

SAFEGUARDING CHILDREN FROM ONLINE SEXUAL EXPLOITATION: A LEGAL AND *MAQĀSID AL-SHARI'AH* APPROACH

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Abstract: Advancements in technology have eased access to information but also heightened children's vulnerability to sexual exploitation in digital spaces. Indonesia ranks among the top 10 countries with the highest incidences of online child sexual abuse, according to ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) data. This article examines legal protections for children against sexual exploitation online from the perspectives of positive law and *maqāsid al-shari'ah* (objectives of Islamic law) using a normative juridical approach. Findings reveal that, despite existing laws such as the Child Protection Act and the Electronic Information and Transactions (ITE) Law, cases of abuse persist. Islamic teachings, rooted in the *maqāsid al-shari'ah*, prioritize the protection of religion, life, intellect, lineage, and property, offering complementary principles for addressing this issue. By integrating statutory regulations with Islamic jurisprudence, a more comprehensive framework for safeguarding children can be established. This approach not only strengthens existing legal measures but also aligns them with universal values, ensuring a balanced and effective response to the challenges of digital-era child protection.

Keywords: Sexual Exploitation; Children Protection; Digital; Islamic law.

Introduction

The internet serves as a powerful tool capable of disseminating both constructive and harmful content. It offers a vast array of

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opportunities for children, enabling them to acquire knowledge, enhance their abilities, and explore various forms of digital creativity. Through platforms such as social media and online games, they are able to engage and interact with a wider community. Current statistics reveal that an overwhelming 98% of children and adolescents are familiar with the internet, and 79.5% actively utilize it for various purposes. This high level of engagement highlights the pervasive role the internet plays in shaping the experiences of younger generations.¹ As reported by the Indonesian internet Service Providers Association (APJII), Generation Z constitutes the largest segment of internet users, accounting for 34.40% of the total user base. Meanwhile, the generation following Gen Z, often referred to as Post-Gen Z, represents 9.17% of internet users. These figures illustrate the significant presence of younger generations in the digital landscape.² On average, children tend to access the internet at least two times daily. Despite the frequent and beneficial use of digital platforms, they are also at heightened risk of falling prey to various forms of online criminal activity.³ Given the lack of sufficient safety measures to match the growing number of internet users, it is unsurprising that Indonesia has consistently ranked among the top 10 countries with the highest rates of online child sexual abuse since 2005. This persistent issue highlights the pressing need for stronger protective mechanisms in the digital realm.⁴

Studies on child exploitation in the digital space generally focus on children as victims of sexual violence. Studies regarding child sexual exploitation in digital spaces are still rarely conducted;

¹ Kominfo, “98 Persen Anak dan Remaja Tahu Internet,” kominfo.go.id, 2014, https://www.kominfo.go.id/index.php/content/detail/3836/98+Persen+Anak+dan+Remaja+Tahu+Internet/0/berita_satker (accessed March 27, 2024).

² APJII, “APJII Jumlah Pengguna Internet Indonesia Tembus 221 Juta Orang,” apjii.or.id, February 7, 2024, <https://apjii.or.id/berita/d/apjii-jumlah-pengguna-internet-indonesia-tembus-221-juta-orang>

³ Muhammad and Surahman Ngazis, “Legal Protection Against Child Exploitation in the Digital Era Based on the Perspective of Justice,” *Jurnal Meta-Yuridis* 7, no 1 (2024): 34-47.

⁴ ECPAT Indonesia, “Safer Internet Day 2024 : ‘Safe Internet, Save You,’” February 24, 2024, <https://www.ecpatindonesia.org/press-release-detail/safer-internet-day-2024-safe-internet-save-you>

most studies only examine sexual violence in everyday life.⁵ The issue of sexual violence against children is also examined within the educational sector, particularly in terms of preventive measures. The discourse focuses on how educational systems can play a crucial role in safeguarding children and preventing such abuses in parenting patterns in the family.⁶ The topic of sexual violence has gained significant attention in the wake of the Covid-19 pandemic. With schools shuttered, children have increasingly turned to online platforms, spending substantial amounts of time in the digital space. This shift has led to a notable surge in incidents related to violence and harassment, with reports indicating a fourfold increase worldwide from March to April 2020.⁷

This study aims to examine the measures undertaken by the government to safeguard children from sexual violence in the digital environment. While various regulations have been implemented to mitigate incidents of sexual exploitation, the reality reveals a disconcerting trend: cases of online sexual exploitation continue to rise, contrary to expectations.⁸ This article explores the substance of legal protection for children in the digital space, focusing on relevant criminal law regulations, law enforcement mechanisms, and preventive measures against online crimes targeting children, such as sexual exploitation.⁹ This analysis will assess whether existing regulations have met the community's need for justice (fair

⁵ Anissaa Nuril Chasanah and Ridwan Arifin, "The Victimological Context on Child Sexual Violence," *Walisongo Law Review (Walrev)* 4, no. 1 (2022): 19-48; Yanuar Farida Wismayanti et al., "The Problematization of Child Sexual Abuse in Policy and Law: The Indonesian Example," *Child Abuse and Neglect* 118 (2021).

⁶ Syahril Ramadhan Alamsyah et al., "Analisa Peran Keluarga Dalam Pelibatan Budaya Anti Kekerasan Seksual Pada Anak," *Hukum dan Demokrasi* 23, no. 2 (2023): 99-110.

⁷ Amber M. Smith-Clapham et al., "Implications of the COVID-19 Pandemic on Interpersonal Violence Within Marginalized Communities: Toward a New Prevention Paradigm," *American Journal of Public Health* 113 (2023); Sakroni, "Kekerasan Terhadap Anak pada Masa Pandemi Covid-19," *Angewandte Chemie International Edition* 6, no. 11 (2021): 951-952.

⁸ UNICEF Indonesia, "Data Survei Baru: Hingga 56 Persen Insiden Eksplorasi Seksual dan Perlakuan yang Salah Terhadap Anak Indonesia di Dunia Maya Tidak Diungkap dan Dilaporkan," July 23, 2022, <https://www.unicef.org/indonesia/id/siaran-pers/data-survei-baru-hingga-56-persen-insiden-eksplorasi-seksual-dan-perlakuan-yang-salah> (accessed March 27, 2024).

⁹ Muhammad and Ngazis, "Legal Protection Against Child Exploitation in the Digital Era Based on the Perspective of Justice."

punishment for perpetrators and recovery for victims), legal certainty (clear and understandable regulations), and usefulness (effectiveness in preventing and handling online crimes against children).¹⁰ This question arises amidst the increasing number of online crimes against children in Indonesia, despite various regulatory and law enforcement efforts. Data from UNICEF Indonesia (2022) shows that up to 56% of incidents of sexual exploitation and abuse against children in cyberspace are not disclosed and reported. This indicates a gap between existing regulations and the reality on the ground. Reasonable regulations are crucial for the successful implementation of laws, particularly in societies with a strong Islamic influence, where laws should serve the benefit of the people and accommodate societal values as defined by Sharia.¹¹ Sharia aims to realize human benefit in this world and the hereafter. Addressing the issue of online child sexual exploitation is crucial due to its detrimental impact on victims, including psychological trauma, disrupted development, and increased vulnerability to risky behaviors. This article starts by arguing that law is a system of life rules created to achieve the values desired by society, namely justice, certainty, and usefulness. However, sometimes, the realization of the legal objectives is hampered by the substance of the law itself. Here, we need rules based on society's social and cultural conditions.

