

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

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ABSTRACT: This study aims to investigate Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from the Perspective of National and Islamic Criminal Law in Indonesia. This study used a qualitative, normative, and empirical legal study. Data were gathered through legal document studies and empirical studies. Legal document studies were conducted through analysing the Indonesian positive law documents and the Islamic law documents. Meanwhile, empirical legal studies were conducted through in-depth interviews with Indonesian law experts and Muslim scholars in Islamic law. This study found that the Indonesian criminal justice system adopts a hybrid system that combines elements of retribution, prevention, and rehabilitation, and is evolving toward a more restorative approach oriented toward victim protection. In the context of protecting children from commercial sexual exploitation, this system emphasizes that sentencing must deter perpetrators while ensuring the recovery and safety of children as highly vulnerable victims. The Islamic criminal justice system adopts a comprehensive and balanced approach, combining elements of prevention, just retribution, and the restoration of social order, including hudud (punishment), qisas/diyat (punishment), and ta'zīr (punishment based on the circumstances). In the context of protecting children from commercial sexual exploitation crimes, these acts are categorized as acts that damage honor, injure dignity, and threaten the safety of children, which are generally placed in the realm of ta'zīr.

KEYWORDS: Child Victims Protection, Sexual Exploitation Protection, Indonesian Criminal Law, Islamic Law

I. INTRODUCTION

Legal protections for children across various regions of Indonesia remain weak (Khatani, Chui, & Gonsamo, 2025; Stark, Bancroft, Cholid, Sustikarini, & Meliala, 2012). The current approach used by law enforcement officials in addressing child sexual crimes is less effective because they rely solely on formal approaches regulated in positive law. The ineffective implementation of Law Number 35 of 2014 concerning Child Protection in various cases of child crime has become one of the reasons for amending or replacing Law Number 23 of 2002 as the legal basis. Several consequences of these problems have resulted in several cases of child trafficking, which have increased in recent years and tend to become more widespread and systematic. In fact, according to an informant from the Child Protection Commission (KPAI), the Child Protection Law is still rarely used in addressing cases of violence and child trafficking. Law enforcement officials tend to use the Criminal Code alone as positive law, resulting in handling and prevention efforts through legal sanctions imposed on perpetrators of child sexual exploitation being too lenient.

The approach to preventing child sexual exploitation is a problem related to how law enforcement officers enforce the law to protect children (Christensen, Rayment-McHugh, Prenzler, Chiu, & Webster, 2021). The choice of approach is crucial because sexual violence against children has profound and long-term impacts on their physical, psychological, social, and future development. One approach is to formulate a holistic, systematic, and evidence-based legal protection concept. Furthermore, an approach through law enforcement that not only provides protection to children but also imposes severe sanctions on perpetrators of sexual violence will provide a deterrent effect and increase children's sense of security. Lu, Owusu-Addo, Yoshikawa, Mensah, & Fry (2025) and Larcombe (2014) emphasize the importance of implementing stricter laws against perpetrators of sexual violence, as well as providing adequate legal protection mechanisms for victims through fair and effective

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

legal implementation. One highly relevant approach is a conceptual legal comparison through a study of national criminal law and Islamic Criminal Law in efforts to address sexual violence against children.

A comparative legal approach provides a broader perspective on the diversity of laws worldwide and on how countries can learn from others' experiences in addressing similar issues (Frankenberg, 2017). The following are some in-depth arguments for the importance of a comparative legal approach in addressing sexual violence against children, with relevant references: first, a deeper understanding of the diversity of legal systems. A comparative legal approach allows for a deeper understanding of the diversity of legal systems across countries in addressing sexual violence against children. Each country has different legal and cultural characteristics in addressing the issue. For example, common law systems, such as those in the United States and the United Kingdom, tend to prioritize criminal trials with harsh penalties for perpetrators. In contrast, countries with civil law systems, such as France or Germany, may place greater emphasis on administrative dispute resolution procedures or mediation, which can offer solutions that focus more on the rehabilitation and recovery of victims (JOHNSON, VAN WINGERDEN, & NIEUWBEERTA, 2010; ULMER & BRADLEY, 2006). According to Mania (2024), comparative law provides greater insight into how a country can adapt or import conceptual legal elements from other legal systems that have been more successful in addressing sexual violence against children. This can be a more effective legal solution in the local context, without having to ignore existing cultural values and legal systems.

Therefore, this research will discuss the conceptual and practical aspects of law enforcement regarding the crime of child sexual exploitation. Reality shows that the positive criminal law in Indonesia, in this case the Criminal Code and applicable laws and regulations specifically, has not been able to overcome the crime of child sexual exploitation in Indonesia. Since the enactment of various laws and regulations regarding child sexual exploitation in Indonesia, the direction is not decreasing but rather increasing and in addition, referring to the percentage of cases involving children in sexual crimes from 2016 to 2017. The highest percentage is child pornography cases (50%), second place, child prostitution (28%), and third place, child trafficking (21%), which is in accordance with the data and the record has illustrated the increasing commercial sexual exploitation of children in several regions in Indonesia. Therefore, to provide legal protection against child sexual exploitation in Indonesia, efforts are needed to find another approach to its enforcement. One of them is exploring the concept of legal protection through a comparative study between Indonesian positive law and Islamic law, thereby providing another solution in preventing sexual crimes against children.

