subang District Attorney's Office is to provide maximum protection to children and their rights, namely providing legal sanctions for the perpetrators of criminal acts so that they do not continue their criminal acts as well as giving a fear effect on others so as not to commit the same criminal acts by paying fines that must be given to victims or restitution.

Keywords: Child Protection; Child Abuse; Family

I. INTRODUCTION

Islam encourages family formation and invites people to live in the shadow of the family. Because the family is like a small picture of a stable life, fulfilling human desires without ignoring their needs. The family is the natural place according to the will of Allah SWT for human life since the existence of the Khalifah,¹ as Allah says in the Qur'an Surah Ar-Ra'd verse 38:

وَلَقَدْ أَرْسَلْنَا رُسُلًا مِّن قَبْلِكَ وَجَعَلْنَا لَهُم أَزْوَاجًا وَذُرِّيًّا ۚ

Meaning: *We have sent messengers to you and given you wives and children.*²

Islam, as a religion that has comprehensive teachings, gives excellent attention to life, even when humans are still in the form of a fetus. Although humans are still in the womb, Islam provides rights that their parents must fulfill. In this case, as usual, every right comes with an obligation, and the existence of children's rights comes with an obligation. Children's rights are obligations for their parents; conversely, children's obligations are the rights their parents should obtain.³

Violence that occurs against children in the family certainly has different motivations from one perpetrator to another. In addition, violence that occurs in families is due to the abuse of power by the strong against the weak. Parents with physical or non-physical strength (due to high status in the family) or who feel superior can do whatever they want.⁴

There are several institutions, both government agencies and non-governmental organizations, to make efforts to protect child victims of violence, whether it occurs in the family sphere or the public sphere, such as the Child Protection Agency (LPA), the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) and one of them is the Prosecutor's Office which prosecutes perpetrators of child abuse as a form of protection provided for children. However, even though various efforts have been made to protect children, there are still many cases of violence against children in the community and family environment.

Based on data from the Subang District Attorney's Office from 2020 to September 2022, as follows:

¹ Ali Yusuf As-Subki, *Fiqh Keluarga (Pedoman Berkeluarga Dalam Islam)* (Jakarta: Amzah, 2010). P. 23.

² Departemen Agama Republik Indonesia, *Al-Qur'an Dan Terjemah* (Jawa Barat: Penertbit Diponegoro, 2010). P. 254.

³ Sholihah H., "Perlindungan Anak Dalam Perspektif Hukum Islam," *Al-Afkar: Journal For Islamic Studies* 1, no. 1 (2018): P. 38-56.

⁴ Abu Huraerah, *Kekerasan Terhadap Anak*, n.d. P. 68.

Table 1.1
Number of cases of violence against children in the Subang District Attorney's Office

NO	YEAR	NUMBER OF CASES	CASES RELATED TO VIOLENCE AGAINST CHILDREN
1.	2020	74 Cases	15 Cases
2.	2021	62 Cases	25 Cases
3.	2022	78 Cases	29 Cases

It can be seen, based on the statistics of cases in the Subang District Attorney's Office for cases related to violence against children, that there is an increase in the number of cases every year.

II. RESEARCH METHODS

The research method used by researchers is a qualitative method, which is descriptive and tends to use analysis and theory as a guide so that the research focuses on the facts in the field. The type of research used is *field research*, which is carried out systematically and takes data in the field, such as observing the environment and taking the data needed for research in the form of interviews.⁵ In addition, the research approach used in this research is normative sociological, where researchers conduct an in-depth examination of a situation or event referred to as a case by using systematic ways of making observations, collecting data, analyzing information, and reporting the results.

The data sources obtained in this study are Primary Data Sources, namely data obtained as a result of direct interviews related to this research, and Secondary Data Sources, namely data obtained in the form of results from research, literature, legislation, and news on the internet. As for data collection techniques, it is a systematic and standard procedure for obtaining the data you want to need. There is always a relationship between the method of collecting data and the research problem to be solved.⁶ Therefore, researchers also need techniques that are following this research so that they can be classified as follows:

⁵ Slamet Riyanto and Aglis Andhitan Hatmawan, *Metode Riset Penelitian Kuantitatif* (Yogyakarta: Deepublish, 2020). P. 4.