This article examines the escalating phenomenon of online child sexual exploitation in Indonesia, a predominantly Muslim nation with high internet penetration rates. Since 2005, Indonesia has reported a concerning increase in such cases, ranking among the top ten countries globally for this issue. This study aims to critically analyze the social and legal frameworks designed to protect children within the Indonesian context. Employing a socio-legal research methodology, this study will examine relevant legal documents, statutes, and regulations while also incorporating real-world observations to assess the efficacy of existing legal protections. This analysis will juxtapose the idealized notion of child pro-

¹⁰ Melisa Nasir et al., "Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 241-254.

¹¹ Muhammad Syafii Antonio, Sugiyarti Fatma Laela, and Thuba Jazil, "Abu Zahrah's Maqasid Sharia Model as A Performance Measurement System," *Jurnal Akuntansi Multiparadigma* 11, no. 3 (2020).

tection (*das sollen*) with the stark reality of increasing online exploitation (*das sein*), aiming to identify problematic areas and propose solution concepts based on positive law and *maqāṣid al-shari‘ah* principles.

The research utilizes both primary and secondary data sources to support its findings. To achieve a holistic understanding, the research adopts a combined statutory and comparative approach. The statutory approach involves a thorough examination of all relevant Indonesian laws and regulations pertaining to child protection in the digital realm. This is complemented by a comparative approach, juxtaposing Indonesian legal provisions with Islamic legal principles derived from *maqāṣid al-shari‘ah*. This comparison seeks to reveal any consistencies or contradictions between the legal objectives of these distinct systems, contributing to a nuanced understanding of how different legal frameworks address the issue of online child sexual exploitation. Data for this study were gathered through various methods, including monitoring news outlets, involved analyzing both international and local Indonesian media to gain insights into public discourse, reported cases, and expert opinions regarding online child sexual exploitation. The data collection strategies employed were active, passive, or a combination of both, with a particular focus on instances of sexual exploitation in digital contexts. Document mapping played a critical role in this research. The analyzed data were synthesized and restated, then organized thematically to align with the article's objectives. Additionally, interpretative methods were applied to comprehend the linguistic and symbolic implications of the collected data.

Rights of the Child and the Crime of Sexual Exploitation

Right of the Child

Rights of the Child are fundamentally linked to the broader spectrum of human rights, encompassing those inherent privileges that arise from their existence as creations of God. These rights are divine gifts that necessitate respect, safeguarding, and promotion by the state, legal frameworks, governing bodies, and society at large. The aim is to honor and protect the dignity and worth of

every individual.¹² Children are entitled to protection from the moment of conception through to their adulthood. In the aftermath of World War II, the United Nations recognized the necessity of human rights, leading to the ratification of the Convention on the Rights of the Child in November 1989. Prior to this, in 1923, Eglantyne Jebb articulated five fundamental rights for children, which laid the groundwork for the UN Convention: 1) children must be provided with the resources essential for their holistic development, both materially and spiritually; 2) those who are hungry must receive nourishment, sick children must have access to medical care, children with disabilities require support, misbehaving children need guidance, and orphans as well as abandoned children must be offered shelter and assistance; 3) in times of crisis, children should be prioritized and receive immediate assistance; 4) they must be afforded opportunities to earn a living and be safeguarded against all forms of exploitation; and 5) education must foster an understanding in children that their abilities should be utilized for the benefit of others.¹³ These five simple statements were later expanded into children's rights at the UN. The development of children's rights must be accompanied by structures and provisions that fall under the government's authority. If this declaration is not accompanied by cooperation with the government, it will be no more than a call for charity and not a codification of rights. Collaboration with governments worldwide is needed to uphold children's rights.¹⁴

On August 25, 1990, Indonesia officially endorsed the Convention on the Rights of the Child via Presidential Decree Number 36 of 1990. This pivotal agreement outlines four fundamental principles that all participating nations are required to uphold: a) the principle of non-discrimination; b) the principle prioritizing the best interests of children; c) the principle ensuring the right to life, survival, and development; and d) the principle that acknowledges

¹² Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

¹³ Lara Bolzman, "The Advent of Child Rights on the International Scene and the Role of the Save the Children International Union 1920-45," *Refugee Survey Quarterly* 27, no. 4 (2008).

¹⁴ Waltraut Kerber-Ganse, "Eglantyne Jebb - A Pioneer of the Convention on the Rights of the Child," *International Journal of Children's Rights* 23, no. 2 (2015): 272-282.

and respects children's viewpoints. Following the ratification of children's rights, Indonesia established Law Number 23 of 2002 on child protection (UUPA) in 2002. This legislation enshrines the duty to safeguard children according to several guiding principles: the principle of non-discrimination, the principle prioritizing the best interests of children, the principle ensuring the right to life, survival, and development, and the principle that respects children's perspectives. To fulfill the stipulations of Article 28B, it is imperative to develop government policies specifically aimed at child protection. This is crucial, as children require safeguarding from the adverse effects of rapid development, the influence of globalization in communication and information, and advancements in science and technology. However, reports from the UNDP indicate that the implementation of strategic and legal frameworks often falls behind and fails to adequately address the intricate challenges that arise from these developments, particularly in the realm of technology.¹⁵ Consequently, as digital technology becomes more deeply integrated into societal structures, there is a pressing need for a comprehensive institutional, policy, and regulatory framework grounded in the principles of children's and human rights.¹⁶ There is an urgent necessity for enhanced efforts to harmonize the regulatory, legislative, and institutional frameworks governing digital technologies with established human rights obligations and standards.

The Crime of Sexual Exploitation

Criminal Law recognizes acts in *mala prohibita* and *mala per se*. *Mala prohibita* is an evil act because it is regulated by law. *Mala per se* is an act contrary to law and justice, regardless of whether the act is regulated by law.¹⁷ Sexual exploitation of children can be

¹⁵ UNDP, "The Impact of Digital Technology on Human Rights in Europe and Central Asia: Trends and Challenges Related to Data Protection, Artificial Intelligence and Other Digital Technology Issues," undp.org, 2023, <https://www.undp.org/eurasia/publications/impact-digital-technology-human-rights-europe-and-central-asia> (accessed March 27, 2024).

¹⁶ Aryono and Rina Arum Prastyanti, "Protection of Children from Violence in Social Media in the New Normal Era," *Veteran Justice Journal* 2, no. 1 (2020).

