

## CHILD PROTECTION ACCORDING TO ISLAMIC LAW AND FORMAL LAW

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### Abstract

The word protection according to the Indonesian dictionary is a shelter or things (deeds and so on) that must be protected. Then, Law No. 23 of 2002 on child protection states that protection covers activities to guarantee and protect children and their rights in order to live, grow and participate optimally in accordance with human dignity, and to obtain protection from discrimination. If parents always protect and pay attention to their children as blessings of God and protect them from actions that can damage the future of the child, then parents should be responsible to keep and protect them. As stated in *Tafsir al-Qurtubi* which expressed the opinion of Ibn Abbas in understanding the above verse: as a form of the command to the husband to protect himself and his family from the fire. The application of the verse in everyday life is to take care of one's self by observing the rules of religion and keeping the family by calling them to worship and pray to God, so they were saved from the fire. The most important issue that is always discussed by scholars of jurisprudence is the issue of parenting (*Hadhonah*) in order to maintain and sustain the continuity and preservation of the life of the newborn. *Hadhonah* is to nurture a child who has not been able to take care of his own life by providing something for the welfare and security, taking care of something painful and dangerous, educate and building himself physically and spiritually. Children are an Almighty's grace for parents, children are also mandated and jewelry for them, as well as pride in the future, but in addition, children can also be a slandered person or a test, even become enemies for their parents. The National Legal Development Board of the Department of Law and Human Rights provides an understanding that the harmonization of law as a scientific activity for the harmonization process (balance alignment) of written law that refers to philosophical, economic, and juridical values<sup>17</sup> As from the description above, the harmonization of Islamic law into national law is a process of harmonization and alignment of Islamic law into national law as a form of making the legal product itself. From the description above, the author sees that the study of harmonization between Islamic law and national law is an interesting study because of the position of Islamic law as one of the National Law builders. In addition, this law is one form of the legal umbrella against childcare itself. So in the glasses of the author, this law is one form of implementing Islamic law into positive law. This is the first step in integrating positively of Islamic law into positive law. Therefore, the writing of this thesis entitled Child Protection according to Islamic Law and Formal Law with Law No. 23 of 2002 on Child

Protection.

**Keywords:** *child, child protection, