

Judges' Considerations in Settling Crimes of Violence Against Biological Children: An Islamic Criminal Law Perspective

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Abstract

Violence against children in Islam is permissible if it does not exceed the limit. It is also only used as an educational effort, not to punish without reason. Because if children are left free without rules, it will have a bad impact on children. The objectives of this study are: To find out the basis of the judge's consideration in the decision of case Number 243/Pid.Sus/2020/PN Idi; and to find out the crime of violence against children in the view of Islamic criminal law. The method used is a type of qualitative research with a case approach. The data collection techniques are interviews and documentation. While the first analysis examines and explains theories. Second, looking for answers to the main problem, and third, drawing conclusions that are the end of this research, from general to specific. The results of the research obtained are 1) The incriminating consideration is that the actions of NR's sister are a very reprehensible, immoral act committed by parents against children, thus causing disability. The mitigating dispute is that NR's sister has apologized and promised not to repeat her actions, so this decision is *ultrapetita*; court decisions in cases of violence against children need to consider aspects of Islamic law, national law, and child protection principles. The goal is to ensure justice for victims, prevent future violence, and strengthen the synergy between religious values and state law in protecting children as the next generation of the nation. 2) Islam itself is very clear and firmly prohibits acts of violence, especially against children. The Qur'an, hadith, and scholars also discuss acts of violence against children with various opinions with the same goal, namely, that educating children is the right of parents, with provisions that have been recommended without crossing the limit in terms of education. The state also regulates in terms of educating and nurturing children, namely in Law Number 35 of 2014 concerning Child Protection.

Keywords: Violence Against Children, Judge's Consideration, Islamic Criminal Law

Introduction

Law is a collection of regulations consisting of Norms and Sanctions. In state and social life, law is an inseparable element, as the classical legal adage reads *Ubi Societas Ibi Ius*, which means that where there is a community, there is a law (Samidan Prang, 2019). Or in another adage, Prof. Satjipto Raharjo, who is called the Founder of the Progressive Law School in Indonesia, conveyed in his famous admonition, "Law for the Community, Not the Community for the Law". (Manan, 2009). On the one

hand, this means that the law is the main reference for behavior, both as an individual of society and a nation (Santoso, 2003). On the other hand, it also aims to regulate society through a series of rules containing orders or prohibitions with a coercive nature in order to create a safe, orderly, peaceful state, accompanied by sanctions imposed on violators.

Meanwhile, *jinayah* (criminal act) according to the term (terminology) is an act that is prohibited by Sharia, whether the act is about the soul, property, or others. The term *jinayah* has several meanings, whose connotations are all forms of evil deeds. In another formulation, it is stated that *jinayah* is an act of great sin or crime (criminal), for example: killing, injuring someone, or defiguring a person's limbs (Fuad Thohari, 2016).

In life, children are immature individuals both physically, mentally, and socially. For this reason, protection from adults is needed. But in this day and age, it is very unfortunate because many minors are already facing the law. This is due to the lack of protection from adults, especially the elderly

Children are a mandate and grace from God Almighty, in whom is inherent the dignity and dignity as a whole human being. Every child has dignity, and dignity that should be upheld, and every child born must get his or her rights without the child asking. This is following the provisions of the convention on the rights of the child which has been ratified by the Indonesian government through the Presidential Decree of the Republic of Indonesia Number 36 of 1990 which states the general principles of child protection, namely non-discrimination, the best interests of children, survival and growth and respect for children's participation.

Children everywhere around the world are born to become the next generation of the nation. They will appear to replace the previous generation with various kinds of history. Thus, the strategic position of a nation is very determined by these children. Giving the best to children must always be put forward through coaching and protection to ensure the growth and development of physical, mental, and social development in a whole, harmonious manner, aligned and balanced (Ketut et al., 2022). The law of the Republic of Indonesia number 23 of 2002 concerning child protection also places an obligation to protect children.

Law Number 23 of 2002 concerning Child Protection explains that a child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb. Child protection is an activity to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally under the dignity and dignity of humanity, and receive protection from violence and discrimination.

According to Law Number 11 of 2012 concerning the juvenile criminal justice system, it is stated in article 1, paragraph 2 that there are three categories of children who conflict with the law, namely:

1. Children who conflict with the law, meaning that children are perpetrators of criminal acts.
2. Children who are victims of criminal acts are children who experience physical, mental, and/or economic losses caused by criminal acts.
3. A child who is a witness to a criminal act, that is, a child who can provide information for the benefit of investigators, prosecutors, and examinations in court about a criminal case that he heard, saw, and/or experienced himself.