¹⁷ Mahmutarom, Sri Endah Wahyuningsih, and Ainul Masruroh, *Hukum Pidana Indonesia (Dilengkapi dengan Kajian Hukum Pidana Islam dan RUU KUHP 2019)* (Semarang: Wahid Hasyim University Press, 2022).

categorized as an evil act because it is prohibited. Sexual exploitation of children is different from sexual violence. Sexual violence against children tends to use children as objects to satisfy the perpetrator's sexual needs. Meanwhile, the sexual exploitation of a child is not only an object of sexual gratification but also a commodity to obtain money or profits from this exploitation.¹⁸

As noted by ECPAT, the sexual exploitation of children represents a profound infringement of their human rights, involving acts of sexual violence perpetrated by adults who may offer financial compensation or valuable goods in exchange for using children as sexual objects and commercial commodities. Child exploitation can be categorized into two primary forms: economic and sexual. However, the existing legal framework fails to adequately define the specific elements constituting these prohibited acts. The lack of a clear definition regarding the criminality of child exploitation complicates the assessment of offenses committed against children, as the weak formulation of these offenses undermines effective legal interpretation. Including clear definitions of criminal acts against children is vital for substantiating evidence in judicial proceedings. In criminal law, the elements of criminal acts (*bestandelen delict*) are essential to ensure that a perpetrator is legally and convincingly established as guilty of committing an offense against a child. The UUPA framework adopts a dual-track model rather than a singular approach, which complicates the process of delineating prohibited acts of exploitation and establishing corresponding criminal penalties.¹⁹ Moreover, this type of sexual exploitation is referred to by various terms, contingent upon the ages of the individuals involved, the situational context, or the nature of their interactions.²⁰

¹⁸ Rio Hendro and Supriyadi Widodo Eddyono, *Tindak Pidana Terkait Eksloitasi Seksual Komersil Anaka (ESKA) dalam Rancangan KUHP*, ed. Ajeng Gandini Kamilah (Jakarta: Aliansi Nasional Repfromasi KUHP in collaboration with ECPAT Indonesia and Institut for Criminal Justice Reform, 2016).

¹⁹ Ahmad Sofian, “Terminologi Hukum ‘Kekerasan dan Eksloitasi Anak,’” binus.ac.id, 2018, <https://business-law.binus.ac.id/2018/09/29/terminologi-hukum-kekerasan-dan-eksloitasi-anak/> (accessed March 2024).

²⁰ Quebec.ca, “Definition of Sexual Exploitation,” quebec.ca, <https://www.quebec.ca/en/family-and-support-for-individuals/violence/sexual-exploitation/definition> (accessed June 1, 2024).

As outlined by ECPAT, sexual exploitation is classified into five distinct categories of criminal offenses: child prostitution, child pornography, trafficking of minors for sexual purposes, child sex tourism, and child marriage.²¹ The UNHCR defines sexual exploitation as the exploitation of an individual's vulnerable circumstances to procure sexual services. This may involve, but is not limited to, the provision of financial compensation or the offer of social, economic, or political advantages, as well as practices such as human trafficking and prostitution.²² The Ministry of PA has established classifications for sexual exploitation that encompass various forms, including cyberbullying, sextortion, scams, hoaxes, child grooming, pornography, and Online Child Sexual Exploitation and Abuse (OCSEA).²³ The definition provided clearly indicates that child sexual exploitation transcends the mere treatment of children as sexual objects; it also regards them as commodities. This implies that an element of 'profit' is inherently involved in the exploitation of children for sexual purposes.

Children are invaluable national assets that require robust protection. The sexual exploitation of minors constitutes one of the gravest violations of human rights. It is imperative for the state to guarantee that every child is nurtured in a secure environment, shielded from all forms of violence. Regrettably, numerous forms of sexual exploitation continue to evade legal scrutiny and safeguards, thereby placing children in exceedingly precarious situations.

Sexual Exploitation in the Digital Space

The internet has become a friend for children. Globally, the average child accesses the internet at a very young age, under 10.²⁴

²¹ Hendro and Eddyono, *Tindak Pidana Terkait Eksplorasi Seksual Komersil Anak (ESKA) dalam Rancangan KUHP*.

²² UNHCR, "What Is Sexual Exploitation, Abuse and Harassment?," [unhcr.org, https://www.unhcr.org/asia/what-we-do/how-we-work/tackling-sexual-exploitation-abuse-and-harassment/what-sexual-exploitation](https://www.unhcr.org/asia/what-we-do/how-we-work/tackling-sexual-exploitation-abuse-and-harassment/what-sexual-exploitation) (accessed June 1, 2024)

²³ Kemenpppa, "Kolaborasi Berkelanjutan Lintas Sektor dan Regional, Kunci Atasi Kasus Kekerasan Terhadap Anak," [kemenpppa.go.id, https://www.kemenpppa.go.id/page/view/NTAxNg==](https://www.kemenpppa.go.id/page/view/NTAxNg==) (accessed March 26, 2024).

²⁴ ECPAT Indonesia, "Eksplorasi Seksual Anak di Ranah Online: Sebuah Ancaman Global," *Diskominfo Pemerintah Kabupaten Lamongan*, October 8, 2021,

In 2023, data from the Indonesian Child Protection Commission (KPAI) indicated that by August, there had been 2,335 reported incidents of child violence across Indonesia, including 487 cases specifically related to sexual violence against minors. Furthermore, according to the PPA Symphony from the Ministry of Women's Empowerment and Child Protection, by December 2023, there were 12,391 cases of sexual violence, along with 351 instances of exploitation and 401 cases of trafficking, resulting in a total of 19,017 child victims. These children lack the necessary skills to navigate the myriad dangers present online, rendering them particularly susceptible to sexual exploitation in cyberspace. In Indonesia, several forms of online sexual exploitation targeting children are emerging, including online grooming, sexting, sextortion, and live streaming.²⁵

Table 1. Cases of Child Sexual Exploitation in Digital Spaces

Sextortion	A mother with the initials R in Pondok Aren, South Tangerang, admitted that she recorded an act of sexual abuse against her five-year-old son because someone threatened him via social media Facebook. Previously, R had given the perpetrator a photo with the promise of 15 million. The money was never given; in fact, R was threatened with having his photo published if he did not want to record his actions of abusing his son. ²⁶
Cyberbullying	A fifth-grade male student in an elementary school in Tasikmalaya, West Java, tragically succumbed to depression following prolonged bullying by his peers. This included a severe act of abuse where he was coerced into engaging in bestiality, recorded on

<https://www.lamongankab.go.id/beranda/diskominfo/post/2077> (accessed 27 March 2024).

²⁵ Sofian, “Terminologi Hukum ‘Kekerasan dan Eksploitasi Anak.’”

