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# Parenting neglect as a contemporary challenge: Reconstructing the concept of *Jarimah Ta'zīr* in Islamic criminal law

RESEARCH ARTICLE

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## ABSTRACT

Parenting neglect has emerged as a contemporary challenge in child protection. Unlike child neglect under Indonesian positive law, which primarily emphasizes legal consequences, parenting neglect encompasses broader parental omissions, including failures to meet children's physical, emotional, educational, healthcare, and supervisory needs. This study examines parenting neglect from the perspective of Islamic criminal law and reconstructs its criminalization as *jarimah ta'zīr*. Using normative legal research with conceptual and statutory approaches, the study analyzes the Qur'an, Hadith, legislation, classical and contemporary Islamic law, *fiqh* literature, and relevant scholarly works. The analysis employs the theories of *maqāsid al-sharī'ah* and *jarimah ta'zīr*. The findings demonstrate that parenting neglect violates parents' *sharī'ah*-based obligations and causes *mafsadah* (harm) to the protection of life (*hifz al-nafs*), intellect (*hifz al-aql*), and lineage (*hifz al-nasl*). The study establishes that parenting neglect does not constitute *hudūd* or *qisās-diyāt* offenses but fulfills the characteristics of *jarimah ta'zīr*. The proposed reconstruction classifies parenting neglect as *jarimah ta'zīr* based on violations of parental obligations and resulting harm to children, with sanctions determined by *ulī al-amr* according to the severity of neglect, resulting *mafsadah*, *maqāsid al-sharī'ah*, and *maslahah*. This reconstruction provides a normative framework for proportionate sanctions and strengthens child protection in contemporary Islamic criminal law and Indonesia.

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## Introduction

The family is the primary institution responsible for safeguarding children's fundamental rights and serves as the cornerstone of human capital development. From the perspective of Islamic law, this responsibility constitutes a *shari'ah*-based obligation entrusted to parents to ensure the fulfillment of children's rights to life, education, protection, and optimal development.<sup>1</sup> However, changing social structures, increasing economic pressures, and the transformation of parenting practices in the digital era have given rise to new forms of vulnerability that are not always manifested through physical violence but rather through parenting neglect.<sup>2</sup>

Unlike abuse, which involves active harmful conduct (*acts of commission*), parenting neglect refers to parents' failure to fulfill their children's basic needs, including physical, emotional, healthcare, educational, and protective needs, and is therefore categorized as an *act of omission*.<sup>3</sup> This phenomenon is widely recognized as one of the most complex forms of child maltreatment because it is often chronic, difficult to identify, and associated with long-term adverse consequences for children's development.<sup>4</sup> The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) emphasize that strengthening parenting support systems is a key strategy for preventing child abuse and neglect, as the quality of parenting is closely associated with children's mental health, social development, and overall well-being throughout the life course.<sup>5</sup>

The growing urgency of addressing parenting neglect stems from its evolution from a private family matter into a broader social and legal issue shaped by changing cultural values, social norms, and environmental conditions. Alhassan Abdullah and Roshni Thattengat argue that the concept of child neglect is inherently influenced by cultural constructions of good parenting, making it impossible to establish a universally applicable definition across jurisdictions. Their study further highlights that existing measures of child neglect have not fully captured the cultural diversity underlying parenting practices in different societies.<sup>6</sup> Likewise, Simon Haworth et al. identify child neglect as a multidimensional phenomenon influenced by individual, familial, community, and structural factors. Accordingly, they contend that child neglect cannot be adequately addressed through a social welfare approach alone but requires robust legal policies capable of providing effective protection for children.<sup>7</sup>

Despite these developments, legal scholarship, particularly in the field of Islamic criminal law, has not kept pace. Existing studies have predominantly focused on developmental psychology, public health, or child protection from the perspective of positive law. In Indonesia, for example, Andhika Jaya Putra and Lia Agustina Damanik examined child neglect

<sup>1</sup> Siti Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 933–53, <https://doi.org/10.32332/milrev.v4i2.10077>.

<sup>2</sup> Alhassan Abdullah and Roshni Thattengat, "Child Neglect as a Culture-Based Concept: A Systematic Review and Implications for Studying and Measuring Child Neglect," *Child Abuse & Neglect* 161 (2025): 107261, <https://doi.org/10.1016/j.chiabu.2025.107261>.

<sup>3</sup> Laura Ylittero, Juha Veijola, and Anu-Helmi Halt, "Emotional Neglect and Parents' Adverse Childhood Events," *European Psychiatry* 66, no. 1 (2023): e47, <https://doi.org/10.1192/j.eurpsy.2023.2420>.

<sup>4</sup> Marit Burkeland-Lie et al., "Parenting After Child Maltreatment: A Study of Maternal Parenting Strategies and the Parent-Child Relationship," *Journal of Child & Adolescent Trauma* 19, no. 2 (2026): 421–33, <https://doi.org/10.1007/s40653-026-00850-1>.

<sup>5</sup> World Health Organization, *WHO Guidelines on Parenting Interventions to Prevent Maltreatment and Enhance Parent-Child Relationships with Children Aged 0–17 Years* (Geneva: World Health Organization, 2022); UNICEF, "Designing Parenting Programmes for Violence Prevention: A Guidance Note" (UNICEF, 2020).

<sup>6</sup> Abdullah and Thattengat, "Child Neglect as a Culture-Based Concept: A Systematic Review and Implications for Studying and Measuring Child Neglect."