Based on the explanation of the child category, in this case, the author only focuses on children who are victims of crime. That is, where the child is a victim of physical violence. Violence against children is any act done to children that causes children to suffer physically, psychologically, sexually, and/or be abandoned. Violence against children does not only occur in poor families or poor environments. This phenomenon can occur in all racial, economic, and cultural groups. Even in families that look harmonious, domestic violence can occur in children (Maisaroh, 2013). Some people may think that violence against children is just about physical violence. However, it is only one form of violence against children.

In this writing, the author explains the exposure of physical violence. Physical violence in children is violence that occurs when someone hurts a child's body or puts him in a physically dangerous state. Children who are physically abused can suffer light, severe injuries, and even death. Examples of forms of physical violence are hitting, throwing, strangling, and snorting cigarettes on children, and the like. Physical violence in children can be characterized by injuries, bruises, or scars on the body. Children can also be seen grimacing in pain (Prastini, 2023).

Islam expressly and prohibits violence against children. But there is one hadith that says, "Command your children to pray when they are seven years old. Beat them if they are ten years old and they are still reluctant to perform prayers." The hadith is certainly contrary to the concept that children should not be subjected to violence. However, the existence of this hadith is not solely without a clear reason. Corporal punishment is not a punishment that can cause trauma and injury to the child.

Child violence in Islam is allowed if it does not exceed the limit and is used as the final step taken. This violence will be carried out if it is felt that no more punishment can deter children. It is also only used as an educational effort, not to punish without reason. Because if children are left free without rules, it will have a bad impact on children. Children can deviate from religious rules, act as they please, and exhibit other negative behaviors (Hosnah, 2023)

This research is based on the case of the defendant with the initials NHT who is legally and convincingly guilty according to the law of committing a crime of violence against a child that resulted in serious injuries, namely the victim's child with the initials NHN as regulated and criminally threatened in article 76C Jo article 80 of Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child

protection. As a result of the violent crime that caused serious injuries committed by the defendant's child, the victim felt pain and the skin felt like it was burning and peeling on the neck, shoulders, left chest, back, to buttocks. In this case, the Public Prosecutor, in reading the criminal charges, sentenced the defendant to imprisonment for 2 (two) months, and the defendant paid a case fee of IDR. 2,000. In the reading of the verdict by the Panel of Judges, the defendant was sentenced to 8 months in prison and paid a case fee of IDR. 2,000.

Several previous studies have shown mixed results. Research conducted by (Razi & Mesraini, 2024) which stated about the legal considerations stipulated by the Panel of Judges in Decision Number 345/Pid.Sus/2021/PN.Sgl concerning the crime of parental violence against children using Law Number 23 of 2002 concerning Child Protection. Based on the examination, all of the elements mentioned have been legally and convincingly proven by the Panel of Judges. The verdict handed down by the judge has prioritized the theory of punishment because the judge, in making his decision, is based on the facts of the trial, both from witness statements, perpetrator statements, and from existing evidence. In Decision Number 345/Pid.Sus/2021/PN.Sgl, the judge has realized the legal principles in deciding that the perpetrator, namely the victim's biological father, is guilty and proven to have committed an act of violence in the form of persecution. However, the verdict still does not provide an ideal sanction, because looking at the number of cases of violence that occur against children always increases every year.

Research conducted (Ramadhanti & Nurhafifa, 2020) entitled Criminal Acts of Persecution Committed by Parents Against Their Biological Children. Acts of persecution often occur in children, carried out by their parents, even though parents must protect their children as well as possible. The occurrence of criminal acts of persecution by parents against their biological children is triggered by broken families, the most important of which is divorce. From the results of the study, it is known that the family factor, namely divorce between the two parents, is the determinant of the occurrence of child abuse crimes. Divorce cases will trigger jealousy in terms of parenting, so that there is a desire to abuse children by one of their parents. Handling Divorce is the most important thing in overcoming parents' understanding of the fulfillment of children's rights and is the main responsibility in the sustainability of children's life development.

Research conducted by (Galuh & Sari, 2023) with the title Violence against Children: Highlighting Criminal Responsibility in Positive Law and Islamic Law. The results of this study are that in positive law, there are rules that regulate the rights and protection of children contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Meanwhile, in Islamic law, violence is something that the Prophet PBUH hates.

After explaining several previous studies, it shows that there are various research results. What becomes the Novelty of this research is a novelty in its approach by combining the perspective of Islamic criminal law with national law related to child protection in Indonesia. This approach provides a more holistic understanding of assessing acts of violence against biological children, which has not been widely reviewed in previous studies. In addition, in the context of violence against biological children, the use of the concept of *takzir* (punishment determined by a judge) is recognized as a flexible solution in Islamic law, which can include educational sanctions or coaching for parents. This study also highlights how the concept of *takzir* can be applied in legal proceedings in court, providing an approach that emphasizes more on rehabilitation than just punishment, and to find out the crime of violence against children in the view of Islamic criminal law

Research Methods

This study uses a case approach (*case approach*), carried out by conducting a review of the case decided with a prison sentence by the Judge as stated in the decision NO 243/Pid.Sus/2020/PN Idi. This is following the main study, namely the study of the considerations of the judicial institution that decided this case, so that it reached the stage of imposing the decision NO 243/Pid.Sus/2020/PN Idi. The data used in this study is Secondary data. Secondary Data is data that official documents include official documents, books, research results in the form of reports obtained from various literature, both articles related to problems, and internet sites (Amiruddin & Asikin, 2020). The secondary data in this study is the decision of the Idi District Court Judge Number 243/Pid.Sus/2020/PN Idi, Law Number 35 of 2014.