⁶ Moh. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2003). P. 174.

First, observation is an activity towards a process or Object with the intention of feeling and then understanding the knowledge of a phenomenon based on previously known expertise and ideas to get the information needed to continue a research. Observation is a data collection technique where researchers make direct observations of the Object of research, as well as collect information from related parties that can help find data related to the problem to be studied as well as being able to support the data obtained from interview data so that it will be known whether the data provided by informants related to research problems is by the actual situation.

Second, in interviews, which are conversations with a specific purpose, the conversation is carried out by two parties, namely the *interviewer (interviewer)* who asks questions and the interviewee (informant) who provides answers to those questions.⁷ Interviews in this study are intended to obtain information related to the psychological recovery efforts of child victims of sexual violence. Interviews will be conducted using guidelines that have been made. The purpose of the guidelines is to make it easier, and the questions the researcher asks are directed to get the desired information related to the problem to be studied. The sources in this research are the Section Head of the General Crimes Division at the Subang District Prosecutor's Office, the Section Head of the Intelligence Division at the Subang District Prosecutor's Office, and the Head of the Prosecution Sub-Section of the General Crimes Division.

Finally, documentation is obtaining data by studying and recording books, archives, or documents. Such as photography, letters, recordings, and the like, which can be used as information.⁸

III. RESULTS AND DISCUSSION

A. The occurrence of violence against children in the family

Currently, in Indonesia, there are many cases handled by law enforcement officials (police, prosecutors, judges) related to violence committed by parents to children. According to Pinos Permana th, the Head of the General Crime Section at the Subang District Attorney's Office explained that children in the family are children who are born due to marital ties, including children who are still in the womb and adopted children or stepchildren who are within the scope of the household. Violence against children is an act that has a physical and traumatic

⁷ Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosda Karya, 2010). P. 186.

⁸ Kadir Ahmad, *Dasar-Dasar Metodologi Penelitian Kualitatif* (Makassar: Indobis Media Centre, 2003). P. 106.

impact. Children are often oppressed because they are weak creatures. According to Pinos Permana, violence against children, which the Subang District Attorney's Office generally handles, is dominated by physical and sexual violence against children by parents.⁹

Violence is the use of physical force and power, threats or actions against oneself, an individual, or a group of people (society) that result in or are likely to result in bruising or trauma, death, psychological harm, developmental abnormalities, or deprivation of rights.¹⁰ The forms of violence committed against children are not only in the form of physical violence, such as abuse, murder, and sexual violence, but violence can also be in the form of non-physical violence, such as economic, psychological, and religious violence.¹¹

According to Akhmadi Adi Sugiarto, the Head of the Intelligence Section at the Subang District Attorney's Office (Public Prosecutor) explained that physical violence is violence committed directly against another person's body so that it has an impact in the form of pain on the body which will also have a traumatizing effect on the victim. Another form of physical violence is sexual violence, which has a more dangerous impact than physical violence, namely violence committed against a person's sexuality and which more often occurs to women, so it has the effect of lifelong trauma because it causes loss of virginity. Psychological violence is violence that causes fear, loss of self-confidence, and a sense of helplessness that can degrade self-image or self-confidence either through unwelcome words or actions. Psychological violence also has the effect of damaging the mentality of its victims.¹²

Several factors lead to child abuse in the family, namely:

1. Internal factors of the perpetrator
 - a. Economic Factors

Families with a lower-middle-class economy often experience cases of child abuse. Several reasons trigger the occurrence of violence, namely parents' income that does not meet the needs of the household, causing parents to get often angry and physically abuse their children, parents selling their children, and parents employing children to help the family economy.

⁹ Pinos Permana, "Wawancara" (Subang, May 25, 2023).

¹⁰ Deby Priscika, *Tinjauan Pustaka Kekerasan Terhadap Anak*, 2015.

¹¹ Anastasia Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia," *Lex Crimen* 4, no. 1 (2015): P. 47.