<sup>7</sup> Simon Haworth et al., "A Systematic Review of Measures of Child Neglect," *Research on Social Work Practice* 34, no. 1 (2024): 17–40, <https://doi.org/10.1177/10497315221138066>.

through the lens of national criminal law and Islamic criminal law, emphasizing the legal liability of perpetrators. While their study makes an important contribution by establishing child neglect as a legally prohibited act, its analysis remains primarily concerned with assessing the compatibility between Indonesian positive law and the principles of Islamic law.<sup>8</sup> It does not develop a conceptual framework for understanding parenting neglect as a contemporary phenomenon with characteristics distinct from the conventional notion of child neglect, nor does it systematically classify parenting neglect as *jarimah ta'zīr* within the broader framework of contemporary *fiqh al-jināyah*. Thus, the existing literature has not sufficiently connected specific forms of parental omission with their consequences for children's fundamental interests under *maqāsid al-sharī'ah*, nor translated such violations into a systematic framework of criminalization under *jarimah ta'zīr*.

A review of the existing literature therefore reveals three key research gaps that provide the rationale for this study. *First*, international scholarship has predominantly examined parenting neglect from the perspectives of psychology, public health, and social welfare, with limited attention to its criminalization within the framework of Islamic law. *Second*, legal studies in Indonesia have largely focused on child protection under positive law or parental obligations in Islamic family law, while the conceptual relationship between parenting responsibilities and criminal liability in Islamic criminal law remains underdeveloped. *Third*, previous studies have not sufficiently explained how specific forms of parenting neglect, such as failure to provide adequate physical and healthcare needs, educational and emotional support, and protection and supervision, may constitute harm to the *maqāsid* of protecting life, intellect, and lineage. Consequently, the classification of parenting neglect as *jarimah ta'zīr* through the lens of *maqāsid al-sharī'ah* remains insufficiently developed. This conceptual gap distinguishes the present study from previous research and defines its primary scholarly contribution.

To address these gaps, this study employs two complementary theoretical frameworks. The first is Jasser Auda's theory of *maqāsid al-sharī'ah*, which conceptualizes the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*) as fundamental objectives of the *sharī'ah* that should be realized through every legal policy.<sup>9</sup> In the context of parenting neglect, *hifz al-nafs* is directly implicated when parents fail to provide adequate food, healthcare, physical care, or protection from danger; *hifz al-'aql* is implicated when neglect involves the failure to provide education, emotional support, or conditions necessary for children's cognitive development; and *hifz al-nasl* is implicated when parental neglect undermines children's protection, proper upbringing, and the continuity of family and generational welfare. The second is the theory of *jarimah ta'zīr*, which recognizes the authority of *ulī al-amr* to define criminal offenses and prescribe sanctions for acts that cause harm, even when such acts do not fall within the categories of *hudūd* or *qisas-diyāt*.<sup>10</sup> The integration of these two frameworks enables parenting neglect to be examined not merely as a breach of parental caregiving obligations but also as conduct that undermines the objectives of the *sharī'ah*. Accordingly, parenting neglect may be conceptually reconstructed as a subject of criminalization within the framework of Islamic criminal law.

<sup>8</sup> Andhika Jaya Putra and Lia Agustina Damanik, "Analysis of The Criminal Act of Child Neglect By Parents Drug Abuse From The Perspektivtive of Islamic Criminal Law," *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam* 4, no. 1 (2023): 11–19, <https://doi.org/10.58836/al-qanun.v4i1.21427>.

<sup>9</sup> Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2008).

<sup>10</sup> Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399–417, <https://doi.org/10.22373/sjkh.v7i1.15101>.

Based on the foregoing discussion, this article aims to reconstruct parenting neglect as a contemporary issue within the framework of Islamic criminal law through the development of the concept of *jarimah ta'zīr* grounded in *maqāsid al-sharī'ah*. Unlike previous studies, which have primarily emphasized child protection, social welfare, or the compatibility of positive law with Islamic legal principles, this article specifically connects parental omissions with the *mafsadah* they cause to children's protection of life, intellect, and lineage, and subsequently formulates their legal significance within the framework of *jarimah ta'zīr*. This article argues that parenting neglect constitutes a breach of parents' *sharī'ah*-based obligations that gives rise to *mafsadah* affecting children's fundamental rights and, where the relevant elements are fulfilled, constitutes grounds for classification as *jarimah ta'zīr*. This conceptual reconstruction is expected not only to enrich the discourse on contemporary Islamic criminal law but also to provide a normative foundation for developing child protection policies that are more responsive to the evolving challenges of modern parenting.

## Methods

This study employs a normative legal research method aimed at examining legal norms, doctrines, and principles of Islamic law to reconstruct the concept of parenting neglect as *jarimah ta'zīr* within Islamic criminal law. The research adopts a conceptual approach to analyze the concepts of parenting neglect, *jarimah ta'zīr*, and *maqāsid al-sharī'ah* through an examination of the Qur'an, Hadith, and the views of Muslim jurists (*fuqahā'*) concerning parental obligations in child care and criminal responsibility in Islam. It also applies a statutory approach to examine child protection provisions under Indonesian positive law.<sup>11</sup> These approaches are integrated to develop a conceptual formulation that explains the position of parenting neglect as a contemporary issue within the framework of Islamic criminal law.

The primary legal materials utilized in this study include the Qur'an, Hadith, statutory regulations concerning child protection, and classical and contemporary *fiqh* literature related to Islamic criminal law. Secondary legal materials consist of reputable national and international scholarly articles, books, and research findings relevant to parenting neglect, child protection, *maqāsid al-sharī'ah*, and *jarimah ta'zīr*. Meanwhile, tertiary legal materials comprise legal dictionaries, encyclopedias, and other reference sources that support the interpretation and conceptual analysis of the subject matter. All legal materials are analyzed qualitatively using a prescriptive legal analysis method, which involves the processes of identification, classification, interpretation, and construction of legal arguments.<sup>12</sup>

The reconstruction proceeds through several analytical stages: first, identifying the *sharī'ah*-based parental obligations toward children and the forms of parenting neglect that constitute violations of those obligations; second, assessing the resulting *mafsadah* by relating specific forms of neglect to the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*); third, examining whether such violations fulfill the characteristics of *jarimah ta'zīr* in light of the authority of *ulī al-amr* and the principles of *maslahah*; and fourth, formulating the appropriate conceptual position of parenting neglect as *jarimah ta'zīr* within contemporary Islamic criminal law. This analysis is conducted to formulate a conceptual reconstruction of parenting neglect as *jarimah ta'zīr* within Islamic criminal law based on the principles of *maslahah* and the objectives of the *sharī'ah*.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cet. 13 (Jakarta: Kencana, 2017).

<sup>12</sup> Katerina Lepenioti et al., "Prescriptive Analytics: Literature Review and Research Challenges," *International Journal of Information Management* 50 (2020): 57–70, <https://doi.org/10.1016/j.ijinfomgt.2019.04.003>.

## Results and Discussion

### Parenting neglect as a contemporary challenge in the protection of children's rights

The child protection literature classifies parenting neglect into several forms, including physical neglect, emotional neglect, educational neglect, medical neglect, and supervisory neglect.<sup>13</sup> The rapid advancement of digital technology has also given rise to a new form of neglect, commonly referred to as digital neglect, which denotes parents' failure to provide adequate guidance, supervision, and protection regarding their children's digital activities. Such neglect increases children's vulnerability to cyberbullying, online exploitation, and adverse psychosocial outcomes.<sup>14</sup> Accordingly, parenting neglect should be understood as a multidimensional concept that extends beyond the failure to meet children's physical needs. It also encompasses the quality of the parent-child relationship in ensuring the comprehensive fulfillment of children's rights.

The dynamics of contemporary society have further heightened the urgency of addressing parenting neglect. Changes in family structures, the growing prevalence of dual-income households,<sup>15</sup> increasing economic pressures,<sup>16</sup> and the widespread integration of digital technology into daily life have transformed traditional parenting practices into a far more complex undertaking.<sup>17</sup> In many cases, although children's material needs are adequately met, their emotional needs, communication, supervision, and parental guidance are neglected. This demonstrates that parenting neglect is not solely associated with poverty or economic deprivation; it can also occur in financially secure families that fail to fulfill their caregiving responsibilities effectively.<sup>18</sup> Consequently, parenting neglect in the contemporary context should be understood as a child rights protection issue that requires a multidisciplinary response, including legal frameworks capable of addressing the evolving forms of parental neglect and ensuring comprehensive protection for children.

In contrast to developments in the international literature, the Indonesian legal system does not explicitly recognize the term parenting neglect. Instead, statutory regulations predominantly employ the concept of *child neglect*, which is understood as the failure to fulfill legal obligations toward a child, resulting in the infringement of the child's rights.<sup>19</sup>

<sup>13</sup> Abdullah and Thattengat, "Child Neglect as a Culture-Based Concept: A Systematic Review and Implications for Studying and Measuring Child Neglect"; Ylitervo, Veijola, and Halt, "Emotional Neglect and Parents' Adverse Childhood Events"; Haworth et al., "A Systematic Review of Measures of Child Neglect."

<sup>14</sup> Alev Üstündağ, "Parenting in the Digital Age: How Is the Digital Awareness of Mothers?," *Journal of Learning and Teaching in Digital Age* 9, no. 1 (2024): 50–60, <https://doi.org/10.53850/joltida.1290600>.

<sup>15</sup> S. Wood et al., "How Might Changes to Family Income Affect the Likelihood of Children Being in Out-of-Home Care? Evidence from a Realist and Qualitative Rapid Evidence Assessment of Interventions," *Children and Youth Services Review* 143 (2022): 106685, <https://doi.org/10.1016/j.childyouth.2022.106685>.

<sup>16</sup> Kathryn Maguire-Jack and Kierra Sattler, "Neighborhood Poverty, Family Economic Well-Being, and Child Maltreatment," *Journal of Interpersonal Violence* 38, no. 5–6 (2023): 4814–31, <https://doi.org/10.1177/08862605221119522>.

<sup>17</sup> Neslihan Altunpul and Nilüfer Koçtürk, "Technology-Based Child Abuse and Neglect Prevention Programs: A Systematic Review," *Psikiyatride Güncel Yaklaşımlar* 16, no. 3 (2024): 466–84, <https://doi.org/10.18863/pgy.1340938>.

<sup>18</sup> Yongyong Xu et al., "Childhood Neglect, Depression, and Academic Burnout in Left-behind Children in China: Understanding the Roles of Feelings of Insecurity and Self-Esteem," *Child Protection and Practice* 5 (2025): 100168, <https://doi.org/10.1016/j.chipro.2025.100168>; G.C.M. Skinner, N. Hodges, and E. Kennedy, "A Systematic Review of the Relationship between Poverty and Child Abuse and Neglect: Evidence from Individual and Family Level Studies," *Children and Youth Services Review* 182 (2026): 108753, <https://doi.org/10.1016/j.childyouth.2026.108753>.

<sup>19</sup> Manisha Ramadanni, "Legal Implications for Parents Who Neglect Their Children from the Perspective of Indonesian Criminal Law," *Jurnal Lex Renaissance* 8, no. 2 (2023): 290–306, <https://doi.org/10.20885/JLR.vol8.iss2.art6>.

Nevertheless, in substantive terms, parenting neglect is closely associated with the legal duties imposed on parents under Indonesian law. Article 26(1) of Law No. 35 of 2014, amending Law No. 23 of 2002 on Child Protection (Child Protection Law), stipulates that parents are obligated to nurture, care for, educate, and protect their children; to support their growth and development in accordance with their abilities, talents, and interests; and to prevent child marriage.<sup>20</sup>

In addition to prescribing parental obligations, Indonesian positive law also imposes legal consequences for acts of child neglect. The Child Protection Law classifies child neglect as a violation of children's rights that may give rise to criminal liability where the statutory elements of the offense are satisfied.<sup>21</sup> Furthermore, the Indonesian Criminal Code contains specific provisions concerning the neglect of persons to whom a legal duty of care is owed. Article 428(1) of Law No. 1 of 2023 on the Indonesian Criminal Code provides:

*“Any person who places or leaves another person in a state of neglect, despite being under a legal or contractual obligation to provide maintenance, care, or support for that person, shall be punished with imprisonment for a maximum of two years and six months or with a fine not exceeding Category III.”* (Translated).

Viewed in light of this provision, parents who neglect their children may be subject to criminal sanctions of up to two years and six months' imprisonment or a fine of up to IDR 50,000,000.<sup>22</sup> This provision demonstrates the state's recognition of the importance of protecting children from neglect through criminal law. Nevertheless, its regulatory focus remains largely confined to the legal consequences of child neglect and does not fully encompass the broader spectrum of non-physical forms of parenting neglect, such as emotional neglect, educational neglect, limited parental involvement in a child's development, or the failure to adequately supervise children's digital activities.

This distinction highlights a significant difference in scope between the concept of child neglect under Indonesian law and the broader notion of parenting neglect developed in the international literature. Under Indonesian positive law, child neglect is generally associated with the failure to fulfill a child's basic needs in a manner that results in legally recognizable harm or liability.<sup>23</sup> By contrast, parenting neglect encompasses any failure to perform parental caregiving functions that may hinder a child's development, even where no immediate or legally cognizable harm has yet occurred.<sup>24</sup> In other words, parenting neglect adopts a preventive approach to child protection by emphasizing the quality of parenting and early intervention, whereas the concept of child neglect in Indonesian positive law is primarily oriented toward a repressive response following the violation of a child's rights. This divergence demonstrates that parenting neglect constitutes a broader conceptual framework than the conventional notion of child neglect currently recognized within the Indonesian legal system.

<sup>20</sup> Abdul Haris Nasution, Zulfahmi Zulfahmi, and Asrofi Asrofi, “Analisis Hukum Perlindungan Anak Di Indonesia Terhadap Eksploitasi Anak Oleh Orang Tua Dalam Praktik Mengemis,” *Mandub: Jurnal Politik Sosial Hukum Dan Humaniora* 2, no. 4 (2024): 13–24, <https://doi.org/10.59059/mandub.v2i4.1652>.

<sup>21</sup> Ramadanni, “Legal Implications for Parents Who Neglect Their Children from the Perspective of Indonesian Criminal Law.”

<sup>22</sup> Republik Indonesia, “Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” 2023.

<sup>23</sup> Ramadanni, “Legal Implications for Parents Who Neglect Their Children from the Perspective of Indonesian Criminal Law.”

<sup>24</sup> Haworth et al., “A Systematic Review of Measures of Child Neglect”; Abdullah and Thattengat, “Child Neglect as a Culture-Based Concept: A Systematic Review and Implications for Studying and Measuring Child Neglect”; Ylitervo, Veijola, and Halt, “Emotional Neglect and Parents' Adverse Childhood Events.”

The foregoing discussion demonstrates that parenting neglect constitutes a contemporary challenge that has yet to be fully conceptualized within the Indonesian legal system. Although its substantive elements are reflected in various statutory provisions concerning parental obligations and the prohibition of child neglect, the existing legal concept of child neglect does not adequately encompass the full range of parenting omissions that have emerged in contemporary society. This conceptual gap warrants careful examination, as the law is expected not only to provide remedies after violations have occurred but also to respond proactively to emerging threats to children's rights. In this regard, Islamic criminal law offers a valuable analytical framework for assessing whether parenting neglect may be regarded as a breach of *shari'ah*-based parental obligations that gives rise to *mafsadah* and, therefore, provides a legitimate basis for its conceptual reconstruction as a form of *jarimah ta'zir*.

### Parenting neglect from the perspective of Islamic criminal law

Islam regards children as both a trust (*amānah*) and a blessing bestowed by Allah SWT, whose rights must be safeguarded, protected, and fully fulfilled. This status entails that parents not only possess rights over their children but also bear a *shari'ah*-based obligation to ensure their survival, education, protection, and moral development.<sup>25</sup> The Qur'an provides a normative foundation for these parental responsibilities. For instance, Allah SWT commands believers in Qur'an Surah (QS.) al-Tahrim [66] verse 6 to protect themselves and their families from the punishment of Hell:<sup>26</sup> "O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones..." Likewise, QS. al-Baqarah [2] verse 233 emphasizes the responsibility of parents to fulfill their children's needs through proper care and nurturing:<sup>27</sup>

*"Mothers shall breastfeed their children for two complete years, for those who wish to complete the nursing period. The father is responsible for providing food and clothing in a reasonable manner. No person is burdened beyond his or her capacity. Neither mother nor father should be made to suffer because of their child."* (QS. al-Baqarah [2]: 233).

