

Legal Harmonization of Child Protection in Human Trafficking: A Comparative Study of Indonesian Positive Law and Islamic Law

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Abstract: This study analyzes the legal protection of child victims of human trafficking through a comparative examination of Indonesian positive law and Islamic law, with specific reference to the Jambi District Court Decision Number 566/Pid.Sus/2023/PN.JMB. The judgment in this case prioritized the punishment of the perpetrator while neglecting the crucial aspect of victim recovery. In response, the study proposes a model of legal harmonization, arguing that the integration of Islamic legal values into positive law has the potential to create a more comprehensive child protection system that is better aligned with Indonesia's socio-cultural realities. The research employs a normative juridical approach, using comparative and case study methods, and draws upon statutory provisions, judicial decisions, Islamic legal literature, and relevant scholarly works. The findings demonstrate that both Indonesian positive law and Islamic law recognize child trafficking as a grave offence; however, positive law tends to emphasize punitive sanctions, while Islamic law highlights spiritual dimensions and community responsibility in addressing exploitation. The key differences lie in philosophical underpinnings, the flexibility of sanctions, and the treatment of victim recovery, with positive law adopting a legal-formal stance and Islamic law stressing holistic, community-based rehabilitation. The study concludes that harmonization between the two systems can strengthen prevention, rehabilitation, and protection mechanisms, producing a more equitable and culturally grounded framework. This study contributes to proposing an integrative model that combines the procedural certainty of positive law with the ethical and spiritual depth of Islamic law, consistent with the spirit of *Pancasila* and advancing the global discourse on culturally responsive child protection.

Keywords: Child Protection, Human Trafficking, Islamic Law, Indonesian Positive Law, Comparative Study.



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Introduction

Child trafficking for sexual exploitation remains a concerning phenomenon in Indonesia, as reflected in case Number 566/Pid.Sus/2023/PN.JMB involving defendant Antonius Bin Johanes Bruto Suharno. This case reveals a new digital-era *modus operandi*, where the Michat messaging application was utilized as a means to offer sexual services of a 17-year-old victim for IDR 600,000 for two sexual encounters. Although the victim initiated the request for the defendant's assistance, the Indonesian legal system emphasizes that victim consent does not eliminate the criminal element in human trafficking offences, especially when the victim is under 18 years of age according to Birth Certificate 9322/DKPS/2010. The Jambi District Court's decision sentencing the defendant to 4 years imprisonment and a fine of IDR 210 million reflects the application of Article 2 paragraph 1 in conjunction with Article 17 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking. However, the aspect of victim recovery, which should be a primary concern in cases of child sexual exploitation, is not explicitly reflected in the verdict, thus indicating the need for a comparative study to find a more comprehensive approach to child protection.

Previous study on child protection from human trafficking reveals a gap between positive legal approaches and religious-cultural dimensions. Widyawati et al. (2022) revealed an increase in human trafficking crimes in Indonesia during the Covid-19 pandemic, with inconsistent legal applications between Law No. 21/2007 and Law No. 18/2017. Mayasari (2017) has conducted a juridical review of legal protection for Indonesian children who are victims of human trafficking, but her study has not integrated Islamic legal approaches. Simbolon (2018) discusses the prevention of child trafficking crimes and legal reform, but has not explored the spiritual-religious dimensions that could potentially strengthen victim protection and recovery efforts. Research on human trafficking in Indonesia by Rochadi (2022), Bah (2022), Umbase (2019), and Naibaho (2023) has also not integrated Islamic legal approaches in analyzing child victim protection. On the other hand, Nurhayati (2022) has analyzed human trafficking from the *maqāṣid al-sharī'ah* perspective, but has not elaborated on its application in concrete Indonesian cases. Shah (2021) and Freamon (2012) highlight the importance of multi-dimensional approaches to modern slavery and human trafficking according to Islamic law, but have not specifically examined child protection in the context of sexual exploitation.

In the global context, studies by Letsie (2021), McDonald (2023), and Kiss (2022) identify characteristics and patterns of child trafficking in various countries, emphasizing the importance of specific victim care models, but have not applied cultural-religious perspectives. Cases in Southeast Asia have received attention through research by Winzer (2019) and Rungfasangaroon (2022). Andreovski (2014) and Farhana (2021) examine experiences of exploitation and human trafficking among Indonesian migrant workers, but with emphasis on criminal aspects rather than victim recovery. Siswanto (2024) proposes a humanistic approach in protecting victims of human trafficking crimes that can be combined with religious values. Allen (2021) and

Heil (2017) have acknowledged the important role of religious values in child protection, but there remains a gap regarding the integration of Islamic values into positive legal frameworks. A harmonization model that integrates Islamic legal values into positive law implementation has the potential to strengthen Indonesia's child protection system, particularly in aspects of community-based prevention and comprehensive victim recovery, as a contribution to academic discourse on cultural-religious approaches to child protection.

This study aims to analyze legal protection for children from human trafficking through a comparative study between Indonesian positive law and Islamic law, using Case Decision Number 566/Pid.Sus/2023/PN.JMB as a case study. The objectives are threefold: first, to conduct a comparative analysis of child protection regulations and practices in both Indonesian positive law and Islamic law; second, to explore points of convergence and divergence between the two legal systems in handling child trafficking cases; and third, to develop a harmonization model that integrates Islamic legal values into the implementation of Indonesian positive law, thereby strengthening the national child protection system and contributing to the global discourse on cultural-religious approaches to child protection.

