



# Protection for Children In Access Maqa Perspective Electronic System<S{ID Asy-Syariah<'AH (Analysis Study of Article 16A of Law No. 1 of 2024 on Information and Electronic Transactions)

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## ABSTRACT

The children will be given the next generation who will be competent in advancing the nation, so it is hoped that the children will continue to have good qualities as they grow up. In this modern age, the presence of electronic systems provides an incentive for children to explore themselves further in their growth. However, in addition to having a good impact, electronic systems can also have a negative impact on children when they access features or contents that they should not have access to. Later, with the passage of time, Act No. 1 of 2024 was enacted, which stipulates in Article 16A that electronic system providers, on their features and contents, must provide age warnings for access, verification, and reporting mechanisms for misuse of access to electronic systems. This study is aimed at studying whether it is in accordance with the teaching of maqa>s{id asy-syari>'ah. So in this study, the researchers use the study of library research with a normative approach. As for the results of the study in this research, the load of Article 16A of Law No. 1 of 2024 is inherent with the doctrine of maqa>s{id asy-syari>'ah in the h{ifz{ al-'aql and h{ifz{ an-nasl, because by limiting his child's access to electronic systems, he will be prevented from accessing features or contents to which he should not have access, so the child's growth will continue to wake up.

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## INTRODUCTION

The development of increasingly advanced times has consequences for the transformation of information technology which in turn has implications for advanced electronic systems as well. Humans create electronic systems to make things easier because they can be accessed without limits. It is evident that to this day, almost all human activities are dominated by the need for electronic systems. Electronic systems are widely known by the public, including children, adults, the elderly, upper class, middle class and lower class. The presence of an electronic system has positive implications because it contains many things, such as: 1) Provide access to very broad information. 2) As an entertainment medium. 3) As a communication medium. 4) As a transaction medium.

Thanks to these developments, previously diverse electronic devices have now been integrated in affordable sizes. For example, via a smartphone, it is now easy for someone to use features and services in the trade sector: Shopee, Bukalapak, and JD.ID. In the streaming subscription sector: Netflix and Spotify. In

the Information Technology sector: YouTube and Google. In the communication and social media sector: Instagram, X, and WhatsApp (Nahriyah, 2018).

Children, in turn, cannot escape accessing electronic systems. By using electronic systems, children have the potential to become more interested in their ability to read, communicate, be entertained, and even be able to build relationships (Junida, 2019).

However, as time went by, the state through its legal instruments issued Law no. 1 of 2024 concerning the Second Amendment to Law no. 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as Law No. 1 of 2024), which in Article 16A basically limits children's activities in accessing electronic systems using certain mechanisms. It is interesting whether Article 16A of Law no. 1 of 2024 concerning child protection is appropriate or actually distorts children's freedom in accessing electronic systems.

So in this regard, it becomes a scientific step for researchers to attempt to study the law associated with the teachings of Imam ash-Sya>t{ibi}'s maqa>s{id ash-syari>'ah as a basis for methodology and principles of contemporary Islamic law. In this research, the researcher raised the problem formulation: What is the maqa>s{id asy-syari>'ah perspective on protection for children in accessing electronic systems as contained in Article 16A of Law no. 1 in 2024? So this research also has a consequent objective, namely to understand the content of maqa>s{id asy-syari>'ah contained in Article 16A of Law no. 1 of 2024.

## METHOD

The method used by researchers in this research is a library research study using library materials which include primary materials from Law no. 1 of 2024 and Imam ash-Sya>t{ibi}'s thoughts about maqa>s{id ash-syari>'ah, as well as secondary materials including books, articles and other coherent data that can strengthen research. So the approach used by researchers is a normative juridical approach.

