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Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents

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Abstract:

Protection for children separated from their parents, particularly due to parental incarceration, is a pressing issue in Indonesia that demands serious attention. The absence of parental support and guidance places these children in vulnerable situations, negatively impacting their physical, emotional, and social well-being. This study examines the importance of legal and social protection for these children and explores the role of the state and government in providing adequate protection and welfare guarantees. Previous research reveals gaps in integrating Islamic legal principles with child protection policies that are contextual and relevant to contemporary social challenges. This article presents a review of key Islamic legal concepts related to child protection, such as *masalah mursalah*, and integrates them with international human rights standards, such as the Convention on the Rights of the Child (CRC). Employing an empirical approach, the study investigates the implementation and practical outcomes of child protection laws. Primary data were gathered through interviews and observations involving key stakeholders, complemented by secondary data from books, journal articles, and legislative documents, including the Child Protection Act. The findings reveal that children separated from incarcerated parents often face neglect, discrimination, and social vulnerability. A case study of the Women's Prison Class II A in Malang City highlights inadequate child protection measures due to insufficient government funding, which hampers the effective delivery of developmental

and protective services for these children. To address these challenges, stronger regulatory frameworks and increased budgetary support are essential. Enhancing the role of the state in implementing robust policies will not only ensure the welfare of affected children but also set a standard for societal participation in fostering healthy, discrimination-free environments. Such measures are critical for safeguarding the rights and development of these vulnerable children.

Keywords: child protection; children's well-being; criminal conviction.

Introduction

The protection of children separated from their parents due to criminal convictions is an issue that is increasingly gaining attention both nationally and internationally. These children often face a range of challenges, including emotional trauma, social stigma, and the risk of neglect or abandonment.¹ Previous research has shown that children left behind by incarcerated parents are more likely to experience psychological disturbances and difficulties in accessing education and social welfare. Several studies have also highlighted the importance of the state in establishing a comprehensive protection system for these children. However, these studies often lack a thorough analysis of the role of local governments and extended families in providing long-term support and are limited by insufficient empirical studies involving data from diverse geographical areas.²

Some of the shortcomings found in previous research include an overemphasis on the psychological aspects of children who are either intentionally neglected or orphaned due to the death of their parents. Specific studies examining the fate of children abandoned because of parental incarceration remain scarce. Therefore, this research aims to explore how the government is responsible for the well-being of children whose parents are involved in criminal cases. This study discusses the legal foundations, both in Islamic law and national law, concerning the obligation to protect these children. It examines how the government can address their social and economic needs, as stipulated in the Child Protection Law No. 35 of 2014. Furthermore, it evaluates how legal protections can reduce the social and economic impacts experienced by these children. Another gap in existing research is the lack of concrete solutions to strengthen the role of local governments in designing more effective child protection policies and the absence of solutions grounded in Islamic law. In other words, previous studies have not provided a comprehensive picture of the challenges these children face in psychological, social, economic, and

¹ Purwanto, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Dalam Perspektif Hukum Positif Indonesia," *Jurnal Idea Hukum* 6, no. 1 (March 6, 2020), <https://doi.org/10.20884/1.jih.2020.6.1.133>.

² Hardianto Djanggih, "Konsepsi Perlindungan Hukum bagi Anak Sebagai Korban Kejahatan Siber Melalui Pendekatan Penal dan Non Penal," *Mimbar Hukum* 30, no. 2 (August 7, 2018): 316–30, <https://doi.org/10.22146/jmh.32017>; Analiansyah Analiansyah and Ali Abubakar, "Children Handling Procedure in Islamic Criminal Offense in Aceh," *AHKAM: Jurnal Ilmu Syariah* 21, no. 1 (June 30, 2021), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/20869>; Ibnu Radwan Siddik Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the Maslahah Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 463–84, <https://doi.org/10.29240/jhi.v9i2.10117>.



governmental aspects, nor have they adequately addressed the application of Islamic values and the principle of *maslahah mursalah*.

Indonesia, as a country with a Muslim-majority population and a signatory to international human rights standards, faces significant challenges in developing effective child protection policies. Cases of children separated from their incarcerated parents often reveal a lack of systemic support in safeguarding their rights, both legally and through social policies. Budgetary gaps, low government attention, and weak implementation of regulations exacerbate this situation. This study addresses these limitations by examining the urgency of protecting children separated from their parents due to criminal convictions through a more holistic approach. Additionally, it explores the dimensions of Islamic law and human rights in the context of child protection, particularly for those separated from convicted parents. Using an empirical approach, this research focuses on the implementation of laws in society and their practical impacts. Furthermore, it integrates Islamic law and human rights principles as solutions to strengthen child protection frameworks.³ The research is expected to contribute to the creation of more responsive policies, grounded in Islamic values, and aligned with modern social frameworks.⁴

The urgency of this research is relevant not only to a national audience but also internationally. Similar issues are prevalent in many countries, particularly in developing nations where social protection systems remain underdeveloped. By considering global trends in child rights protection, this study aims to provide insights adaptable to the international community. Since children are the future generation who will shape the nation's progress, their protection must be a top priority in social and legal policies.⁵ In Islam, children are a gift from God that must be nurtured and guided well as a resource for the future. Children are invaluable treasures and a trust from God that must be cared for, protected, and educated. In the Qur'an, children are referred to as God's trust, which must be safeguarded physically, mentally, and spiritually. As stated in Surah Al-Anfal [8:28]: "And know that your wealth and your children are but a trial, and that with Allah is a great reward." This verse indicates that children are both a test and a trust, requiring parents to be responsible for their lives and education. Children are also part of *zuriat* (lineage), an integral part of the family, according to the concept of *maqashid al-syariah*. Therefore, children are a responsibility that must be safeguarded by all.⁶

Within the principles of human rights, every child is entitled to protection, affection, education, and an environment conducive to their growth and development. When parents are incarcerated, children lose their primary caregivers, leading to disruption in the fulfillment of their basic needs, such as care, security, and education. Moreover, these children frequently face social stigma, discrimination,

³ Chusniatun, "Perlindungan anak dalam Perspektif UU Negara RI dan Islam," *Suhuf* 28, no. 1 (February 7, 2017): 48–62, <https://doi.org/10.23917/suhuf.v28i1.3316>.

⁴ Toufiqoh Toufiqoh, "Tinjauan Maslahah Mursalah Terhadap Perlindungan Hak Anak Pasca Perceraian (Undang-Undang Perkawinan No.1 Tahun 1974 Pasal 41 dan 45, Dan Kompilasi Hukum Islam Pasal 105 Dan 156 Tentang Hadanah Dan Nafkah)" (undergraduate_thesis, STAIN Pekalongan, 2016), <https://perpustakaan.uingusdur.ac.id/>.

⁵ Hani Sholihah, "Perlindungan Anak Dalam Perspektif Hukum Islam," *Al-Afkar, Journal For Islamic Studies* Vol.1, No.1 (January 11, 2018): 38–56, https://doi.org/10.31943/afkar_journal.v1i1.3.

