EXAMINATION OF CONSTITUTIONALITY OF CHILD PROTECTION LAW IN FIQH

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Abstract: The child protection law provides its own interpretation, which is part of the law of children in Indonesia starting from civil rights, parenting, guardianship, adoption, exploitation of children in the economic, social and sexual fields. On the other hand, the punishment for adults that committing crimes on children are the responsibility of parents, the community and the state in protecting children. However, the legal coverage of the child is very broad and cannot be simplified into the field of legal violations committed by children. Due to the number of child protection regulations, it is necessary to compile legislation by state agencies that have authority. A study is also needed to see the harmonization between legislation in Islamic law (Fiqh). Thus, there can be seen gaps and legal vacancies that occur. Therefore, it is necessary to carry out legal reform so that the issue and protection of children becomes a priority by the state.

Keywords: Examination, Constitutionality, Child Protection Law, Fiqh

Introduction

Based on Laws No. 35 of 2014 which has been converted on Amendments into Laws No. 23 of 2002 on Child Protection Article 20, those who are obliged to provide protection to children are the state, government, local government, community, family, and parents have the obligation and responsibility for arranging child’s protection. Child protection should be guided by the effort to make children as human beings who deserve to get better attention. Child Protection is one of the efforts in order to realize the conditions in which every child can implement his rights and obligations. [1]

Among child protection that must be emphasized, that is the protection of children from acts of economic or sexual exploitation against children. Definition of exploitation according to article 2 verse (1) of Laws No. 21 of 2007 on Eradication of Criminal Acts on Trafficking in Persons is:

“Exploitation which is the action with or without the consent of the victim that includes not limited to prostitution; forced labor or services; slavery or practices similar to oppression; extortion, physical use, sexual, reproductive organs; or as well as against the law; or transplantation of organs or body tissues; or utilizing one’s power or ability by other parties to gain material and immaterial benefits.”

The forms of sexual exploitation include: Prostitution or child prostitution, namely the use of children in sexual activities with payments or in other forms of compensation. Child pornography, which is every representation in any ways, explicitly involvement of a child in sexual activities whether real or simulated, or any show of the sexual organs of children for sexual purposes. Trafficking of Children. [2] there are strong and fundamental causes so that acts of exploitation of children exist, including: Economic factors, poverty faced by a family often brings the family to a disappointing situation which ultimately creates various problems. Family factors, it is referring to the situation of families, especially the relationship of parents who are less harmonious. Environmental factors, children who are accustomed to live in the streets as buskers and beggars, are most likely lead to exploitation crimes. Divorce factors, it can cause household problems such as childcare problems,
affection, and others. At present, there is no specialization in sexual exploitation of children in Indonesia, but in terms of child exploitation it is integrated into Child Protection Law.

In the Islamic view, the act of plunging someone into sexual prostitution is a form of atrocity, because it is a job that is strictly forbidden to do. Because it is considered a dangerous thing or has a bad influence for people, whether toward aqidah, behavior or morality, self-esteem, and civilization, especially for safety and honor. [3]

These actions are forbidden and included into the great sins. There are two reasons why this action is prohibited. First, human trafficking is basically strictly prohibited or unlawful. Second, because children who are in the age of protection (who do not have maturity) have a very high vulnerability to be exploited outside their own interests.

According to Islamic criminal law, the act of exploitation can be categorized into the form of Jarimah, which is related to the crime of honor and moral destruction. Jarimah means bad deeds or sins. Jarimah commonly used as sinful act, form, manner, or the nature of sin, for example, theft, murder, sexual assault, or actions relating to politics and so on and so forth. Jarimah is identical to the definition referred to in positive law as a crime or violation.

In positive law Jarimah is termed offense or criminal acts. An interesting issue to be examined in depth is the issues of sexual exploitation of children in terms of judicial review. Children, who should be able to get proper protection from all kinds of threats that can damage their future, but fall into prostitution world. The existence of Laws No. 35 of 2014 which has been converted on Amendments into Laws No. 23 of 2002 on Child Protection has not guaranteed protection for children thoroughly. Everyone should refer to Maqashid Al-Sharia, while the sexual exploitation of children is clearly not paying attention to what is on Maqashid Al-Sharia, a descendant of ghazriah or an instinct for all beings, which continued human life. As for what is meant by the continuation of human life here is the continuation human in form of family, while what is meant by the family is the family produced through a legitimate marriage.[4]. So there is no custody for a good successor since good successor are born from from a legitimate marriage bond.

It can be concluded that the existence of Laws No. 35 of 2014 which has been converted on Amendments into Laws No. 23 of 2002 on Child Protection has not guaranteed protection for children thoroughly. Everyone should refer to Maqashid Al-Sharia, while the sexual exploitation of children is clearly not paying attention to what is on Maqashid Al-Sharia, a descendant of ghazriah or an instinct for all beings, which continued human life. As for what is meant by the continuation of human life here is the continuation of human in form of family, while what is meant by the family is the family produced through a legitimate marriage. As a consequence, there is no custody for a good successor since good successor are born from a legitimate marriage bond. Therefore, the authors are interested to study the crime of sexual exploitation of children by judicial review in depth.

Objectives of the Research

This study aims to find out a juridical review of sexual exploitation of children according to Child Protection Act; sanctions for sexual exploitation of children according to Islamic Criminal Law; relevance of sanctions for sexual exploitation of children in the Child Protection Law of Islamic Criminal Law perspective.

Methods of the Research

The approach used in this research is normative juridical or legal search. This research is descriptive analytic, namely trying to describe and describe sexual exploitation of children, both in positive law and in Islamic criminal law. Attempting to find legal doctrines or principles, as material taken from the Criminal Code (KUHP in Indonesia) and Laws No. 35 of 2014 on Child Protection, and the Laws and Islamic Criminal Law. The data analysis method used is qualitative, that is, all respondents’ statements, both in writing and verbally, as well as the real behavior of respondents who are studied and examined as a whole. Then the data that has been collected is processed. First,
selecting existing data based on their reliability and validity. Incomplete data is aborted or equipped with substitution.

Discussion

1. The Definition of Exploitation

According to Kamus Besar Bahasa Indonesia (a dictionary which is the main reference in standard Indonesian language), juridical review is a thorough examination; data collection activities; administrator; analysis; and presentation of data carried out systematically and objects to solve a problem. Whereas ‘juridical’ means: according to law; legally; assistance; legal aid (given by a lawyer to his client before the court).

The definition of exploitation based on article 2 verse (1) Laws No. 21 of 2007 about Eradication of Criminal Acts of Trafficking in Persons is:

“Exploitation which is the action with or without the consent of the victim that includes not limited to prostitution; forced labor or services; slavery or practices similar to oppression; extortion, physical use, sexual, reproductive organs; or as well as against the law; or transplantation of organs or body tissues; or utilizing one’s power or ability by other parties to gain material and immaterial benefits.”

Sexual exploitation of children can also be interpreted as the use of children for sexual purposes in cash or in other forms between children; buyer of sex services; intermediary or agent; and others who are benefited from sexual trafficking of children. [5] Islamic law is a state law or part of state laws. Islamic law originates from Western literature. Hasbi Ash-Shiddieqy provides a definition of Islamic law, namely all the efforts of Fuqaha (the jurisprudence) in applying Islamic Sharia according to the community needs.[6]

Islamic criminal law is a law that is part of the Islamic legal system, which regulates criminal acts and crimes based on the Qur’an and the Sunnah. Islamic Criminal Law was made by Allah SWT who is omniscient of the past, present, and future, and most understands every aspect of human life. [7]

Islamic Criminal Law is often called Fiqh Jinayah which discusses all types of violations or human crimes with various targets, bodies, souls, property, honor, reputation, country, life order and environment. [8]

Talking about sexual exploitation of children, it is not merely a medical problem, but also involves many fields, including: religion, psychology, and law. However, that will be examined in this study are only related to law and religion, in particular Islamic criminal law and child protection law.

The act of sexual exploitation of children is the most vile and painful acts. Children who are in an emergency situation, one of them is economically and or sexually exploited, must get special protection from the government, state institutions and the community. As contained in article 66 of Laws No. 35 of 2014 which has been converted on Amandements into Laws No. 23 of 2002 on Child Protection, namely:

“Special protection for economically and/or sexually exploited children as referred to in article 59 verse (2) letter (d) is carried out through: a. dissemination and/or socialization of legislation relating to the protection of economically and/or sexually exploited children;”

Article 269 of the Criminal Code (KUHP in Indonesia) states that:

“Anyone who intentionally connects or facilitates obscene act by others with others and makes it a livelihood or habit is threatened with imprisonment for at most one year and four months or a fine of at most one thousand rupiah”.

Seeing the article does not discuss or write “sexual exploitation”, but when reviewing the contents of the article, it seems that this article can be categorized as an article that addresses the problem of sexual exploitation. This can be seen in the sentence, “anyone who intentionally connects or facilitates obscene act by others with others and makes it a livelihood or habit”.

Reconstruction on Sharia Sciences in Facing Contemporary Law Problematics/99
More detailed explanations of sexual exploitation are found in articles 78, 82, and 88 of Laws No. 35 of 2014 which has been converted into Laws No. 23 of 2002 on Amandements on Child Protection, namely:

Verse 78: “Everyone who knows and intentionally leaves a child in an emergency situation as referred to in Article 60, children who are faced with the law, children from minority groups, economically and or sexually exploited children, child trafficking, children who are victims of narcotics, alcohol abuse, psychotropic, and other addictive substances, kidnapped children, child victims of trade, or children of victims of violence as referred to in article 59, even though the child needs help and must be assisted, sentenced to imprisonment of a maximum of 5 (five) years and or at most Rp100,000,000.00 (one hundred million rupiahs).”

Verse 82: “(1) Every person who violates the provisions referred to in article 76 E shall be sentenced to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiahs). (2) the criminal act as referred to in verse (1) is a crime”.

Verse 88: “Everyone who violates the provisions referred to in article 76 I, is punished with a maximum imprisonment of 10 (ten) years and/or a fine of a maximum of Rp. 200,000,000.00 (two hundred million rupiah)”.

All the articles discuss the prohibition of sexual exploitation of children, especially article 88 which expressly states that it will be punished by imprisonment for a maximum of 10 (ten) years and or a fine of a maximum of Rp. 200,000,000.00 (two hundred million rupiah) for people who exploit sexual activity in children in order to benefit themselves or benefit others.

Sexual exploitation of children according to Islamic criminal law can be said to be included in Jarimah Ta’zir. According to Abu Bakr Jabir Al Jazairi, jarimah ta’zir is a sanction with leatherings, indignities, or embargoes, or deportations. Then the ta’zir criminal offense is a crime which if carried out is threatened with disciplinary sanctions in the form of leatherings, or indignities, or embargoes, or deportations. However, some scholars included the death penalty for certain cases in the ta’zir crime.

Ta’zir is a sanction whose designation is given to the caliph (generally represented by qadhi/judge). However, this does not make him entitled to impose sanctions at will. Because when the caliph determines the ta’zir sanction, he must be bound by what is set by Allah and his Prophet, and he must not go beyond that provision.

Sexual exploitation of children is said to be included in Jarimah ta’zir because sexual exploitation of children is included in the classification of ta’zir criminal acts based on their violations, namely violations of honor and those that violate morality and decency.

2. The Forms of Sexual Exploitation of Children

The forms of sexual exploitation of children are devided into two forms, namely:

a. Physical Exploitation, among them: Workers in industries or companies that dangerous, beggars and abandoned children.


According to Suyanto, the forms of sexual exploitation in prostitution can also be children usage for pornography, sexual abuse, service, sexual and pedophile practices, namely sexual attraction perceived by an adult to a child.

One of them is the forms of sexual exploitation according to Islamic criminal law is to commit sodomy. Apart from prostitution, there are also conventional, oral and rectral intercourse services. Man-child must be homo and heterogeneous, because there are special services. This has a high risk for their health. Not only that, the victims had experienced 25% of physical violence carried out by pimps and 16% by customers. A homo has sexual relations by sodomy or liwath. This term is taken from the story of Prophet Lut whose people like to do this
abnormal relationship, namely pedesrasty and sodomy. Islam strictly forbids such actions and equates them into adultery.

3. The Elements of Sexual Exploitation Acts on Children

The elements of sexual exploitation in children are the existence of an act that violates morality or decency; there is a heinous act. The act is an action related to the environment of sexual desire and sex. Types of sexual exploitation acts that violate morality or decency, including: Obscene views on children by looking from top to bottom in certain parts; Approaching children with passion or sexual desire; Feeling certain parts of the body for sexual satisfaction; Swiping his body into a girl’s body; Doing intercourse or sodomy; Forcing children to do fellatio, and so forth.