¹² Akhmad Adi Sugiarto, "Wawancara" (Kejaksaan Negri Subang, May 25, 2023).

b. Non-conceived Factors

Based on data available at the Subang District Attorney's Office, cases of violence experienced by children in the family from 2020 to 2022 have increased every year. Of the 28 cases of violence against children in the family in 2022, 19 cases were committed by stepfathers.

This is because adopted children or stepchildren are biologically not related by blood. Parents feel that the child is not their flesh and blood, so when parents commit violence, there is no inner contact that occurs.

c. Education Factors

The parental education factor greatly influences parents' parenting patterns towards their children. Many parents who are educated only up to junior high school (SMP) and senior high school (SMA) treat their children arbitrarily because they do not know that children are protected by the government and sanctions for parents who commit violence against children under laws and regulations.

2. External factors of the perpetrator

a. Child's behavioral factors

Parents who are tired of working all day when they come home to find the house in disarray without being tidied up by their children become a trigger for acts of violence against children. Lazy and unruly children cause parents to become angry. In addition, children who always make mischief and do not do their obligations will also make parents become angry and commit violence with the intention of teaching lessons so that children change their behavior for the better.

b. Environmental Social Factors

The living environment can also be a factor that causes violence committed by parents against children to occur. Suppose we live in a slum environment and are accustomed to the world of crime and immorality where acts of violence are ordinary, such as fights, persecution, and brawls. In that case, it can have an impact on parents to become accustomed to violence against children. Usually, this kind of environment is far from religion, such as localized entertainment venues.

According to Finradost Yufan Madakarah, as Head of the Prosecution, Execution, and Examination Sub-Section at the General Crimes Section, cases of violence against children in the family handled by the Public Prosecutor at the Subang District Prosecutor's Office occur due

to economic factors, factors that are not biological children and social, environmental factors.¹³

B. Protection of Children Due to Violence in the Family According to Islamic Law and Positive Law.

1. The Concept of Child Protection According to Islamic Law

The position of children as the young generation, bearers of the nation's noble ideals, future leaders, and a source of hope for previous generations requires the most incredible opportunity to grow and develop mentally, physically, and spiritually. Social child protection is the effort and activity of the entire environment in various tasks and roles, realizing the importance of children for the country and nation in the future. It is time to replace the previous generation when they have matured physically, mentally, and socially.¹⁴

Parents must love their children, and their right is to get respect from them. Speaking of rights, there must be obligations on the other side. Conversely, a child must respect their parents, and their right is to receive love. Ideally, this principle is inseparable. That is, a person is obliged to respect if he gets affection. And parents are compelled to love if they get respect. It's an interchange, like the egg and the chicken, if one had to wait for the other. Neither one starts to fulfill the other's rights. Usually, a person gets a right if he has carried out an obligation. Therefore, obligations must come first without considering the rights that must be obtained. Parents should love, with all their behavior, gifts, and orders to their children forever. Likewise, children should honor and glorify their parents forever.

Islam views children as a gift and a trust from God for parents. Therefore, they (parents) are fully responsible for the child's safety, welfare, and education. The child's safety, which is the responsibility of the parents here, is not only the safety of the world but also the hereafter. Therefore, the child becomes a field of reward for both parents. All that is given to children by parents is not in vain in the eyes of Allah but is ongoing worship and becomes a good deed if sincerely intended to expect His pleasure.¹⁵

¹³ Finradost Yufan Madakarah, "Wawancara" (Kejaksaan Negri Subang, May 26, 2023).

¹⁴ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2014). P. 40.

¹⁵ Syekh Khalid bin Abdurrahman Al-'Akk, *Cara Islam Mendidik Anak*, 1st ed. (Yogyakarta: Ad-Dawa', 2006). P. 97.

Islam is a religion that strongly opposes the practice of violence. Violence in any form and against anyone, especially against children in the realm of family, community social interaction, educational institutions, as well as in the daily environment. Abusive and arbitrary treatment is a *fāsid* act in Islam. Moreover, these acts of *fāsid* (destruction) are committed against children who are the next generation of the nation. These acts of destruction can be in the form of murder, abuse, and other heinous acts that Allah SWT forbids.