II. LITERATURE REVIEW

A. THE CONCEPT OF CRIMINAL LAW

The concept of criminal law in Indonesian criminal law has undergone significant development from the classical paradigm in the old Criminal Code to the modern paradigm framework of punishment in the new Criminal Code (Law No. 1 of 2023) (Faisal et al., 2024). The old Criminal Code, a colonial legacy, is dominated by classical school thinking that emphasizes legal certainty, proportional retaliation, and a rigid structure of the sanction system, as reflected in Article 10 of the Criminal Code concerning the types of principal and additional penalties. The concept of punishment positions criminal sanctions as an instrument of state retaliation against perpetrators of crime (retributive justice), in accordance with classical doctrine (Woolsey, 1915). However, the new Criminal Code seeks to shift this orientation by emphasizing the value of social benefit, victim protection, and the individualization of punishment through recognition of broader, more humanistic purposes of punishment. The concept of criminal conceptual renewal, including the expansion of punishment types, the introduction of alternative punishments, and support for restorative justice solutions, aligns with modern approaches in national criminal policy.

From the philosophical perspective of criminal theory, the concept of punishment in Indonesian criminal law now combines three main paradigms: retributive, utilitarian, and restorative. These three conceptual concepts of punishment are developments of the positive legal paradigm that prioritizes the retributive concept, which is maintained as long as it guarantees proportionality and enforcement of legal norms through just retribution. Meanwhile, the utilitarian approach is reflected in the efforts of punishment that aim to prevent crime, protect society, and rehabilitate perpetrators, in accordance with modern thinking on the social utility of punishment. The conceptual concept of the restorative approach has developed along with the implementation of the values of deliberation and social recovery in various policies, especially in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which requires diversion for the best interests of children and the restoration of social relations. This conceptualization of the restorative approach aligns with Indonesian cultural values and John Braithwaite's theoretical work on restorative justice.

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

B. CONCEPT OF CRIMINAL SANCTION SYSTEM

The concept of the criminal sanction system in Indonesian criminal law is built on the principle that punishment is not merely a repressive measure, but a social instrument aimed at upholding justice, protecting society, and educating perpetrators (Bowles, Faure, & Garoupa, 2008). This is reflected in the Criminal Code, particularly Article 10, which regulates the types of principal and additional punishments, and is further deepened by modern criminal doctrines and theories. The theoretical basis of the Indonesian criminal sanction system is influenced by classical theory (vergelting/retributive theory), which emphasizes proportional retribution; the goal theory (utilitarian/preventive theory), which views punishment as a means of general and specific prevention; and a combined theory that provides space for rehabilitative and restorative approaches.

Indonesian criminal law doctrine places the sanction system as part of an integrated criminal policy, namely a penal policy that must be in line with the objectives of protecting society and promoting human rights (Ashworth & Zedner, 2008). The Indonesian penal system is based on a humanistic paradigm and individualization of punishment, which emphasizes the importance of choosing the sanction that best suits the character of the perpetrator, his actions, and his social conditions. This system is also reflected in the development of non-conventional sanctions, such as rehabilitative measures, community service, supervision, and various restorative approaches, as adopted in special laws such as the SPPA Law, the Narcotics Law, and the PTPPO Law. Philosophically, the Indonesian criminal sanction system is rooted in the ideas of substantive justice, protection of human dignity, and social utility, which together emphasize that punishment is not a tool of state revenge, but an instrument to restore order, educate perpetrators, protect victims, and create social harmony (6).

In relation to the concept of the criminal sanction system in Indonesian criminal law, the concept of legal protection for children as victims of commercial exploitation lies in the dual function of punishment as a repressive instrument against the perpetrator as well as a protective instrument for the victim (Lahti, 2017). This is reflected in Article 10 of the Criminal Code regarding types of crimes and special regulations such as Law Number 35/2014 concerning Child Protection and Law Number: 21/2007, which contains regulations on heavy sanctions against perpetrators of child exploitation as a form of strengthening legal protection. Theoretically, the goal theory (utilitarian/preventive theory) and the combined theory provide the basis for punishing perpetrators of child exploitation to achieve general and specific prevention, including deterring the perpetrator's network while ensuring maximum protection for the victim. The doctrine of social defense and integrated criminal policy, as put forward by Barda Nawawi Arief, emphasizes that the criminal sanction system must fulfill the goal of protecting society, including vulnerable groups such as children, so that punishment must target the structure of crime, not the victim. Its philosophy is rooted in the principles of human dignity and the best interests of the child, which require the state to provide a punishment mechanism that not only punishes the perpetrator but also prevents re-victimization, strengthens law enforcement, and supports victims' recovery.