The crimes of morality and decency are regulated in the Criminal Code (KUHP) in Chapter X of Criminal Code (KUHP). Chapter XIV book II contains 2 (two) types of criminal acts, the first in the form of crimes violating morality (articles 281-299 of the Criminal Code/KUHP), while the second form is a crime that violates decency which is not moral (article 300-303 of the Criminal Code/KUHP).

The crimes of morality regulated in articles 281 to 299 of the Criminal Code (KUHP) are divided into several parts as follows:

- a. Morality crimes that have a non sexual coxion (articles 281-283 of the Criminal Code/KUHP).
- b. Morality crimes that are sexual intercourse (articles 284-289 of the Criminal Code/KUHP).
- c. Morality crimes that are homosexual (article 292 of the Criminal Code/KUHP).

Violation of decency in public and towards decency in the presence of others without being wanted, sexual abuse, intercourse with a woman in a state of unconsciousness or in weak condition, a real assault on decency, obscene acts with someone in a state of unconsciousness or in weak condition. Women trafficking, as formulated in articles 281, 284, 285, up to article 290, articles 292 to 297 are the most appropriate crimes against morality or decency, since these obscene acts appear as a result of sexual desire, it seems that their sexual nature develops unconscious. These actions can pose a danger to the sustainability of community.

Various elements of criminal acts of heinous acts in Islamic criminal law:

- a. Fornication or Adultery

Fornication or adultery is one of the great sins. Even it is at the forefront of the group of great sins, namely after the paganism, the sin of shirk, and the sin of murder. Fornication or adultery is forbidden based on the word of Allah:

وَلَا تَقْرَبُوا آتِيَتَيْ إِنَّهُ كَانَ فَهْجَتَةً وَسَاءَ سَبِيلًا

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way”. (QS. Al-Isra: 32)

- b. Prostitution

Prostitution is a familiar word in our ears. The word prostitution is identical with the foreign word; comes from the Latin “prostituere”, which is interpreted as behavior that overtly surrenders to adultery. In Islam, prostitution is one of adultery. Prostitutes, whose routines are identical to adultery, are another form of sexual deviation in which sexual relations between men and women are not based on legal marriage.

The word of Allah SWT:

وَلْيَسْتَعْفِفُ الَّذِينَ لَا يَجْدُونَ نِكَاحًا حَتَّى يَعْفُوهُمُ اللَّهُ مِنْ فَضْلِهِ وَلَدَوْنَ أَنْ يَعْفُوُنَ أَلَّا يَكْتُبَ مَعَ مَلْكِهِ أَيْمَنَكُمْ فَكَأَنِّي وُسْتَهُمْ إِنْ عَلِمْتُمْ فِي مَكَانِهِ وَأَنْوَهُمْ مَنْ مَالٌ اللَّهُ إِلَّا إِنْ كُنْتُمْ وَلَاءُكُمْ وَلَا تَكْرِهُوا فِتْنَتَكُمْ عَلَى
“But let them who find not [the means for] marriage abstain [from sexual relations] until Allah enriches them from His bounty. And those who seek a contract [for eventual emancipation] from among whom your right hands possess - then make a contract with them if you know there is within them goodness and give them from the wealth of Allah which He has given you. And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life. And if someone should compel them, then indeed, Allah is [to them], after their compulsion, Forgiving and Merciful.” (QS. An-Nur: 33)

From the paragraph above, it means that those who do not have dowry and income to mate. Let them maintain their sanctity from adultery. Allah gives them convenience (with His gift) until they are able to marry. Both men and women are trusted and have the ability to try, the results of which will be able to pay for their independence agreements. Your woman must not be forced to commit adultery, but should maintain her honor from adultery, moreover, the one who just looks for profit. The desire to preserve this honor causes prohibition to force, while the conditions here do not function properly through coercion.