## RESULTS AND DISCUSSION

### The Urgency of Child Protection

Children are offspring or generations resulting from sexual relations between a man and a woman, whether bound by marriage or not. Then, according to Soerojo Wignjodipoero, apart from being the next generation, children are also a vessel for the hopes of parents who in the future will protect their parents if they are no longer physically capable and serve as the backbone of the family. On the other hand, children are also the next generation of the nation who will one day occupy more strategic positions (leaders), so that children are also attached to a big responsibility in the succession of the nation's progress.

Unlike adults, children have unique characteristics and characteristics that must be given protection so that their overall physical, mental and social growth and development is maintained (Eleanora, 2021). The state must invest massively and progressively in the fields of security, welfare, education, and so on. This is of course achieved with a commitment to provide guarantees for children's rights.

Indonesia itself has a commitment to guarantee children's rights, this is proven by Presidential Decree (Keppres) no. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child, which states that children have the following rights: 1) Feeling happy. 2) Education. 3) Protection. 4) Good name. 5) Getting food. 6) Health. 7) Recreation. 8) Similarity. 9) Play a role in development (vide Presidential Decree No. 36 of 1990).

From the above, the discussion that is quite interesting for children is about protection. Protection itself is a guarantee of security, peace and prosperity in the present and future periods. Child protection itself is the responsibility of parents, family, society and the state by providing a series of activities that are held continuously so that children can be protected (Fitriani, 2016). The simplest example of child protection is trying to prevent children from being harmed, such as abuse of responsibility in any form (abuse). The right to protect children is a right inherent in children which is intertwined with power and which is given by law to the child concerned.

Apart from the ratification of the convention on children's rights, child protection has a strong foundation, namely as follows: 1) Philosophically, child protection is based on Pancasila which is a philosophical guideline for life at every level. 2) Ethically, child protection is carried out on the basis of a person's professional ethics so that in carrying out their profession they do not violate the rights of children; 3) Juridically, child protection must be based on the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) and which will later be further explained through statutory and regulatory instruments (Said, 2018).

So in relation to this, the state has obligations, namely: 1) The state is obliged to respect and is not permitted to carry out actions that annul the human rights of children. 2) The state is obliged to protect children from perpetrators who violate human rights. 3) The state is obliged to act to fulfill children's rights, which cannot be achieved without intervention from the state, for example by building schools and hospitals. 4) The state is obliged to promote the fulfillment of children's rights, such as training and sensitizing the community about child protection (Perempuan, et al, 2016).

As an actualization of this, the state issued Law no. 23 of 2002 concerning Child Protection. The a quo law then underwent changes starting from Law no. 35 of 2014, to Law No. 17 of 2016. Law no. 23 of 2002 regulates various matters regarding children, such as children who are in legal trouble, children born from minority groups, children who are victims of exploitation, children who are victims of riots, children who are trafficked, children who become refugees and so on (Eleanora, 2021).

Nevertheless, history has proven that even when Indonesia achieved its heyday in various aspects, the issue of child protection still escaped major attention. This is proven by the fact that there are still many cases of decline in academic achievement, cases of sexual abuse committed by children and children being exploited for certain things, and sadly there is even the impression that this is considered normal. So the current regulations are actually not enough to accommodate children's protection rights.

In order to provide complete protection for children, real concrete steps and strategies are needed in the form of strengthening child protection through strengthening regulations so that the style of dehumanization of children can stop. Issues regarding children need to be raised more, which previously only stopped in the domestic domain to become a public domain which is the responsibility of the state and society (Suyanto, 2010),

Apart from the state, citizens also have a responsibility to concretize child protection for the welfare of the children themselves. This is also reasonable considering that we all need to ensure that there are quality next generation resources, who have a competitive spirit and can become future leaders. Apart from that, child protection will also benefit parents, families, the environment and even the country. Because children's happiness is shared happiness (Faisal, 2018).