As often happens in the world of child development, they usually get harsh and harsh treatment from parents and families with the excuse of educating or punishing the child for making repeated mistakes. A reason that is almost without loopholes and difficult to break. Back to the previous explanation, Islam does not allow violence, especially in educating and caring for children. However, this prohibition does not apply in the case of *ubūdiyyah* or *tarbiyyatuddinniyyah*. This means that, outside of this, violence against children in the family in any form is prohibited.

In a hadith, Rasulullah Saw explained:¹⁶

مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ، وَاضْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرِ، وَفَرِّقُوا بَيْنَهُمْ فِي الْمَضَاجِعِ.

It means, “Command your children to pray when they are seven years old, spank them when they are ten, and separate their beds.”

In this Hadith, the Prophet used the expression *murū* (command) for children under the age of 10 and *idhribū* (beat) for 10 years old. Thus, before a child reaches the age of 10, he is not allowed to use violence in the matter of prayer, let alone in issues other than prayer, namely in the education process. Educating children who are not yet 10 years old is only limited to providing motivation. However, the permissibility of hitting does not mean it is necessary or obligated to hit. The purpose is a “conditional” firm action, namely a blow that is carried out in the context of *ta’dib* (educating, namely so as not to get used to committing deliberate violations); the blow is not carried out in a state of anger (because it is feared that it will harm), not to injure or (even) kill, not to hit vital parts of the body such as the face, head, and chest, must not exceed 10 times, preferably a maximum of 3 times, not using dangerous objects (shoes, bricks and other complex objects).

¹⁶ Al-Hafidz Al-Imam Abi Daud Sulaiman Ibn Al-asy’as As-Sjastani, *Sunan Abi Daud (Kitab As-Salat)*, 1st ed. (Semarang: Cv. Asy-syifa’, 1992). P. 325.

Spanking is the last alternative. Therefore, it is not justified to spank unless all other methods of educating, giving other punishments, and taking the process according to the child's age have been used. Discipline can be achieved without violence because Allah mandates that children be cared for, educated, and guided to become pious and pious. Neglecting and wasting children is also strictly prohibited by Islam. But keep in mind that violence, in its legal origin, is an act that is not permitted; the Hadith is an exception. Therefore, acts of violence outside of matters related to children's *ubūdiyyah* are not allowed. This is in line with Luqman's advice (command) to his children in the Qur'an Surah Al-Luqman (31): 17 :

يُبْنِيَّ اَقِمِ الصَّلَاةَ وَاْمُرْ بِالْمَعْرُوفِ وَانْهَ عَنِ الْمُنْكَرِ وَاَصْبِرْ عَلٰى مَا اَصَابَكَ اِنَّ ذٰلِكَ مِنْ عَزَمِ الْاُمُورِ

Meaning: "O my son, establish prayer, enjoin good, prevent evil, and be patient with what befalls you. These are all things that must be considered."

From the verse quoted above, we can conclude that Islam commands the performance of *mahḍah* acts of worship (including prayer) and that advising and teaching goodness is obligatory (*farḍu 'ain*) for parents towards their children.

Extended description of the protection of children's welfare according to Islamic law, acts of violence against children in the household are strictly prohibited. In Islamic law, a child's rights are protected from the womb until the age of 18 or until marriage. However, Islamic law tolerates "violence" as long as it does not affect physical and mental development as a means of education for children. Still, it does not violate the rights of a child—both Islamic law and the laws that apply in Indonesia.

2. Concept of Child Protection According to Positive Law

Children are an integral part of the survival of humans, nations, and countries. Still, in reality, crimes of violence against children in Indonesia continue to increase. They are even carried out sadistically so that violence against children has been categorized as a severe crime.

Legal protection is protection for human rights harmed by others and given to the community so they can enjoy all the rights granted by law. In other words, legal protection is a variety of legal efforts that law enforcement officials must make to provide a sense of security, both in mind and physically, from disturbances and various threats from any party.¹⁷

¹⁷ Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000). P. 74.

Legal protection narrows the meaning of protection; in this case, it is only protection by law. The protection provided by law is also related to rights and obligations, in this case, owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have the rights and obligations to carry out legal action.¹⁸

According to Philipus M. Hadjon, there are two kinds of legal protection means, namely:¹⁹

a. Means of Preventive Legal Protection

In this preventive legal protection, legal subjects can submit objections or opinions before a government decision takes a definitive form. The aim is to prevent disputes from occurring. Preventive legal protection is meaningful for government actions based on freedom of action. With preventive legal protection, the government is encouraged to be careful when deciding based on discretion. In Indonesia, there is no specific regulation on preventive legal protection.

b. Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Court and Administrative Court in Indonesia falls into this category of legal protection. The principle of legal protection against government actions derives from the recognition and protection of human rights because, according to Western history, the birth of concepts of recognition and protection of human rights is directed at limiting and laying down the obligations of society and government. The second principle underlying the legal protection of government actions is the principle of the rule of law. Attributed to the recognition and protection of human rights, the recognition and protection of human rights are central and can be associated with the purpose of the rule of law.

Regulations regarding criminal acts of violence against children in the family have been widely applied in laws that are valid in Indonesia. This is undoubtedly a binding regulation for all levels of society, which, if there is a violation, will be subject to appropriate sanctions by the sanctions contained in the regulation.

Regulations regarding violent crimes that violate children's rights include :

¹⁸ CST Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1980). P. 102.

¹⁹ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987). P. 30.

- a. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.
- 1) Article 1 point 15a
Violence is any act against a child that results in physical, psychological, sexual, and neglectful harm or suffering, including threats to commit acts, coercion, or unlawful deprivation of liberty.
 - 2) Article 20
The State, Government, Local Government, Community, Family, and Parents or Guardians are obliged and responsible for implementing Child Protection.
 - 3) Article 76C
Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children.
 - 4) Article 76D
Every person is prohibited from committing violence or threatening violence to force a child to have sexual intercourse with them or with another person.
 - 5) Article 76E
Every person is prohibited from committing violence or threat of violence, forcing, deceiving, committing a series of lies, or inducing a child to commit or allow obscene acts.
 - 6) Article 76I
Every person is prohibited from placing, allowing, committing, ordering to commit, or participating in the economic and sexual exploitation of children.
 - 7) Article 80
 - (1) Any person who violates the provisions referred to in Article 76C shall be imprisoned for 3 (three) years, 6 (six) months, and a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah).
 - (2) If the child, as referred to in paragraph (1), is seriously injured, the perpetrator shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).
 - (3) If the child, as referred to in paragraph (2), dies, the perpetrator shall be sentenced to a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

- (4) The punishment shall be increased by one-third of the provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) if the offender is a parent.
- 8) Article 81
 - (1) Any person who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
 - (2) The criminal provisions, as referred to in paragraph (1), shall also apply to any person who intentionally commits deceit, a series of lies, or induces a child to have sexual intercourse with them or another person.
 - (3) Suppose the criminal offense, as referred to in paragraph (1), is committed by parents, guardians, caregivers, educators, or education personnel. In that case, the punishment shall be increased by 1/3 (one-third) of the criminal sentence, as referred to in paragraph (1).
- 9) Article 82
 - (1) Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).
 - (2) Suppose the criminal offense referred to in paragraph (1) is committed by parents, guardians, caregivers, educators, or education personnel. In that case, the punishment shall be increased by 1/3 (one-third) of the criminal sentence, as referred to in paragraph (1).
- 10) Article 88

Any person who violates the provisions referred to in Article 76I shall be imprisoned for a maximum of 10 (ten) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).
- b. Law of the Republic of Indonesia Number 23 2004 on Eliminating Domestic Violence.
 - 1) Article 1 point 1

Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological, and domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household.

2) Article 1 point 2

The Elimination of Domestic Violence is a guarantee provided by the state to prevent domestic violence, take action against perpetrators of domestic violence, and protect victims of domestic violence.

3) Article 10

Victims are entitled to:

- a. Protection from family, police, prosecutors, courts, advocates, social organizations, or other parties either temporarily or based on the stipulation of a protection order from the court.
- b. Health services by medical needs.
- c. Special handling is related to victim confidentiality.
- d. Counseling by social workers and legal aid at every level of the examination process, as required by laws and regulations.
- e. Spiritual guidance services.

4) Article 44

(1) Every person who commits physical violence within the scope of the household as referred to in Article 5 letter A shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah).

(2) If the act referred to in paragraph (1) results in the victim getting sick or seriously injured, he/she shall be imprisoned for a maximum of 10 (ten) years or a maximum fine of Rp. 30,000,000.00 (thirty million rupiah).

(3) If the act as referred to in paragraph (2) results in the death of the victim, the perpetrator shall be punished with a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 45,000,000.00 (forty-five million rupiah).

5) Article 45, paragraph (1)

Every person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (Nine million rupiah).

C. Development of Handling Child Victims of Family Violence Based on Islamic Family Law and Positive Law

1. Development of handling child victims of family violence based on Islamic family law

The term in Islamic Family Law or Islamic Marriage Law is not protection. Still, the maintenance and education of children in the Marriage Law, namely Law No. 1 of 1974 concerning marriage, while the term child maintenance in the Compilation of Islamic Law is the same as the term *Hashanah* in fiqh.²⁰ In KHI, maintenance or *hadhânah* is defined as caring for, maintaining, and educating children until they are mature or able to stand independently. Thus, child maintenance has three keywords: caring for, maintaining, and educating children.

Several articles in the Indonesian Islamic Marriage Law provide protection and guarantees for the maintenance of children. These articles can be explained as follows:

First, in Marriage Law No. 1 of 1974 (Law No. 1 of 1974 concerning Marriage), the protection and guarantee of child maintenance are stated in Article 45 that in the event of divorce, either the mother or the father remains obliged to maintain and educate his children and that the father is responsible for all maintenance and education costs required by the child so that the breakup of the parent's marriage should not be an excuse for neglecting the maintenance of children. Still, in the context of guaranteeing and protecting the right to child maintenance in Article 45, both parents must maintain and educate their children as well as possible. Child maintenance and education are children's rights that must be fulfilled (obligations) of parents.

Secondly, the Compilation of Islamic Law (KHI) also mentions what is mandated in UUP No. 1 of 1974. As mentioned in the introduction, the KHI defines child maintenance in the General Provisions. The maintenance period mentioned in chapter xiv Child Maintenance Article 98, which is 21 years old, is the age at which the child is believed to have stood alone.

As for who is entitled to maintain and who is responsible for the costs of child maintenance, it is mandated in article 105 that (1) the mother is more entitled to maintain when the child is not yet mumayyiz or not yet 12 years old, and (2) the father is responsible for the costs of child maintenance.

Then, Article 149 reaffirms that if the marriage is broken due to divorce, the former husband (father) is obliged to provide *hadhânah* costs for his

²⁰ Khairuddin Nasution, "Perlindungan Terhadap Anak Dalam Hukum Keluarga Islam Indonesia," *Jurnal Al-Adalah* XIII, no. 1 (June 2016).

children who have not reached the age of 21. Article 156 still emphasizes that all the expenses of *hadhânah* and child maintenance are the responsibility of the father.

Thus, From the articles mentioned above, it is clear that children receive protection and guaranteed maintenance rights. However, in reality, many children are neglected: (1) children who do not get the right to care, (2) children who do not get the right to maintenance, or (3) children who do not get the right to education. Three parties contribute and play a significant role in determining whether or not children's maintenance rights are guaranteed, especially in cases of divorce between parents, namely: 1. The judge in court, 2. The kindness of the parent (father), 3. The involvement of the wife/mother during the divorce process.²¹

2. Development of positive law-based handling of child victims of family violence

The Attorney General's Office of the Republic of Indonesia, now referred to as the Attorney General's Office, is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law.²² In protecting child victims of violence, which is intended to accommodate the rights of child victims of violence and provide justice to child victims of violence, especially violence against child victims of violence in the family, the Attorney General of the Republic of Indonesia has issued a Circular Letter Number: SE-007/A/JA/10/2016 concerning Protection of Child Victims of Violence with a scope that includes handling and resolving cases of criminal acts of child protection, eradicating criminal acts of trafficking in persons and eliminating domestic violence whose victims are children and criminal acts related to violence or economic or sexual exploitation of child victims of violence.