This study argues that harmonization between Indonesian positive legal and Islamic legal approaches has the potential to create a more comprehensive child protection system that is contextual to the socio-cultural realities of Indonesian society. Formal and structural mechanisms in Indonesian positive law provide a procedural framework that ensures legal certainty and effective enforcement, while the principles of *maqāṣid al-sharī'ah*, particularly protection of lineage (*ḥifẓ al-nasl*) and honor (*ḥifẓ al-'ird*), can strengthen the spiritual and communal dimensions in efforts to prevent and recover child trafficking victims. In case 566/Pid.Sus/2023/PN.JMB, comparative analysis shows that the court's decision has applied the principle of proportionality in criminal sanctions, but has not been optimal in aspects of victim recovery, which is precisely a primary concern in Islamic legal approaches. Therefore, the integrative model proposed in this study emphasizes strengthening the role of religious institutions in community-based prevention, developing rehabilitation models that combine psychosocial approaches with spiritual-religious ones, and strengthening the role of families and communities as the front line of child protection from human trafficking. This model offers not merely technical harmonization, but also epistemological integration that enriches the theoretical framework of child protection at national and global levels.

Method

This study employs a normative juridical approach with comparative methods and case studies to analyze child protection from human trafficking in the perspectives of Indonesian positive law and Islamic law. The normative juridical approach was chosen because the research focuses on analyzing legal norms contained in Indonesian

legislation, particularly Law No. 21 of 2007 concerning the Eradication of Human Trafficking and the Child Protection Act, as well as Islamic legal sources. This approach focuses on “ought-to-be” legal norms rather than “is” legal practices, aligning with doctrinal legal studies.

The comparative method is used to compare concepts, principles, and mechanisms of child protection in both legal systems, identify their similarities and differences, and explore the potential for harmonization between them. The comparative analytical framework used in this research refers to the model developed by Zweigert and Kötz (1998) with adjustments for the context of comparing secular and religious legal systems. The comparison parameters include: First, epistemological aspects: Comparing the philosophical foundations and legal knowledge sources of Indonesian positive law and Islamic legal systems, and their implications for child protection conceptualization; Second, substantive aspects: Comparing definitions, classifications, and elements of child trafficking crimes in both legal systems, including concepts of exploitation, victim consent, and categorization of child victims; Third, procedural aspects: Comparing law enforcement mechanisms, evidence, and judicial processes in both legal systems; Fourth, sanction aspects: Comparing types, purposes, and proportions of sanctions applied to child trafficking perpetrators in both legal systems; Fifth, victim protection and recovery aspects: Comparing protection mechanisms, rehabilitation, and reintegration of victims in both legal systems; Sixth, prevention aspects: Comparing approaches and strategies for preventing child trafficking in both legal systems; Seventh, implementation aspects: Comparing effectiveness, challenges, and obstacles in implementing both legal systems in Indonesia’s socio-cultural context.

Research data sources include primary legal materials such as Indonesian legislation and Jambi District Court Decision Number 566/Pid.Sus/2023/PN.JMB as a case study, along with the Qur’an, Hadith, and classical fiqh books. Secondary legal materials include Qur’anic interpretations, Hadith commentaries, contemporary fiqh literature, scientific journals, books, and research findings related to child protection and human trafficking, both from Islamic legal and positive legal perspectives.

The focus on the Jambi District Court Decision Number 566/Pid.Sus/2023/PN.JMB, as the sole case study, is based on its representativeness, as it reflects a contemporary *modus operandi* of online sexual exploitation of minors, illustrates the application of enhanced sanctions under Law No. 21 of 2007, and highlights the gap between retributive punishment and victim recovery. Nevertheless, this study acknowledges a limitation: findings from a single case analysis cannot automatically be generalized to all judicial practices in Indonesia. This clarification strengthens the transparency and credibility of the methodology.

Data collection techniques were conducted through documentary studies of written sources and library research. Data analysis uses descriptive-analytical and comparative methods with a normative-dogmatic approach to analyze Indonesian

positive law provisions and a *maqāṣid al-sharī'ah* approach to explore values and principles of child protection in Islamic law. Jambi District Court Decision Number 566/Pid.Sus/2023/PN.JMB is critically analyzed to understand the application of positive law in concrete cases and identify aspects that can be strengthened through the integration of Islamic legal values.

This study also uses an interdisciplinary approach by considering sociological, psychological, and theological aspects of child trafficking issues, to produce an integrative protection model that is comprehensive and contextual to the socio-cultural realities of Indonesian society. To strengthen the validity of the analysis, this research applies theory triangulation by using various theoretical perspectives in data interpretation, whereby *maqāṣid al-sharī'ah* theory is applied to interpret Islamic legal norms and values, child protection theory is employed to frame the state's duty of care and responsibility toward vulnerable groups, and legal system theory is used to analyze institutional compatibility and the interaction between Islamic law and Indonesian positive law.

Case Analysis of Decision Number 566/Pid.Sus/2023/PN.JMB

The case under examination in this research is criminal case Number 566/Pid.Sus/2023/PN.JMB involving defendant Antonius Bin Johaness Bruto Suharno. The chronology of events began in early June 2023 when the defendant met with witness 1 (the victim) in the second-floor lobby of Hotel Raja. This meeting continued with the victim requesting the defendant to serve as an administrator on the Michat application and to find customers interested in engaging in sexual relations with the victim. As compensation, the defendant was promised a payment of IDR 50,000 per customer successfully obtained.