⁶ Fika Natasya Umala and Atiya Mumtaza, "Tafsir Kontekstual QS. Al-Anfal [8] : 28 Dan Kaitannya Dengan Fenomena Childfree (Aplikasi Pendekatan Abdullah Saeed)," *Jurnal Mafatih : Jurnal Ilmu Al-Qur'an Dan Tafsir* Volume 2 Nomor 1 (June 2022): 35.



and neglect, further compounding their challenges. In this context, the rights of children, as outlined in the Convention on the Rights of the Child (CRC) and Islamic principles, emphasize that the state, family, and society have a responsibility to ensure that children separated from their parents due to criminal convictions receive full protection. Failure to uphold these rights not only violates human rights but also poses long-term risks to the physical, mental, and social development of children. Therefore, a holistic approach and strong policies are essential to guarantee the fulfillment of their rights, including the provision of appropriate social, psychological, and educational support.

Constitutionally, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution) stipulates that every child has the right to survival, growth, development, and protection from violence and discrimination. These fundamental rights of children are explicitly enshrined in the Constitution.⁷ The state and government must guarantee protection so children can grow and develop as assets for the nation's future. Due to the strategic importance of children, the government must create specific policies related to their legal protection.⁸ Such protection is essential to prevent children from becoming victims of others' actions, whether within their family environment or society, directly or indirectly. Parental roles are crucial in providing protection to ensure that children feel safe, comfortable, loved, and able to grow and develop as expected.⁹

Another recent case that captured public attention is the case of Ferdi Sambo and his wife, Putri Candrawati, who were convicted for the murder of Brigadier Joshua Hutabarat. Ferdi Sambo was initially sentenced to death, and Putri Candrawati received a 20-year prison sentence. Following legal appeals, Sambo's sentence was reduced to life imprisonment, and Candrawati's sentence was reduced to 10 years. The noteworthy aspect of this case is that the couple has a minor child. Seto Mulyadi, then Chairman of the Indonesian Child Protection Agency (LPAI), intervened to provide psychological support and assistance to the child of Ferdi Sambo and Putri Candrawati.

Based on the background above, this research primarily aims to explore more comprehensive protection strategies for children left behind due to their parents' criminal convictions. It also seeks to provide policy recommendations based on empirical data that can be applied at national and international levels. Since children,

⁷ Rini Fitriani, "Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak Anak," *Jurnal Hukum Samudera Keadilan* Volume II, Nomor 2 (July 2016): 250; Hasanudin Hasanudin et al., "Phenomena of Domestic Violence Against Women and Divorce in 2020-2022 in Indonesia: An Islamic Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam*, August 23, 2023, 137–52, <https://doi.org/10.24090/mnh.v17i2.7686>.

⁸ Muhammad Fachri Said, "Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia," *JCH (Jurnal Cendekia Hukum)* 4, no. 1 (September 28, 2018): 141–52, <https://doi.org/10.33760/jch.v4i1.97>.

⁹ Tegar Sukma Wahyudi and Toto Kushartono, "Perlindungan Hukum Terhadap Hak Anak yang Menjadi Korban Perlakuan Tindak Kekerasan dalam Rumah Tangga Dihubungkan dengan Undang-undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," *Jurnal Dialektika Hukum : Jurnal Ilmu Hukum* 2, no. 1 (June 1, 2020): 57–82, <https://doi.org/10.36859/jdh.v2i1.510>; Yayan Sopyan, "Access To Justice of Citizenship Rights for Stateless Indonesian Migrant Workers' Children In Sarawak, Malaysia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 2 (2021): 476–502, <https://doi.org/10.19105/al-lhkam.v16i2.5285>.



as the younger generation, will carry forward the noble aspirations of the nation, serve as future leaders, and embody the hopes of earlier generations, they must be afforded the broadest opportunities to grow and develop appropriately-spiritually, physically, and socially.¹⁰ Child protection is a collective effort involving all levels of society, in various capacities and roles, who understand the critical importance of children for the nation's future. When children achieve maturity in their physical, mental, and social growth, they will be ready to take the place of the previous generation and lead the nation forward.¹¹

Method

This study employs an empirical research method based on interviews, focusing on direct observation and experience to understand how certain laws or phenomena are applied and function in real-life contexts.¹² This method examines the practical aspects of implementing laws or policies in society, utilizing data collected from the field. A qualitative approach is adopted to gain an in-depth understanding of the experiences, perspectives, and perceptions of individuals or groups related to the phenomena under study. In the context of interviews, this approach provides researchers with the flexibility to explore relevant issues in detail and within their specific contexts. The data used in this study consists of three categories: primary, secondary, and tertiary data. Primary data are obtained directly from original sources through experiences, observations, or interactions with research subjects. Secondary data are derived from relevant literature, including books, journal articles, and official documents, while tertiary data include encyclopedias and summarized data that support a comprehensive analysis.

The data collection techniques employed in this study include interviews, observations, and literature reviews. Interviews are conducted to gather information from informants with extensive knowledge of the research topic. Observations are undertaken to directly examine behaviors and phenomena related to the application of laws in the field. Literature reviews involve analyzing various relevant sources to provide a broader understanding of the research context. The collected data are analyzed using content analysis techniques, which involve identifying, categorizing, and examining the substance of the data. This analytical approach enables researchers to uncover the meanings embedded within the data, identify patterns, and draw conclusions that are relevant to the research focus. Through this systematic approach, the study aims to provide a deeper understanding of the relationship between laws and societal behavior in the context of their implementation.

Result and Discussion

The Conceptual Framework for Protecting Children Left Behind by Parents Sentenced as Criminal Offenders: Philosophical, Juridical and Sociological

¹⁰ Nursariani Simatupang Faisal, *Hukum Perlindungan Anak* (Medan, CV Pustaka Prima, 2018).

¹¹ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2013, 2008), <http://library.stik-ptik.ac.id/detail?id=4057&lokasi=lokal>.

¹² Iffaty Nasyiah, Ramadhita Ramadhita, and Khoirul Hidayah, "The Protection of Local Handicrafts Through the Geographical Indication by the Regional Government in East Java, Indonesia," *Jurisdictie: Jurnal Hukum Dan Syariah* 13, no. 2 (2022): 162–87, <https://doi.org/10.18860/j.v13i2.18265>.



The protection of children left behind by parents serving criminal sentences is an urgent issue that demands special attention. These children are placed in vulnerable positions when their parents are incarcerated, necessitating a strong conceptual framework to ensure their rights are safeguarded and fulfilled. The absence of parental care, a vital element in a child's upbringing, can significantly harm their physical, emotional, and social development. Therefore, policies and protective measures grounded in the principles of children's rights, the best interests of the child, and the state's responsibility are crucial. Such an approach ensures these children do not become secondary victims of their parents' criminal actions and can grow up in environments that support their well-being.