Prostitution is a disease in society that must be immediately eliminated, because it is very disturbing to the peacefulness in a society. There is no one thing in prostitution that gives something positive, both in the social community or in the economy to fulfill their life, because the money produced is also forbidden. However, the reality proves that the more prostitution is pressed, the wider the spread of prostitution is also. Because there is no law that strictly prohibits the practice of prostitution, and the absence of restrictions and sanctions on people who engage in sexual relations outside of marriage, what is prohibited in the law is only practice rather than procurers.

c. Committing Sodomy

In Islamic law, al-Auza’i and Abu Yusuf equate sodomy with adultery, because according to them, the two actions are the same. Then the punishment is the same. At the time of Caliph Umar bin Khattab, he instructed that a perpetrator of sodomy must be burned alive. However, because he was severely criticized, then the punishment was stoned or prosecuted. Word of Allah:

“By your life, [Muhammad], indeed they were, in their intoxication, wandering blindly.” “So the shriek seized them at sunrise.” “And We made the highest part [of the city] its lowest and rained upon them stones of hard clay.” “Indeed in that are signs for those who discern.” (QS. Al-Hijr: 72-75)

In Sunnah, it is explained how severe punishment should be given to the perpetrators of sodomy or liwat. Rasulullah-sallallahu alaihi wasallam said:

من وجنثئونا عمل قوم لوط ف أفظلوا الفاعل والمفعول به

Reconstruction on Sharia Sciences in Facing Contemporary Law Problematics/102
“Whoever is found conducting in the manner of the people of Lot, (homosexual) kill the doer and the receiver”. (HR.at-Tirmidzi no.1456, Abu Dawud no.4462 and validated by al-Albani in Shahih at-Tirmidzi).

Al-Musnad Imam Ahmad narrated (2915) from a companion of Abdullah bin Abbas that Rasulullah sallallaahu alaihi wasallam said:

لَعْنَ اللَّهُ مِنْ عَمَلٍ عَمَلَ قَوْمٍ لُوطٍ، لَعْنَ اللَّهُ مِنْ عَمَلٍ عَمَلَ قَوْمٍ لُوطٍ، ثَلَاثًا

“Allah cursed the people who committed the actions of the people of Lut, Allah cursed the people who committed the actions of the people of Lut, he said three times.”(Done by Syu’aib al-Arna’uth in Tahqiq al-Musnad).

d. Homosexuality

Homosexuality comes from the English word “homosexual” which means the condition of men who are interested in same gender. In Arabic it is called liwath. Homosexuality is a general term often used in the scientific world to distinguish between bisexual and heterosexual. Homosexuality is a great sin in Islam because it is contrary to religious norms, moral norms and also violates human nature. Allah creates humans consist of men and women to be pairs as husband and wife to get legitimate decent and to obtain peace and love. Word of Allah SWT:

إِنْ تَأْتُونَ الرِّجَالَ مَجَاهَةً مِنْ ذَرِّيَّةِ الْإِنسَانِ بَلْ أَتُّمُّ قَوْمَ مُسْتَسْرِقَةً

“Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people.” (QS. Al-A’raaf:81).

Homosexual and lesbian are behaviors that have a negative impact on the perpetrators. Ulama also mentioned the effects of liwath, among them:
1) Upholding criminal law for human nature.
2) The younger generation becomes damaged because it exerts excessive sexual desire because can be done easily.
3) Self-esteem becomes despicable because homosexual behavior is a disgrace.
4) Harming women because husbands turn away from their wives due to their hobbies of doing liwath. So that a wife’s rights are not fulfilled.
5) Descent becomes a little because it is a must for a man to marry a woman, but with liwath, someone will hate marriage and turn away from women.
6) Causing a husband to come to his wife from the rectum, even though the behavior is bad behavior in jima’ ethic.
7) Homosexuals will tend to do things that can fulfill their lust, among others: swiping their hands and going to animals. As we know, these two cases are as bad as a great sin, the effect is most dangerous to the body, and can damage the morality.
8) Damaging household life, dividing families, and causing hostility and disputes.
9) Encourage young people to not get married and do not understand the responsibilities of a marriage.