²⁶ Raja Eben Lumbanrau, “Kasus Ibu Cabuli Anaknya di Tangsel Ungkap Pemerasan Seks-Apa itu Sekstorsi, Bagaimana Modus, dan Cara Mengatasinya?” *BBC News Indonesia*, June 7, 2024, <https://www.bbc.com/indonesia/articles/c03311le1y4o> (accessed July 26, 2024).

	a mobile device, and the resulting video subsequently disseminated on social media. ²⁷
Child grooming	The perpetrator got to know the child in an online game. The perpetrator bought several items provided by online games to stimulate conversation and even asked for personal contact with the child. Children think the perpetrator is a unique figure because he is a friend who tells stories and keeps secrets. The perpetrator used a fake account with an attractive profile photo. The perpetrator seduces the child to make a video call or record a video in which the child is asked to do things related to sexual activity to satisfy the perpetrator's sexual desires. The perpetrator then distributes or sells the video. ²⁸
Pornography	Juki Chandra molested children and recorded all the scenes on film. Around 100 (one hundred) film recordings on the suspect's cell phone have been made since March 2006. ²⁹

The spread of child sexual exploitation above is often found on online media platforms such as Facebook, X, Telegram, WhatsApp, and website links.³⁰ Actors prefer online systems because the digital space provides advantages, while offline ones do not. First, anonymity on the internet, the ability to hide one's identity, makes tracing difficult. Second, it is easy to exploit humans;

²⁷ Irwan Nugraha and Reni Susanti, "Bocah SD di Tasikmalaya yang Dipaksa Setubuhi Kucing Rahasiakan Identitas Pelaku hingga Meninggal," Kompas.com, July 21, 2022, <https://bandung.kompas.com/read/2022/07/21/093352178/bocah-sd-di-tasikmalaya-yang-dipaksa-setubuhi-kucing-rahasiakan-identitas?page=all> (accessed March 26, 2024).

²⁸ Devandra Abi Prasetyo, "Viral Kasus Child Grooming via Chat Game Online, KemenPPPA Soroti ini," *detikhealth*, May 4, 2024, <https://health.detik.com/berita-detikhealth/d-7324407/viral-kasus-child-grooming-via-chat-game-online-kemenpppa-soroti-ini> (accessed July 26, 2024).

²⁹ Hendro and Eddyono, *Tindak Pidana Terkait Eksplorasi Seksual Komersil Anak (ESKA) Dalam Rancangan KUHP*.

³⁰ Fawwas Aufaa Taqiyyah Prastiwi and Aroma Lemina Martha, "Perlindungan Hukum Terhadap Anak sebagai Korban Eksplorasi Seksual Melalui Media Online," in *Prosiding Seminar Hukum Aktual Fakultas Hukum UII: Idealita Dan Poblematika Undang-Undang Tindak Pidana Kekerasan Seksual* (Yogyakarta: FH UII, 2023), 37-54. Retrieved from <https://law.uii.ac.id/perlindungan-hukum-terhadap-anak-sebagai-korban-eksplorasi-seksual-melalui-media-online-2023/> (accessed March 26, 2024).

perpetrators often use social techniques to manipulate their victims, and a lack of awareness makes these techniques successful. Third, location, cyber crimes can be committed without national boundaries. The internet can penetrate the boundaries of space and time. Fourth, there is a lack of strict laws. Legal developments do not accompany technological progress; law tends to develop more slowly. As a result, there is less enforcement of cases because no law regulates them.

From the data and explanation above, it can be stated that the sexual exploitation of children in online spaces is very worrying. Anonymity, location beyond national borders, and lack of strict laws result in increased sexual exploitation. Sexual exploitation is not only carried out by adults but also involves minors.³¹ Children can act as creators, site users, viewers, viewers, and even actors in pornographic videos, as is the case with cyberbullying.

Exploitation in the Online Space

Every child is entitled to protection against exploitation and all forms of harm. This responsibility falls upon parents, guardians, governmental bodies, and relevant institutions, as outlined in international legal frameworks such as the Convention on the Rights of the Child, as well as national legislation. These regulations explicitly forbid any individual from subjecting children to exploitation, whether through direct involvement, consent, or facilitation. Exploitation refers to the act of manipulating or coercing a child for the benefit of oneself, one's family, or a group, often through means of deceit or intimidation.³² Indonesia lacks a dedicated legal framework addressing the commercial sexual exploitation of children (CSEC). Instead, CSEC is addressed as a distinct component within various existing criminal statutes.

³¹ Ibid.

³² Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

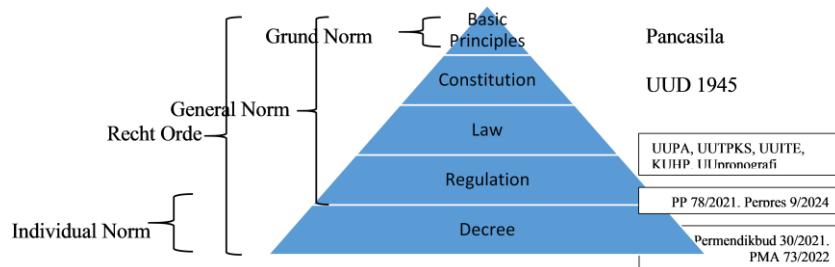


Figure 1. Concept of CSEC Legal Protection

The Grundnorm theory provides a robust framework for how every law must comply with higher norms. In the context of the legal system, this theory has a vital role. Pancasila is the fundamental value of the state philosophy, as stated in the 1945 Constitution. Child sexual exploitation is a form of social injustice that is contrary to the values of Pancasila as the Main Basis for legal protection for citizens. The 1945 Constitution guarantees the fundamental rights of every citizen, including children. The right to live, grow and develop, and be protected from violence are fundamental rights that cannot be violated. Furthermore, below that, there is a general norm, namely several regulations governing sexual exploitation; there are general laws (general norms) and special legal norms (individual norms) which are implemented with various nomenclatures of laws and regulations that still lead to fundamental law (Grundnorm-basic norm) or according to Hans Nawiasky it is called Staatsfundamentalnorm. All of these regulations, although scattered, are bound by recht order, which means that the legal rules on child sexual exploitation are arranged in such a way that they become a “legal system” that is interconnected and mutually determining. The legal rules related to child sexual exploitation can be inventoried as follows:

- Articles 4, 5, 6, 17 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking), In general, regarding criminal acts of human trafficking, including sexual exploitation (Articles 6, 17), Articles 4 and 5 related to the adoption of children for exploitation and sending children.