From a philosophical perspective, children are regarded as both a trust and a blessing from God Almighty. They inherently possess dignity, rights, and humanity that must be upheld. Children's rights are fundamental human rights, as enshrined in the 1945 Constitution and the United Nations Convention on the Rights of the Child (CRC). From the perspective of national life, children represent the nation's future and the successors of its aspirations. Hence, every child is entitled to survival, growth, development, protection from violence and discrimination, and freedom to participate in social life. Children are inseparable from the sustainability of humanity and the existence of a nation and state. To ensure they can responsibly contribute to the nation's future, children must be provided the broadest possible opportunities to grow and develop optimally physically, mentally, and socially. Consequently, child protection efforts must aim to achieve child welfare by guaranteeing the fulfilment of their rights without discriminatory treatment. Child protection efforts should begin as early as possible, from the prenatal stage to the age of 18 years. Article 2 of Law No. 23 of 2002 explains that the implementation of child protection is based on Pancasila and the 1945 Constitution, adhering to the fundamental principles of the CRC, including non-discrimination, the best interests of the child, the right to life and development, and respect for the child's views.

Children are the future generation of the nation and require special legal protection distinct from adults due to their physical and mental immaturity. Legal protection for children is interpreted as an effort to safeguard children's rights and freedoms related to their welfare. Such protection must be comprehensive and continuously pursued by the government to ensure societal welfare, creating a secure, peaceful, and prosperous environment, as outlined in Indonesia's national objectives in the Preamble to the 1945 Constitution, paragraph IV. These goals emphasise building a just and prosperous society based on Pancasila. This mandate is explicitly stated in Article 28B paragraph (2) of the 1945 Constitution, which affirms that "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination."¹³

Children are a gift from God Almighty who must be cared for and protected by their parents, as they inherently possess dignity, rights, and humanity that must be upheld.¹⁴ Children represent the future generation of a nation. Article 1, Paragraph 1

¹³ Johanes Chrisna Adimas Bunyu, *Perlindungan Hukum Terhadap Korban Dan Akibat Hukum Terhadap Orangtua Sebagai Pelaku Penelantaran Anak Akibat Perceraian Di Kota Kupang*, vol. p. 45 (UPT Perpustakaan Undana, 2023), http://skripsi.undana.ac.id/index.php?p=show_detail&id=17549&keywords=.

¹⁴ M. G. Endang; Sumiarni, *Perlindungan Hukum Terhadap Anak Dalam Hukum Pidana* (UJY Press, 2003), http://opac.iainkediri.ac.id%2Fopac%2Findex.php%3Fp%3Dshow_detail%26id%3D4281.



of Law No. 23 of 2002 implies that a child is defined as a person who has not yet reached the age of 18, including a child still in the womb. Furthermore, Article 1, Paragraph 12 of the same law states that children's rights are part of human rights, which must be guaranteed, protected, and fulfilled by parents, family, society, government, and the state.

The bond between parents and children is inseparable, particularly the connection between a mother and her child. A mother carries and gives birth to her child for nine months and ten days, establishing a unique emotional connection. A newborn is highly dependent on its mother for breastfeeding and nurturing with love and care. Every child has an equal right to receive parental protection and affection. Parents are responsible for ensuring their child's physical and spiritual growth and development.

Parents play a crucial role in their child's growth and development by providing education, attention, responsiveness to their needs and desires, affection, and warmth. Parental education focuses more on moral and character formation than solely imparting knowledge. The foundation and goals of family education are individually shaped by the parents' worldview, although, on a national scale, Indonesian families share a common foundation in Pancasila. Some parents base their parenting approach on religious principles, emphasising religious education to raise children who are devout and faithful to God Almighty. Others orient their education toward socio-economic aspects, aiming to prepare their children to become productive and valuable members of society.¹⁵

It becomes an intriguing and significant issue when a child's parent is convicted of a criminal offence and sentenced to prison. This situation inevitably raises the risk of the child becoming neglected. According to Article 1, Paragraph (6) of Law No. 35 of 2014, a neglected child is defined as "a child whose needs, whether physical, mental, spiritual, or social, are not met appropriately." Neglected children are the state's responsibility, as mandated by Article 34, Paragraph (1) of the 1945 Constitution. Therefore, proactive measures must be taken to prevent such situations, as children are the future generation who will carry on the nation's legacy. Article 34, Paragraph (1) of the 1945 Constitution signifies that the state, through the government, must care for and empower neglected children. This duty is explicitly stated in the Preamble to the 1945 Constitution, which outlines the Indonesian government's commitment to protecting all Indonesian citizens, promoting the general welfare, advancing intellectual life, and contributing to global order. These obligations should not remain mere rhetoric but must be actualised by the government.

The children of incarcerated parents often bear significant emotional and psychological burdens. Their lives, in a sense, also feel imprisoned. While their bodies may be free, their inner selves remain confined by invisible barriers. The suffering endured by these children, referred to as secondary prisonisation, parallels the incarceration of their parents. These children experiencing secondary prisonization require attention and care to ensure they can remain integrated members of their communities. The foundational principle is simple: even when parents are incarcerated, their children still deserve love and compassion.

¹⁵ Bunyu, *Perlindungan Hukum Terhadap Korban Dan Akibat Hukum Terhadap Orangtua Sebagai Pelaku Penelantaran Anak Akibat Perceraian Di Kota Kupang*.



From the explanation above, it is philosophically imperative to provide protection to children whose parents are incarcerated as a result of criminal convictions. These children are at risk of becoming neglected and thus require the care and attention of the state and government to prevent discrimination and ensure their well-being. The state, government, and regional governments are responsible for guaranteeing the protection, care, and welfare of such children. This includes respecting the rights and responsibilities of parents, guardians, or other legally responsible parties, overseeing the implementation of child protection, and ensuring that children can exercise their rights to express opinions according to their age and level of intelligence. The state's most critical obligations include organising a minimum of nine years of basic education for all children, providing broad opportunities for children to access education, and offering free or subsidised education or special services for underprivileged children, neglected children, and children living in remote areas. These measures are essential to ensure that no child is deprived of their right to growth, education, and equal opportunities.

To bridge the philosophical imperative of child protection with the legal foundation required to address this issue, it is essential to establish regulations that not only ensure the rights and welfare of children with incarcerated parents but also provide a robust legal framework to eliminate discrimination and uphold justice. This alignment of moral responsibility with legal certainty ensures comprehensive solutions to address societal challenges and legal gaps effectively. The legal foundation is the consideration or rationale that justifies the formation of regulations to address legal issues or fill legal voids, taking into account existing rules that may need to be amended or repealed to ensure legal certainty and a sense of justice in society. The legal element pertains to legal issues related to the substance or content being regulated, thereby requiring new legislation. In other words, the legal element illustrates that regulations are designed to resolve legal problems or address legal gaps while considering existing, amendable, or repealable rules to ensure legal certainty and societal justice.¹⁶

Several legal issues necessitating attention include outdated regulations, inconsistent or overlapping laws, regulations with weaker enforcement due to their lower legal status, inadequate existing regulations, or the complete absence of such regulations. Legal provisions concerning the protection of children are already stipulated in various laws and regulations, including the Constitution, statutes, and derivative regulations, such as: a) Article 28B Paragraph (2) and Article 34 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia; b) Law No. 4 of 1979 concerning Child Welfare; c) Law No. 39 of 1999 concerning Human Rights ; d) Law No. 23 of 2002 concerning Child Protection in conjunction with Law No. 35 of 2014 concerning Amendments to Law Law No. 23 of 2002 concerning Child Protection; e) Law No. 13 of 2003 concerning Manpower; f) Law No. 23 of 2004 concerning Abolishment of Domestic Violence; g) Law No. 13 of 2006 concerning Witness and Victim Protection in conjunction with Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection; h) Law No. 11 of 2009 concerning Social Welfare; i) Government Regulation No. 78 of 202 concerning Special Protection for Children; j) Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on The Rights of The Child

¹⁶ Nurlaila Harun, "Perlindungan Anak Perspektif Hukum Islam Dan Perundang-Undang," *Jurnal Harkat : Media Komunikasi Gender* 14, no. 1 (January 22, 2019): 50–58.