In the development phase, sexual instincts are not immediately oriented to the opposite gender. At first sexual instincts, it seems an attempt to find something that cannot be distinguished to obtain emotional contact with other personalities, and the atmosphere can determine that the other personality is of the same gender. Desperate actions, the worship of feelings of heroism and friendship are natural phenomena at the beginning of adolescence. In most cases, this phenomenon illustrates a very preliminary phase of development and will
soon be overcome. These events must be prevented carefully, but do not need to be suppressed by coercion. [9]

Based on the description above, when physical changes occur, the resulting additional psychosomatic energy currents may be enough to overwhelm the development of normal heterosexuals and leave someone to continue to stick to the homosexual phase. Experience in adolescence, of course, is not the only cause especially for adult homosexuality. This situation generally has far deeper sources. However, in a significant amount, this situation is an important trigger factor. Based on this reason, homosexual among young people, and homosexual acts on teenagers carried out by older people, should be considered as crimes that should be oppressed by all means.

e. Sexual Abuse

On this vision, sexual abuse means sexual intercourse that is not only the matter of forced intercourse, but also coercion to have intercourse with other organs, according to which the perpetrator can provide (bring in) satisfaction. In addition, sexual intercourse is not only related to male genitals, but also items used by rapists to bring satisfaction.

This event happened at the time of Caliph Umar bin Khatab, namely Ubaidullah or Abu Syamhah. When Ubaidullah was drunk, he saw a sleeping woman. Then, he raped her until this woman became pregnant. This event is included in the act of rape.

فَمَنْ أَتَبَيَّنَّ أَوْرَأَهُ دَأْبًا ذَلِكَ فَأُؤْلِكَ هُمُ الْعَاذُونُ (7)

“But whoever seeks beyond that, and then those are the transgressors”. (QS. Al- Mu’minun: 7)

The meaning of this verse is that people keep their genitals from illicit acts, such as adultery, or sodomy, and they only approach their wives or husbands. He who receives what God has done to him, then, there is no reproach and sin upon him. Whoever chooses other than his wife or husband and slaves are those who transgress.

Some factors that causing sexual abuse are as follows:
1) The influence of cultural developments that increasingly do not respect the ethics of dressing (based on Islam), which can stimulate others to commit indecent and evil acts;
2) Lifestyle or promiscuity between men and women, can no longer distinguish between what can be done and what should not be done or prohibited in the moral code regarding the relationship between men and women;
3) Low experience and appreciation of religious norms that occur in the community. religious values that are increasingly eroded in society or horizontal relations patterns that tend to negate the role of religion are very potential to encourage someone to do evil and harm others;
4) Low level of social control, various behaviors that are suspected of being irregularities, violate the law and religious norms that do not get reponse and supervision from the community;
5) Judges’ decision that is unfair, such as sentences that are too light for the perpetrator. It is possible to encourage other members of the community to do things that are vicious and malicious. This means that those who want to do evil, do not feel afraid of the legal sanctions that they received;
6) The inability of the perpetrator to control his sexual emotions and passions. His sexual desire is allowed to wander and demands that he must get compensation that can satisfy him;
7) The willingness of the perpetrator to do (vent) revenge against the attitude, utterance (decision) and behavior of the victim who is considered to hurt and harm him.
The consequences of sexual abuse as follows:

1) Psychological suffering, such as feeling no longer valuable due to loss of virginity (purity) in the eyes of society, a husband, prospective husband, or others associated with it. Other psychological suffering can be anxiety, loss of self-confidence, no longer cheerful, often close up or stay away from the crowd, growing hatred (antipathy) towards the opposite gender and excessive suspicion of the others who are meant to him.

2) Pregnancy. This can result in more fatal if the fetus grows (there is no desire to be abolished); it means the child who born due to sexual abuse does not have clarity of juridical status and religious norms.

3) Physical suffering, it means sexual abuse or rape will cause injury to the victim. This injury is not only related to torn genitals (female genitals), but does not rule out the possibility of other bodily organs being injured if the perpetrator fights more harshly and cruelly first and in order to conquer resistance from the victim.

4) The growth of a lack of trust in the handling carried out by the legal apparatus, if the handling of the suspect seems less serious. Victims feel discriminated against and their psyche is increasingly suffering or mentally weak due to continuous suppression by the process of resolving cases that never end.

   Victims, who are faced with difficult situations such as no longer feeling valuable in the eyes of the community, their families, their husbands, and prospective husbands, can fall into the world of prostitution. It means that prostitution is used as a place to vent them to take revenge on men and look for appreciation. [10]

   Based on the discussion above, immoral acts are preceded by views and/or obscene acts to enforce sexual relations. Sexual abuse is an example of criminal acts that violate women’s rights because it positions gender superiority more favorably, which results in women being treated as objects of biological satisfaction for men. Men feel superior and powerful than women. This feeling later, prompted him to experiment with acts that were not commendable (such as sexual violence).