- b. Articles 11, 12, 15, 16, 37, 38 of Law No. 44 of 2008 concerning Pornography related to CSEC Prohibition of child pornography
- c. Articles 66, 78, 81, 82, 88 of Law No. 23 of 2007 concerning Child Protection related to Protection against CSEC
- d. Articles 27, 45, 52 of Law No. 19 of 2016 concerning ITE, the relevance is distributing transmitting material including violations of morality
- e. Articles 4, 12, 13, 14, 16, 57 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence that exploitation is part of the criminal act of sexual violence

Legal protection represents the government's initiative to safeguard individuals from abuses perpetrated by both the state and its citizens. In Indonesia, such protection is fundamentally aimed at upholding human dignity, grounded in the principles of Pancasila. According to Philipus M. Hadjon, Pancasila serves as the foundational ideology of the Republic, drawing from the intrinsic values of Indonesian culture and society. Consequently, it holds dual significance: it is both the ideological foundation of the state and a reflection of the nation's collective ethos.³³

Gustaf Radbruch posits that legal ideals serve as essential regulatory and foundational standards; without these ideals, legal instruments may become devoid of significance. It is imperative that legal ideals are recognized as the fundamental framework and obligatory guiding force in the legislative process. Therefore, all procedures for enacting and amending laws must align with these established legal ideals.

In the context of commercial sexual exploitation of children (CSEC), legal protection is executed through both preventive and repressive measures. Specifically, safeguarding against sexual exploitation in digital environments must be anchored in Pancasila, as it is the ideological bedrock and source of all legislative frameworks in Indonesia. Such legal protections should embody the values of divinity, humanity, unity, popular sovereignty, and social justice.

³³ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987).

Moreover, preventive legal measures are designed to avert the occurrence of commercial sexual exploitation of children (CSEC), primarily through the establishment of statutory regulations, as illustrated in Table 2. At present, Indonesia lacks legislation that directly addresses the complexities of CSEC. Instead, this issue is merely treated as an aspect of broader criminal laws, leading to significant legal gaps.

Firstly, there is an absence of a clear definition for child sexual exploitation within the existing legal framework. Secondly, the current laws do not delineate the various actions that could be classified as sexual exploitation of minors. This is particularly concerning given the proliferation of technology and internet usage, which has facilitated the emergence of numerous novel forms of sexual exploitation against children.³⁴ This is crucial as a foundation for legal protection in its repressive form, ensuring that no offender can evade the consequences of their actions under the threat of legal penalties,³⁵ on the basis that in positive law, there are no specific provisions regarding online sexual exploitation of children.

Repressive legal protection is provided if a violation has occurred. Existing laws are pretty protective. In contrast to the Criminal Code, the crime of child sexual violence is not a complaint offence. Moreover, there is a threat of sanctions against perpetrators of CSEC crimes. The reality in the field is that the application of the articles and sanctions depends on the law enforcers. 1) In Indonesia, the punishment for perpetrators of child sexual exploitation is ten years in prison. Still, in Indonesia, many cases of child sexual exploitation are only sentenced to 5 years or even less. This is because many CSEC cases do not use the Law on Child Protection,³⁶ the Law on the Crime of Human Trafficking,³⁷ and the Law on Crimes of Sexual Violence,³⁸ where the law carries a minimum

³⁴ Samsul Arifin and Kholilur Rahman, “Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation di Tengah Pandemi Covid-19,” *Al Danlah: Jurnal Hukum Pidana dan Ketatanegaraan* 10, no. 2 (2021).

³⁵ Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual.

³⁶ Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

³⁷ Undang-Undang Republik Indonesia Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang.

³⁸ Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual.

sentence of three years.³⁹ 2) There are discriminatory practices against children who are victims of sexual exploitation and children who are victims of sexual violence carried out by Law Enforcement Officials (APH) and also Service Providing Institutions in terms of handling children who are victims of sexual exploitation. Children who are victims of sexual exploitation are often labelled negatively because they are considered naughty children because of their clothes or because of their make-up. Meanwhile, children who are victims of sexual violence receive more empathy because the violence they experience is considered an attack, coercion with threats and violence.⁴⁰

From the explanation above, it can be seen that legal protection against sexual exploitation in online spaces is still not optimal. Both in the form of preventive and repressive protection. Child protection can also be interpreted as all efforts to prevent, rehabilitate, and empower children. Who experience acts of child abuse, exploitation, and neglect to ensure the survival and average growth and development of children, both physically, mentally, and socially, based on the values contained in Pancasila.

***Maqāṣid al-Shari‘ah* Concept in Sexual Violence Protection**

Islam does not recognize sexual exploitation. In Islam, what is known is adultery. Islam prohibits approaching adultery, let alone committing it (see al-Isrā’ [17]: 32). Adultery is any sexual intercourse that occurs not because of a legal marriage, not because of scepticism, and not because of slavery.⁴¹ In Islam, adultery is categorized as a crime/delink/criminal act.⁴² Adultery is included in the hudud finger, a finger whose form has been determined by Shari‘ah. In Islam, sexual exploitation can be equated with sexual

³⁹ Hendro and Eddyono, *Tindak Pidana Terkait Eksplorasi Seksual Komersil Anak (ESKA) Dalam Rancangan KUHP*.

⁴⁰ ECPAT Indonesia, “Catatan Akhir Tahun ECPAT Indonesia 2023: Keberlanjutan Perlindungan Anak dari Eksplorasi Seksual,” [ecpatindonesia.org](https://ecpatindonesia.org/press-release-detail/catatan-akhir-tahun-ecpat-indonesia-2023-keberlanjutan-perlindungan-anak-dari-eksplorasi-seksual), 2023, <https://ecpatindonesia.org/press-release-detail/catatan-akhir-tahun-ecpat-indonesia-2023-keberlanjutan-perlindungan-anak-dari-eksplorasi-seksual> (accessed March 27, 2024).

⁴¹ Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2 (n.p.: Dār Ihyā’ al-Kutub al-’Arabīyah, n.d.).

⁴² Musthofa Hasan, *Hukum Pidana Islam: Fiqh Jinayah* (Bandung: Pustaka Setia, 2013).

harassment and is included in the category of adultery, namely acts that resemble adultery. However, it does not fulfil the elements of essential zina, namely sexual intercourse between a man and a woman who is not his *mahrum*.⁴³

Sexual exploitation hurts children who are victims. Dār al-Iftā' al-Miṣrīyah's fatwa states that sexual violence is a significant sin, violates the Shari'a, and is a crime that is against the law.⁴⁴ This act is carried out by humans controlled by animal desires so that they lose control of their reason and humanity. Sexual activity in Islam can only be carried out through one route, namely the route of legal marriage, by following the terms and conditions that have been determined by the God, where God has created humans accompanied by desires, and these desires must be controlled. This is as stated by God in Āli 'Imran [3]: 14. In its fatwa, the MUI recommends to all parties to immediately stop all forms of activities such as viewing, creating, and depicting Pornography and pornographic actions. Thus, in Islam, the act of sexual exploitation of children is a major sin and an act that the Shari'ah prohibits.