Among all the regulations mentioned above, none specifically address the protection of children left behind by parents who are serving prison sentences as convicted offenders. Children in such circumstances are inevitably deprived of parental care, affection, and other fundamental rights, placing them at risk of neglect. Therefore, it is imperative to formulate specific regulations aimed at providing protection for children whose parents have been sentenced to imprisonment due to criminal convictions. To address the pressing issue of children left behind due to parental imprisonment, it is necessary to recognize the reality that life often presents unforeseen challenges, which can lead individuals, particularly mothers, to face incarceration. This underscores the urgency of formulating specific regulations that ensure these children's protection while enabling imprisoned mothers to fulfil their inherent responsibilities toward their children, safeguarding their fundamental rights despite challenging circumstances.

Life is often filled with unexpected events. Unforeseen circumstances, being in the wrong place at the wrong time, or an individual's mistakes can result in someone becoming a prisoner. It is particularly ironic when the prisoner is a woman who is also a mother tasked with raising her child. As a prisoner sentenced to imprisonment, a mother must continue to care for her child to fulfil the child's inherent rights. A right is the authority to receive or do something that should be afforded to a particular individual and cannot be infringed upon by anyone else. This authority is fundamentally enforceable.¹⁷ From birth, every human being is endowed with basic rights that are universally respected and acknowledged. These rights are more significant than those of any ruler or king. Such basic rights are divine gifts from God Almighty, granted to all humans. A prisoner, defined as a convict serving a sentence of deprivation of liberty in a correctional institution, retains certain rights protected under Indonesia's correctional system, even while their liberty is restricted.

According to Article 1, Paragraph 2 of Law No. 22 of 2022 concerning Corrections, the correctional system is an integrated framework governing the direction, limits, and methods for executing correctional functions. This system outlines the direction, boundaries, and means of fostering correctional inmates based on the principles of Pancasila. It is implemented in an integrated manner involving correctional officers, the inmates themselves, and society. The aim is to enhance the quality of correctional inmates by fostering awareness of their mistakes, encouraging self-improvement, and preventing recidivism so they can reintegrate into society, contribute actively to development, and live responsibly as good and accountable citizens.¹⁸ Female and male prisoners fundamentally share equal rights. However, female prisoners require specific attention due to their unique biological characteristics, such as menstruation, pregnancy, childbirth, and breastfeeding, which do not apply to male prisoners. These rights necessitate special consideration under the law and by correctional facility officials throughout Indonesia.

As creations of God, even prisoners must have their inherent rights respected. These rights should be recognised and protected by national laws and Indonesia's correctional system, which is explicitly founded on the principles of Pancasila. The

¹⁷ Intan Nuraini, "Hak Dan Kewajiban Warga Negara," *PENDIS (Jurnal Pendidikan Ilmu Sosial)* 3, no. 2 (August 30, 2024): 24, <https://doi.org/10.61721/pendis.v3i2.390>.

¹⁸ Allysa, "Perlindungan Anak Yang Mengikuti Ibunya Sedang Menjalani Pidana Penjara Di Lembaga Perasyarakatan Wirogunan Yogyakarta" (Universitas Atma Jaya Yogyakarta, 2017), <https://e-journal.uajy.ac.id/11641/>.



rights of prisoners, as Indonesian citizens deprived of liberty due to criminal offences, must be upheld according to human rights and given adequate attention.¹⁹ From birth, every human being is endowed with inalienable rights that are universally respected and recognised. These rights are more significant than those of any ruler or king. These fundamental rights are divine gifts from God Almighty, granted to all humanity. Prisoners, as individuals serving sentences of deprivation of liberty in correctional facilities, retain certain rights that are protected under Indonesia's correctional system, although their freedom has been restricted.

Article 1, number 2 of Law No. 22 of 2022 concerning Correctional Systems states that the correctional system is an integrated framework outlining the direction, scope, and methods for implementing correctional functions. The objectives of the correctional system, as outlined in Article 2 of the same law. The primary goals are to ensure the protection of the rights of detainees and children, focusing on their humane treatment and adherence to legal standards. Another aim is to improve the personality and independence of inmates by fostering awareness of their mistakes and encouraging self-reform. This process helps them to avoid repeating criminal acts and supports their reintegration into society as responsible, law-abiding citizens who can actively contribute to community development. Additionally, these measures are designed to protect society by reducing the likelihood of repeat offenses.

For female inmates in women's correctional facilities who have children requiring special attention and care, specific policies should be established to ensure children's rights are fulfilled. Article 2, Paragraph (1) of Law No. 4 of 1970 concerning Child Welfare stipulates that children have the right to welfare, care, guidance, and nurturing grounded in love, whether within their families or in special care settings, to grow and develop properly. Meanwhile, Article 2, Paragraph (3) explains that children have the right to maintenance and protection before and after birth. However, direct observations at the Class II A Women's Correctional Facility in Malang City reveal the absence of adequate facilities for mothers and children. The nursing room is only a small partitioned area, and there is no comfortable space for mothers and children to communicate effectively or for children to feel at ease, free from the distressing environment of a prison. Interviews conducted on-site also revealed that female inmates with children receive the same treatment as other inmates. They are only given the opportunity to focus on their children. This policy is aimed at preventing jealousy among inmates. This is reflected in the statement of one informant, Rita, who explained:²⁰

“There is no special treatment for women who bring their children; they are treated the same as other inmates. Equality is highly valued to avoid jealousy among the inmates. Some inmates bring their young children to the correctional facility, but they must remain under their mother's supervision.”

Another informant, Martina, emphasised: “Women who bring their children to the women's correctional facility are treated the same as other inmates, except that they are given the opportunity to focus on their children. Regardless of the

¹⁹ Suwanto Suwanto, “Pelaksanaan Pidana Penjara Dengan Sistem Pemasyarakatan,” *Jurnal Hukum PRO JUSTITIA* 25, no. 2 (2007): 168.

²⁰ Rita Icris, Administrative staff at the Women's Correctional Facility Class II-A in Malang City, September 18, 2023.



circumstances, the child's needs must be met, including breastfeeding. A child brought by their mother to the correctional facility must remain under the mother's direct supervision."²¹ Based on the interviews above, children brought into the correctional facility by their mothers, who are inmates serving sentences under final and binding court decisions, do not receive any special treatment. These children are treated the same as other inmates. Below is data on children (under three years old) who reside with their mothers as inmates at the Women's Correctional Facility in Malang City.

