

## **Child Care and Protection in Perspective of Legislation, Human Rights and Islamic Law**

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### **Abstract**

The empirical reality regarding the issue of care and protection for children is still a global concern. It is necessary to find rules regarding the protection and care of children. Comparing several rules in legislation, human rights and Islamic law in strengthening the position of children as human beings who must receive care and protection. This research is a literature review with a normative juridical approach. Examining various literatures by focusing on aspects of laws and regulations related to care, child protection, human rights and Islamic law. The techniques of analysis used were descriptive and comparative. The findings of this study indicate that child care and protection falls into the category of fulfilling human rights. Child protection is in line with the universal principles of human rights and has a legal umbrella and the power to obtain care and protection. However, the existing regulations have not been maximally implemented. In Islamic law, children have a very high guarantee of protection, this is included in the category of caring for children as the goal of sharia (*maqashid syari'ah*). The implication of this finding is that the protection of children's rights cannot be negotiated, because the state and religion have provided protection, so what must be enforced is the supervision of the fulfillment of children's rights.

Realita empiris permasalahan pengasuhan dan perlindungan terhadap anak masih menjadi isu dan perhatian global. Perlu untuk menemukan aturan-aturan terkait dengan perlindungan dan pengasuhan anak. Membandingkan beberapa aturan dalam perundangan-undangan, HAM dan Hukum Islam dalam menguatkan posisi anak sebagai insan yang harus mendapatkan pengasuhan dan perlindungan. Penelitian merupakan kajian kepustakaan dengan pendekatan yuridis normatif. Menelaah berbagai literatur dengan memfokuskan aspek peraturan perundang-undangan yang terkait dengan

pengasuhan, perlindungan anak, hak asasi manusia (HAM) dan hukum Islam. Teknik analisis yang digunakan yakni deskriptif dan komparatif. Temuan penelitian ini menunjukkan bahwa pengasuhan dan perlindungan anak masuk dalam kategori pemenuhan Hak Asasi Manusia. Perlindungan anak sejalan dengan prinsip-prinsip universal Hak Asasi Manusia dan telah memiliki payung hukum dan kekuatan untuk mendapatkan pengasuhan dan perlindungan. Akan tetapi, peraturan yang ada belum maksimal dalam penerapannya. Hukum Islam, anak memiliki jaminan perlindungan yang sangat tinggi, hal masuk dalam kategori memelihara keturunan sebagai tujuan syariat (*maqashid syari'ah*). Implikasi dari temuan ini, mengingatkan perlindungan hak-hak anak menjadi hal yang tidak dapat ditawar-tawar, karena Negara dan agama telah memberikan perlindungan, maka yang harus ditegakkan adalah pengawasan pemenuhan hak-hak anak.

**Key Words:** *Care; Protection; Child; Human rights; Islamic law.*

## Introduction

One of the main focuses of the rule of law is to provide protection and guarantee for the rights of citizens.<sup>1</sup> One of the citizens whose human rights should be protected are children because children are the assets of the nation's successors. The concept of the rule of law has the following characteristics; (1) Protection of human rights; (2) Separation or division of powers to guarantee that right; (3) Government based on regulations and; (4) Administrative court in disputes.<sup>2</sup>

Every child has the right to legal protection, education and care. But the fact is today, there are so many children who are victims of various impacts of social and political conditions. According to a report by the Indonesian Child Protection Commission (KPAI), the number of violations against children's rights within 5 years is quite high. In 2015, the number of cases was 4,309, in 2016 it reached 4,622, in 2017 it was 4,579, in 2018 it was 4,885 and in 2019 it was 4,369 cases. However, the highest case record for 10 years was in 2020 where the number of cases reached 6,519. This could have happened because of the pandemic conditions that hit Indonesia throughout 2020. In 2018 as many as 857 cases were received by the Indonesian Child Protection Commission (KPAI) many of which occurred due to divorce factors and also children born in unregistered marriages (*siri*). This increase occurred compared to 714 similar cases in 2017.<sup>3</sup>

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<sup>1</sup>The 1945 Constitution of the Republic of Indonesia Article 1 Paragraph 3.

<sup>2</sup>Oemar Seno Adji, *Seminar Ketatanegaraan Undang-Undang Dasar 1945* (Jakarta: PT. Seruling Masa, 1966), p. 24.

<sup>3</sup>Davit Setyawan, *Peta permasalahan perlindungan anak di Indonesia*, KPAI.go.id.