In Islam, legal formation must refer to *maqāṣid al-shari'ah* as the goal of the law. *Maqāṣid al-shari'ah* functions to find the spirit of the meaning of Sharia law.⁴⁵ So that the framework of Islamic Shari'ah forms the law. Shari'ah in terminology is *sacred texts from the Koran and al-Sunnah, which have not been interfered with by human thought*, which includes 'aqidah, 'amaliyah, and *khuluqiyah*.⁴⁶ Al-Ghazālī stated that *maqāṣid al-shari'ah* rejects damage and attempts to create means of benefit.⁴⁷ Based on the level of urgency, *maqāṣid al-shari'ah*, according to al-Shāṭibī, is divided into *darūriyāt*, *ḥājiyāt*, and *tahsīnīyāt*.⁴⁸ *Darūriyah* benefits five principles (*uṣūl al-khamsah*), namely: guard-

⁴³ Jalāl al-Dīn b. 'Abd al-Rahmān b. Abī Bakr al-Suyūṭī, *al-Dibāj 'alā Ṣaḥīḥ Muslim b. al-Hajjāj*, vol. 4 (N.p.: Dār Ibn 'Affān, 1996).

⁴⁴ Zainuddin Lubis, "Dosa Besar Kekerasan Seksual pada Anak dalam Islam," NU Online, November 30, 2023, <https://islam.nu.or.id/syariah/dosa-besar-kekerasan-seksual-pada-anak-dalam-islam-tUpvk> (accessed March 27, 2024).

⁴⁵ Wahbah Zuhaylī, *Uṣūl al-Fiqh al-Islāmī*, vol. 2 (Beirut: Dār al-Fikr, 2006).

⁴⁶ Asyafri Jaya Bakri, *Konsep Maqashid Syari'ah Menurut Al-Syatibi* (Jakarta: Raja Grafindo Persada, 1996); Zurifah Nurdin, "Hubungan Aqidah, Syari'ah, dan Akhlak dalam Kehidupan Beragama," *Jurnal Ilmiah Syi'ar* 9, no. 2 (2008).

⁴⁷ Abū Ḥāmid al-Ghazālī, *Shifā' al-Ghalil fī Bayān al-Shabb wa al-Mukhlis wa Masālik al-Tahbīl* (Baghdad: al-Irshād, n.d.).

⁴⁸ Musthofa Hasan, *Hukum Pidana Islam: Fiqh Jinayah*.

ing religion (*al-din*), protecting the soul (*al-nafs*), guarding offspring (*al-nasl*), guarding wealth (*al-mal*) and guarding reason (*al-‘aql*).⁴⁹ Meanwhile, according to Abū Zahrah, *maqāṣid* contains three dimensions: *tahdhib al-fard* (educating individuals), *iqāmat al-‘adl* (establishing justice), and *jalb al-maṣlahah* (improving community welfare) as the ultimate goal of *maqāṣid al-shari‘ah*⁵⁰ in *jalb al-maṣlahah* contained *uṣūl al-khamṣah*.

Tahdhib al-fard (educating individuals) is intended so that every Muslim can become a source of goodness for society and the environment. The best humans are pious (al-Mā’idah [5]: 35), carry out their commands, and avoid what they prohibit (Āli ‘Imrān [3]: 102). The existence of humans in this world is to worship (al-Dhāriyāt [51]: 56) and have noble morals (al-‘Ankabūt [29]: 45). “Indeed, I was sent to perfect the nobility of morals” (a ḥadīth narrated by al-Bayhāqī). This goal is achieved through various types of worship that are prescribed. All worship in Islam is aimed at cleansing the soul. Humans have heart disease, creating affection among fellow human beings and preventing cruel acts. Allah emphasizes acts of worship such as prayer, zakat, fasting, and pilgrimage to educate the human soul to be clean from evil, unjust, and cruel traits, preventing brutal and evil acts (al-‘Ankabūt [29]: 45).⁵¹ In Indonesia, children’s education starts from the family, school, and community.

Iqāmat al-‘adl, or upholding justice in society, is the second aim of enshrining Islamic law regarding fellow Muslims’ affairs and in relations with other parties/non-Muslims (al-Mā’idah [5]: 8). Islam views that everyone has an equal position before the law. This principle emphasizes the need for balance and avoiding tyranny. So, efforts to prevent violence are handled with the principles of a) non-discrimination, b) the best interests of the child, c) child participation, d) gender justice and equality, e) equality of rights and accessibility for persons with disabilities, f) accountability; g) caution; and h) educational sustainability. The government then promulgated Minister of Education and Culture Regulation No. 30 of 2021 concerning Violence. Sexuality in the College Environ-

⁴⁹ Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2.

⁵⁰ Jalāl al-Dīn b. ‘Abd al-Rahmān b. Abī Bakr al-Suyūṭī, *al-Dibaj ‘ala Ṣabīḥ Muslim b. al-Hajjāj*.

⁵¹ Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Beirut: Dār al-Fikr al-‘Arabī, 1958).

ment. Permendikbudristek Number 46 of 2023 concerning Prevention and Handling of Violence in the PMA Education Unit Environment. Minister of Religion Regulation (PMA) Number 73 of 2022 concerning Prevention and Handling of Sexual Violence in Education Units as a preventive measure. Meanwhile, as a repressive step, the government formed a PPKS Task Force in schools with law enforcement agencies (police, prosecutors, judges). Relevant government institutions and non-governmental organizations that function as social control for preventive protection.

According to Gustaf Radbruch, the concept of justice can be equated with legality as outlined in positive law. A rule is deemed just when it is consistently applied to all cases for which it is intended, while it is considered unjust if it is selectively enforced in some instances but not others that are comparable. The implementation of both preventive and repressive legal protections illustrates those regulations concerning commercial sexual exploitation of children (CSEC) and their enforcement must apply uniformly to all citizens of Indonesia, thereby demonstrating the functioning of justice within the nation.

The principle of justice in national law is anchored in the Pancasila ideology, which emphasizes “social justice for all Indonesian people.” Justice embodies equitable treatment for all individuals. The acknowledgment of children’s rights is an essential aspect of this justice, as it creates an obligation to ensure their protection. In the context of child sexual exploitation, justice can be understood as the restoration of violated rights, the elimination of criminal acts characterized by violence, intimidation, and sexual assault, and the realization of equal treatment under the law to prevent the emergence of vigilantism, which entails non-selective law enforcement.

Jalb al-maslahah (maintaining true benefit) is the ultimate goal of every Islamic law. The true benefit desired by Islamic law is not a benefit based on lust but a benefit based on religious texts, which consist of five essential things: maintaining religion, soul, property, reason, and offspring.⁵² According to Abū Zahrah, taking benefits means the same as realizing maqasid Sharia. On the other hand, ignoring the benefits means ignoring the maqasid of Sharia.⁵³ In

⁵² Kamarudin Arsyad, “Panorama Maqashid Syariah,” in *Panorama Maqashid Syariah*, ed. Abdurrahman Misno (Bandung: Media Sains Indonesia, 2021), 150-54.

⁵³ Zahrah, *Uṣūl al-Fiqh*.

the context of child sexual exploitation in online spaces, the success of the mashed concept of Sharia can be measured by the fulfilment of *uṣūl al-khamsah*.