Tabel 1. Children (Under Three Years Old) Residing with their Mother as Inmates in Women's Correctional Facility Class II-A of Malang City

No	Child's Name (abbreviation)	Mother's Name (abbreviation)
1	AMN	AA
2	GUU	SLP
3	ALPI	DP
4	YGU	DAS
5	AH	MF

Source: Women's Correctional Facility Class II-A of Malang City, 18 September 2023

Table 1 shows that five inmates brought their children into the facility. These children are cared for inside the prison alongside their mothers since they still require breastfeeding. Although the children of inmates are not convicts undergoing corrective treatment, the Women's Correctional Facility Class II A in Malang City is obligated to fulfil their rights as stipulated in Article 62 of Law No. 22 of 2022 concerning Corrections. This regulation states that children of detainees or inmates who are brought into detention centres or correctional facilities, or those born in correctional facilities, may stay with their mothers until they reach the age of three years. These children must be accommodated in a special area within the facility along with their mothers. If the child has special needs, they may be placed in a designated disability service unit to ensure proper care. Additionally, these children are entitled to receive extra nutrition as recommended by a doctor or nutritionist, ensuring their health and development are well-supported.

The government has issued Regulation of the Minister of Law and Human Rights No. 12 of 2016 concerning the Requirements and Procedures for Correctional Inmates as part of the implementation of the Correctional System. This regulation is part of the framework established under Ministerial Regulation No. M.HH-OT.02.02 of 2009 concerning the Blueprint for Correctional System Reform. According to the Annex of Ministerial Regulation No. 2 of 2009, "women's correctional facilities must provide accommodations for all necessary care and treatment before and after

²¹ Martina Andayani, Staff manager of the Women's Correctional Facility Class II-A of Malang City, September 18, 2023.



childbirth. If breastfeeding children are permitted to stay in the facility, a daycare facility equipped with qualified personnel must be prepared to care for the children when they are not under their mothers' supervision."

In practice, however, particularly at the Women's Correctional Facility Class II A in Malang City, none of these provisions are fulfilled due to budgetary constraints. Through the Ministry of Law and Human Rights, the government should allocate a specific budget for inmates who bring their children into correctional facilities. This is critically important to ensure these children's rights are upheld. After all, these children represent the future generation who will carry forward the nation's aspirations. Adi Santosa, the Head of Subdivision at the Women's Correctional Facility Class II Malang, explained in his interview: "There is no specific budget for this, so correctional officers carry out their duties based on the available budget. As a result, efforts to fulfil the rights of children brought into correctional facilities by their mothers as inmates-such as the right to live, grow, and develop, as well as the right to health services and protection from cruelty, violence, injustice, and other mistreatments-have not been adequately met."²²

Sociologically, children left behind by their parents due to court convictions for criminal offences must still receive protection in all aspects because they are at risk of becoming neglected children and are vulnerable to discrimination. Moreover, the negative stigma from society associated with having lived in prison with their parents or mothers can have a profound negative impact on their psychological well-being and mental development. This is particularly concerning, considering that children are the future generation expected to carry forward the nation's aspirations. Therefore, they must be safeguarded through religious, educational, health, and social protections.

Foundations of Islamic Law in Child Protection

Child protection in the perspective of Islamic law is firmly rooted in the Qur'an, Sunnah, and relevant principles of fiqhiyah. Islamic law not only establishes obligations to fulfill children's rights but also ensures the protection of their physical, mental, and spiritual well-being as individuals with inherent dignity and potential that must be safeguarded. The Qur'an explicitly underscores the importance of child protection. Allah SWT says in the Qur'an, Surah Al-Isra' (17:31), which means, "And do not kill your children for fear of poverty. We provide for them and for you. Surely killing them is a heinous sin." This verse emphasizes that children have the right to live without discrimination, including those who are abandoned by their parents due to legal or criminal reasons. Therefore, the state and society are responsible for ensuring that these children receive their basic needs, including food, clothing, shelter, and healthcare.²³ The prohibition of killing children out of fear of poverty reflects Islam's deep concern for the welfare of children.

²² Adi Santosa, Head of Subdivision of the Women's Correctional Facility Class II-A of Malang City, September 18, 2023.

²³ Muhammad Zaki, "Perlindungan Anak Dalam Perspektif Islam," *ASAS-Jurnal Hukum Ekonomi Syariah* 6, no. 2 (July 14, 2014): 2, <https://doi.org/10.24042/asas.v6i2.1715>; Rifdah Alifiyah and Isa Anshori, "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (December 30, 2023): 348–61, <https://doi.org/10.22373/ujhk.v6i2.19153>; Muhamad Harun et al., "The Ideal Legal Protection of the Child Labor Rights in Indonesia: The Dimensions of Maqāṣid al-Sharī'ah and the Welfare State,"



In Surah At-Tahrim (66:6), Allah SWT says, "O you who have believed, protect yourselves and your families from the Fire." Parents and society have a responsibility to create a positive environment for children, especially after they lose their parents due to a criminal sentence. An environment full of affection, safety, and support is crucial for the physical, mental, and emotional development of children. This directive to protect families from the Fire also encompasses the obligation to shield children from influences that harm their morals and spirituality. As for the Sunnah, the Prophet Muhammad (peace be upon him) provided concrete examples of child protection. He emphasized children's rights to a good name, education, love, and fair treatment. In a Hadith narrated by Bukhari and Muslim, the Prophet said: "None of you truly believes until he loves for his brother what he loves for himself." This Hadith affirms that children are also among those who must be treated with love and fairness. Islamic teachings thus form a comprehensive framework for ensuring the rights and protection of children in all aspects of life.²⁴

In Islamic law, children are considered a trust from God that must be protected, nurtured, and provided with a good education. Protection of children is a crucial matter that is governed by Islamic principles, which involve not only parents but also the state and society. This protection encompasses several aspects, including the fulfillment of a child's basic rights in various areas such as the right to life, the right to education, protection from violence and discrimination, and the right to grow in a supportive physical, mental, and emotional environment. A child also has the right to receive a good education. Allah SWT says in Surah Al-Alaq (96:1-5) about the importance of seeking knowledge. Education is a fundamental right that must be provided to children, regardless of their parents' background. If the child's parents are incarcerated, the child still has the right to receive proper education. The state and society must ensure that these children can access education without discrimination, as education is a means to improve their quality of life and provide them with a better future.

In addition, in Islam, children must be protected from all forms of violence, whether physical, mental, or emotional. Allah SWT says in Surah Al-Baqarah (2:195), "And spend in the way of Allah and do not throw yourselves into destruction." This includes protecting children from violence, neglect, and harmful treatment. Children who are abandoned by their parents due to criminal sentences often face social stigma and the potential for discrimination. Therefore, Islam stresses the need for protection from discriminatory actions that could harm their dignity. Islam emphasizes the importance of providing a safe and healthy environment for the child's development. In addition to the family, the state also plays a vital role in ensuring the protection of children whose parents are incarcerated. In this case, the state must provide a social protection system capable of offering proper care for children in need. The state has an obligation to establish child protection institutions that can provide alternative care, education, and psychological support for these children. In the Islamic legal system, the state also has a responsibility to create fair

JURIS (Jurnal Ilmiah Syariah) 23, no. 1 (June 30, 2024): 167–78, <https://doi.org/10.31958/juris.v23i1.10537>; Rahmat Hidayat et al., "Review of Maqāsid Al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (December 31, 2022): 213–28, <https://doi.org/10.30631/alrisalah.v22i2.1254>.