Furthermore, QS. al-Nisā' [4] verse 9 warns parents against leaving behind a vulnerable generation (*dhurriyyatan dī'āfan*), whether in physical, intellectual, or economic terms:<sup>28</sup> "And let those fear Allah who, if they were to leave behind weak offspring, would be concerned for their welfare.." Collectively, these verses demonstrate that child-rearing in Islam is not merely a social responsibility but a legal and ethical obligation aimed at securing the welfare (*maslahah*) and holistic well-being of children.

This principle is further reinforced by a hadith of the Prophet Muhammad PBUH, which states that every leader will be held accountable for those under his or her responsibility (*kullukum rā'in wa kullukum mas'ūlun 'an ra'iyyatihi*). Within the family context, parents are regarded as leaders who are accountable for ensuring the fulfillment of their children's rights.<sup>29</sup>

<sup>25</sup> Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices."

<sup>26</sup> Akhmad Syahbudin et al., "The Role of Parents in Family Education on Surah At-Tahrim (Study of Interpretation Maudhū'i Li Sūrah Wāhidah)," *Munaddhomah: Jurnal Manajemen Pendidikan Islam* 3, no. 3 (2023): 272–83, <https://doi.org/10.31538/munaddhomah.v3i3.285>.

<sup>27</sup> Ahmad Saifudin et al., "Child Rearing Traditions and the Maqāsidī Tafsir of Q.S. Al- Baqarah (2):233: Integrating Islamic Values with Cultural Practices," *Mimbar Agama Budaya* 42, no. 1 (2025): 213–24, <https://doi.org/10.15408/mimbar.v42i1.46102>.

<sup>28</sup> Muhamad Saleh et al., "The Concept of Child Protection in the Qur'an Based on the Interpretation of Surah An-Nisa 4:9 from the Perspective of Islamic Law," *Journal of Mujaddid Nusantara* 3, no. 1 (2026): 34–50, <https://doi.org/10.62568/jomn.v3i1.772>.

<sup>29</sup> Muhamad Rizky Rizaldy and Maulana Syarif Hidayatullah, "Islamic Leadership Values: A Conceptual Study," *Dialogia: Jurnal Studi Agama Dan Sosial* 19, no. 1 (2021): 88–104, <https://doi.org/10.21154/dialogia.v19i1.2589>.

Accordingly, the obligation of child custody and care (*hadānah*) in Islamic jurisprudence extends beyond physical maintenance to encompass education (*tarbiyah*), protection (*himāyah*), moral development (*ta'dīb*), and the fulfillment of children's emotional needs. The primary objective of *hafānah* is to safeguard the child's well-being and best interests until the child is capable of living independently. Consequently, any form of caregiving that neglects a child's fundamental needs is inconsistent with the objectives of Islamic law (*maqāsid al-sharī'ah*), as it undermines the *maslahah* (public welfare or best interests) that the child is entitled to receive within the family environment.<sup>30</sup>

Although the term parenting neglect is not explicitly recognized in classical Islamic jurisprudential literature, its substantive meaning can be inferred from the concept of neglecting the *sharī'ah*-based obligations of parents. In Islamic law, every obligation prescribed by the *Sharī'ah* is intended to promote welfare (*jalb al-masālih*) and prevent harm (*dar' al-mafāsīd*).<sup>31</sup> Accordingly, when parents intentionally or negligently fail to fulfill their caregiving responsibilities, resulting in the neglect of their children's rights, such conduct gives rise to *mafsadah* (harm) that is contrary to the objectives of the *Sharī'ah*. This *mafsadah* extends beyond physical injury to include psychological harm, educational deprivation, the loss of a sense of security, and impaired moral development.<sup>32</sup> Therefore, parenting neglect should not be regarded merely as a violation of familial ethics but rather as a breach of a legally binding parental obligation with significant implications for the protection of children's rights.

The analysis of parenting neglect in this study is grounded in Jasser Auda's theory of *maqāsid al-sharī'ah*, which conceptualizes the objectives of Islamic law as dynamic and responsive to the evolving needs of society.<sup>33</sup> From this perspective, parenting neglect directly threatens at least three essential objectives of the *Sharī'ah*. First, it undermines *hifz al-nafs* (the preservation of life), as neglecting a child's health, nutrition, and safety may jeopardize the child's survival and healthy development. Second, it compromises *hifz al-'aql* (the preservation of intellect), since the failure to provide adequate education, cognitive stimulation, and psychological support may impede the child's intellectual growth and mental well-being. Third, it endangers *hifz al-nasl* (the preservation of lineage or future generations), because the quality of parenting plays a decisive role in nurturing a healthy, morally grounded, and socially responsible generation. Accordingly, parenting neglect should be understood not merely as harm inflicted upon an individual child but as a practice that undermines the broader objectives of the *Sharī'ah* in safeguarding the quality and sustainability of future generations.

This *maqāsid al-syarī'ah* approach demonstrates that the protection of children in Islam is not merely reactive but fundamentally preventive. Rather than waiting until harm has actually occurred, the *Sharī'ah* encourages every possible effort to prevent potential harm at its earliest stage, in accordance with the principle of *dar' al-mafāsīd* (the prevention of harm).<sup>34</sup> Consequently, any form of parental neglect that demonstrably impedes the fulfillment of children's rights should be regarded as inconsistent with the principle of *maslahah* (the promotion of welfare). This perspective differs from that of positive law, which generally focuses on the legal consequences arising after neglect has occurred.<sup>35</sup> By contrast, Islamic law

<sup>30</sup> Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices."