The data collection techniques are interviews and documentation. The interviews conducted in this study were unstructured interviews by interviewing the Idi District Court Judge. In this study, the analysis carried out is: first, to study and explain the theories. Second, to find answers to the main problem, and third, to draw conclusions that are the end of this research, from general to specific (Wijaya et al., 2025). In the research, the data analysis techniques carried out are: 1. Data reduction, by selecting the simplification of data from the record of the judge's decision results by grouping the appropriate problems; 2). Presentation of data, connecting and comparing data from the judge's decision with the perspective of Islamic criminal law, 3). Conclusion drawn, obtained based on the results of interviews and documentation.

Result and Discussion

Analysis of the judge's consideration of the verdict

In June 2020, at around 10.00 WIB, or at least still included in June 2020 to coincide with Alue Parang Hamlet, Bantayan Village, Simpang Ulim District, East Aceh Regency. Sister (NR) has committed violence against minors, namely the victim is the biological child of Nurhayati (NR) herself, namely (NH). Sister NR was cleaning

her goat drum, then Sister NR told the victim's child to boil water, and Sister NH immediately did what Sister NR told her to do. When the water was boiling, Sister NH immediately put the hot water into a thermos. Then outside the house I heard Sister NR being angry with Sister NH while saying "that's why the water was put in the thermos, it hasn't boiled yet, I'll water it later" then Sister NH replied "the water is boiling" and Sister NH immediately put the water in the flask. Not long after, Sister NR immediately entered the house and opened the thermos and poured water in the thermos on Sister NH's body.

After the incident, a moment later, Sister NR immediately took off Sister NH's clothes and wrapped her body in hot water with pepsodent and starch. Sambal he said, "Don't leave the house and don't tell others, later, mamak will flush hot water again". Sister NH was not taken to the hospital for follow-up treatment, only bought ointment from her stepfather.

Not only was violence committed by NR's sisters, but NR's sisters often committed acts of violence that were at other times and for a long time since NH's sister was a child. The violence was in the form of sister NH being tied up/hung with a head down position with the legs and hands of sister NH each tied using a pole rope above the house, sister's hand/elbow NH was hit with a hammer until sister NH's bones shifted and swollen until the time of the trial, sister NH was once thrown with a knife, but did not affect sister NH, Sister NH has also been thrown/thrown into the river/channel in front of Sister NR's house and many more Acts of violence committed by Sister NR against Sister NH for the reason that Sister NH has heard that Sister NR once said "I want revenge on you, because in the past your father often hit me". From the chronological explanation above, the criminal charge filed by the Public Prosecutor is NR's sister

1. Legally and convincingly, according to the law, it is guilty of committing a criminal act of violence against children as regulated and threatened in Article 76C Jo Article 80 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.
2. Imposing a criminal sentence on NR's sister to imprisonment for 2 (two) months with an order that NR's sister be immediately detained;
3. Stipulate that NR's sister pay the case fee of Rp. 2000.

Then on February 25, 2021, after going through the judicial process and based on the facts in the trial, NR's sister was legally sentenced by the Panel of Judges and guilty of committing a crime of violence against a child with a prison sentence of 8 months and paying case fees to each of IDR. 2000,- (two thousand rupiah).

The author collected data in the form of the necessary files and the results of the author's interview with the Idi District Court Judge. The author analyzes that in the case of the crime of violence against a biological child that caused serious injury, in the study of the verdict Number 243/Pid.Sus/2020/PN Idi, the Judge decided that the

case, in the reading of the verdict, exceeded the criminal charges filed by the Public Prosecutor (*ultrapetita*).

The Judge's consideration in this decision, the aggravating circumstance is that NR's sister is the biological mother of the victim NH, NR's sister has neglected her duty to educate children, has committed violence against her minor biological child so as to cause disability in her child. The mitigating circumstance is that NR's sister has apologized and will not repeat her actions, NR's sister still has a baby who was 2 years old at that time and more than a month. In case Number 243/Pid.Sus/2020/PN Idi, the Judge used Law Number 35 of 2014 concerning Child Protection, article 76 C Jo article 80 paragraphs (2) and (4).