First, *hifz al-din* (maintaining religion). Islam as the way of life is a teaching that provides guidance, direction, and rules (Shari‘ah) in all aspects of human life to obtain happiness in this world and the hereafter; therefore, religion must be a guide to behaviour. Every child possesses the fundamental right to practice their religion and to think and express their ideas in accordance with their cognitive abilities and developmental stage, all under the supervision of their parents or guardians (Article 6).⁵⁴ The government grants individuals the liberty to practice their religion and uphold their beliefs, even in situations where they are supporting a victim or an offender of sexual violence.⁵⁵ The UUPA and the UU TPKS require families, educational institutions, and communities to undertake preventive measures aimed at enhancing children’s education, including their religious upbringing. The influence of religion is essential in fostering a supportive environment that is devoid of sexual violence, as emphasized by the Qur’ān: “Do not come near adultery, for indeed, it is an immoral act and a detrimental path” (al-Isrā’ [17]: 32).

Second, *hifz al-nafs* (maintaining for the soul). The human soul is not only physical but also psychological.⁵⁶ Therefore, protection for children is not only in the form of eating or drinking but also related to their mental health, so sexual exploitation of children in online spaces, even if it does not cause physical harm, is a form of criminal sexual violence (Article 4 of the TPKS Law). Sexual exploitation of children can cause feelings of shame, worthlessness, difficulty interacting, isolation, and substance abuse, and can even lead to suicide.⁵⁷ Even more concerning is the potential for child victims of commercial sexual exploitation (CSEC) to become per-

⁵⁴ Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

⁵⁵ Ibid.

⁵⁶ Mahmatarom, *Konsep Manunggaling Kawulo Gusti dalam Pengelolaan Perguruan Tinggi* (Semarang: Wahid Hasyim University Press, 2018).

⁵⁷ Ermanita Permatasari, “Perlindungan Terhadap Anak Korban Eksplorasi Seksual dalam Perspektif Yuridis-Normatif dan Psikologis (Studi Kasus Wilayah Hukum Polres Lampung Timur),” *Al-'Adalah* 13, no. 2 (2016).

perpetrators in the future. While every individual is born in a state of purity (Ar-Rum: 30), it is ultimately the parents who influence whether a child identifies as a Jew, Magian, or Christian. This underscores the significant impact that external circumstances, particularly those shaped by parental guidance, have on a child's decisions. Consequently, the law mandates the establishment of safe environments for children and outlines rehabilitation initiatives for CSEC victims (as stated in Article 70 of the TPSK Law and Article 64 of the UUPA) to ensure that children do not endure lasting trauma.

Third, *bifaz al-aql* (maintaining reason). CSEC will reduce their opportunities to explore and express themselves. Childhood is a golden period in human growth and development.⁵⁸ Determining the age limit for adulthood is a crucial aspect of the validity of a person's legal actions and reflects the level of competence in carrying out legal actions. This is reflected in the existence of child criteria in the legislation. Determining this age is essential because children still need to develop physically and psychologically fully. In criminal law, punishment for children is not the same as for adults. Meanwhile, in civil law, children are considered incompetent in legal actions. The child protection law states that children are those under 18 years of age. In Islamic law, children are not subject to the law of taklifi because a child is considered incapable of making decisions until he reaches puberty. Maintaining the mind is an essential thing in Islam; the existence of the mind, which should be used to think about something useful for life in this world and the hereafter, needs to be protected, whether from trauma, fear, worry, and fear that disturbs human life, this will causing loss (*mafsadah*). Therefore, the establishment of sanctions to provide a deterrent effect, such as castration, is an effort to maintain reason (*bifaz al-aql*), especially for children who are victims of sexual violence.

Fourth, *bifaz al-mal* (protecting wealth). The primary difference between child sexual violence and child sexual exploitation is that there is an attempt to obtain material benefits from the act. A child

⁵⁸ Fayola Maulida, "Semua Hal yang Perlu Kita Ketahui Tentang Maraknya Eksploitasi Seksual ada Anak," *Rumah Faye*, <https://rumahfaye.or.id/all-hal-yang-perlu-kita-ketahui-tangan-maraknya-exploit-sexual-pada-anak/> (accessed March 26, 2024).

has no obligation to earn money, and no child is asked to be born.⁵⁹ However, it is the parents who want the presence of a child. For this reason, parents are obliged to fulfil their children's living needs. The Qur'an and the hadith of the Prophet often mention this matter as mentioned in the verse. Children are obliged to obey their parents, but the parents do not then use a child's obedience to obtain wealth for the child's existence. The incident of child sexual abuse in Tangerang, which involved a promise of 15 million, serves as a stark illustration of how parents, who are meant to serve as protectors, can exploit their children for financial gain. According to Article 26 of the UUPA, parents have the duty and responsibility to care for, educate, and safeguard their children. The state and government are committed to ensuring the protection, support, and well-being of children, taking into account the rights and responsibilities of parents, guardians, or other individuals legally accountable for the welfare of minors (Article 23 UUPA).

Fifth, *hifz al-nasl* (preservation of lineage) within *maqāsid al-shari'ah* aims to establish healthy families.⁶⁰ However, a recent child sexual abuse case in Tangerang highlights the exploitation of children for financial gain,⁶¹ violating Article 26 of the Child Protection Law concerning parental obligations. The Indonesian government guarantees child protection (Article 23 of the Child Protection Law),⁶² and mandates a minimum marriage age of 19⁶³ to safeguard reproductive rights and ensure healthy offspring. Child marriage, including contract marriages often motivated by financial gain, constitutes a form of exploitation and violates the principle of *hifz al-nasl*. Islam prohibits actions that harm reproductive

⁵⁹ Patricia Cindy Andriani, "Eksplorasi Anak: Keadilan dan Perlindungan Hukum bagi Korban," *Rumah Faye*, <https://rumahfaye.or.id/perlindungan-anak-korban-eksplorasi/> (accessed June 1, 2024).

⁶⁰ Netti Herawati, Abnan Pancasilawati, and Maisyarah Rahmi, "Perlindungan Hak Anak Akibat Kekerasan Seksual Perpektif Maqasid Syariah dan Hukum Positif," *Maqasid: Jurnal Studi Hukum Islam* 12, no. 2 (2023).

⁶¹ Lumbanrau, "Kasus Ibu Cabuli Anaknya di Tangsel Ungkap Pemerasan Seksual Apa itu Sekstorsi, Bagaimana Modus, dan Cara Mengatasinya?"