<sup>31</sup> Duski Ibrahim, *Al-Qawa'id Al-Fiqhiyyah (Kaidah-Kaidah Fiqih)* (Palembang: Noerfikri, 2019).

<sup>32</sup> Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices."

<sup>33</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

<sup>34</sup> Ibrahim, *Al-Qawa'id Al-Fiqhiyyah (Kaidah-Kaidah Fiqih)*.

<sup>35</sup> Ramadanni, "Legal Implications for Parents Who Neglect Their Children from the Perspective of Indonesian Criminal Law."

recognizes the care and upbringing of children as an ongoing religious and legal obligation that must be fulfilled continuously from the outset.<sup>36</sup>

Based on the foregoing discussion, parenting neglect in the perspective of Islamic criminal law may be understood as a breach of the *shari'ah*-based parental obligations that results in the violation of children's fundamental rights and gives rise to *mafsadah* (harm) contrary to the objectives of the *Shari'ah* (*maqāsid al-shari'ah*). Although neither the Qur'an nor the Sunnah specifically classifies parenting neglect as a distinct *jarimah* (criminal offense), the general principles of Islamic law provide a normative foundation for the proposition that any conduct threatening the preservation of life, intellect, and lineage must be prevented and may give rise to legal accountability. This normative framework provides the basis for further examining the legal status of parenting neglect within the Islamic criminal justice system through the doctrine of *jarimah ta'zīr*, under which offenses not explicitly prescribed in the primary sources are subject to discretionary punishment determined by the legitimate authority.

### Reconceptualizing parenting neglect as a *jarimah ta'zīr* under Islamic criminal law

Islamic criminal law (*fiqh al-jināyah*) is fundamentally established to realize and safeguard the five essential objectives of the *Shari'ah* (*maqāsid al-shari'ah*), namely the protection of religion (*hifz al-dīn*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-māl*). Any act that threatens these objectives is regarded as a prohibited act and may give rise to legal liability.<sup>37</sup> Nevertheless, the *Shari'ah* does not regulate in detail every form of conduct that may emerge as society evolves. In Islamic criminal law, criminal offenses (*jarimah*) are generally classified into three categories: *jarimah hudūd*, *jarimah qisās-diyāt*, and *jarimah ta'zīr*.<sup>38</sup> Among these categories, *jarimah ta'zīr* is the most dynamic because it grants the state the authority to determine both the types of conduct that constitute criminal offenses and the corresponding sanctions for acts that cause public harm but are not explicitly prescribed in the *nass* (authoritative religious texts).<sup>39</sup>

*Jarimah ta'zīr* encompasses any sinful act or violation of the public interest for which no specific punishment is prescribed in the Qur'an or the Hadith. Accordingly, the authority to determine both the prohibited conduct and the appropriate sanctions is vested in the *ulī al-amr* (legitimate authority) based on the principle of *maslahah* (public interest). This concept demonstrates that *ta'zīr* is not merely a supplementary category of punishment but also serves as an instrument of legal adaptation within Islamic law (legal adaptability), enabling the *Shari'ah* to remain responsive to social change and contemporary developments.<sup>40</sup> Accordingly, the emergence of new forms of misconduct that were unknown during the classical period does not place them beyond the scope of Islamic criminal law. Rather, such conduct may be examined and classified as *jarimah ta'zīr* provided that it violates the objectives of the *Shari'ah* (*maqāsid al-shari'ah*) and results in harm to individuals or society.<sup>41</sup>

In the context of this study, parenting neglect is a contemporary phenomenon that is not recognized as a specific legal term in classical Islamic jurisprudence. Nevertheless, its

<sup>36</sup> Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices."

<sup>37</sup> M. Nurul Irfan, *Hukum Pidana Islam* (Jakarta: Amzah, 2016); Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

<sup>38</sup> Irfan, *Hukum Pidana Islam*.

<sup>39</sup> Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law."

<sup>40</sup> Zul Fahmi et al., "Legal Perspectives on Breast Grabbing as an Act of Sexual Harassment: Comparing Indonesian Positive Law with Islamic Criminal Law: Perspektif Hukum Tentang Begal Payudara Sebagai Tindakan Pelecehan Seksual: Membandingkan Hukum Positif Indonesia Dengan Huk," *Al-Jinayah: Jurnal Hukum Pidana Islam* 11, no. 1 (2025): 26–43, <https://doi.org/10.15642/aj.2025.11.1.26-43>.

<sup>41</sup> Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law."

underlying substance, namely, the failure of parents to fulfil their parental obligations, has long been acknowledged in Islamic law through the concepts of *hadānah* (child custody and care), *tarbiyah* (child upbringing and education), and the broader parental responsibility for the care and protection of children.<sup>42</sup>

As discussed in the previous subsection, both the Qur'an and the Hadith impose upon parents the obligation to nurture, educate, protect, and provide for their children as part of the trust (*amānah*) for which they are accountable before Allah SWT.<sup>43</sup> Accordingly, when parents intentionally or negligently fail to discharge these obligations in a manner that impedes a child's growth and development, such conduct can no longer be regarded merely as a moral failing. Rather, it constitutes a breach of Shari'ah-based parental obligations that gives rise to legal consequences.