Crimes of Violence against Biological Children from the Perspective of Islamic Criminal Law

Qur'anic verses that explain the prohibition of committing acts of violence against children

a. Surah An-Nahl Verse 78

وَاللَّهُ أَخْرَجَكُمْ مِنْ بُطُونِ أُمَّهَاتِكُمْ لَا تَعْلَمُونَ شَيْئًا وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ ۖ لَعَلَّكُمْ تَشْكُرُونَ

Meaning: "And Allah brought you out of your mother's womb in a state of ignorance, and He gave you hearing, sight and heart, so that you may be grateful."

When Allah SWT takes out every baby or child from a mother in a state of ignorance. After that, He gave them hearing by which they knew sounds, sight by which they could see things, and the heart, which is the intellect, whose center is the heart. This is according to a valid opinion. There are also those who say, brain and intellect. Allah also gives us intellect by which we can distinguish things, which are subordinate to *mudhorat* and benefits. All the powers of the five senses are gradually acquired by humans. Each time he grows, his hearing, vision, and intellect will increase until adulthood. The bestowal of the five senses to human beings, so that they can worship Allah well (Ibn Katsir, 2004)

According to the tafsir of *Jalalain* (and Allah brought you out of your mother's womb in a state of ignorance), the number of *التعلمون شيئا* sentences is in the position of being a thing or a sentence of *وجعل لكم السمع* (and he gives hearing). The word *السمع* means plural, even though the pronunciation is *mufrad* (vision) (Al-Mahali, Jalaluddin Imam, 2009)

In the tafsir of Al-Misbah, this verse states that: and Allah brought you out of your mother's womb according to His power and knowledge. Just as you were intangible, so He can bring you out of the bowels of the earth and bring you back to life. When you were taken out of your mother's womb, you did not know anything that was around you, hearing, sight, and various hearts, as provisions and tools to gain knowledge so that you would be grateful for these tools (Quraish, 2005).

b. Surah Ali 'Imran Verse 159

فَبِمَا رَحْمَةٍ مِنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لَانْفَضُّوا مِنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ

It means: "It is by the grace of Allah that you are gentle towards them. If you are harsh and rude-hearted, of course, they will distance themselves from your surroundings. Therefore, forgive them, ask for forgiveness for them, and consult with them in the matter. Then, when you have made up your mind, trust in Allah. Indeed, Allah loves those who trust in Him."

Based on this verse, the Qur'an, as the main source of Islamic teachings, has provided a lot of awareness for humans about the importance of compassionate, mutual help, prioritizing peace rather than violence, respecting the rights of others, acting gently, not being rude, not hard-hearted, forgiving, and trusting. Some of these things are relevant to know and apply in schools as a place for education. So, in an effort to create a safe, peaceful, and peaceful education, there must be serious efforts from various parties.

According to *Tafsir Jalalain* (So blessings) ma is an addition (mercy from Allah, you become gentle) O Muhammad (to them) so that you face their transgression of your commands with a lenient attitude (and if you are harsh), that is, your bad morals are not praiseworthy (and hard-hearted) until you take harsh action against them (of course they will distance themselves from your surroundings). so forgive them for the wrongs they have done (and ask for forgiveness for them) for those wrongs until I forgive them (and consult with them) that is, ask for their opinion or the fruit of their thoughts (on the matter) i.e. the matter of war and others to win their hearts, and so that the people may imitate the sunnah and the footsteps of your steps, then the Messenger of Allah (peace and blessings of Allah be upon him). A lot of deliberations with them. (Then) when you have made up your mind) to do what you want after deliberating (then trust in Allah), that is to say, believe in Him. Indeed, Allah loves those who trust in Him (Al-Mahali, Jalaluddin Imam, 2009).

This means that one should always speak with a gentle voice and do good to fellow human beings. If you speak rudely and ugly to your fellow men, they will stay away from you. Be forgiving to those who have done bad or bad things to us. Solving all problems and problems using consensus deliberation. Respect every opinion expressed by other deliberation participants. Do not prioritize your ego or opinion in conducting deliberations. When the result of the deliberation has been agreed, it should be done together and surrender (trust) everything to Allah.

The main issue of anti-violence education is contained in QS. Ali 'Imran verse 159 above begins with his command to prioritize deliberation in all aspects of life. The concept of *musyawarah* has values that show the importance of democracy. In the sense of a democratic leader's attitude, by trying to accept criticism and suggestions from

his members and trying to guide his members in a good method without any element of violence. The formation of the whole human being through education is a national ideal that has long been upheld by the nation's teachers. Because humans are unique creatures who can be educated (receive education) and provide education to others for the realization of a value that is to be achieved in national education. These values are enshrined in the goal of national education, which is to make Indonesian people whole by helping students to develop their potential (Anwar, 2014).

c. Surah Al-Ma'idah Verse 32

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَآئِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعْدَ ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

"Therefore, We have ordained (a law) for the Children of Israel, that: whoever kills a man, not because that person (kills) another person, or not because he has caused harm on the earth, it is as if he had killed all mankind. And whoever preserves the life of one man, it is as if he has preserved the life of all mankind. And indeed, Our Messengers have come to them with clear revelations, and many of them have indeed gone beyond the limit of doing evil on the earth."