C. LEGAL PROTECTION FROM AN ISLAMIC LEGAL PERSPECTIVE

In Islamic Criminal Law, or *jarimah*, there is also a concept of legal protection, called *jināyah* (Alotaibi, 2021). The concept of *jināyah* as a term in Islamic Criminal Law related to legal protection for children as sexual victims is the name for the results of a person's bad actions, and what he or she is trying to do; these actions are also called criminal acts. Acts of sexual exploitation can be categorized as one form of *jarimah* (criminal act) related to crimes of honor and damage to human morals. The categorization of an act as a criminal act in Islamic Criminal Law includes all human actions that violate the welfare of humanity, as stated by several mujtahids, such as, first, in the book *Al-Majmu'* Syarh al-Muhadzdzab, Imam Nawawi stated that any violation of human honor and dignity, including sexual exploitation, will damage the social order and cause psychological disorders in victims, especially for children who are not yet emotionally mature.

The social impact on families and society. Islamic jurists also highlight the broader social impact, particularly on the victim's family and society at large (Bantekas, 2009). For example, in *Fatawa al-Azhar*, scholars from al-Azhar University stated that child sexual exploitation not only damages the individual but also causes a breakdown in the family structure, which in turn affects social interactions within the community. Victims who experience severe trauma will have difficulty functioning normally in their social and family lives, potentially increasing social tension and instability within the community. Third, difficulties in social recovery and reintegration. The social recovery of child victims of sexual exploitation presents a significant challenge from an Islamic legal perspective. In *Al-Qawa'id al-Fiqhiyyah*, it is explained that victim recovery requires an approach based on the principles of justice, protection, and rehabilitation. Islamic jurists emphasize the importance of reintegrating children into society through appropriate social support. However, victims often experience difficulties in social reintegration, particularly due to the shame and distrust of others that can arise from sexual exploitation. Fourth, the importance of protection in Islamic law places great emphasis on protecting children, especially in cases of sexual exploitation, which is considered a major violation of basic

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

human rights. In his book *al-Mughni*, Ibn Qudamah asserts that in Islam, any action that harms the morals and welfare of children, including sexual exploitation, not only violates the child's personal rights but can also damage the social structure of society as a whole. This will create widespread social tensions, such as distrust among members of society and a violation of the principle of honor.

II. METHODOLOGY

This study uses qualitative normative and empirical legal research methods (Engel, 2018; Mitchell, 2022). In qualitative research, the use of theory is only a guide so that the research focus is by the facts in the field (Nurdin & Pettalongi, 2022; Nurdin, Stockdale, & Scheepers, 2016). The data was collected through legal document analysis, which includes positive law documents and Islamic law documents related to child protection. Data were also collected through in-depth interviews with key informants who understand about the topic being studied (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). This research was carried out in Palu city, Central Sulawesi, Indonesia. The interviews involved five local customary leaders, local citizens, four office religious affairs staff, two positive law experts, and two Islamic law experts. The interviews were recorded and transcribed. The transcripts were consulted with participants to obtain their consent (Nurdin, Scheepers, & Stockdale, 2022; Nurdin, Stockdale, & Scheepers, 2014). The data analysis used a deductive approach, which can be interpreted as a research procedure that produces deductive data from interviews and field notes. Data analysis was conducted using thematic analysis from Strauss and Corbin (1998). The analysis started with open, axial, and selective coding. The final result of the data analysis is the themes found from the data.

III. RESULTS AND DISCUSSION

A. CHILD SEX COMMERCIAL EXPLOITATION IN INDONESIA

Second, the social impact on families and society. Islamic legal experts also highlight the broader social impact, particularly on victims' families and society at large. For example, in the *Fatawa al-Azhar*, scholars from al-Azhar University stated that child sexual exploitation not only damages individuals but also causes the breakdown of family structures, which in turn impacts social interactions within the community. Victims who experience severe trauma will have difficulty functioning normally in their social and family lives, potentially increasing social tensions and instability within the community. Cases of child sexual exploitation in Indonesia show a relatively high prevalence rate from year to year. According to the Indonesian Child Protection Commission (KPAI), in 2021, compared to 2022 data, there were 2,982 cases and 4,683 cases, a significant increase. In 2023, the prevalence of child sexual exploitation cases reached 1,800 cases, a quantitative decrease. Meanwhile, data from the 2025 national survey showed that the prevalence of child sexual exploitation cases reached a recorded figure of 1,800 cases, which, quantitatively, as a whole, is illustrated in Figure 1 below:

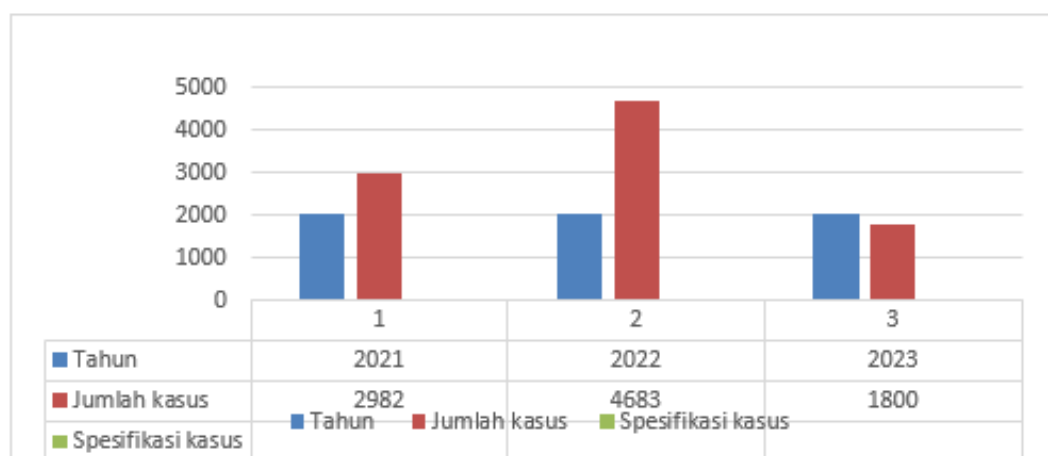


Figure 1. Child Sexual Exploitation Cases in Indonesia in 2024

Based on Figure 1, it is clear that quantitative records of commercial sexual exploitation cases show a significant decline. However, using comparative data from the Indonesian Child Protection Commission (KPAI) yields similar figures. Furthermore, KPAI data from 2021 showed 5,953 cases, 2022 data showed 4,683 cases, and 2023 data showed 2,656 cases. These figures reflect a decline. Comparative data documented through national surveys indicate that many cases of child exploitation are underreported to government and private institutions (dark numbers).

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

Furthermore, the 2024 survey data, with 1,450,403 cases, placed Indonesia third in the world for online child pornography exploitation. In 2025, these cases reached 1.4 million cases of online child sexual exploitation. Data from the Online Information System for the Protection of Women and Children (Simfoni PPA) also recorded 11,770 cases of child sexual violence in 2024 out of 19,626 cases of children from January to December 2024.

The survey results also show data on cases of child sexual exploitation by province in Indonesia, as shown in Table 1 below:

Table 1: Cases of child sexual exploitation by province in Indonesia in 2025.

Provinsi	Kasus 2025	Persentase (%)
Jawa Barat	835	16,5
Jawa Timur	760	15,0
Jawa Tengah	635	12,6
DKI Jakarta	470	9,3
Sumatera Utara	305	6,0
Banten	270	5,3
Sulawesi Selatan	245	4,9
Lampung	215	4,3
Sumatera Selatan	205	4,1
Riau	190	3,8
Provinsi lain	920	18,2
TOTAL	5.050	100,0

Based on 2025 data, the highest number of child sexual exploitation cases was recorded in West Java Province, with 835 cases (16.5%) of the national total, representing the largest contribution compared to other provinces. Meanwhile, the lowest number of cases in the provinces detailed in the table was in Riau, with 190 cases (3.8%). This should be interpreted with caution, as low figures may reflect both a lower incidence rate and potential underreporting. Data on the commercial sexual exploitation of children is not yet available for Central Sulawesi Province. This information was obtained from the Center for the Protection of Children and the Women's Empowerment and Child Protection Agency (P2TP2A) and the Central Sulawesi Province Office of Women's Empowerment and Child Protection. Furthermore, reports from law enforcement officials and related institutions reveal that policies to mitigate child sexual exploitation in Indonesia have a strong legal basis through legislation, such as Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). However, its implementation still faces several challenges. Most law enforcement officials stated that the lack of coordination between law enforcement agencies, such as the police, prosecutors, and courts, is one of the main obstacles in ensuring appropriate punishment for perpetrators of child sexual exploitation.

Furthermore, several non-legal sources documented in the annual report of the Ministry of Law and Human Rights show that between 2019 and 2022, there were 3,457 cases of child sexual exploitation, but only 1,832 cases reached the courts. This indicates problems with the effectiveness of law enforcement and the inability of the juvenile justice system to prosecute all reported cases. The distribution of commercial sexual exploitation cases of children by region in Indonesia used as a research sample is shown in Figure 2 below:



Figure 2. The Spread of Child Sex Commercials Across Islands in Indonesia in 2024

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

Based on the non-legal data, the highest potential for cases is in Jakarta (35.1%), indicating a concentration of child sexual exploitation issues in densely populated urban centers. As the capital city, Jakarta has very high population mobility, high levels of individual interaction, and ongoing economic activity. These factors can accelerate the spread of cases, regardless of the modus operandi. Furthermore, Jakarta has a better, faster reporting system, so the number of cases seen may be more representative of the actual situation than in other regions. Central Sulawesi (28.1%) and Bali (25.9%) also show insignificantly lower percentages than Jakarta and instead form a "middle block" that accounts for the majority of cases outside the capital. In Central Sulawesi Province, the spread of cases is influenced by its vast geographical distribution and uneven infrastructure, which can delay early detection and cause cases to appear to spike. Meanwhile, Bali, as an international and domestic tourist destination, carries a high risk due to the influx of foreign and domestic tourists, which also increases the potential for increased cases of child sexual exploitation, especially if the monitoring system is not commensurate with the volume of tourists.