Cases of human rights violations are very diverse, ranging from sexual harassment, neglect, children in conflict with the law, domestic violence (KDRT), child trafficking and child exploitation. Article 28B paragraph (2) of the 1945 Constitution states that "every child has the right to survive, grow and develop and obtain protection from violence and discrimination, because children are assets and the next generation of the nation."<sup>4</sup>

Islamic law also accommodates the rights of children as human beings created by Allah swt., whose soul, body, dignity and worth must be protected. No one can deprive children of their rights on any basis. The issue of child care and protection will involve parents, the state and the government. When a husband and wife divorce, one of the problems is the child care, especially the problem of living. Law Number 1 of 1974 Article 45 Paragraphs 1 and 2 concerning Marriage states (1) both parents are obliged to maintain and educate their children as well as possible and (2) the obligations of the parents referred to in Paragraph (1) of the Article are valid until the child marries. and can stand alone, the obligation applies continuously even though the marriage between the two parents is broken.<sup>5</sup>

The variety of problems experienced by children that have been described by the author above shows that the problem of children's rights is multidimensional. Starting from global issues in the international world to local issues within the scope of the Indonesian state. The issue of child care and protection is a concern that must be studied together through legislation, human rights, and Islamic law. This is important, so that the issue of violations of children's rights can be studied in depth with the aim of minimizing the various problems that befall children by giving birth to new formulations.

## **Methodology**

This study is interesting to be analyzed in depth considering the level of violence against children continues to increase. For this reason, it is necessary to find rules related to child protection and care. In addition, comparing several rules in legislation, human rights and Islamic law is to strengthen the position of children as human beings who must receive care and protection.

This research is a literature review using a normative juridical approach.<sup>6</sup> Reviewing various literatures on child care and protection and violations of

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<sup>4</sup>The 1945 Constitution of the Republic of Indonesia.

<sup>5</sup>The Law Number 1 of 1974 concerning Marriage.

<sup>6</sup>Normative legal research is also known as doctrinal legal research. Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer legal issues at hand. Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010), p. 35.

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children's rights. The study also focuses on aspects of laws and regulations related to care, child protection, human rights (HAM) and Islamic law.

The research process is carried out by conducting a literature study, namely by searching for adequate references on child care and protection in the perspective of law, human rights and Islamic law. The data collected will be analyzed and then the relationship will be compared with a comparative approach. The analysis technique used is descriptive and comparative. The method of application is by describing violations of children's rights from the perspective of positive law applicable in Indonesia and Islamic law.

## **Discussion**

### **Child Care and Protection in Indonesian Legislation**

The State of Indonesia is a state of law, this is stated in the 1945 Constitution Article 1 Paragraph 3. As a state that upholds the law, every citizen must obey the law. This is interpreted not for the sake of the law itself, but this law is a tool for the welfare, protection and order to create an ideal society order. One of the principles of a rule of law is to uphold human rights (HAM) and guarantee the protection of the dignity and worth of every citizen, both adults and children. But the thing that deserves attention is the human rights aspect of children because they are the spearhead of a country's success when he leads.

According to the Declaration of the Rights of the Child in the United Nations, Article 1 states that a child is someone who has not reached the age of 21 years and has never been married. According to Law Number 13 of 2003 concerning Manpower, it is stated that a child is every person under the age of 18 years. Law Number 4 of 1979 concerning Child Welfare Article 2 states that a child is someone who has not reached 21 years of age and has never been married. According to Law Number 23 of 2003 concerning Child Protection, it is stated that a child is someone who is not yet 18 years old, including children who are still in the womb. Arif Gosita argues that legal certainty needs to be endeavored for the continuity of child protection activities and to prevent fraud that has undesirable negative consequences in the implementation of child protection.<sup>7</sup>

More specifically, the definition of a child in the Government Regulation of the Republic of Indonesia Number 44 of 2017 concerning the Implementation of Child Care Article 1 paragraph (2) states that a child is someone who is not yet 18 years old, including a child who is still in the womb. This further confirms that the various legal products concerning children further strengthen all forms of

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<sup>7</sup>Armando Brilian, "Perlindungan Hukum Terhadap Anak yang Menjadi Korban Tindak Pidana Perkosaan., Lex Crime 2, Number , (November 2013), p. 58.

fulfillment of children's rights including custody of them. Article 1 part (1) states that child care is an effort to fulfill the permanent and sustainable needs for affection, attachment, safety and welfare in the best interest of the child.