### **Protection for Children in Accessing Electronic Systems in Article 16A of the ITE Law**

In the legal domain, Indonesia responded to the rapid development of electronic systems with Law no. 11 of 2008 which was later amended by Law no. 1 of 2024. The a quo law is attached as a legal instrument to regulate, one of which concerns electronic systems. UU no. 11 of 2008 has gone through fourteen Working Committee Meetings attended by the Government and Commission I DPR RI. Then the Panja gave the task to the Synchronization Team to hold a follow-up meeting which resulted in an agreement regarding changes to 14 articles and the addition of 5 articles.

That there are six challenges that must be considered regarding access to electronic systems for children, namely: 1) Easy internet access. 2) There are no connection limits so it will make children too free to access. 3) It is easier for children to master technology, but this does not mean that children understand all the features and content that are worth accessing. 4) There is a feeling of wanting free access from the child. 5) Not yet understanding the risks (Agustina, 2019).

The Minister of Communication and Information, Budi Arie, emphasized that one aspect that must be understood is that children do not yet have the capacity or ability to understand the risks of violating their rights in using products or services available in electronic systems.

UU no. 1 of 2024 is the state's commitment to further guarantee recognition and respect for human rights and freedoms. To accommodate the interests of a just era, legal instruments must be considered that can provide security and public order in the domain of a democratic society.

However, it is not impossible that the existence of electronic systems can be used by some irresponsible people to carry out their bad intentions and achieve collective benefits by exploiting children. Director General Samuel said that protecting children in accessing the digital world has been exemplified by America and Europe (Kominfo, 2023).

Therefore, the state is trying to provide protection for children as a guarantee of a sense of security and peace in Law no. 1 of 2024. In Article 16A electronic system operators must fulfill several things, namely: 1) Provide protection for children regarding the use of services, features and products. 2) Applying technology and technical efforts to provide protection for children, starting from the development stage to implementation.

The protection in question also includes: 1) Information about the minimum age limit for children who can receive services or products; 2) There is a verification mechanism. 3) There is a reporting mechanism for misuse of services, features and products that have the potential to violate children's rights (vide Article 16A of Law No. 1 of 2024).

### **Maqas{id asy-Syari}'ah**

Maqas{id asy-syari}'ah is a theory of Islamic law that has existed since the establishment of Islamic law, and then over time the theory was established by ulama after the ta>bi' ta>bi'i>n period . Even though its development is not faster than us{ul al-fiqh, the existence of its theory has been applied by many scholars in establishing law (Busyro, 2019).

Maqas{id ash-syari}'ah consists of two words, namely maqas{id and ash-syari}'ah. Etymologically, maqas{id is the plural of maqsad which means aim and purpose. Meanwhile, al-syari}'ah means the path that a Muslim must take (Wahyuni, 2020). In his magnum opus entitled al-muwa>faqat,

Imam ash-Sya>t{ibi> does not clearly state the definition of maqa>s{id ash-syari>'ah. Maqa>s{id asy-syari>'ah was defined for the first time by a contemporary Ulama, namely Imam at{-T{a>hir Ibn 'A>syu>r. According to him, maqa>s{id asy-syari>'ah is the goal and wisdom used as a basis for the sharia in the context of all provisions of religious law.

According to Imam ash-Sya>it{ibi>, there are two points of view of the Shari'a in maqa>s{id ash-syari>'ah. First, related to qas{d ash-sya>r'i (the purpose of Allah SWT in issuing sharia). Second, related to qas{d al-mukallaf (syar'i objectives for themukallaf). This can be understood further as follows:

Maqa>s{id asy-syari>'ah regarding qas{d asy-sya>r'i contains four aspects, namely: 1) The main aim of the Shari'a is none other than the actualization of benefits in this world and the hereafter. 2) Sharia is something that must be understood. 3) Sharia, which is also a taklif law, must be implemented. 4) The aim of sharia is to lead humans to be bound by the law. 5) Maqa>s{id ash-syari>'ah regarding qas{d al-mukallaf

In principle, it is obligatory for the mukalaf who is charged with sharia' to actualize the aims and objectives of human creation, namely carrying out actions that are in line with sharia. The purpose of sharia is to protect and escalate actions that are predominantly wrong, and not to allow actions that are associated with danger and require sacrifices that are not normal (Hudafi, 2021).