B. PUNISHMENT FOR COMMERCIAL SEX CRIMES AGAINST CHILDREN IN ISLAMIC LAW

In Islamic criminal law, criminal responsibility is known as the concept of *al-mas'ūliyyah al-jinā'iyyah*, namely the obligation of a person to bear the legal consequences of a criminal act (*jarimah*) that they commit, as long as the act is carried out consciously, voluntarily, and by a competent legal subject (*mukallaf*). Criminal responsibility in Islam requires the fulfillment of the elements of a prohibited act (*rukn al-māḍī*), the element of intent or negligence (*rukn al-ma'nawī*), and the element of the perpetrator having legal capacity (*rukn al-shar'ī*). This principle is rooted in the teachings of the Qur'an, which emphasizes that every individual is responsible for their own actions, as stated by Allah in QS. *al-An'ām* [6]: 164 and QS. *al-Isrā'* [17]: 15, which emphasizes that no one bears the sins of others. This principle is also reinforced by the hadith of the Prophet Muhammad SAW, which states that the pen of law is lifted from three groups, namely sleeping people, children, and crazy people, which is the basis for the exception of criminal responsibility for those who do not have the awareness and ability to act legally.

The scholars of the Islamic schools of thought agree that criminal responsibility can only be imposed on perpetrators who fulfill the conditions of *taklīf*, namely being rational (*'āqil*), having reached puberty, and having the ability to understand the consequences of their actions. The Hanafi school, as explained by *al-Kāsānī* in *Badā'i' al-Ṣanā'i'*, emphasizes that the element of intent (*al-qasd*) is the primary basis of criminal responsibility, so that acts committed without will or under duress cannot give rise to full responsibility. The Maliki school, through *Ibn Rushd* in *Bidāyat al-Mujtahid*, adds that, in addition to intent, criminal responsibility must also be assessed by the impact of the act on public interest, so that, in certain cases, the state can impose *ta'zīr* sanctions even though the elements of *hudud* are not fully satisfied. In the Shafi'i school, the close relationship between intention (*niyyah*) and criminal responsibility is emphasized, as explained by *Imam al-Nawawī* in *Al-Majmū' Sharḥ al-Muhadhdhab*, that moral and legal fault can only be charged if the act is done with awareness and free choice. Meanwhile, the Hanbali school, as stated by *Ibn Qudāmah* in *Al-Mughnī*, views criminal responsibility as a consequence of violations of God's rights and human rights, so that criminal sanctions serve to uphold justice while maintaining social order.

In contemporary thought, *Abdul Qadir Audah* formulated the concept of Islamic criminal liability as a system that balances individual justice with the interests of society. According to him, criminal liability is not absolute but rather depends on the fulfillment of the element of fault (*al-khaṭa'*) and the capacity of the perpetrator, so that Islamic criminal law still allows forgiveness, abolition of punishment, or reduction of sanctions under certain conditions. This concept shows that criminal liability in Islam is personal, rational, and oriented towards the protection of *maqāṣid al-sharī'ah*, especially the protection of human life, mind, and honor. In relation to the case of commercial sexual exploitation of children, commercial sexual exploitation of children (CSEC), CSEC is a form of serious *jarimah* in Islamic criminal law because it directly violates the principle of protection of honor (*ḥifẓ al-'ird*), offspring (*ḥifẓ al-nasl*), and soul (*ḥifẓ al-nafs*), which are included in the main objectives of Islamic law (*maqāṣid al-sharī'ah*). Although the term CSEC is not explicitly recognized in classical Islamic jurisprudence, the substance of the act encompasses various acts prohibited by Sharia, such as adultery, sexual harassment, human trafficking, and the economic exploitation of children who do not yet have legal capacity (*ghayr mukallaf*).

Within the framework of Islamic criminal law, children cannot be held criminally responsible because they do not yet meet the requirements of *taklīf*, so all criminal responsibility rests with the adults who exploit, facilitate, or profit from the practice. The concept of criminal responsibility in Islamic criminal law requires the perpetrator to have awareness, will, and the capacity to take responsibility (*al-mas'ūliyyah al-jinā'iyyah*). The principle of personal responsibility is affirmed by the Qur'an, which states that "no one bears the burden of another's sin" (QS. *al-An'ām* [6]: 164), meaning that child victims of sexual exploitation cannot be held criminally responsible for the acts committed against them. Scholars agree that children who have not yet reached puberty and are not yet of sound mind cannot be held criminally responsible, as emphasized in the Prophet's hadith about the removal of

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

the pen of justice from children until they reach puberty. Therefore, in cases of CSEC, criminal responsibility rests entirely with the adult perpetrator, whether as the direct perpetrator, the intermediary, or the party who gains economic benefit.