Then Law Number 23 of 2002 concerning child protection in Chapter VIII Part One Article 37 states that child resilience is aimed at children whose parents cannot guarantee the child's normal development and development, both physically, mentally, spiritually, and socially. Basically, custody of children in Government Regulation Number 44 of 2017 is carried out by parents, blood families in a straight line, blood families in deviant lines, foster parents, childcare institutions and social institutions. However, the most basic party obliged to take care of children is the parents if the parents are not able to fulfill their obligations in caring for their children then it can be done by other parties as intended in the Government Regulation.

The family as the smallest social institution plays an important role in the pattern of child development. Marriage is a sacred bond that is recognized by law so that when both are given a child, from the time they are in the womb the parents have started their responsibility to look after the fetus until it is born into the world. Although the government has provided alternative care for children outside of their original parents, government policies can encourage parents to take a big part in caring for their children by providing clear standards of care for children in the family environment.

Parenting as an effort to prosper children. There are many parenting styles from the perspective of social welfare science such as authoritative parenting, neglecting parenting, authoritarian parenting and compliant parenting. This type of parenting must still be balanced with regulations set by the government so that the goals can be achieved. In addition, humans are required to show attitudes that become their identity, namely self-respect, self-image, and self-esteem towards the social environment. A person's identity is born as a form of ownership of a basic value for himself (human rights).<sup>8</sup>

In addition, in the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 21 of 2013 concerning Child Care Chapter III Care by the Family Article 7 (1) care by the family is carried out by the biological parents or family members in a straight line up or down to the third degree. (2) care by blood family members in a straight line up or down to the third degree as referred to in paragraph (1) must be registered with the social agency and agency

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<sup>8</sup>Arum Nugraeni, and Ni'ami Mutimatun. *Pengaruh Perceraian Terhadap Pengasuhan Anak Ditinjau Dari Undang-Undang Perlindungan Anak (Studi Pada Desa Pateken Kecamatan wonoboyo)*. Diss. Universitas Muhammadiyah Surakarta, 2021.

that administers local population affairs. Whereas in Article 9 (1), in the case of parents being separated due to divorce, and the court decides that the child is cared for by one of the parties, the father or mother, the obligations and responsibilities of the parents remain binding until the child reaches adulthood. The uncertainty about the exact regulation of child care by families has been answered by the variety of regulations that have been formulated by the government.

Child protection according to Article 1 paragraph 2 of Law Number 23 of 2002 states that all activities are to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and protection, and receive protection from violence. The law also explicitly regulates the parties responsible for the protection of children, including in chapter IV Part One, Part Two and Part Three where these obligations and responsibilities are carried out by the State and Government, the Community, the Family and the Parents. Meanwhile, the implementation of child protection in the law has been explicitly regulated in Chapter IX which consists of 5 parts including the implementation in the fields of religion, health, education, social and special protection.

Article 26 Paragraph (1) of the Child Protection Law states that; Parents are obliged and responsible for; (a) care for, nurture, educate and protect children; (b) develop children according to their abilities, talents and interests; (c) prevent marriage at the age of a child; and (d) providing character education and inculcating character values in children. Parents and families are the first and foremost institutions responsible for the upbringing of children.<sup>9</sup>

In a complex manner, the protection and care of children has been regulated in various regulations that have been made by the government. The rise of violations against children is not an act that is carried out without control, it is our common concern that in resolving the problem of violations of children's rights, it must be done in a structured manner by taking into account the content of the regulations, the implementation of the rules and the legal culture of the community.

In addition, through a court decision classified as supporting child protection, there was a case of Musician Machica Mukhtar who was married to her husband and had children. The child does not get the right to support by his father. By law, marriage in Law Number 1 of 1974 concerning marriage confirms that legally only registered marriages are declared legal. So that Machica Mochtar

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<sup>9</sup>Hana Krisnamurti, Pola Pengasuhan terhadap Anak Dihubungkan dengan Hukum Perlindungan Anak di Kelurahan Pasanggrahan Kota Bandung. *Jurnal Pengabdian Tri Bhakti* (2020): 68.

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submitted a petition for the right to support her child against her husband Moerdiono and the Constitutional Court granted the request, namely Decision Number 46/ PUU-VIII/2010.<sup>10</sup> The decision clearly states that the child born from an unregistered marriage, still has a lineage (*nasab*) relationship with his biological father as long as it can be proven by a DNA test. For this reason, the benefit aspect in the decision is nothing but protecting the rights of children in a civil manner.

### Child Care and Protection in the Perspective of Human Rights (HAM)

Every child who is born has inherent human rights which are the responsibilities and obligations of parents, family, community, government and state. At the international level, the United Nations pays attention to the protection of children based on the agreement of the United Nations General Assembly by ratifying the Covenant on the Rights of the Child (CRC) on November 28, 1989. Indonesia is one of the countries that also ratified the Covenant on the Rights of the Child (CRC) with the issuance of Presidential Decree No. 36/1990.<sup>11</sup> on August 25, 1990 and has been in effect since October 5, 1990.

Through this ratification, the State must expressly protect children from various threats against them in various ways, one of which is by formulating legal products that can legitimize the position of children legally. Protection is not only limited to the life and physical security of the children who are victims. Under no circumstances shall states respect, protect and fulfill the human rights of their citizens and of everyone within their territory or under jurisdiction.<sup>12</sup>

The role of the state in protecting and ensuring the fulfillment and protection of children's rights in accordance with the mandate of the 1945 Constitution. The government established laws and regulations to guarantee the protection of children's rights with the issuance of Law Number 23 of 2002 concerning child protection which was later amended in Law Number 35 of 2014

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<sup>10</sup>The Constitutional Court Decision Number 46/PUU-VIII/2010 states that Article 43 Paragraph (1) of Law Number 1 Year 1974 concerning Marriage which reads that Children born outside of marriage only have a civil relationship with their mother and their mother's family is contrary to the 1945 Constitution and has no power. legally binding as long as it is interpreted to eliminate civil relations with men which can be proven based on science and technology and or other evidence according to the law that turns out to have blood relations as the father so that the verse must read "children born out of wedlock have a civil relationship with their mother and as well as with a man as his father who can be proven based on science and technology and or other evidence according to the law having blood relations, including civil relations with his father's family.

<sup>11</sup>Presidential Decree on Ratification of *Convention on the Rights of the Child*.

<sup>12</sup>Laurensius Arliman, "Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan." *Kanun Jurnal Ilmu Hukum* 19.2 (2017), p. 313.

concerning amendments to Law Number 23 of 2002 concerning child protection. One form of child protection is the realization of legal certainty for children. Arif Gosita said that legal certainty is a means to prevent discrimination against children which of course will have negative consequences for the children themselves.<sup>13</sup>

The guarantee of children's rights in the International Covenant is specifically described in Article 24 even though it has been explained generally in civil rights which *mutatis mutandis* apply to children, because children are a group that is vulnerable to forms of violence and victims of rights violations. The central role of parents in the family is the key to the continuation of the best care and protection for children. Children have the right to receive adequate life and health insurance. The reality that happens to Indonesian children is that there are still many neglected children due to several factors, including the low family economy, children born to parents who are not ready for marriage, children born from extramarital relationships.

The Indonesian government also ratified the Convention on the Rights of the Child through Presidential Decree Number 39 of 1990.<sup>14</sup> By law there has been an obligation to respect and guarantee the rights set out in the Convention. According to the Convention on the Rights of the Child adopted from the UN General Assembly in 1989, every child regardless of race, sex, ancestry, religion or language, has rights. Then the Law of Human Rights Number 39 of 1999 Article 33 (1) states that "Everyone has the right to be free from torture, punishment or cruel treatment, inhumane, degrading and human dignity."<sup>15</sup>

It is clearly stated that the scope of children's rights includes; (1) Right to survival, concerning the right to a decent standard of living and health services; (2) The right to develop, including the right to education, information, free time, artistic and cultural activities, freedom of thought, belief and religion, as well as the rights of children with special needs to special services, treatment and protection; (3) Protection rights, including protection of all forms of exploitation, cruel treatment and arbitrary treatment in the criminal justice process; (4) The right to participate, includes freedom to express opinions, assemble and associate as well as the right to participate in decision-making concerning oneself.<sup>16</sup>

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<sup>13</sup>Muhammad Fachri Said, "Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia." *JCH (Jurnal Cendekia Hukum)* 4.1 (2018), p. 145.

<sup>14</sup>Convention on The Right of The Child in 1989 which was ratified by the Government of Indonesia through Presidential Decree Number 39 of 1990.