Then, to organize needs so they are benefit-based, Imam ash-Sya>it{ibi> broke down human needs contained in Islam into three levels, namely d{aru>riya>t, h{a>jiyat, and tah{si> intention (Nasution, 2020).

d{aru>riya>t (essential). This level is the highest level of requirement in maqasid al-syari'ah. So a need that is included in this level must be fulfilled, because if it is not fulfilled it will have the consequence of canceling benefits both in this world and in the hereafter. At this level, the objectives of Islamic law are also contained in the form of specific elements that must be taken into account (ad-d{aru>riyat al-khams), namely h{ifz{ al-di>n, h{ifz{ an-nafs, h{ifz{ -al-'aql, h{ifz{ an-nasl, and h{ifz{ al-ma>l.

H{ifz{ ad-di>n (keeping religion). In Islam, there are legal and religious teachings that are based on the Shari'a. So by implementing all existing Islamic teachings, a person can be said to have protected the religion or cared for the existence of the religion. This can be done by carrying out obligatory prayers, fasting, zakat and Hajj.

H{ifz{ an-nafs (guarding the soul). Protecting the soul is the second priority after protecting religion. Islam forbids a Muslim from destroying himself and playing with the souls of others and it is mandatory for him to protect himself from harm. Allah SWT has full authority over the lives of creatures, so it is not permissible for anyone to take another person's life by preempting the power of Allah SWT.

H{ifz{ al-'aql (keeping reason). In human life, reason has a dominant role. If reason encounters a problem, all forms of activity will stop. So Islam prohibits someone from doing something that has the potential or could damage the mind. For example in Q.S. al-Ma>idah verse 90 Allah SWT has forbidden humans to drink khamr because it can cause someone to get drunk.

H{ifz{ an-nasl (looking after offspring)

The existence of descendants is the key to the continuation of human civilization. Islam views that the honor of offspring must be protected, such as by forbidding adultery and ordering people to enter into valid marriage contracts so that the resulting offspring are born from a legitimate relationship and receive proper recognition. Children born from a legitimate relationship will bring peace to the child himself. Apart from that, it is also mandatory to be able to care for and educate children so that they have intelligence.

H{ifz{ al-ma>l (guarding wealth). As creatures who have the instinct to love property, Islam commands humans to obtain property in halal ways or transactions and is not permitted in unjustified ways, so that the security of property ownership becomes more guaranteed (Fajri, 2022).

H{a>jiyat (complementary). At this level, if a need is not met it will not threaten human safety, but if it can be fulfilled it can make life easier. For example, everything that is included in the legal classification of rukhsah in the domain of worship, for example, when someone is sick, it is permissible to shorten the worship service.

Tah{si>niyat (tertiary). At this level, if a need is not met, humans will not encounter threats and difficulties. However, if this need is fulfilled in accordance with human desires, it will increase the value of goodness because it is basically muru'ah (moral), beautiful and harmonious (MR & Noor, 2014). For example, wearing good quality clothes to increase self-confidence.

So regarding the above, theoretical studies regarding maqa>s{id ash-syari>'ah are very urgent. This is based on the following things. Firstly, revelation is the source of Islamic law intended for mankind, therefore Islamic law must be adaptive to social change (social engineering), so maqa>s{id asy-syari>'ah is used to articulate the spirit of shari'ah in a new law. Second, the validity of the maqa>s{id asy-syari>'ah theory has been proven since the time of the Prophet SAW. Third, the mujtahid's understanding of maqa>s{id asy-syari>'ah is the basis for the success of ijihad (Jumaidi, 2021).