²⁴ Sholihah, "Perlindungan Anak Dalam Perspektif Hukum Islam."



and accountable policies to ensure the protection of children. The state must actively provide the necessary facilities to support the development of these children so that they can grow well, even if their parents are unable to be present.²⁵

Broadly speaking, child protection policies in Indonesia have been established through various regulations, yet their implementation still faces significant challenges. One of the primary issues is the imbalance in fund allocation, particularly at the local government level, which results in a lack of facilities such as safe houses and psychological services. Additionally, inadequate human resource capacity, weak inter-agency coordination, and low public awareness further exacerbate the situation. In remote areas, access to child protection services is often unavailable, hindering equitable protection efforts. An Islamic-based approach can serve as a practical solution to address these challenges. The optimization of zakat, infak, and sedekah funds can support child protection programs, while waqf can be utilized to develop infrastructure such as safe houses and free schools. Religious scholars and community leaders can play a crucial role in raising public awareness through sermons and education grounded in Islamic values. Furthermore, training for child protection officers with an ethical and Sharia-based approach can strengthen local government capacity to handle child-related cases professionally.²⁶

Integrating Islamic values into child protection policies, such as strengthening Sharia-based laws and implementing family education programs, can encourage community participation and ensure comprehensive protection. Thus, collaboration between the government, society, and Islamic based institutions can create sustainable solutions for more effective child protection in Indonesia. In Islamic teachings, protecting children is a shared responsibility among families, communities, and the state. Children who lose their parents due to criminal cases require special attention to ensure their basic rights such as care, education, and protection are fulfilled. The principles of Islam, which emphasize compassion, justice, and safeguarding vulnerable groups, form the foundation for ensuring their welfare.

The concept of *maslahah mursalah* in Islamic law provides a basis for ensuring the well-being of these children. This principle supports policies that aim to bring benefits and prevent harm, even if not explicitly mentioned in the Qur'an or Hadith. Child protection for those left behind by criminal cases can be realized through programs ensuring their welfare, such as education, psychological rehabilitation, and proper care.²⁷ Through *maslahah mursalah*, various measures can be implemented to

²⁵ Alih Usman, "Siapa yang Wajib Memberikan Perlindungan Terhadap Anak?," bpsdm.kemenkumham.go.id, May 2, 2023, <https://bpsdm.kemenkumham.go.id/informasi-publik/publikasi/pojok-penyuluhan-hukum/siapa-yang-wajib-memberikan-perlindungan-terhadap-anak>.

²⁶ Muazzul and Andi Hakim Lubis, "Perlindungan Anak Perspektif Hukum Islam (Sosiologi Hukum Islam Sebagai Pendekatan Pengkajian)," *Journal of Gender and Social Inclusion in Muslim Societies* 2, no. 1 (July 28, 2021): 1–16, <https://doi.org/10.30829/jgsims.v2i1.9639>.

²⁷ Yusron Munawir, "Tinjauan Masalah Terhadap Perlindungan Hukum Bagi Anak Yang Bekerja Di Indonesia," *Ahkam: Jurnal Hukum Islam* 11, no. 1 (2023), <https://doi.org/10.21274/ahkam.2023.11.1.1-30>; Musleh Harry et al., "Examining the Provision of Legal and Religious Education to Islamic Families to Safeguard the Rights and Well-Being of Women and Children: A Case Study Conducted in Malang Regency, East Java," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (August 24, 2024): 1526–46, <https://doi.org/10.22373/sjhk.v8i3.19566>.



prevent further harm, such as the risk of children falling into criminal behavior or exploitation. Zakat and waqf institutions can be optimized to support these children's needs, including their daily necessities and education. This approach aligns with the collective responsibility of the Muslim community toward vulnerable groups.

Practical solutions include alternative care for these children through foster families or institutions rooted in Islamic values. The state can also provide psychological rehabilitation programs and education that support their physical, emotional, and spiritual growth. Additionally, zakat and waqf can be utilized to meet their needs, while public awareness is enhanced through educational programs and religious sermons. By integrating Islamic values and the principle of *maslahah mursalah*, the protection of children left by parents due to criminal cases can be more effectively implemented. Collaboration between the state, society, and Islamic institutions will create an environment that holistically supports the growth and development of these children.

The Principle of Child Protection for Children left by Parents due to Convictions

Satjipto Rahardjo states that legal protection aims to safeguard someone's rights by granting them the authority to act in their own interest.²⁸ Two principles underlie legal protection. The first principle is the concept of recognising human rights, which leads to delineating and limiting societal obligations and prompts government action to protect those rights. The second principle relates to the interconnection between the rule of law and the recognition of human rights, which occupy a central position relevant to the objectives of a rule-of-law state.²⁹ This aligns with the nation's objectives: "to establish a government that can protect the entire Indonesian people to achieve general welfare, foster an intelligent society, and participate in maintaining global order based on independence, peace, and the fulfilment of social justice." On this basis, the government formulates legislation to uphold human rights for the welfare of society, including the protection of children's human rights. Protecting children is not solely the responsibility of parents or families; the government bears a greater obligation to ensure that children's rights are legally fulfilled.³⁰

On one hand, concern for these children does not necessarily have to be codified in a specific law (*lex specialis*). However, on the other hand, the lack of specific legislation might give the impression that the rights of children of convicted offenders can be ignored. This perspective must be corrected. For Indonesian children whose parents are currently serving prison sentences, the government needs to take serious measures to provide them with adequate protection.

To compare, in the United States, it is estimated that between 2.7 million and 5 million children are separated from their parents due to incarceration.³¹ This figure represents approximately 7 per cent of the total child population in the country. These

²⁸ Satjipto Rahardjo, *Penegakan hukum progresif* (24: Penerbit Buku Kompas, 2010).

²⁹ Bianca Agnetha and Irma Cahyaningtyas, "Perlindungan Hukum Bagi Anak Yang Lahir Di Penjara Dalam Perspektif Hak Asasi Manusia," *Jurnal USM Law Review* 5, no. 2 (October 31, 2022): 593–605, <https://doi.org/10.26623/julr.v5i2.5723>.

³⁰ Nopiana Mozin and Maisara Sunge, "Pemberian Edukasi dan Bantuan Hukum Terhadap Anak Korban Kekerasan," *Jurnal Ius Constituendum* 6, no. 1 (April 22, 2021): 166–81, <https://doi.org/10.26623/jic.v6i1.2485>.

³¹ Seto Mulyadi, "Orang Tua Dipenjara, Bagaimana Dengan Anak Mereka?," *Kompas.Com*, August 27, 2022, <https://nasional.kompas.com/read/2022/08/27/06000031/orangtua-dipenjara-bagaimana-dengan-anak-mereka?page=all>.



numbers underscore the urgent need for concern regarding the fate of children left behind when their parents are imprisoned. The government must promptly take action by creating regulations to ensure protection for these children.