On June 14, 2023, at approximately 8:00 PM, the victim provided the defendant with an Oppo mobile phone equipped with a Michat account to be used for finding customers. The defendant subsequently continued communications with potential customers who had previously interacted with the victim, resulting in an agreement to meet at Hotel Raja Residence for a payment of IDR 600,000 for two sexual encounters.

The victim in this case is a 17-year-old child, as evidenced by Birth Certificate 9322/DKPS/2010. According to the Child Protection Act, the victim is categorized as a child since they are still under 18 years of age. This fact becomes an important consideration in the context of sentence enhancement as regulated in Article 17 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking. In this case, the victim was in a vulnerable position both in terms of age and socioeconomic conditions. Although the case records that the victim initiated the request for assistance from the defendant, the Indonesian legal system adheres to the principle that victim consent

does not negate the criminal elements in human trafficking offenses, especially since the victim was still under 18 years of age.

The form of human trafficking that occurred in this case is commercial sexual exploitation of a child. The defendant was proven to have conducted recruitment by offering the victim's services through the Michat application for the purpose of sexual exploitation. Although the defendant did not use violence or threats of violence, the defendant's actions still fulfilled the element of "recruitment" as defined in Article 1 point 9 of Law No. 21 of 2007, which encompasses the acts of inviting, transporting, or placing someone for the purpose of exploitation. The defendant also received financial benefits from such exploitation in the form of IDR 50,000 per customer, although at the time of arrest, the defendant claimed not to have received payment from the victim yet.

The legal considerations in the court's decision were based on the first alternative indictment, namely Article 2, paragraph 1, in conjunction with Article 17 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking. The panel of judges emphasized that the crime of human trafficking is a formal offence; thus, it does not have to cause consequences to be punishable. In its considerations, the panel of judges stated that the defendant had been legally and convincingly proven to have committed recruitment actions against the victim for the purpose of exploitation within the territory of the Republic of Indonesia. The fact that the victim was an underage child became the basis for applying Article 17, which regulates a one-third increase in criminal penalties from the threatened punishment in Article 2.

The panel of judges, in their decision, declared the defendant legally and convincingly guilty of committing the crime of human trafficking as stated in the first alternative indictment of the public prosecutor. The sanction imposed on the defendant was imprisonment for 4 years and a fine of IDR 210 million, with the provision that if the fine is not paid, it will be substituted with 3 months of imprisonment. Additionally, the evidence in the form of cash amounting to IDR 600,000 was confiscated by the state, and the defendant was charged with court costs of IDR 5,000.

In determining the sentence, the panel of judges considered aggravating factors, namely that the defendant's actions did not support the government's program in eradicating human trafficking, and mitigating factors, namely that the defendant was forthright during the trial, acknowledged and regretted his actions, and had never been convicted before.

Analysis of the decision shows that the panel of judges correctly applied the provisions of Law No. 21 of 2007, particularly in identifying the elements of "recruitment" and "exploitation" as defined in the law. However, it should be noted that the decision did not specifically address the aspect of recovery or rehabilitation for the victim, who is a minor. In the context of child protection, the aspect of victim

recovery should receive special attention to mitigate the psychological and social impacts resulting from the sexual exploitation experienced. Law No. 21 of 2007 actually regulates the victim's rights to health rehabilitation, social rehabilitation, repatriation, and social reintegration, but this aspect is not reflected in the examined decision.

The court's decision in this case reflects a retributive approach that emphasizes punishment of the perpetrator rather than a restorative approach that also considers victim recovery. The 4-year imprisonment imposed on the defendant aims to provide a deterrent effect and prevent similar crimes, but it has not been optimal in fulfilling the aspects of protection and recovery of the child victim. From a child protection perspective, ideally, the decision should also consider the special needs of child victims, for example, by ordering psychosocial recovery or special post-exploitation assistance. This becomes an important note in efforts to improve legal protection for children from human trafficking in Indonesia.

Child Protection from Human Trafficking in Indonesian Positive Law

From the perspective of Islamic law based on the Qur'an and Hadith, cases of child trafficking for sexual exploitation, as occurred in decision Number 566/Pid.Sus/2023/PN.JMB, constitute strictly prohibited acts. Islam prohibits exploitation. This includes child trafficking. It is a form of oppression that violates human dignity. The Qur'an explicitly prohibits all forms of human exploitation, as mentioned in Surah An-Nur verse 33, which forbids forcing female slaves into prostitution if they desire chastity. Although the context of this verse addresses slavery at that time, the essence of the prohibition against coercion and sexual exploitation applies universally (Shah, 2021). Similarly, in a Hadith narrated by Bukhari, the Prophet Muhammad (peace be upon him) stated that there are three groups whom Allah will oppose on the Day of Judgment, one of which is the person who sells free persons and consumes the proceeds. This affirms that human trafficking, including children, constitutes a serious crime from an Islamic perspective.

The principles of child protection adopted in the PTPPO Law and the Child Protection Law can be traced in the legal considerations of the decision. The panel of judges implicitly applied the principle of the best interest of the child by stating that the victim's consent does not eliminate the elements of human trafficking, especially since the victim was still underage. This aligns with Article 26 of the PTPPO Law, which emphasizes that the consent of trafficking victims does not eliminate prosecution for human trafficking offenses (Simbolon, 2018). Additionally, the principle of non-discrimination is evident from the court's approach in providing legal protection regardless of the victim's background. However, the principle of child participation in decision-making processes that affect their lives is not explicitly apparent in this decision, which indicates there is still room for improvement in the comprehensive application of child protection principles (Sukma, 2021).