The verse explains about human rights that are regularly protected. In essence, humans have these rights. With this study, humans understand that there is a law that explains the prohibition of killing or damaging something on Earth. According to the Tafsir of Al-Azhar, therefore, we oblige the Children of Israel that the goods of sipa that kills someone, which is not because of killing (also) (found at the base of verse 32). That is, because of the great sin of killing man, which had been started by the son of Adam to his brother, we made a rule for the Children of Israel. That whoever kills his fellow man, who is not guilty of killing another man, is guilty of killing another person, that is, he is killed by the order of the judge; "or do any harm to the earth", i.e. disturbing security, robbing and robbing, rebelling against the righteous Imam, setting up mobs, robbing people's property, burning houses, and so on. "So it is as if he has killed all mankind". This verse asserts that a murderer and a destroyer of public order and security is the same as killing all human beings (Hamka, 2007)

"And whoever gives life to it, it is as if he were giving life to all mankind." He emphasized, if each of us has taken care of the lives of others, of course, the whole community will be alive. Free from fear and anxiety. Therefore, if we look at reconciling the person, so that there is no bloodshed, no one should have their lives taken away; their lives will be lost outside the provisions of the law. So in Islamic Religious Law, when someone is chased by someone who wants to kill him, then that person hides in our house, and we protect him. So if the pursuer asks if he is hiding here, we can lie that he is not here, so that the life of the person we are hiding may be preserved. It can even be confirmed that not only is it allowed, but he is even obliged to lie at that time (Hamka, 2007)

Can we understand in this verse that preserving the lives of fellow human beings is obligatory in person (*fardhu 'ain*), a personal responsibility for each of us, to maintain the security of living together. At the end of verse 32, it is explained that humans only hitchhike on this earth, and even that is only temporary. If he crosses the boundaries set by God, the one who will doubt is not anyone else, but himself. For however he tries to cross the limit prescribed for himself as a man, yet surely he is bound to the absolute power of God.

d. Surah Al-Baqarah verse 233

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّمَ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلِّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۚ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَزِيعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ﴾

Means: "And mothers should breastfeed their children for two whole years, for those who want to breastfeed perfectly. And fathers must properly bear their maintenance and clothing. A person is not burdened beyond his or her capabilities. Let not a mother suffer for her child, nor for a father (suffer) for his child. The heirs are also obligated like that. If both want to wean with agreement and deliberation between the two, then there is no sin against both. And if you want to breastfeed your child to someone else, then there is no sin for you to pay in a proper way. Fear Allah and know that Allah is All-Seeing of what you do."

Basically, this verse is a continuation of the episode discussed in the previous verse, namely the law of marriage and talaq, which ends in the separation of husband and wife. And maybe they have children who are still breastfeeding. So through this verse, Allah SWT commands wives who have been rejected to continue breastfeeding their children (Al-Shabuniy, 1981). Furthermore, Wahbah Al-Zuhailiy explained that this verse is intended for women who are rejected or not, both of whom are ordered to breastfeed their children for two full years and no more. However, there is no prohibition on breastfeeding children for less than two years if it is indeed seen that there will be benefits in it (Al-Zuhailiy, 2009). Imam Ibn Katsir (2005) views this verse as guidance from Allah SWT for mothers; they should breastfeed their children perfectly, that is, for two years.

The obligation of fathers is to provide for mothers (Ash-Shabuni, 2011). Whether in the relationship of husband and wife who are overwhelmed with affection, or even if they are divorced, they bear the shopping, the clothes of the wife or widow who are breastfeeding her child according to the proper (*ma'rūf*), that is, according to the standard of living (standard) that is proper in the woman's life. Remember that a mother at the time of breastfeeding is carrying a very heavy burden, consuming a lot of energy, spiritual and physical. A mother has sacrificed, while the child she breastfeeds is usually from her husband. Therefore, defending his wife and sufficiency in her expenses, especially in childcare, is an absolute obligation for a husband. These

two verses are very important for children's education. Often we see, especially in children whose parents divorce, there is a bitter grudge against the child himself because of the good upbringing that comes from the mother or father. The grudge between the two of them is transferred to the young child. So that there are children who hate their father, because their father is always spoiled by their mother in front of him, or vice versa. How heartbroken a father would be if his son did not appreciate it (Hamka, 2007).

With this guidance, children who are born are guaranteed good physical growth and mental development. In fact, he must still get this guarantee even though his father has died, because the heirs are also obliged to do so, namely to meet the needs of the child's mother so that she can breastfeed and maintain the child properly. What is meant by heirs is those who inherit the father, namely the child who is breastfed. In the sense that the inheritance that is the right of the child of his deceased father is used, among other things, for the cost of breastfeeding and even eating and drinking the mother who breastfeeds him.