### Protection for Children in Accessing Electronic Systems from Maqa>s{id asy-Syari>'ah Perspective

Even though access to electronic systems is a freedom guaranteed by the constitution and increasingly perfects the role of humans on earth, in reality the continued presence of electronic systems, both directly and

indirectly, will influence human behavior, both positively and negatively. Then it is these negative aspects that can then drag humans into the realm of harm. Especially for children who mentally and emotionally have not yet reached a good point, so they cannot be compared to adults.

Even though electronic access is a child's right, the state also needs to consider the negative potential that could arise. Children may use electronic systems intentionally or unintentionally to access certain sites that should only be accessed by adults, for example adult content and online loan transactions.

Based on information presented by Sardjito RSUP public relations officer Dr. Sardjito quoted data from the Ministry of Health in 2017, that 94% of students accessed adult content as much as 43% from comics, 57% from the internet, 4% from games, 17% from films, 34% from social media, 19% from magazines, 26% from books. %, and others as much as 4%.

Children who consume adult content can cause the following things: 1) Easily nervous when invited to communicate and tend to avoid eye contact. 2) Spirit fluctuations in activities. 3) Fluctuations in performance. 4) Difficult to concentrate. 5) Dependence on gadgets. 6) Tends to be alone, especially in his own room. 7) Leaving good habits (Sardjito, 2019).

Not only that, several years ago there was a lot of news on social media about Kaesang Pangarep being a victim of fraud. After carrying out an investigation, the police finally arrested four children who were using Instagram to sell limited edition goods (Indonesia, 2020).

This happened because in the previous regulation, namely Law no. 23 of 2002 and its amendments do not contain articles that pay attention to the use of electronic systems by children, such as regarding the minimum age limit for accessing electronic systems. Therefore, protection for children is indeed an urgent matter so that children are not affected by undesirable things.

In Law no. 1 of 2024 electronic system administrators have the obligation to organize and manage electronic systems well by providing protection for children in the form of establishing a minimum age limit for access, verification mechanisms and reporting abuse. So that the content in the a quo article which is a strengthening of the spirit of child protection is in line with *h{ifz} al-'aql* and *h{ifz} an-nasl*.

That the law *qas{d al-mukallaf}* (aimed at *themukallaf*) must be based on benefit. By regulating child protection in the article in question, it becomes the actualization of *maqas{id asy-syari}'ah*, because if it is not regulated in this way, electronic systems that contain a lot of adult content that can be accessed easily will ultimately damage the mind and quality of children. children on a massive scale. Damage to children's minds will make it increasingly difficult for children to differentiate between what is good and what is right in the process of their growth and development, which will lead to a domino effect in the form of weakened children's competitiveness when they grow up.

In Islam, every Muslim is obliged to create and maintain the next generation so that they have quality in all aspects of life. Allah SWT has ordered that the people should not produce offspring who are weak and have no competitiveness. This has been stated in Q.S. *an-Nisa>'* verse 9 as follows:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَةً ضِعَفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ  
وَلْيَقُولُوا قَوْلًا سَدِيدًا (٩)

And let them fear (Allah SWT) those who, in case they leave weak offspring behind them, whose (welfare) they fear, then fear Allah and speak with the right words.

## CONCLUSION

In this era, every human's activities have been made easier because of the existence of increasingly sophisticated electronic systems. Children are no exception, children can access electronic systems that can be used to support their growth and development. However, on the other hand, electronic systems can also backfire on children when children use them not wisely, for example by accessing adult content.

However, currently the state has issued Law no. 1 2024 which in Article 16A regulates that electronic system providers must provide age limit warnings, verification and reporting mechanisms if users (children) access features that they should not access. Regarding the a quo article inherent in *maqas{id ash-syari}'ah* regarding *h{ifz} al-'aql* and *h{ifz} an-nasl*. With the a quo article, children's growth and development will occur and in the future they will be able to have competitive abilities in order to advance the nation.

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