C. COMPARISON OF LEGAL ACTION FROM THE PERSPECTIVE OF POSITIVE AND ISLAMIC LAW

In the context of comparing positive criminal law and Islamic criminal law, each has advantages in the formulation of types of criminal offenses, where positive criminal law excels in the aspect of legal certainty through the formulation of detailed, written, and systematic offenses. In contrast, Islamic criminal law offers advantages in normative flexibility and value orientation through the concepts of hudūd, qisās, and especially ta'zīr, which allow the formulation and handling of criminal offenses to develop along with social changes while remaining based on the principles of justice and welfare. In this regard, the following are several different concepts from the two criminal law systems, the comparison of which is shown in Table 13 below:

Table 2. Comparison of Types of Punishment in Positive Criminal Law and Islamic Criminal Law in Indonesia

Aspects	Indonesian Positive Criminal Law	Islamic Criminal Law (Fiqh Jināyah)
Types of Crimes	Crimes against morality (Child Protection Law and TPKS Law)	Jarimah Ta'zīr (violation of honor for which no sanctions are stipulated in the text)
Elements of a Crime	Objective (indecent acts, violence), Subjective (intention/deliberate), age of the victim	Prohibited acts, elements of morality, intentional, and there are elements of violation of Sharia.
Source of Law	KUHP, UU_17 Child Protection, UU TPKS	Al-Qur'an, Hadis, Qiyas, Ijtihād, fatwa ulama
Santion	In prison(3–15 years), fine (up to Rp 5 miliar), and victims' rehabilitation	Ta'zīr: caning law, jail, isolation, fine (the ruler/judge decides based on benefits)
Purpose of Criminalization	Deterrent effect, child protection, victim recovery	Hifzh al-Nafs (protect the soul), Hifzh al-Nasl (protect offspring), precaution of mafsadah
Justice Approach	Legislative & judiciary (through general judicial processes)	Moral, social, and religious, the rights of Allah and the rights of children as innocent creatures

Based on Table 15 conceptual formulation of types of criminal acts resulting from the comparative study, the conclusions of the research results are obtained as recommendations in the discussion, namely, first, it is necessary to strengthen the Sharia-Based Ta'zīr System in Special Regions Sharia-based regional governments, such as Aceh can continue to develop the ta'zīr legal system for cases of sexual abuse against children by making Islamic law as an ethical and moral basis, accompanied by legal reforms based on the psychology of victims and restorative justice. Second, Harmonization of National Law with Islamic Legal Values Outside Aceh, the Islamic approach can still be used as a moral and social basis, for example, through family education, MUI fatwas on sexual abuse, and the formation of regional regulations (Perda) that regulate social sanctions for perpetrators. Third, restorative justice with a touch of Sharia The restorative justice approach in the Indonesian legal system should involve Islamic spiritual and social approaches, such as the involvement of religious leaders in the rehabilitation process for child victims and perpetrators who are still children.

D. PUNISHMENT FOR COMMERCIAL SEX OFFENDERS IN INDONESIAN POSITIVE LAW

Ontologically, the concept of criminal acts in Indonesian positive criminal law is rooted in legal positivism, which views law as a rational product of human beings and as part of a social system that aims to maintain order. Law is seen as a formal instrument to regulate behavior, so that the focus of attention is on external human actions that are contrary to written norms. In this framework, criminal acts (strafbaar feit) are understood as actions that are prohibited by law and are subject to punishment for those who violate them, as stated in Article 1 paragraph (1) of the Criminal Code, which emphasizes the principle of legality (nullum delictum nulla poena sine praevia lege poenali). The ontology of positive criminal law is anthropocentric, placing humans as the makers and center of the validity of the law. This is in line with Hans Kelsen's legal theory of the Stufenbau des Rechts, which holds that legal norms obtain validity from a higher hierarchy of norms, not from morality or revelation.

In contrast, in Islamic Criminal Law, the ontology of jarimah stems from theocentrism, namely that law originates from the power and will of God (Sharia), not merely the result of human rationality. The essence of criminal acts is not only a violation of social order, but also a violation of divine provisions. Therefore, its ontological dimension is transcendent, encompassing both worldly and hereafter aspects. Its epistemology is built from revelation (the Qur'an and Hadith), complemented by rational ijtihad through

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

ijma' and qiyas, making it a legal system that integrates reason and faith. Its axiology rests on maqashid al-shari'ah, namely the goal of Islamic law to safeguard religion (hifz al-din), soul (hifz al-nafs), intellect (hifz al-'aql), descendants (hifz al-nasl), and property (hifz al-mal). Thus, Islamic Criminal Law is not merely repressive, but also preventive and educative, because it emphasizes moral accountability before Allah SWT.