However, if both parties (fathers and mothers) are both pleased and have been well deliberated, and have agreed that this child is forced to be breastfed by another woman, then religion does not prohibit it, because education, parenting and defense of the child are the full responsibility of both of them. Find another woman who will breastfeed her and pay her properly, here God warns with the words *bil ma'rūf* which is known and considered appropriate according to the common law in society, considering time and space. So that neither side feels disadvantaged.

Hadith explaining educating children (beatings that are recommended and not recommended)

a. Recommended beatings

The understanding of the hadith advising hitting children in context is understood as the concept of educating children based on the hadith of the Prophet Saw.

Parents as the person in charge of their children's education were ordered by the Prophet Saw, to order them to perform prayers. He said:

مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ ، وَاضْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرِ سِنِينَ ، وَفَرِّقُوا بَيْنَهُمْ فِي الْمَضَاجِعِ
(رواه ابو داود)

Meaning: "Command your children to pray when they are 7 years old. And beat them when they are 10 years old. And separate the beds." (HR. Abu Daud).

The command to carry out prayer is carried out strictly, because in general, the command to pray has been carried out by parents since before that age. Children from the age of four or five years have been invited by their parents to pray together. Children do it even by following or imitating prayer movements. Children at this age just follow along; they have not done well, both in their movements and in their reading. Children sometimes want to do it and sometimes do not want to do it. Now,

after the age of the child reaches seven years old, the parents' orders are to be strictly not like when they are under seven years old (Majid, 2012).

The commandment to pray expressly begins at the age of seven and continues and increases until the ages of 9 and 10. If at the age of 10 a child does not want to carry out the prayer command, then the parents are ordered to hit.

This hadith is an order to punish children who disobey orders or violate prohibitions. Punching here means a punishment that follows the conditions; it could be that what is hit is the inner by being isolated or disliked, angry, and others. Or a physical blow if necessary, which in principle the child can change himself for the better according to commands and prohibitions. If it is interpreted as a physical blow, it is a harmless blow, but it can change the child's attitude for the better. The punishment of spanking is given to children when they are 10 years old, because at this age, a child is generally able to withstand a blow as long as it is not faced. This blow indicates a severe punishment for the child who abandons prayer. The followers of Madhhab Shafi'i oblige beating children who leave prayer intentionally when they are ten years old.

Imam Malik is of the opinion that, based on the above hadith in the redaction (instruct them) it is true that parents are obliged to order their children to perform prayers to be trained, but for children, who are not entitled to receive beatings as stated in the words of the Prophet (and hit them) he believes that beatings can hurt others, while it is not permissible for Sunnah matters (Abu Malik Kamal, 2007).

As for what is meant by a punch or slap here, it is a blow that is not harmful, but an educational blow that serves to make the child admit their mistake and want to correct it. And the blow should not be directed at the child's face, because it is synonymous with one's mental and honor. Never bring down a child's mentality or honor, later he will become a timid child, inferior, and so on.

The order to separate the beds between them, intended to avoid sexual defamation in bed, because the age of ten is the age of puberty or approaching adolescence. Her sexual development is as well as her physical, spiritual, and lust development. Shaykh al-Manawi in *Fath al-Qadir Syarah al-Jami' al-Shaghir* said that the separation of the beds between them was to avoid sexual turmoil. In the hadith, the combination of the commandment to pray and the commandment to separate them from the bed gives them lessons in order to keep the commandments of Allah as a whole and to maintain good relations between human beings. Sleeping together between siblings in the same bed is not a good education and worries about sexual deviation, either intentionally or unintentionally. Al-Thibiy said: The commandment to pray and to separate them from each other in the bed at a young age is combined, because it teaches ethics and observes the commandments of Allah as a whole and gives lessons and relationships between creatures and so that they do not stop in suspicious places, then they abandon haram things (Majid, 2012).

b. Beatings are not recommended

The first form of protection given in the hadiths of the Prophet PBUH, in the aspect of *min janib al-'adam*, is the existence of legal provisions that prohibit all acts that can harm and violate the rights of children. This is found in many hadiths of the Prophet PBUH. In general, the Prophet PBUH forbade parents to commit crimes or violence against their children, and vice versa. The prohibition of committing this crime includes all forms of acts that violate the rights of children. As the Prophet PBUH said:

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَهَنَّادُ بْنُ السَّرِيِّ قَالََا حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ شَيْبِ بْنِ عَرْقَدَةَ عَنْ سُلَيْمَانَ بْنِ عَمْرٍ وَبْنِ الْأَحْوَصِ عَنْ أَبِيهِ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ فِي حَجَّةِ الْوَادِعِ يَا أَيُّهَا النَّاسُ أَلَا أَيُّ يَوْمٍ أَحْرَمٌ ثَلَاثَ مَرَّاتٍ قَالُوا يَوْمَ الْحَجِّ الْأَكْبَرِ قَالَ فَإِنَّ دِمَاءَكُمْ وَآمَوَالَكُمْ وَأَعْرَاضَكُمْ بَيْنَكُمْ حَرَامٌ كَحُرْمَةِ يَوْمِكُمْ هَذَا فِي شَهْرِكُمْ هَذَا فِي بَلَدِكُمْ هَذَا أَلَا لَا يَجْنِي جَانٍ إِلَّا عَلَى نَفْسِهِ وَلَا يَجْنِي وَالِدٌ عَلَى وَلَدِهِ وَلَا مَوْلُودٌ عَلَى وَالِدِهِ. (رواه ابن ماجه)

Meaning: "Hadith from Abu Bakr bin Abi Shaybah and Hannad bin al-Sirri, from al-Ahwash, from Shab ib bin Gharqadah, from Sulaiman bin 'Amr bin al-Ahwash, from his father who heard the Prophet PBUH say during Hajj Wada': "O people. Remember, which day is holier?" The crowd replied: "The day of Hajj Akbar." The Prophet PBUH said: "Indeed, your blood, your treasure, and your wealth are holy among you as holy is your day, this month of yours, in your land. Remember, it is never a person who commits a crime, but the consequences will befall him. A parent should not do evil to his child and a child should not do evil to his parents." (H.R. Ibn Majah).

The evil act referred to in the above hadith can be equated with acts of violence against children (child abuse) as popularly spoken of by today's scholars. Terry E. Lawson, a child psychiatrist, mentions four types of child abuse, namely: emotional abuse, verbal abuse, physical abuse, and sexual abuse.

Emotional abuse can occur in the form of neglect when children ask for attention, or ignore children when they want to be hugged or protected. Verbal abuse can occur when parents yell at children or hurl abusive words at them. Physical abuse can include the act of hitting a child, either with the hand or using a tool, including murder. Meanwhile, sexual abuse is an act that sexually harasses children. Included in this act of violence is economic violence, such as neglect of child support rights, child inheritance rights, and the forcible employment of children to meet the family's financial needs. All types and forms of violence against children are prohibited by the Prophet PBUH in the hadiths that will be presented (Indonesian Child Welfare Foundation, 2003).

The Prophet PBUH forbade the killing of children for any reason, either because of fear of falling into poverty, fear of humiliation, not being able to bear shame, and so on. This is a form of protection of children's rights, in this case, rights related to the soul. The strict prohibition on killing these children is found in the following hadith.

حَدَّثَنَا هِشَامُ بْنُ عُمَارٍ حَدَّثَنَا يَحْيَى بْنُ حَمَزَةَ عَنْ عَمْرِو بْنِ مُهَاجِرٍ أَنَّهُ سَمِعَ أَبَاهُ الْمُهَاجِرَ بْنَ أَبِي مُسْلِمٍ يُحَدِّثُ عَنْ
أَسْمَاءَ بِنْتِ يَزِيدَ بْنِ السَّكَنِ وَكَانَتْ مَوْلَاةً أَتَاهَا سَمِعَتْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ لَا تَقْتُلُوا أَوْلَادَكُمْ سِرًّا.
(رواه ابن ماجه)

It is narrated from Hisham bin 'Ammar, from Yahya bin Hamzah, from 'Amri bin Muhajir that he heard his father Muhajir bin Abi Muslim narrate from 'Asma' bint Yazid bin Sakan and Asma' was his slave that he actually heard the Prophet PBUH say: "Do not kill your children secretly." (H.R. Ibn Majah).

The prohibition on killing children applies in all places and circumstances, both in peacetime and in times of war. The Prophet forbade killing children in the course of war. The Prophet also forbade placing or allowing children to be in an environment that could harm or hinder their growth and development reasonably. This dangerous environment includes war. The Prophet PBUH also forbade abusive acts against children in all forms and types, because they can have a profound negative impact on children. The Prophet PBUH also forbade abusive acts against children in all forms and types, because they can have a profound negative impact on children. Acts of violence should not be committed, especially against girls. The emphasis on girls is because women have a soft nature and feelings, so they are very incompatible with acts of violence. However, that doesn't mean boys should be treated harshly.

According to the views of Imam Malik and Imam Ahmad, if a person beats to the point of causing disability to the child or one of his limbs, both argue that the act cannot be guaranteed forever as a form of discipline. As long as the educational act remains within the limits prescribed by the Sharia, if the beating is carried out harshly and is considered a form of discipline, then such an educational act will be questioned rather than a criminal act (Abdul Qadir).