When examined within the classification of *jarimah*, parenting neglect cannot be categorized as *jarimah hudūd*, as no *nass* explicitly prescribes either the offense itself or the corresponding punishment.<sup>44</sup> Likewise, parenting neglect does not fall within the category of *jarimah qisās-diyāt*, since it does not necessarily involve the unlawful taking of life or the physical injury that constitutes the primary subject matter of that category.<sup>45</sup> Rather, the characteristics of parenting neglect are more appropriately classified as *jarimah ta'zīr*, as it involves conduct that violates Shari'ah-based parental obligations, causes harm to children, and requires legal regulation based on the principle of *maslahah* (public interest). Accordingly, the doctrine of *ta'zīr* provides the legal basis for the state to formulate criminal liability for acts of parenting neglect in a manner that is responsive to the evolving needs and social realities of contemporary society.

The reconstruction of parenting neglect as *jarimah ta'zīr* in this study is grounded in the *maqāsid al-shari'ah* approach. Jasser Auda argues that the *maqāsid al-shari'ah* should be understood as a dynamic system capable of responding to contemporary legal challenges.<sup>46</sup> From this perspective, the legal assessment of an act is determined not merely by the existence or absence of an explicit ruling in the *nass*, but also by its implications for the protection of the objectives of the Shari'ah. Accordingly, the *maqāsid al-shari'ah* approach provides a conceptual foundation for the development of Islamic criminal law, enabling it to address emerging forms of misconduct arising from social change, including parenting neglect.

These findings also reveal a conceptual gap in the existing literature. The study conducted by Andhika Jaya Putra and Lia Agustina Damanik examined child neglect from the perspectives of Indonesian criminal law and Islamic criminal law, with particular emphasis on the legal liability of perpetrators. While the study concluded that child neglect is contrary to the Islamic principle of child protection, it did not develop a doctrinal argument regarding the classification of parenting neglect as *jarimah ta'zīr*.<sup>47</sup>

<sup>42</sup> Nurjanah et al., "Children's Rights in Islamic Law: A Contemporary Study of Family Practices."

<sup>43</sup> Syahbudin et al., "The Role of Parents in Family Education on Surah At-Tahrim (Study of Interpretation Maudhū'i Li Sūrah Wāhidah)"; Saifudin et al., "Child Rearing Traditions and the Maqāsidī Tafsir of Q.S. Al-Baqarah (2):233: Integrating Islamic Values with Cultural Practices"; Saleh et al., "The Concept of Child Protection in the Qur'an Based on the Interpretation of Surah An-Nisa 4:9 from the Perspective of Islamic Law."

<sup>44</sup> Irfan, *Hukum Pidana Islam*.

<sup>45</sup> ST Halimang, Ridhwan Ridhwan, and Sakdiah Sakdiah, "Justice and Qisās in Islamic Law: The Views of Muslim Scholars and Intellectuals at Makassar City, South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 617–42, <https://doi.org/10.22373/sjhk.v9i1.26164>.

<sup>46</sup> Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

<sup>47</sup> Putra and Damanik, "Analysis of The Criminal Act of Child Neglect By Parents Drug Abuse From The Perspektivctive of Islamic Criminal Law."

Meanwhile, Abdullah and Thattengat, through a systematic review, demonstrated that the concept of child neglect continues to evolve in response to changes in culture and parenting practices.<sup>48</sup> However, their study was situated within the fields of psychology and child protection and therefore did not examine the development of the concept within the framework of Islamic criminal law. Accordingly, the present study offers a conceptual contribution by reconstructing parenting neglect as *jarimah ta'zīr* based on the theories of *maqāsid al-sharī'ah* dan teori *ta'zīr*.

Based on the foregoing analysis, this study proposes three normative foundations for the criminalization of parenting neglect under Islamic criminal law.

- 1) Islamic law explicitly imposes upon parents a Shari'ah-based obligation to provide care and upbringing for their children.
- 2) there must be an act or omission that results in the deprivation of a child's fundamental rights and consequently gives rise to *mafsadah*.
- 3) the *ulī al-amr* possesses the authority to prescribe prohibited conduct and determine appropriate sanctions through the mechanism of *ta'zīr* in accordance with the principle of *maslahah*.

These foundations, however, do not mean that every parenting shortcoming constitutes a criminal offense. For parenting neglect to warrant classification as *jarimah ta'zīr*, the omission must involve a sufficiently serious violation of a parental obligation, result in or create a substantial risk of *mafsadah* to the child's fundamental rights, and be attributable to the parent as a form of culpable neglect. Minor, occasional, or unavoidable shortcomings in parenting that do not cause significant harm or risk should remain within the realm of ordinary parental difficulties, social intervention, or educational measures rather than criminal liability. Thus, the criminal law threshold is determined by the seriousness of the omission, the degree of culpability, and the nature and extent of the harm or risk caused to the child.

Collectively, these three elements and the foregoing threshold demonstrate that the criminalization of parenting neglect does not constitute an arbitrary expansion of criminal law. Rather, it represents the implementation of the Shari'ah's objective of protecting children's rights as an integral component of *maqāsid al-sharī'ah*.

**Table 1.** Conceptual reconstruction of parenting neglect as a *jarimah ta'zīr*

| Analytical Stage                                 | Conceptual Reconstruction                                                                                                                                                                                                                                              |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Shari'ah-based parental obligations              | Parents are obligated to provide child custody and care ( <i>hadānah</i> ), education ( <i>tarbiyah</i> ), protection, and the fulfillment of their children's rights.                                                                                                 |
| Form of violation                                | Parents fail to fulfill these obligations by neglecting the child's physical, emotional, educational, healthcare, or supervisory needs (parenting neglect).                                                                                                            |
| Criminalization threshold                        | The omission is sufficiently serious, attributable to the parent, and causes or creates a substantial risk of <i>mafsadah</i> affecting the child's fundamental rights. Minor or unavoidable parenting shortcomings do not automatically constitute a <i>jarimah</i> . |
| Legal implications                               | Such neglect results in <i>mafsadah</i> (harm), threatening <i>hifz al-nafs</i> (the preservation of life), <i>hifz al-'aql</i> (the preservation of intellect), and <i>hifz al-nasl</i> (the preservation of lineage).                                                |
| Classification of the offense ( <i>jarimah</i> ) | The conduct does not fall within the categories of <i>hudūd</i> or <i>qisās-diyāt</i> offenses but fulfills the characteristics of a <i>jarimah</i>                                                                                                                    |

<sup>48</sup> Abdullah and Thattengat, "Child Neglect as a Culture-Based Concept: A Systematic Review and Implications for Studying and Measuring Child Neglect."

|                    |                                                                                                                                                                  |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                    | <i>ta'zīr</i> subject to discretionary punishment.                                                                                                               |
| Legal consequences | The <i>ulī al-amr</i> (legitimate authority) has the discretion to determine proportionate sanctions based on the principle of <i>maslahah</i> (public welfare). |

Source: processed by the author from various sources.

This reconstruction demonstrates that the orientation of Islamic criminal law toward parenting neglect is not merely retributive but also preventive and educational. The classification of parenting neglect as *jarimah ta'zīr* therefore does not mean that every shortcoming in parenting practices should be criminalized. Criminal liability is limited to forms of parental neglect that meet the foregoing threshold, particularly where the omission is sufficiently serious, culpable, and demonstrably harmful or creates a substantial risk to children's fundamental rights. Rather, it seeks to establish normative boundaries for forms of parental neglect that demonstrably threaten children's fundamental rights and give rise to *mafsadah*. Accordingly, the application of *ta'zīr* must be guided by the principles of proportionality, the degree of culpability, and the extent of the harm caused, thereby remaining consistent with the objectives of punishment in Islam, which emphasize the protection of the public interest (*maslahah*), moral education (*ta'dīb*), deterrence, and behavioural reform.<sup>49</sup> Within this framework, the authority of the *ulī al-amr* extends beyond the imposition of criminal sanctions to encompass the formulation of legal policies, the strengthening of parenting systems, and the establishment of comprehensive child protection mechanisms as an implementation of *maqāsid al-syarī'ah*.

Accordingly, the reconstruction advanced in this study not only enriches the discourse on Islamic criminal law concerning the phenomenon of parenting neglect, but also demonstrates the normative flexibility of *jarimah ta'zīr* in responding to the evolving challenges of contemporary society while remaining faithful to the fundamental principles of the Shari'ah. From this perspective, Islamic criminal law functions not only as a mechanism for law enforcement after a violation has occurred but also as a framework for the preventive protection of children's rights. Consequently, the proposed reconstruction provides a normative foundation for the development of contemporary *fiqh al-jināyah* while contributing to scholarly discourse and to the formulation of child protection policies in Indonesia that are more responsive to the diverse manifestations of parenting neglect.

## Conclusion

Parenting neglect constitutes a contemporary legal issue with a broader scope than the conventional concept of child neglect under Indonesian positive law. It extends beyond the failure to satisfy children's physical needs to encompass the neglect of their emotional, educational, healthcare, and supervisory needs, all of which may jeopardize their healthy development. From the perspective of Islamic criminal law, parenting neglect represents a breach of parents' *shari'ah*-based obligations as established in the Qur'an, Hadith, and the principles of *hadānah*. Such conduct gives rise to *mafsadah* that threatens the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*). Accordingly, this study reconstructs parenting neglect as *jarimah ta'zīr*. The proposed reconstruction establishes that parenting neglect may be classified as *jarimah ta'zīr* when the parental omission constitutes a serious and culpable violation of parental obligations and causes, or creates a substantial risk of, *mafsadah* affecting children's fundamental rights.

Although it does not fall within the categories of *hudūd* or *qisās-diyāt*, it satisfies the essential characteristics of an offense that may be criminalized under the discretionary

<sup>49</sup> Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law."

authority of *ulī al-amr* to promote *maslahah* with sanctions determined proportionately according to the seriousness of the neglect, the degree of culpability, and the resulting harm, in accordance with *maqāsid al-sharī'ah* and *maslahah*.

Based on these findings, this study recommends that the development of contemporary Islamic criminal law accord greater attention to various forms of parenting neglect as an integral component of child protection grounded in *maqāsid al-sharī'ah*. It further recommends that Indonesian policymakers strengthen the child protection framework by explicitly incorporating the concept of parenting neglect into existing legislation. Such reform would shift the legal framework beyond a predominantly reactive response to child neglect toward a more preventive approach capable of addressing the evolving forms of parental neglect in contemporary society. Future research should also explore criminal policy formulations concerning parenting neglect through a comparative analysis of Islamic law and Indonesian positive law in order to develop a more responsive child protection model for contemporary family dynamics.

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### Author Contributions

Y.S.N.: Conceptualization, Formal analysis, Investigation, Methodology, and Writing—original draft preparation. W.P.A.: Investigation, Validation, Supervision, and Writing—review and editing. All authors have read and agreed to the published version of the manuscript.

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