From an axiological perspective, positive criminal law emphasizes legal certainty, while Islamic criminal law emphasizes justice and morality. These two systems complement each other, with positive law excelling in formal legal certainty and Islamic law excelling in moral and spiritual justice. The comparative advantages of the two criminal law systems targeted in this comparative study are illustrated in Table 1 below:

Table 3. Ontological and Philosophical Comparison of the Formulation of Criminal Acts According to Positive Criminal Law and Islamic Criminal Law

Aspets	Indonesian Positive Criminal Law	Islamic Criminal Law
Ontology	Anthropocentric – law as a human social construct to maintain order.	Theocentric – law comes from God's revelation to maintain moral and social balance.
Epistemology	Based on human rationality and statutory regulations	Sourced from revelation (Al-Quran, Hadith) and guided rationality (ijtihad)
Axiology	Maintaining order, legal certainty, and social security	Maintain maqashid al-syari'ah and uphold divine justice.
Filosofi Pemidanaan	Retributive and preventive; focus on social effects.	Educational, moral, and spiritual; focused on repentance and well-being.
Dimensi Keadilan	Legal-formal (positivistic).	Substantif-transcendental (based on morals and faith).

Based on Table 2 above, it is clear that the fundamental difference between Indonesian positive criminal law and Islamic criminal law (jināyah) in the formulation of the concept of criminal acts lies in their ontological sources and philosophical orientations. Positive criminal law is rational-empirical, placing humans at the center of lawmaking, while Islamic criminal law is transcendent-theocentric, placing God as the primary source of law. However, both have complementary goals. Furthermore, positive criminal law provides legal certainty in the world, while Islamic criminal law ensures moral and spiritual justice. In the context of Indonesia's national legal system, which is based on Pancasila, the synthesis of these two systems can create a balance between legal certainty and substantial justice.

V. CONCLUSIONS

In conclusion, the Indonesian criminal justice system adopts a hybrid system that combines elements of retribution, prevention, and rehabilitation, and is evolving toward a more restorative approach oriented toward victim protection. In the context of protecting children from commercial sexual exploitation, this system emphasizes that sentencing must deter perpetrators while ensuring the recovery and safety of children as highly vulnerable victims. Through specific provisions in the Child Protection Law and the Sexual Violence Crime Law, the state imposes harsher penalties, including imprisonment and high fines. It allows for additional penalties such as chemical castration, disclosure of the perpetrator's identity, and confiscation of criminal profits. The Indonesian criminal justice system not only punishes perpetrators but also ensures maximum protection for children, restores the dignity of victims, and prevents recurrence of crimes through a firm, proportional approach oriented toward the child's best interests.

The Islamic criminal justice system adopts a comprehensive and balanced approach, combining elements of prevention, just retribution, and the restoration of social order, including hudud (punishment), qisas/diyat (punishment), and ta'zir (punishment). In the context of protecting children from commercial sexual exploitation crimes, these acts are categorized as acts that damage honor, injure dignity, and threaten the safety of children, which are generally placed in the realm of ta'zir. Judges can impose the most severe punishment according to the level of danger, evil intent, and its impact on the victim. This approach is in line with the main objectives of Sharia to protect honor (hifz al-'ird), offspring (hifz al-nasl), and soul (hifz al-nafs), so that Islamic Criminal Law provides a strong basis for maximum protection for children. It emphasizes that all forms of sexual exploitation are serious violations that must be prevented and dealt with firmly for the benefit of society. Islamic Criminal Law places more emphasis on

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

the balance between justice (balanced between justice), protection of victim rights (protection of victimization), and the sanctity of society (the sanctity of society).

REFERENCES

- 1) Alotaibi, Haged A. (2021). The challenges of execution of Islamic criminal law in developing Muslim Countries: An analysis based on Islamic principles and existing legal system. *Cogent Social Sciences*, 7(1), 1925413. doi:10.1080/23311886.2021.1925413
- 2) Ashworth, Andrew, & Zedner, Lucia. (2008). Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions. *Criminal Law and Philosophy*, 2(1), 21-51. doi:10.1007/s11572-007-9033-2
- 3) Bantekas, Ilias. (2009). The Disunity of Islamic Criminal Law and the Modern Role of Ijtihād. *International Criminal Law Review*, 9(4), 651-665. doi:<https://doi.org/10.1163/156753609x12487030862746>
- 4) Bowles, Roger, Faure, Michael, & Garoupa, Nuno. (2008). The Scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications. *Journal of Law and Society*, 35(3), 389-416. doi:<https://doi.org/10.1111/j.1467-6478.2008.00444.x>
- 5) Christensen, Larissa S., Rayment-McHugh, Susan, Prenzler, Tim, Chiu, Yi-Ning, & Webster, Julianne. (2021). The theory and evidence behind law enforcement strategies that combat child sexual abuse material. *International Journal of Police Science & Management*, 23(4), 392-405. doi:10.1177/14613557211026935
- 6) Engel, Christoph. (2018). Empirical Methods for the Law. *Journal of Institutional and Theoretical Economics (JITE) / Zeitschrift für die gesamte Staatswissenschaft*, 174(1), 5-23.
- 7) Faisal, Yanto, Andri, Rahayu, Derita Prapti, Haryadi, Dwi, Darmawan, Anri, & Manik, Jeanne Darc Noviayanti. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634. doi:10.1080/23311886.2023.2301634
- 8) Frankenberg, Günter. (2017). *Critical Comparisons: Re-thinking Comparative Law* London: Routledge.
- 9) JOHNSON, BRIAN D., VAN WINGERDEN, SIGRID, & NIEUWBEERTA, PAUL. (2010). SENTENCING HOMICIDE OFFENDERS IN THE NETHERLANDS: OFFENDER, VICTIM, AND SITUATIONAL INFLUENCES IN CRIMINAL PUNISHMENT. *Criminology*, 48(4), 981-1018. doi:<https://doi.org/10.1111/j.1745-9125.2010.00210.x>
- 10) Khatani, Paul Vinod, Chui, Wing Hong, & Gonsamo, Dagim Dawit. (2025). Advancing child protection systems in Indonesia and Ethiopia: A comparative analysis of progress and challenges. *Child Abuse & Neglect*, 170, 107762. doi:<https://doi.org/10.1016/j.chiabu.2025.107762>
- 11) Lahti, Raimo. (2017). Towards a more efficient, fair and humane criminal justice system: Developments of criminal policy and criminal sanctions during the last 50 years in Finland. *Cogent Social Sciences*, 3(1), 1303910. doi:10.1080/23311886.2017.1303910
- 12) Larcombe, Wendy. (2014). Limits of the Criminal Law for Preventing Sexual Violence. In Nicola Henry & Anastasia Powell (Eds.), *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture* (pp. 64-83). London: Palgrave Macmillan UK.
- 13) Lu, Mengyao, Owusu-Addo, Ebenezer, Yoshikawa, Miho, Mensah, Hilda, & Fry, Deborah. (2025). Understanding law enforcement interventions for the response to and prevention of sexual exploitation and abuse against children and women in Ghana: Findings from a realist review. *Aggression and Violent Behavior*, 83, 102068. doi:<https://doi.org/10.1016/j.avb.2025.102068>
- 14) Mania, Karolina. (2024). Legal Protection of Revenge and Deepfake Porn Victims in the European Union: Findings From a Comparative Legal Study. *Trauma, Violence, & Abuse*, 25(1), 117-129. doi:10.1177/15248380221143772
- 15) Mitchell, Matthew. (2022). Analyzing the law qualitatively. *Qualitative Research Journal*, 23(1), 102-113. doi:10.1108/qrj-04-2022-0061
- 16) Nurdin, Nurdin, & Pettalongi, Sagaf S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.
- 17) Nurdin, Nurdin, Scheepers, Helana, & Stockdale, Rosemary. (2022). A social system for sustainable local e-government. *Journal of Systems and Information Technology*, 24(1), 1-31. doi:10.1108/JSIT-10-2019-0214
- 18) Nurdin, Nurdin, Stockdale, Rosemary, & Scheepers, Helana. (2014). Coordination and Cooperation in E-Government: An Indonesian Local E-Government Case THE ELECTRONIC JOURNAL OF INFORMATION SYSTEMS IN DEVELOPING COUNTRIES, 61(3), 1-21.

Legal Protection Efforts for Child Victims of Commercial Sexual Exploitation from The Perspective of National and Islamic Criminal Law: A Comparative Legal Study

- 19) Nurdin, Nurdin, Stockdale, Rosemary, & Scheepers, Helana. (2016). Influence of Organizational Factors in the Sustainability of E-Government: A Case Study of Local E-Government in Indonesia. In Inderjeet Singh Sodhi (Ed.), Trends, Prospects, and Challenges in Asian E-Governance (pp. 281-323). Hershey, PA, USA: IGI Global.
- 20) Rusli, Rusli, Hasyim, Muhammad Syarif, & Nurdin, Nurdin. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.
- 21) Rusli, Rusli, & Nurdin, Nurdin. (2022). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*, 27(3), 4117-4140. doi:10.1007/s10639-021-10779-7
- 22) Stark, Lindsay, Bancroft, Carolyn, Cholid, Sofyan, Sustikarini, Amalia, & Meliala, Adrianus. (2012). A qualitative study of community-based child protection mechanisms in Aceh, Indonesia. *Vulnerable Children and Youth Studies*, 7(3), 228-236. doi:10.1080/17450128.2012.663947
- 23) Strauss, Anselm, & Corbin, Juliet M. (1998). *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (2 ed.). California, USA: Sage Publications, Inc.
- 24) ULMER, JEFFERY T., & BRADLEY, MINDY S. (2006). VARIATION IN TRIAL PENALTIES AMONG SERIOUS VIOLENT OFFENSES. *Criminology*, 44(3), 631-670. doi:<https://doi.org/10.1111/j.1745-9125.2006.00059.x>
- 25) Woolsey, Theodore S. (1915). Retaliation and punishment. *Proceedings of the American Society of International Law at its annual meeting*, 9, 62-69. doi:10.1017/S0272503700054574



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