The effectiveness of criminal sanctions imposed in this case, namely 4 years imprisonment and a fine of IDR 210 million, needs to be examined from the perspective of sentencing objectives. From a retributive standpoint, the sanction has provided proportional retribution for the defendant's actions in accordance with statutory provisions. From a general preventive perspective, this punishment is expected to have a deterrent effect on the wider community to prevent similar criminal acts (Farhana, 2021). However, the effectiveness of criminal sanctions in preventing and eradicating child trafficking cannot be measured from a single decision alone but needs to be viewed in the context of law enforcement as a whole. Data from the Indonesian Child Protection Commission (KPAI) shows that cases of child trafficking continue to occur despite the existence of laws with severe criminal sanctions, indicating that criminal sanctions alone are not sufficient to comprehensively address child trafficking issues.

The fulfillment of child victims' rights in legal processes is an important aspect of child protection, but analysis of decision Number 566/Pid.Sus/2023/PN.JMB reveals limitations in this aspect. The PTPPO Law regulates victims' rights in Articles 44 through 54, which include the right to identity confidentiality, the right to receive assistance during judicial proceedings, the right to health and social rehabilitation, the right to repatriation, and the right to social reintegration (Siswanto, 2024). In the decision, there is no explicit discussion regarding the fulfillment of these victims' rights, particularly those related to post-exploitation recovery and rehabilitation. Although the decision establishes the confiscation of evidence in the form of IDR 600,000 in cash for the state, there are no provisions regarding compensation or restitution for the victim. This shows that the focus of the decision is more on punishing the perpetrator than on victim recovery, which is a deficiency from the perspective of comprehensive child protection (Naibaho, 2023). Such a limited approach reflects the absence of a holistic legal perspective that integrates moral, spiritual, and social recovery for victims. In this regard, the pattern of religious adaptation within Indonesia's urban modernity—as identified by Luhuringbudi et al. (2025)—illustrates how Islamic ethics can evolve in response to modern challenges without losing its normative essence. Applying such adaptive principles in the legal domain may help bridge the gap between positive law enforcement and the higher objectives of *maqāṣid al-sharī'ah* in child protection.

Limitations in the implementation of positive law in protecting children from human trafficking are evident from several aspects in this case. First, there is a gap between statutory provisions and law enforcement practices, particularly regarding the fulfillment of victims' rights. Second, there is a lack of a holistic approach in handling child trafficking cases, which should ideally encompass aspects of prevention, protection, recovery, and social reintegration (Chan, 2023). Third, victims have limited access to justice and recovery mechanisms, as evident from the absence of discussion about victim assistance and rehabilitation in the decision. Fourth, the child protection system is not yet integrated from the central to regional levels,

resulting in suboptimal implementation of child protection policies against human trafficking (Widyawati, 2022). Similar regulatory gaps are also evident in the protection of women workers in the digital sector, where gender perspectives and social protections remain weakly integrated into national policies (Adawiyah & Habi, 2025). Fifth, there is a lack of victim perspective in the judicial process, as demonstrated by minimal attention to the psychological and social impacts experienced by the victim as a result of exploitation.

Challenges in implementing positive law to protect children from human trafficking are also related to the complexity of factors causing child trafficking. Factors such as poverty, lack of education, minimal legal awareness in society, and misuse of information technology developments for exploitation purposes (such as the Michat application in this case) are root problems that need to be addressed comprehensively (DeCapita, 2019). Existing laws have not fully been able to address these challenges, especially in terms of prevention and handling risk factors. Additionally, coordination between law enforcement agencies and child protection institutions is still not optimal, causing the handling of child trafficking cases to be poorly integrated. Other challenges include limited resources—human resources, infrastructure, and budget—for effective and sustainable implementation of child protection policies (Kadir, 2024).

As for improvement efforts that can be made to overcome these limitations and challenges, they include: first, strengthening the implementation of provisions in the PTPPO Law and Child Protection Law related to victims' rights, especially the right to rehabilitation and social reintegration (Utami, 2024); second, developing a more holistic and victim-oriented approach in handling child trafficking cases; third, enhancing coordination between law enforcement agencies and child protection institutions to ensure integrated case handling (Sari, 2023); fourth, strengthening prevention systems through increased legal awareness in society and addressing risk factors for child trafficking; fifth, allocating adequate resources for implementing child protection policies; and sixth, developing policies that are more responsive to the evolution of child trafficking *modi operandi*, especially those utilizing information technology. These efforts are expected to strengthen the child protection system against human trafficking within the framework of Indonesian positive law.

Child Protection from Human Trafficking from the Perspective of Islamic Law

From the perspective of Islamic law based on the Qur'an and Hadith, cases of child trafficking for sexual exploitation, as occurred in decision Number 566/Pid.Sus/2023/PN.JMB constitute strictly prohibited acts. Islam views exploitation of humans, especially children, as a form of oppression that contradicts the principle of human dignity. The Qur'an explicitly prohibits all forms of human exploitation, as mentioned in Surah An-Nur verse 33, which forbids forcing female slaves into

prostitution if they desire chastity. Although the context of this verse addresses slavery at that time, the essence of the prohibition against coercion and sexual exploitation applies universally (Shah, 2021). Similarly, in a Hadith narrated by Bukhari, the Prophet Muhammad (peace be upon him) stated that there are three groups whom Allah will oppose on the Day of Judgment, one of which is the person who sells free persons and consumes the proceeds. This affirms that human trafficking, including children, constitutes a serious crime from an Islamic perspective.