   Sexual exploitation is the use of children for sexual purposes in cash or in other forms between children, buyers of sexual services, intermediaries or agents and others who are benefited from trafficking in child sexuality. The form of sexual exploitation of children is clearly a game of procurers or child trafficking. Sexual exploitation occurs because there is one factor that is pushing a procurer to make profits for themselves with no responsibility for what they have done towards the child as a victim and a future generation.

   Based on the above analysis, it is known that in positive law, criminal acts for perpetrators of sexual exploitation in children are specified in detail. Whereas in Islamic criminal law, there are no specific details, in Islamic law only provides a general explanation of the prohibition of prostitution and the prohibition of taking the wages from these actions to benefit themselves.

   After knowing the criminal from the two legal systems, namely in the view of Islamic law and positive law, Ta’zir punishment can be identified as a prison sentence. Whereas in positive law, the provisions of criminal acts of sexual exploitation of children are regulated in detail in Child Protection Law in articles 76, 78, 81 verse (1), article 81 verse (1) and (3) and article 88.

   In terms of punishments that can be imposed on the perpetrator, between Islamic criminal law and positive law that both state that punishment aims to provide a deterrent and retaliatory effect for perpetrators of criminal acts of sexual exploitation of children. And the essence of punishment is to raise the level of human beings, especially women and children who are victims of sexual exploitation in the form of prostitution.

   Islamic criminal law is part of Islamic law and the objectives contained in Islamic criminal law are inseparable from the objectives of Islamic law. Islamic law aims to create goodness for the life of mankind, both the world and the hereafter.
According to the description above, positive legal sanctions referring to Laws No. 35 of 2014 which has been converted on Amendments into Laws No. 23 of 2002 on Child Protection with sanctions based on Islamic criminal law, which is relevant because in the Child Protection Act it is said that sanctions for sexual exploitation of children are punishable by imprisonment and fines, as well as Islamic criminal law, sexual exploitation of children including Jarimah Ta’zir where the sentence is fully handed over to the judge. However, sanctions in Jarimah Ta’zir can be in the form of imprisonment, prison, capital punishment, exile and fines. So, it is very relevant when sanctions for sexual exploitation of children according to the child protection law and those based on Islamic criminal law because they are still in the form of threats of imprisonment or fines. Even though in terms of sentencing, between Islamic criminal law and Child Protection Law, in terms of time, it is not the same even if Islamic criminal law is heavier or shorter than Child Protection Act.

**Conclusion**

According to Child Protection Law, sexual exploitation acts are actions or actions to manipulate and exploit or extort children under the age of 18 by being employed as sex workers to obtain personal, family, or class benefits, both material and non-material. Whereas the act of sexual exploitation, according to Islamic criminal law, has no specific meaning, still if we look at the elements such as the existence of acts that violate morality or decency; Sexual exploitation of children is an act that violates the law on child protection article 81 verse (1) and (2), article 82, article 83, and article 88. According to Islamic criminal law, the prohibition on sexual exploitation of children is found in QS. An-Nur verse 33. Based on child protection law, the penalty for criminal acts of sexual exploitation of children is a threat of imprisonment for a maximum of 10 years and/or a fine of a maximum of Rp. 200,000,000. Whereas according to Islamic criminal law, sexual exploitation of children is included in Jarimah ta’zir, where sanctions for Jarimah ta’zir, the implementation is handed over to the judge by paying attention to the quality of the criminal acts committed, the situation of the perpetrator’s condition and the motivation that drives the crime. Positive legal sanctions referring to Laws No. 35 of 2014, which has been converted on Amendments into Laws No. 23 of 2002 concerns about Child Protection with sanctions. According to Islamic criminal law, which is relevant because in Child Protection Act it is said that sanctions for sexual exploitation of children are threats of imprisonment and fines, as well as in Islamic criminal law, sexual exploitation of children is included in jarimah ta’zir where the sentence is fully handed over to the judge. However, sanctions in Jarimah Ta’zir can be in the form of imprisonment, capital punishment, deportation and fines.

**REFERENCES**