<sup>15</sup>Nur Hidayati, "Perlindungan Anak terhadap Kejahatan Kekerasan Seksual (Pedofilia)." *Ragam Jurnal Pengembangan Humaniora* 14.1 (2014): 68-73.

<sup>16</sup>Absori, *Perlindungan Hukum Hak-Hak Anak Dan Implementasinya di Indonesia Pada Era Otonomi Daerah*, Jurnal Jurisprudence, Vol. 2. Number 1. March 2005, p. 80-83.

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Regarding the four children's rights, four general principles contained in the Convention on the Rights of the Child (CRC) are clearly stated, including; (1) Non-discrimination, meaning that all rights recognized and contained in the CRC must be applied to every child without any distinction; (2) What is best for children, meaning that in all actions involving children carried out by government and private social welfare institutions, judiciary, government agencies or legislative bodies, the best interests of the child must be the main consideration; (3) The right to life, survival and development means that participating countries recognize that every child has an inherent right to his life; (4) Respect for children's opinions means that children's opinions, especially when it comes to matters that affect their lives, need to be considered in every decision making.<sup>17</sup>

Children must be protected so that they do not become victims of anyone's actions (individuals or groups, private organizations or the government) either directly or indirectly. The meaning of the victim here is to suffer mental, physical, and social harm. In essence, children cannot protect themselves from various kinds of crimes that cause harm to themselves in various fields of life and livelihood. Ari Gosita emphasized that child protection is an effort to protect children so that they can obtain their rights and obligations. So that children are free to express themselves both in the social field and for themselves. Child protection also concerns physical and spiritual needs so that children's development does not experience disturbances and obstacles in their growth and development.<sup>18</sup>

### Child Care and Protection in the Perspective of Islamic Law

Islam as a religion full of compassion highly upholds human dignity, as well as the inherent rights of every human being. The event of the Prophet's migration from Mecca to Medina had a very large impact in the history of the development of Islam to confirm the rights and obligations that must be carried out by the emigrants (*Muhajirin*) and the *Ansar* at that time. The agreement was motivated by the development of an increasingly pluralistic society, so as to avoid any violation of each right then the Prophet (pbuh) made an agreement called the Medina Charter. Before the term Human Rights existed in human civilization, long before that Islam had guaranteed it.<sup>19</sup>

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<sup>17</sup>M. Nasir Djamil, *Anak Bukan Untuk Dihukum* (Sinar Grafika, 2013), p. 28.

<sup>18</sup>Anggun Lestari Suryamizon, "Perlindungan Hukum Preventif Terhadap Kekerasan Perempuan dan Anak Dalam Perspektif Hukum Hak Asasi Manusia." *Marwah: Jurnal Perempuan, Agama dan Jender* 16.2 (2017), p. 122-123.

<sup>19</sup>Suyuthi Pulungan, *Fiqh Siyasah: Ajaran, Sejarah dan pemikiran* (Jakarta: PT. Grafindo Persada, 1994), p. 80-81.

Every child who is born has the right of his parents to receive care so that it leads him to adulthood. The formation of a child's soul is very much influenced by the way the child is cared for and nurtured since he is born.<sup>20</sup> Child development requires serious attention, especially during infancy. Allah says in the Qur'an related to child care in line with QS At-Tahrim/66:6.

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا قُورًا أَنفُسِكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ .

The translation:

O believers! Protect yourselves and your families from a Fire whose fuel is people and stones, overseen by formidable and severe angels, who never disobey whatever Allah orders always doing as commanded.

The seriousness of Islam in upholding human rights values can be traced in several verses which are the basis and guidelines for the fulfillment of rights and social ethics, including Surah al-Isra'/17: 33 which guarantees the right to life, al-Baqarah/2: 188 guarantees children's rights to get a job and work. An-Nur/24: 27 regarding the right to honor. The rights described in the Qur'an and Hadith apply to all humans without exception, including the rights to children, this is in line with QS al-An'am/6: 140.

قَدْ خَسِرَ الَّذِينَ قَتَلُوا أَوْلَادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ وَحَرَّمُوا مَا رَزَقَهُمُ اللَّهُ افْتِرَاءً عَلَى اللَّهِ قَدْ ضَلُّوا وَمَا كَانُوا مُهْتَدِينَ .