In the context of *maqāṣid al-sharī'ah* (the objectives of Islamic law), protection of children from human trafficking can be examined from several aspects (Nurhayati, 2022). First, protection of religion (*ḥifẓ al-dīn*), where sexual exploitation of children can disrupt the victim's spiritual development and faith. Second, protection of life (*ḥifẓ al-naḥs*), as sexual exploitation negatively impacts children's physical and mental health (Aibak, 2023). Third, protection of intellect (*ḥifẓ al-'aql*), considering that trauma resulting from exploitation can interfere with children's cognitive and psychological development. Fourth, protection of lineage (*ḥifẓ al-nasl*), because sexual exploitation damages the child's reproductive and family future (Husien, 2024). Fifth, protection of property (*ḥifẓ al-māl*), where economic exploitation of children violates their right to a decent livelihood. Sixth, protection of honor (*ḥifẓ al-'ird*), because sexual exploitation strips away the dignity and honor of the child. In case 566/Pid.Sus/2023/PN.JMB, the defendant's actions clearly contradict all aspects of *maqāṣid al-sharī'ah*, particularly the protection of lineage and honor (Rahmatiah, 2023).

The form of exploitation in this case, namely offering sexual services of a child through online applications for material gain, is viewed as highly reprehensible in Islamic law. Such action falls under the category of *al-baghā* (prostitution/sexual exploitation), which is strictly prohibited in Islam (Shah, 2021). Although in this case the victim initiated the request for the defendant's assistance, this does not diminish the defendant's culpability because in Islamic law, consent does not eliminate prohibition in matters that are explicitly forbidden (*mā ḥurrima li dhātihī*) (Rohmawati, 2022). Furthermore, a victim who is still underage is considered not to have *ahliyyah kāmilah* (full legal capacity), so their consent cannot be used as a justification (Nasution, 2021). Imam Al-Ghazali in *Ihyā' 'Ulām al-Dīn* emphasizes the importance of protecting children from all forms of exploitation, including sexual exploitation, because children are a trust that must be safeguarded properly. The defendant's actions in exploiting a child for commercial sexual purposes also violated the principles of *'adālah* (justice) and *iḥsān* (benevolence) emphasized in Islamic teachings (Muzaiyanah, 2022).

Regarding legal sanctions, Islam views sexual exploitation of children as a serious crime that can be subject to *ta'zīr* punishment. *Ta'zīr* is a form of punishment entrusted to the discretion of judges or authorities based on considerations of public welfare. In the context of case 566/Pid.Sus/2023/PN.JMB, *ta'zīr* sanctions can include imprisonment, fines, or a combination of both as imposed by the court. However, from

the perspective of Islamic law, determining the form and severity of *ta'zīr* punishment must consider several aspects: first, the degree of the crime and its impact on the victim and society; second, the background and motives of the perpetrator; third, the possibility of rehabilitation and repentance of the perpetrator; and fourth, prevention of similar crimes in the future (Jailani, 2024). Based on these considerations, the 4-year imprisonment and fine of IDR 210 million imposed on the defendant can be considered consistent with the principle of *ta'zīr* in Islamic law, although in historical Islamic judicial practice, punishments for similar cases could vary depending on social and political contexts.

Another important aspect of Islamic law is the existence of protection and recovery mechanisms for victims. Islam emphasizes the principles of *raf' u al-ḍarar* (eliminating harm) and *jabru al-ḍarar* (compensation for damages) in handling crime victims (Purnamawati, 2024). In the context of protecting child victims of human trafficking, several approaches can be applied: first, psychological recovery through spiritual approaches and Islamic counseling to address trauma; second, social recovery through community support and reintegration into society; third, economic recovery through the provision of education and skills; and fourth, legal recovery through enforcement of justice and prevention of repeated victimization (Zainuddin, 2024). Additionally, the concepts of *kafālat al-yatīm* (care for orphans) and *laqīṭ* (abandoned children) in Islamic jurisprudence can be adapted to provide protection for child victims of human trafficking (Gurusi, 2024). The Prophet's companion, Umar bin al-Khattab, was known for his firm policies in protecting children from exploitation, including by providing allowances from the *bayt al-māl* (state treasury) for children in need of protection.

Prevention is a fundamental aspect of the Islamic approach to child protection. The concept of *sadd al-dharī'ah* (blocking the means to harm) can be applied through strengthening moral and religious education, monitoring children's use of technology, and restricting harmful content on social media and online applications (Lubis, 2024). In case 566/Pid.Sus/2023/PN.JMB, the use of the Michat application to offer the victim's sexual services demonstrates the importance of regulation and oversight of digital technology to prevent child exploitation. Additionally, Islam emphasizes the role of family and community in protecting children. The concept of *ḥaḍānah* (custody) in Islamic jurisprudence places great responsibility on parents to ensure the physical, mental, and spiritual well-being of children (Muharrani, 2024). The community also has a collective obligation (*fard kifāyah*) to ensure child protection and prevent exploitation.

Alignment between Islamic law and Indonesian positive law in the context of protecting children from human trafficking can strengthen the overall protection system (Zuhriah, 2024). The comprehensive approach of Islamic law, covering aspects of prevention, protection, recovery, and sanctions, can complement the existing positive legal framework. Islamic values such as protection of human dignity (*karāmah*

insāniyyah), justice (*‘adālah*), benevolence (*iḥsān*), and compassion (*rahmah*) can be incorporated into the application of child protection laws and eradication of human trafficking (Hayati, 2023). Furthermore, religious institutions such as mosques, Islamic boarding schools, and Islamic organizations can play an active role in prevention efforts through education and public awareness, as well as in victim recovery through spiritual and psychosocial support (Harry, 2024). By aligning Islamic law and positive law approaches, it is hoped that protection of children from human trafficking can be implemented more effectively and comprehensively, in accordance with the socio-cultural context of Indonesian society, which is predominantly Muslim (Aslati, 2024).