Meanwhile, Imam Shafi'i argues that the person who conducts education is responsible for injuries and disabilities in children, regardless of the situation. However, educating is an educator's right, not an obligation, so educators can choose to abandon or continue the action.

Abu Hanifah personally argued that fathers, grandfathers, and guardians are responsible for injuries or disabilities in children, just as husbands are responsible for their wives. However, this view does not apply in his madhhab. Some *fiqh* scholars are of the opinion that Abu Hanifah was wise in his opinion and argued that he had no responsibility for the consequences that might arise.

Abu Yusuf and Imam Muhammad argued that fathers, grandfathers, and guardians were given permission to perform such acts, and there was no problem with them. However, Abu Hanifah's teacher and some friends argued that beating became a problem in criminal acts if there was no permission from the father or guardian. In this context, beating becomes a problem because the strong opinion is that there is no permission to perform (Abdul Qadir).

However, if the child is hit with the permission of the father or guardian, this is not a problem because a teacher, when teaching, must be responsible for maintaining confidentiality and refraining from hitting. Therefore, the madhhab of Abu Hanifah and his companions agree with the madhhab of Imam Malik and Imam Ahmad in concluding that the education of children is the same as teaching, but there is a difference in the opinion of Imam Hanafi about beating in terms of education. They argue that beating in terms of education is considered right, and beating in teaching is mandatory. This difference is related to the safety requirements in the first position and has nothing to do with the second position.

We conclude that this distinction emphasizes that the beating of the husband as discipline and the beating of the child by the father, guardian, or grandfather as education have the same meaning in terms of beating itself, although the word "discipline" has almost the same meaning as educating and teaching.

Regarding the research conducted by the author based on the Judge's consideration in case Number 243/Pid.Sus/2020/PN Idi, namely the crime of violence that causes serious injuries committed by a mother to her biological child, has crossed the line in terms of education, as explained in the verses of the Qur'an, hadiths, and the opinions of scholars. The Judge's consideration to punish the crime committed by NR's brother is a justice for the victim of the crime / his biological child, and the justice obtained by NR's brother is that the Judge is still thinking about the situation of NR's brother who still has a baby who is 2 years and 1 month old.

Conclusion

In the case handled by the Idi District Court with Decision Number 243/Pid.Sus/2020/PN, the Judge in deciding the case used Law Number 35 of 2014 concerning Child Protection, the Judiciary Law, and the decision was also strengthened by the conviction of the Panel of Judges. The Crime of Violence against the biological child that caused serious injuries committed by NR's sister against her biological child NH, the Panel of Judges in deciding the criminal case considering and weighing and prosecuting NR's sister was sentenced to 8 (Eight) months in prison and paid a case fee of IDR.2000, with the aggravating consideration that NR's sister act is a very reprehensible immoral act committed by the parents against the child, and Sister NR's actions have caused a disability in her child. The mitigating consideration is that NR's sister has apologized and promised not to repeat her actions, and at the time of the trial, NR's sister still has a baby who is still 2 years old for more than a month. The Judge's decision is beyond the demands of the Public Prosecutor, where the Public Prosecutor asks to sentence Sister NR to imprisonment for 2 (Two) months, then this decision is *ultrapetita*.

Children are a trust and a gift from Allah SWT. Which in him is inherent in dignity and dignity as a human being. However, parents often misinterpret when it

comes to parenting and educating their children. Violence is any act done to a child that causes the child to suffer physically, psychologically, sexually and/or be abandoned. The religion of Islam itself is very clear and strictly prohibits acts of violence, especially against children. The Qur'an, hadith, and scholars also discuss acts of violence against children with various opinions with the same goal, namely, that educating children is the right of parents, with provisions that have been recommended without crossing the limit in terms of education. If parents, in terms of education, cross the line and cause the child to be injured or disabled, the parents will be questioned rather than a criminal offense. The state also regulates in terms of educating and nurturing children, namely in Law Number 35 of 2014 concerning Child Protection.

Based on the above conclusion, the following suggestions can be given: 1). Consideration of Islamic Criminal Law, (Maqashid Sharia) in Islamic criminal law, the aspect of protection of the life and safety of children is strongly emphasized through maqashid sharia (sharia purposes) which aims to protect the life and offspring, the Judge needs to pay attention to the actions of parents that result in injury to the child, even in the context of education, must not go beyond the limit to threaten the safety and well-being of the child; 2). This research can produce recommendations related to the reform of child protection legal policies, both from the perspective of Islamic and national law. By strengthening the synergy between the two, judges can more easily set firm boundaries on what constitutes violence in children's education, as well as improve legal protections for children who are victims of violence from their parents 3). The next research can focus on the development of parenting guidelines based on the principles of *Sharia maqashid* as part of efforts to prevent violence. This study can develop parenting modules that prioritize child protection as part of the Sharia goals (protection of soul, intellect, and offspring).

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