The translation:

Lost indeed are those who have murdered their own children foolishly out of ignorance and have forbidden what Allah has provided for them—falsely attributing lies to Allah. They have certainly strayed and are not 'rightly' guided.

The verse is also a form of warning to protect children from an early age by giving the right to life to the fetus that was in the mother's stomach before birth.<sup>21</sup> Children as entrusted by God have rights that must be protected. Parents are obliged to carry out their obligations towards children as the fulfillment of children's rights. The right to life is the basis of human rights. Islam forbids killing each other because killing is the same as violating the *maqashid sharia*, one of which

<sup>20</sup>Muhammad Zaki "Perlindungan Anak dalam Perspektif Islam." ASAS 6.2 (2014), p. 7.

<sup>21</sup>Siti Nurjanah, *Keberpihakan Hukum Islam terhadap Perlindungan Anak* (Jurnal Al-Adalah Vol 14, Number 2, 2017), p. 406

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is protection of the soul (*hifdz nafs*). The concept of *maqashid sharia* which includes protection of religion is important to be realized by providing religious education to children. Children have the right to receive teaching in the field of religion and in general as a form of fulfilling children's rights.

In the terminology of *fiqh*, there are two different words which are often meant for the same meaning, namely the words *kafalah* and *hadanah*. Both mean in a simple sense is maintenance or nurture. In a more complete sense, is the maintenance of young children after the breakup of marriage. According to al-Shanʿani, what is meant by *hadanah* is to take care of someone (child) who cannot be independent, educate and maintain him to avoid everything that can damage and bring harm to him.<sup>22</sup>

Protection of the soul in the formulation of *maqashid alkhamsah* can be applied in the care of parents, family, community and government in giving children the right to a decent life. Protection of offspring (*hifdz nasl*) can be done in guaranteeing the origin of a child. protection of property (*hifdz al-mal*) when applied to children can be realized by providing a good living, giving an inheritance to the rightful heirs. Keeping religion (*hifdz dinn*) can be done by guiding children to worship and carry out all forms of Allah's commands and stay away from all prohibitions.

The position of Islamic law as one of the norms adhered to in Indonesian society needs to be used as a basis in studying child protection issues. The elasticity of Islamic law with the principle of *shalih lil kulli zaman wa makan* and the principle of *al hukmu yaduru ma'al illati wujudan wa adaman* requires analogies and new interpretations in accordance with the context of the phenomenon of crimes that occur against children today. The transcendental value attached to the norms of Islamic law is a distinct advantage that causes its adherents to be more convinced that if religious teachings are understood properly, it will also be realized how religion does not want the exploitation of fellow human beings. The values of upholding justice, preventing injustice and the need for cooperation in overcoming social problems are humanitarian missions brought by religion. However, these values need to always be actualized and reinterpreted in accordance with the latest developments in the mode of crime.<sup>23</sup>

Some principles and principles of human rights in the application of Islamic law include, first, human rights in Islam are based on the principle of monotheism

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<sup>22</sup>Abdul Basith Junaidy, "Pengasuhan Anak Menurut Hukum Islam." *Al-Hukama': The Indonesian Journal of Islamic Family Law* 7.1 (2017), p. 79.

<sup>23</sup>Djaenab, "Perlindungan Anak Perspektif Fiqih dan Perundang-Undangan, *Jurnal Al-Risalah* 10, Number 1 (May 2010), p. 3.

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(tawhid), the value of justice, equality, help, tolerance and so on. Second, human rights in Islamic teachings are influenced by Islamic personality, authority, equity, belief, legality, prudence, legal certainty, balance, ethics, human honor, etc., third, human rights in Islam are formulated using the rules of *ushuliyyah*, *fiqhiyyah*, *dhawabith*, and *lawaqih*.<sup>24</sup> Basically, the application of human rights to child protection is a form of Islam as a religion of *rahmatan lil 'alamin* which aims to achieve *maqashid sharia*.

## Conclusion

In complex terms, the protection and care of children has been regulated in various regulations that have been made by the government. The rise of forms of violations against children is not an act that is carried out without control. Resolving the problem of violations of children's rights must be done in a structured manner by paying attention to the content of the regulations, the implementation of the rules and the legal culture of the community. Increased supervision of the implementation of regulations related to child care and protection should be maximized. The care and protection of children in the view of human rights has been guaranteed in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia and derivatives of international conventions. In line with the application of protection for children in accordance with the principles of *maqashid sharia*.

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