A Comparative Study of Positive Law and Islamic Law

In the comparative study between Indonesian positive law and Islamic law approaches to child trafficking case Number 566/Pid.Sus/2023/PN.JMB, several fundamental similarities merit careful examination. First, both legal systems view child trafficking for sexual exploitation as a serious crime requiring firm action. The principle of protecting children as a vulnerable group represents a value recognized and upheld in both Indonesian positive law through the Child Protection Act and Anti-Trafficking Act, and in Islamic law through the concepts of protection of lineage (*ḥifẓ al-nasl*) and honor (*ḥifẓ al-‘ird*). Second, both Indonesian positive law and Islamic law maintain that victim consent does not eliminate the unlawful nature of human trafficking offenses, especially when the victim is a minor. Third, both legal systems apply the principle of proportionality in determining sanctions, where positive law regulates it through minimum and maximum sentencing provisions, while Islamic law regulates it through the concept of *ta‘zīr* adjusted according to the severity of the crime. Fourth, both legal systems recognize the importance of prevention and rehabilitation aspects, albeit with different emphases and methods.

Despite several similarities, there are also significant differences between positive law and Islamic law approaches in handling child trafficking cases. First, in terms of philosophical foundation, Indonesian positive law is based on state sovereignty and is more oriented toward formal legality, while Islamic law is derived from divine revelation (the Qur’an and Hadith) and prioritizes spiritual and moral dimensions. Second, regarding the determination of sanctions, positive law is more bound by minimum and maximum penalties stipulated in legislation, while Islamic law offers greater flexibility through the concept of *ta‘zīr*, allowing judges to consider various factors including the offender’s repentance (*tawbah*). Third, the positive law approach to victim recovery prioritizes institutional mechanisms through state agencies, whereas the Islamic law approach emphasizes spiritual aspects and community roles. Fourth, in terms of prevention, positive law emphasizes legal regulation and enforcement, while Islamic law places greater emphasis on family roles and moral-religious education.

The Indonesian positive law approach possesses several strengths and limitations. Its strengths include: first, greater legal certainty through codification and

standardization of legal norms; second, more structured enforcement mechanisms through the criminal justice system; third, more comprehensive coverage in regulating various aspects of human trafficking; and fourth, better harmonization with international standards in child protection. The limitations of the positive law approach include: first, an orientation that tends to emphasize formal-legal aspects rather than substance and socio-cultural context; second, lack of spiritual dimension that could strengthen internal motivation to protect children; third, implementation often hampered by bureaucracy and resource limitations; and fourth, an approach that tends to be reactive rather than preventive in addressing the root causes of child trafficking such as poverty and inadequate education.

The Islamic law approach also has its own advantages and limitations. The first advantage is its strong spiritual dimension, which provides a moral and ethical foundation for child protection. Values such as *amānah* (responsibility), *‘adālah* (justice), and *rahmah* (compassion) can strengthen society’s internal motivation to protect children. Second, the Islamic law approach tends to be more holistic, integrating legal, moral, social, and spiritual aspects into a unified whole. Third, the strong concepts of family and community in Islam can serve as an effective social basis for prevention and victim recovery efforts. Fourth, flexibility in determining *ta‘zīr* sanctions enables more contextual responses to various forms of child trafficking. Nevertheless, the Islamic law approach also faces several limitations, including: first, challenges in codification and standardization of Islamic legal norms within modern judicial systems; second, varying interpretations of religious texts that may cause legal uncertainty; third, potential conflicts with universal human rights principles if applied literally without contextualization; and fourth, limitations in structured enforcement mechanisms within the context of the modern state.

In case 566/Pid.Sus/2023/PN.JMB, comparative analysis demonstrates that both legal systems have points of convergence that can be harmonized. The court’s decision to impose a 4-year prison sentence and a fine of IDR 210 million on the defendant aligns with the principle of proportionality in positive law, although the rehabilitative approach toward victims remains suboptimal. From an Islamic law perspective, the verdict can also be viewed as an implementation of *ta‘zīr* aimed at deterrence and prevention of similar crimes. However, the aspect of victim recovery, which constitutes an integral part of the Islamic approach to justice (*al-‘adālah al-tashrī‘iyyah*), is not explicitly reflected in the verdict. Conversely, the clarity of definitions and elements of criminal offenses in the Anti-Trafficking Act provides legal certainty in case handling, while Islamic legal values can strengthen moral and preventive dimensions that may receive insufficient attention in the positive law approach.

The potential harmonization between Indonesian positive law and Islamic law in protecting children from human trafficking can be realized through several strategies. First, integrating Islamic values such as protection of human dignity (*karāmah insāniyyah*) and moral responsibility (*amānah*) into the implementation of

child protection and anti-trafficking laws. For example, the Indonesian Ulema Council (MUI) could issue a fatwa on digital child protection to address new online exploitation methods. Second, strengthening the role of religious institutions such as Islamic boarding schools, religious study groups, and Islamic organizations in prevention efforts through education and community awareness. In practice, this could include joint programs between *pesantren* (Islamic boarding school) and local governments to provide training on safe internet use for children. Third, developing victim rehabilitation models that combine psychosocial approaches with spiritual-religious approaches for more holistic recovery. Religious courts, for instance, could collaborate with the National Narcotics Agency (BNNP) to design integrated rehabilitation programs for victims of trafficking who also experience drug abuse. Fourth, strengthening the roles of families and communities as the frontline of child protection, in accordance with the principle of *ḥaḍānah* (guardianship) in Islam and community-based child protection systems in the Child Protection Act. Fifth, increasing the participation of religious scholars and leaders in formulating child protection policies and programs to ensure cultural and religious sensitivity. Sixth, developing jurisprudence that accommodates Islamic legal principles in court decisions related to child trafficking cases.