In this study, there are several things that researchers found, namely about punishment based on the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence; there are phrases of imprisonment or fines in several articles on criminal provisions. The phrase "or" can be interpreted as an option; parents who commit criminal acts of violence against children in the family to avoid imprisonment can simply pay a fine. This does not reflect the intention of the law, which is to protect child victims of violence in the family, which will have an impact on children who are afraid to report acts of violence committed by parents. Children will

²¹ Nasution. P. 14.

²² "UU RI Nomor 11 Tahun 2021 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia," Pub. L. No. 11 (2021).

experience violence and trauma throughout their lives in the family. This differs from Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, where in the criminal provisions applied, the perpetrators are held accountable for their actions by imprisonment and paying fines.

According to Akmal Kodrat th, the Head of the Subang District Prosecutor's Office, who explained that in cases of violence against children in the family, he had given instructions to the Public Prosecutor at the Subang District Prosecutor's Office to make a letter of demand to charge the perpetrator with imprisonment and not to charge the perpetrator with only paying a fine.²³

In this study, researchers also found the importance of Islamic legal knowledge for the Public Prosecutor in making and submitting prosecutions for perpetrators of violence against children in the family following what the Prophet Muhammad SAW did in his hadith:

'Abdullah ibn Yusuf reported from Malik reported from Isma'il reported from Malik reported from Ibn Shihab reported from Abi Salamah ibn' Abdirrahman reported from Abu Hurairah r.a. that two women from Banu Huzail quarreled and one of them threw a stone at the other and the fetus died. So the Messenger of Allah (SAW) prescribed a fine in the form of an enslaved man or an enslaved woman.' (H.R. al-Bukhari).

In the Hadith, the Prophet made various efforts and policies to provide maximum protection to children and their rights, namely, providing legal sanctions for the perpetrators of criminal acts so that they do not continue their criminal acts, and creating a fear effect on others so that they do not commit the same criminal acts by paying restitution that must be given to child victims.

IV. CONCLUSIONS

Based on the discussion and research above, several conclusions can be drawn. *First*, the factors that cause violence against children in the family are two things, namely Internal factors, including economic factors, factors that are not biological children, educational factors, and external factors, including factors of the child's behavior and social, and environmental factors. *Second*, Islam strictly prohibits acts of violence, especially in educating and caring for children. However, this prohibition does not apply to *ubūdiyyah* or *tarbiyyatuddinniyyah*. This means that outside of these matters, violence against children in the family in

²³ Akmal Kodrat, "Wawancara" (Kejaksaan Negri Subang, May 26, 2023).

any form is prohibited. The practical examples of Islam in protecting children exemplified by the Prophet Muhammad include Loving children even if they are the result of adultery, being fair in giving, maintaining the good name of the child, protecting children from violence, protecting children from neglect, and guaranteeing maintenance. *Third*, the concept of child protection according to positive law is divided into 2 (two): *Preventive* legal protection and *Repressive* legal protection. The development of handling child victims of family violence based on Islamic Family Law that child maintenance in the Compilation of Islamic Law, the same as the term *Hashanah* in fiqh. In KHI, maintenance or *hadhânah* is defined as caring for, maintaining, and educating children until they are mature or able to stand alone. Thus, child maintenance has three keywords: caring for, maintaining, and educating children. Then, the development of handling child victims of family violence in the Subang District Attorney's Office that the importance of knowledge of Islamic law for the Public Prosecutor in making and filing prosecutions against perpetrators of violence against children in the family follows what the Prophet Muhammad SAW did with his various efforts and policies to provide maximum protection to children and their rights, namely providing legal sanctions for the perpetrator of the crime so that he does not continue his criminal acts as well as giving a fear effect on others so as not to commit the same criminal act by paying a fine that must be given to the victim or restitution.

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