⁶² Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

⁶³ Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

health, including abortion.⁶⁴ Child marriage threatens fundamental rights, such as education and health, effectively denying children their right to a protected childhood.⁶⁵

The protection of children from sexual exploitation is a critical issue that demands serious attention. Both Indonesian positive law and the principles of *maqāsid al-shari‘ah* emphasize the importance of child protection. Based on an analysis of existing regulations and the reality of child sexual exploitation, three fundamental concepts for child protection can be derived from both *maqāsid al-shari‘ah* and positive law: justice, benefit (or public interest), and certainty. This conceptual framework is grounded in the theory of *maqāsid al-shari‘ah* as articulated by Abū Zahrah and the legal objectives proposed by Gustav Radbruch.⁶⁶

Within the context of child protection, justice entails prioritizing the best interests of the child and ensuring the fulfillment of their rights. This aligns with the legal objective of justice, which emphasizes equal treatment before the law for all individuals. This includes holding perpetrators of child sexual exploitation accountable through fair punishment and providing adequate remedies and recovery for victims. The recognition of children's rights is a crucial step towards achieving justice, as this recognition inherently creates an obligation to protect. The Indonesian Child Protection Law is commendable for its stringent penalties for perpetrators of child sexual abuse.⁶⁷ *Maqāsid al-shari‘ah* emphasizes the implementation of just and equitable laws for all, without discrimination. However, despite the legal framework, discriminatory practices against child victims of sexual exploitation persist, indicating that the full realization of justice remains a challenge.⁶⁸ This underscores the need for continuous efforts to ensure that the legal sys-

⁶⁴ Achmad Beadio Busyroel Basyar, “Perlindungan Nasab dalam Teori Maqashid Syariah,” *Maqashid: Jurnal Hukum Islam* 3, no. 1 (2020).

⁶⁵ Manida Noebklang, *Tanya dan Jawab Tentang Eksplorasi Seksual Komersial* (n.d.: ECPAT Internasional, 2001). Retrieved from <https://dp3a.semarangkota.go.id/storage/app/media/E-book/faq-eska.pdf> (accessed March 26, 2024).

⁶⁶ Bernard L. Tanya, *Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi* (Yogyakarta: GENTA Publishing, 2013).

⁶⁷ Helen Intania Surayda, “Perlindungan Hukum Terhadap Korban Kekerasan dalam Kajian Hukum Islam,” *Jurnal Ius Constituendum* 2, no. 1 (2017),

⁶⁸ ECPAT Indonesia, “Catatan Akhir Tahun ECPAT Indonesia 2023: Keberlanjutan Perlindungan Anak dari Eksplorasi Seksual.”

tem upholds the principles of justice and equality in protecting children from sexual exploitation.

The principle of benefit, or *maslahah*, within *maqāṣid al-shari‘ah* dictates that laws and policies should serve the well-being of both individuals and the wider community. In the context of child sexual exploitation, this translates to a legal framework that prioritizes the needs and rights of victims while also promoting the public good. Effective interventions should not only provide essential support and recovery services to victims but also contribute to the prevention of future exploitation. While the Indonesian legal system acknowledges the right of child victims to rehabilitation and recovery, the specific implementation of these measures requires further clarification and strengthening.⁶⁹ Echoing the principle of maslaha, the legal framework must strive to prevent sexual exploitation and ensure that children receive comprehensive protection and support. This highlights the need for a holistic approach that addresses both the immediate needs of victims and the long-term goal of creating a safe and protective environment for all children.

Meanwhile, legal certainty emphasizes clarity, consistency, and predictability in legal rules and their application. Laws should be clear, easily understood, and consistently enforced. This principle is crucial in the context of child sexual exploitation, where legal processes must be robust and unwavering. The enforcement of criminal law against child sexual exploitation must proceed resolutely, even in the face of attempts to halt legal processes based on local traditions, customs, or socio-political considerations.⁷⁰

However, the current legal framework in Indonesia faces challenges in addressing online child sexual exploitation. A clear and comprehensive definition of sexual exploitation, including its various manifestations in the digital realm, is needed within the legislation. The rapid advancement of technology has outpaced legal developments, creating a gap that hinders the optimal protection of children online. To ensure legal certainty, highlights the necessity of clear and accessible legal provisions that are consistently en-

⁶⁹ Nur Lailatul Musyafa’ah and Ahlam Nugraha, “Protection of Sexual Violence Victim from the Perspective of Maqasid al-Syariah,” *Islamica: Jurnal Studi Keislaman* 18, no. 1 (2023): 134-58.

⁷⁰ Surayda, “Perlindungan Hukum Terhadap Korban Kekerasan dalam Kajian Hukum Islam.”

forced, enjoy broad public support, and are adjudicated by an independent judiciary.⁷¹ While not explicitly termed “certainty of law,” the concept of education within *maqāṣid al-shari‘ah* holds a strong correlation. Education aims to enhance public understanding of legal rights and obligations, fostering awareness and compliance with the law. Within *maqāṣid al-shari‘ah*, this certainty is further elaborated through the concepts of *qat‘i* and *zanni*.⁷²

The principles of *maqāṣid al-shari‘ah* and the objectives of positive law are aligned in prioritizing justice, benefit, and certainty (through education) in protecting children from sexual exploitation. *Maqāṣid al-shari‘ah* provides an ethical and moral foundation for positive law, while legal objectives offer an operational framework for law enforcement. Both complement each other and contribute to a legal system that effectively safeguards children from sexual exploitation.

Conclusion

While offering numerous benefits, advancements in information technology have also given rise to negative consequences, particularly for children who are vulnerable to online exploitation. Exposure to pornography, sadism, and various forms of online sexual exploitation, including sextortion, cyberbullying, child grooming, and the dissemination of child sexual abuse material, pose a significant threat to children’s development and well-being.

The Indonesian government, in fulfilling its constitutional mandate to protect its citizens, has undertaken efforts to safeguard children from online sexual exploitation through both preventive and repressive measures. Various legal frameworks, such as the Child Protection Law, the Sexual Violence Crimes Law, the Electronic Information and Transactions Law, the Pornography Law, the Anti-Trafficking in Persons Law, and the Criminal Code, are aimed at preventing and addressing child sexual exploitation in the digital realm. These efforts to protect children align with the principles of *maqāṣid al-shari‘ah* (education, justice, and public benefit)

⁷¹ Zulfahmi Nur, “Keadilan dan Kepastian Hukum (Refleksi Kajian Filsafat Hukum dalam Pemikiran Hukum Imam Shāṭibī),” *Misykat al-Anvar: Jurnal Kajian Islam dan Masyarakat* 6, no. 2 (2023): 247-272.

⁷² Zahrah, *Uṣūl al-Fiqh*.

and the objectives of law (justice, benefit, and certainty), which emphasize the protection of children's rights and the creation of a safe environment.

However, the implementation of legal protections remains suboptimal. The lack of a clear definition of sexual exploitation and the absence of specific regulations contribute to legal uncertainty and hinder effective law enforcement. A comprehensive reconstruction of the legal framework is urgently needed to address these challenges. Furthermore, child protection requires cross-sectoral collaboration. Families, communities, and the government must work together to create a holistic protection system that is responsive to social dynamics and technological advancements.

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