In Indonesia, as long as the criminal justice system continues to prioritise litigation in handling criminal cases, the number of inmates is expected to rise. As more individuals enter the prison system, it logically follows that more children will be separated from their parents who are serving as inmates. These children are highly vulnerable to stigmatisation and discrimination due to their parents' incarcerated status. Psychology research indicates that stigmatisation, as a form of psychological attack and social sanction, can have effects that are at least as severe as physical abuse on children.

Measures to address these issues are essential, as children left behind by parents convicted of criminal acts based on court rulings are at high risk of becoming neglected children. The following are several causes that increase the likelihood of children being neglected:³² 1) Neglect due to divorce : This occurs when parents, both the father and mother, separate and no longer live together, making the child victimised by the situation. The child may be neglected and their rights ignored or abandoned, preventing them from leading a proper life; 2) Neglect due to economic conditions: Parents' economic status is a significant factor in ensuring the protection and well-being of their children. Family's poor economic conditions may lead to the failure to fulfil children's rights. This includes the child's lack of access to education, healthcare, and spiritual development; 3) Neglect due to unwanted children: This situation arises when a child is born from parents who have a relationship without the institution of marriage. In such cases, the parents may abandon the child out of shame or due to the disapproval of their families. Consequently, the child is not wanted by either parent; 4) Neglect due to parental mindset :Parents with children must be prepared to take responsibility and fulfil their child's physical and emotional needs. However, some parents lack the mindset required to properly nurture, educate, guide, and develop their child's talents. This neglect often results from a lack of knowledge or understanding, and it is commonly observed among underage parents or parents with mental health issues; 5) Neglect due to the child's behaviour. While rare, some parents neglect their children because of the child's behaviour. Parents may feel ashamed of their child's actions, such as drug addiction, alcoholism, theft, and other behaviours, leading to neglect.

To provide comprehensive legal protection for children, encompassing all aspects of their lives-including cultural, social, economic, and psychological

³² Bunyu, *Perlindungan Hukum Terhadap Korban Dan Akibat Hukum Terhadap Orangtua Sebagai Pelaku Penelantaran Anak Akibat Perceraian Di Kota Kupang*; Syukrawati Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (April 30, 2024): 121–46, <https://doi.org/10.21580/ahkam.2024.34.1.20624>; Ibnu Elmi AS Pelu et al., "Polygamy Law Reform Through the Development of the Aceh Qanun: A New Approach to Protecting the Rights of Women and Children in Indonesia," *El-Mashlahah* 14, no. 1 (June 30, 2024): 149–68, <https://doi.org/10.23971/el-mashlahah.v14i1.7864>; Amal Fathullah and Muhammad Abduh, "The Relationship of Children and Their Biological Father (Comparative Study of Positive Law of Indonesia, Thailand and Jordan)," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 2 (December 19, 2022): 213–30, <https://doi.org/10.18592/sjhp.v22i2.8918>.



dimensions it is crucial to support the child's personal development and growth.³³ Many children face pressure and have no choice but to accept treatment, circumstances, and decisions imposed upon them. Due to societal norms of respecting elders, children are often forced to obey all appropriate instructions, ultimately compelling them to act against their desires.³⁴

Essentially, legal protection for children means safeguarding the rights of all children worldwide, including those in Indonesia, even for children left behind by parents convicted of criminal acts. These children are entitled to the same legal protection as any other child. A child cannot choose the family or environment into which they are born and raised. The state must provide comprehensive legal protection for the child's life and future. This aligns with Law No. 4 of 1979 concerning Child Welfare, which emphasises that children have the right to receive care and affection from a family and environment that supports their growth and development. This enables them to cultivate their social lives and become good and valuable citizens to the nation.³⁵

Protection of Children: A Critical Issue in the Framework of Human Rights

Protection of children is a critical issue within the framework of human rights (HR), emphasizing the need to ensure the fulfillment of children's fundamental rights even when their parents are involved in the criminal justice system. The rights of children left behind by incarcerated parents are not limited to the right to life but also encompass various other aspects such as the right to care, education, protection from discrimination, and the right to grow in a safe and supportive environment. First, the right to life and survival. The right to life is a fundamental right that every child possesses. In this case, although children may lose their convicted parents, they still have the right to life and survival. The state must ensure that these children do not experience hunger, malnutrition, or neglect in fulfilling their basic needs, such as food, shelter, and health services. Therefore, the state and society are responsible for providing alternative care or support to ensure their survival.

Second, the right to education. One of the most crucial rights for children is the right to receive a proper education. For children whose parents are convicted, education becomes even more important to provide a brighter future and avoid the negative impacts of losing a parental figure. According to Article 28 of the Convention on the Rights of the Child (CRC), every child has the right to receive education without discrimination. Children whose parents are imprisoned often face

³³ Lilien Ristina, "Peran Jaksa dalam Penerrapan Kebijakan Diversi Terhadap Pelaku indak Pidana," *Jurnal Ius Constituendum* 3, no. 2 (November 9, 2018): 166–78, <https://doi.org/10.26623/jic.v3i2.1038>.

³⁴ Shafira Fatahaya and Rosalia Dika Agustanti, "Legalitas Aborsi yang Dilakukan Oleh Anak Akibat Perkosaan Inses," *JURNAL USM LAW REVIEW* 4, no. 2 (November 5, 2021): 504–24, <https://doi.org/10.26623/julr.v4i2.4041>; Sudirman Sudirman et al., "Examining the Complexity of Child Marriage as Sexual Violence in Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (September 30, 2023): 310–28, <https://doi.org/10.22219/ljih.v31i2.28881>; Lisnawaty Wadju Badu and Julisa Aprilia Kaluku, "Restoratif Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children," *Jambura Law Review* 4, no. 2 (July 30, 2022): 313–27, <https://doi.org/10.33756/jlr.v4i2.11664>.

³⁵ Hazar Kusmayanti, Efa Laela Fakhriah, and Bambang Daru Nugroho, "The Settlement of Disputes Regarding Division of Joint Property After a Divorce in the Central Aceh Regency," *Jurnal Ilmiah Islam Futura* 21, no. 2 (August 19, 2021): 170–82, <https://doi.org/10.22373/jiif.v21i2.6599>.



additional challenges, including social stigma, which can hinder their access to education. Therefore, the state must ensure that these children can still access adequate education, free from discrimination and marginalization.

Third, the right to protection from discrimination. Children who are abandoned by their parents due to a criminal sentence are often exposed to social stigma and discrimination from society. They may be considered as children from problematic families, which can affect their self-esteem and social relationships with their peers. In this context, protection from discrimination becomes a critical right for the child. According to Article 2 of the CRC, the state must ensure that children are not subjected to any discrimination, whether in access to social services, education, or treatment by society. This protection must also include measures to ensure that children who have lost their parents due to criminal sentences are not treated differently or stigmatized in their social environment.³⁶

Fourth, the right to care and maintenance. Children left behind by their parents due to criminal sentences require special attention regarding their care and maintenance. In this context, the right to proper care includes emotional and psychological needs, as the loss of a parent can have a significant psychological impact on them. Protection for these children also involves securing a safe living arrangement, providing nurturing care, and offering the necessary psychological and social support to help them cope with the situation. The government and society must play an active role in ensuring that these children receive care that not only meets their basic needs but also supports their mental health.

Fifth, the right to a safe and supportive environment. Children who lose their parents due to criminal sentences are entitled to an environment that supports their physical, mental, social, and emotional development. Article 6 of the CRC emphasizes the right of children to grow in conditions that support their full development. A safe and stable environment is essential for children to avoid disruptions that could harm their future. Children left by their parents due to criminal convictions are often exposed to uncertain and challenging situations, including the possibility of entering child protection systems or educational institutions that may not always provide proper care. Therefore, it is important to create a social protection system that can offer more holistic support for these children.

Sixth, the role of the state in protecting children. The state has the obligation to protect the rights of children, including those who are separated from their parents due to criminal convictions. The state must provide clear regulations and policies that ensure these children are not neglected or left in vulnerable conditions. This includes providing social protection services, establishing child protection agencies specifically handling such cases, and offering access to adequate psychosocial services. The state must also collaborate with non-governmental organizations (NGOs) and international bodies to raise awareness and strengthen support systems for children separated from their parents.

In conclusion, the protection of children whose parents are incarcerated is a matter that requires serious attention from the state, family, and society. Within the framework of human rights, children have the right to life, education, protection from

³⁶ Act Human Rights Commission, "Rights of Children in the Criminal Process - HRC" (Human Rights Commission, 2024), <https://www.hrc.act.gov.au/humanrights/rights-protected-in-the-act/rights-of-children-in-the-criminal-process>.



discrimination, and care in a safe environment. The state must ensure that these rights are met, and that these children are not only physically protected but also supported psychologically and emotionally for their overall well-being.³⁷

Protecting children left behind by parents incarcerated due to criminal convictions aims to prevent them from experiencing physical or mental abuse. If such abuse occurs, it is highly likely that as they grow up, they may develop negative traits and eventually become involved in harmful environments, potentially leading to criminal behaviour.³⁸ Social conditions, family dynamics, and the surrounding community, which should ideally serve as the first line of protection for children, can sometimes contribute to juvenile delinquency. Children may be deemed to violate the norms and values their social community uphold if they fail to meet those standards.³⁹ Therefore, child protection must be comprehensive, encompassing both physical and mental aspects, with the hope that children can develop their full potential without hindrance.

When a child is left behind due to a parent's incarceration, it negatively impacts their personal development. It leaves them vulnerable to neglect, as they may no longer have anyone to care for them. Neglected children are those whose basic needs physical, mental, spiritual, or social are not adequately met. Neglected children generally come from diverse family backgrounds. Some originate from economically disadvantaged families, compelling them to work on the streets to support their family's income. Others may lack knowledge of their parents or family origins, leading to an absence of parental affection and a heavy emotional burden that often results in the development of negative traits.⁴⁰

The state upholds human rights, including children's rights, as evidenced by guarantees of protection and fulfilment of those rights in the 1945 Constitution and several national and international laws and regulations. These guarantees are further through the ratification of international conventions on children's rights, particularly the Convention on the Rights of the Child ratified through Presidential Decree No. 36 of 1990. Article 28B of the 1945 Constitution stipulates that the state guarantees every child the right to live, grow, and develop and to be protected from violence and discrimination. This provision is complemented by Article 28G, which asserts that every individual has the right to personal, familial, and property protection, as well as the right to feel safe and secure from threats or fears that could infringe upon their fundamental rights. Despite these provisions, neglected children without families often fail to receive their guaranteed rights, such as access to adequate healthcare.

Healthcare is a fundamental right for all children, ensuring their ability to live, grow, and develop optimally. Every child is entitled to proper health services tailored to their physical, mental, and spiritual needs. These rights are explicitly guaranteed

³⁷ Iskandar Hoesin, *Perlindungan Anak Dari Perspektif Hak Asasi Manusia* (Perpustakaan Komnas Perempuan: Jakarta : Komisi Nasional Perlindungan Anak, 2006), //perpustakaan.komnasperempuan.go.id%2Fweb%2Findex.php%3Fp%3Dshow_detail%26id%3D1078.

³⁸ Khoirunnisa, Edith Ratna, and Irawati Irawati, "Perlindungan Hukum Anak Terlantar Atas Hak Anak Mendapatkan Jaminan Kesehatan," *Notarius* 13, no. 2 (August 7, 2020): 546–56.

³⁹ Muhammad Ridwan Lubis and Panca Sarjana Putra, "Pemidanaan Terhadap Anak Yang Berhadapan Dengan Hukum," *JURNAL USM LAW REVIEW* 4, no. 1 (June 18, 2021): 226–41, <https://doi.org/10.26623/julr.v4i1.3354>.

⁴⁰ Ciendy M. I. Mongkaren, "Perlindungan HAM Terhadap Anak Di Bawah Umur Dalam Proses Persidangan Di Pengadilan Khususnya Perkara Pidana," *Lex Administratum* 3, no. 2 (2015): 7.



under Article 8 of the Child Protection Law and Article 62 of the Human Rights Law, applying equally to children with families and those who are abandoned or without families. These rights are inalienable and cannot be taken away. However, in reality, neglected children and those living in poverty often lack sufficient health guarantees. They face significant barriers to accessing proper health services that address their physical, mental, and spiritual needs. This discrepancy underscores the need for more effective measures to ensure that all children, regardless of their circumstances, can access the care and services they are entitled to.⁴¹

Conclusion

This study highlights the significant challenges faced by children left behind by parents due to criminal convictions and underscores the urgent need for comprehensive protection strategies. Previous research has often overlooked the integration of Islamic legal principles with child protection policies, resulting in gaps in addressing the socio-economic and psychological needs of these children. By examining the foundations of Islamic law, particularly the principles of *maslahah mursalah*, this research proposes a framework that combines compassion, justice, and modern policy-making to safeguard the rights of these vulnerable children. The findings emphasize the critical role of local governments in implementing robust child protection systems. This includes allocating sufficient funding, ensuring access to education and healthcare, and enforcing legal protections that effectively mitigate the socio-economic impacts experienced by these children. Additionally, the study highlights the importance of integrating Islamic values into policy-making processes, such as utilizing *zakat* and *waqf* to support child welfare programs and promoting societal awareness through religious and community leaders. This research advocates for a collaborative approach involving government institutions, Islamic organizations, and communities to create a sustainable and responsive child protection system. By embedding Islamic principles into legal and cultural frameworks, policymakers can develop solutions that address both immediate needs and long-term welfare. Such efforts ensure that these children can grow and thrive despite their challenging circumstances. This integration not only strengthens the social fabric but also upholds the collective responsibility mandated by Islamic teachings and international human rights standards.

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⁴¹ Khoirunnisa, Ratna, and Irawati, "Perlindungan Hukum Anak Terlantar Atas Hak Anak Mendapatkan Jaminan Kesehatan."



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