Implementation of this harmonization model in the context of case 566/Pid.Sus/2023/PN.JMB and similar future cases can realize a more comprehensive child protection system that is contextual to the socio-cultural realities of Indonesian society. By integrating strengths from both legal systems—legal certainty and structured enforcement mechanisms from positive law, along with strong spiritual dimensions and community roles from Islamic law—Indonesia can develop more effective approaches to combating child trafficking. This aligns with the principle of national legal development that recognizes living legal values in society, including Islamic law, as sources of law formation. In the long term, this harmonization can also contribute to jurisprudential development that enriches national legal traditions and bridges gaps between normative and empirical aspects of child protection. Consequently, efforts to protect children from human trafficking can be implemented more effectively and sustainably, respecting the diversity of values within society while upholding universal principles of human rights and the best interests of the child.

Integrative Model for Child Protection from Human Trafficking

The integration model of Islamic legal principles within positive law implementation represents an approach that harmonizes *maqāṣid al-sharī'ah* values with Indonesia's formal legal framework to create a more comprehensive child protection system. *Maqāṣid al-Sharī'a* here refers to the objectives that Islamic law aims to achieve for human welfare in this world and the hereafter (Al Idrusiah et al., 2024; Kurniawan et al., 2020; Kurniawan & Zaiful, 2022; Kurniawan, 2018; Kurniawan et al., 2025;

Kurniawan et al., 2025), as understood by *uṣūl al-fiqh* scholars that *maqāṣid al-sharīʿa* are “the objectives and secrets of the *sharīʿa* established by God (*al-shāriʿ*) in all His laws, all of which lead to human welfare in this world and the hereafter” (Ibn ʿĀshūr, 2004, p. 165; al-Fāṣī, 1993, p. 7; al-Zuhaylī, 2011, II: 308).

Within this framework, such welfare will be realized through five basic principles known as *al-ḍarūriyyāt al-khams*, namely protecting religion (*dīn*), life (*nafs*), lineage (*nasl*), wealth (*māl*), and intellect (*ʿaql*) — as also affirmed in *al-Muwāfaqāt* (al-Shātibī, 2005, II: 8). Some scholars, such as ʿIzz al-Dīn ibn ʿAbd al-Salām, also add honor (*ḥifẓ al-ʿird*) as part of the *maqāṣid al-sharīʿah* (Ibn ʿAbd al-Salām, 1991, Vol. 1, p. 11). Contemporary scholars such as Jasser Auda have developed this *maqāṣid* theory by incorporating new dimensions such as protection of human rights, environmental protection, and sustainable development, while emphasizing a holistic approach that considers all dimensions of *maqāṣid* integratively, not hierarchically (Auda, 2022; Audah, 2014, 2022).

This integrative approach is not confined to the legal sphere but reflects a broader civilizational pattern in Islamic thought that values synthesis over dichotomy. As Kurniawan (2023) explains, the historical relationship between Islam and other civilizations has been multidirectional—characterized by intellectual exchange, competition, and cooperation—revealing Islam’s inherent adaptability to engage with various systems without compromising its ethical and theological essence. Within this broader context, the interaction between religious authority and legal institutions further demonstrates that religious values and state law can either complement or come into tension with one another, depending on how integration is negotiated (Mustajab & Kurniawan, 2024). Therefore, the incorporation of *maqāṣid al-sharīʿa* into Indonesia’s positive law on child protection represents not merely a contextual innovation but a continuation of Islam’s dialogical and integrative tradition that bridges religious and civic values in pursuit of *maṣlaḥah ʿāmmah* (public welfare).

Building on this theoretical foundation, the integration model proposed in this research highlights that the principles of protecting lineage (*ḥifẓ al-nasl*) and honor (*ḥifẓ al-ʿird*) are particularly relevant to the context of child protection from human trafficking. These values can enrich the substantive dimensions of Law No. 21 of 2007 and the Child Protection Act, ensuring that positive law is not only applied formally but also supported by ethical and spiritual imperatives rooted in Islamic tradition. The concept of *amānah* (responsibility), for example, reinforces the awareness that protecting children is both a legal obligation and a moral-spiritual duty. Likewise, adopting *maṣlaḥah* (public interest) as a legal objective ensures that every decision and action taken by law enforcement officials is consistently oriented toward the best interests of the child.

Strengthening prevention aspects based on religious values can be accomplished through character education integrated into formal and non-formal curricula. These educational programs emphasize values such as responsibility

(*amānah*), justice (*‘adālah*), and compassion (*rahmah*) that can prevent the formation of exploitative attitudes toward children. Islamic educational institutions such as *madrasah* and Islamic boarding schools can develop specialized modules on child protection from an Islamic perspective, teaching that child exploitation contradicts religious principles. Public awareness campaigns about the dangers of child trafficking can also utilize religious forums such as Friday sermons, religious study groups, and *majelis taklim* to reach the broader community. In cases like Number 566/Pid.Sus/2023/PN.JMB, prevention based on religious values can help anticipate misuse of technology such as the Michat application, for sexual exploitation purposes, by instilling awareness that such activities violate not only state laws but also religious principles.

Optimizing the role of communities and religious institutions in child protection can serve as first-line early warning and detection systems. Religious institutions can act as information centers and reporting hubs for suspicious cases. For instance, Fatayat NU in East Java conducts training for LKP3A cadres, equipped with SOPs, to provide counseling and reporting mechanisms for women and children experiencing violence (NU Online Jatim, 2023). Religious leaders are also trained to recognize trafficking indicators and report appropriately to authorities. Community-based religious networks like Muhammadiyah and NU collaborate with agencies such as the Indonesian Child Protection Commission (KPAI) and Social Services Department to form protective networks. Family support programs help address trafficking risk factors like poverty and dysfunction. In the context of case 566/Pid.Sus/2023/PN.JMB, such proactive community involvement would create a more secure environment for vulnerable children like the 17-year-old victim.

Improvement of sanction and rehabilitation systems based on integration of both legal systems can produce more equitable and effective approaches. The sanction system in positive law that emphasizes legal certainty through minimum and maximum penal provisions can be enriched with the principle of *ta’zīr* in Islamic law, which is more flexible and contextual. In child trafficking cases, judicial considerations should not be limited to formal juridical factors but should also include moral dimensions and social impacts of such acts. Rehabilitation programs for perpetrators can integrate conventional psychological approaches with spiritual approaches emphasizing repentance (*tawbah*) and fundamental mindset changes. Meanwhile, rehabilitation for victims can combine psychological counseling with spiritual guidance for holistic recovery. Restitution and compensation models for victims can also be developed by adopting the concept of *diyat* (compensation) in Islamic law, which emphasizes the perpetrator’s responsibility to provide proportional reparations to victims. While *diyat* is traditionally applied in *qisās* cases, its underlying principle of proportional compensation can inform civil restitution mechanisms in state courts, providing a normative bridge between Islamic values and positive law practice. In case 566/Pid.Sus/2023/PN.JMB, the court could consider not only imposing a 4-year

prison sentence and a fine of IDR 210 million on the defendant but also directing a portion of the fine toward victim rehabilitation.

Recommendations for policy and legislative improvements encompass several important aspects to strengthen child protection from human trafficking. First, revision of Law No. 21 of 2007 on the Eradication of Human Trafficking is necessary to integrate more explicit provisions regarding recovery and rehabilitation of child victims, considering approaches based on religious values. Second, the government needs to develop specific regulations governing the monitoring of online applications potentially misused for child sexual exploitation, such as Michat in case 566/Pid.Sus/2023/PN.JMB. Third, guidelines should be developed for law enforcement officials and judges in handling child trafficking cases that integrate Islamic law and positive law perspectives. Fourth, central and local governments need to allocate adequate budgets for community-based prevention programs and victim rehabilitation that adopt integrative approaches. Fifth, cooperation between government agencies and community organizations and religious institutions should be strengthened in implementing child protection policies against human trafficking. Sixth, Indonesia should promote the development of regional and international instruments that accommodate approaches based on religious values in protecting children from human trafficking.

Implementation of this integrative model requires commitment and coordination from various stakeholders, including government, judicial institutions, civil society organizations, religious institutions, and the broader community. An approach based on integration of Islamic law and positive law has the potential to address the complexity of child trafficking issues in Indonesia, which cannot be adequately addressed through a formal-legal approach alone. Religious values can provide a strong moral foundation to prevent child trafficking and ensure comprehensive protection for victims. Meanwhile, formal mechanisms of positive law provide a procedural framework that guarantees legal certainty and effective enforcement. By harmonizing the strengths of both legal systems, Indonesia can develop a model for protecting children from human trafficking that not only complies with international standards but is also rooted in the values and local wisdom of Indonesian society. This aligns with the spirit of Pancasila, particularly the first principle of Belief in One Supreme God, which acknowledges the religious dimension in national and civic life.

Conclusion

The comparative study of Islamic law and Indonesian positive law in the child trafficking case Number 566/Pid.Sus/2023/PN.JMB reveals that both legal systems view child trafficking for sexual exploitation as a serious crime requiring firm action. Islamic law, through the principles of *maqāṣid al-sharī'ah*—particularly *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-'ird* (protection of honor)—provides a strong moral

and spiritual foundation. Meanwhile, positive law, through Law No. 21 of 2007 and the Child Protection Act, offers a structured legal framework with enhanced criminal sanctions. Fundamental similarities between the two systems include the recognition of children as vulnerable groups, the invalidity of victim consent under 18, and the principle of proportionality in sanctions. Key differences lie in philosophical foundations, the flexibility of *ta'zīr* in Islamic law versus standardized penalties in positive law, and divergent approaches to victim recovery—spiritual in Islamic law, institutional in positive law. In the case examined, the 4-year imprisonment and IDR 210 million were fine were proportionate, but the absence of victim recovery measures indicated a systemic gap.

Harmonization can be achieved by integrating Islamic values—such as *karāmah insāniyyah* (human dignity) and *amānah* (moral responsibility)—into the implementation of positive law. Strengthening the role of religious institutions in prevention, developing psychosocial-spiritual rehabilitation models, and empowering families and communities as frontline protectors are key strategies. This integrative model does not seek to replace state law, but to enrich it with culturally rooted values. By synergizing the procedural certainty of positive law with the ethical depth of Islamic law, Indonesia can build a more comprehensive, sustainable, and humane child protection system—one that is both compliant with international standards and grounded in the socio-religious fabric of its society. This approach aligns with the spirit of Pancasila and advances the global discourse on culturally responsive child protection.

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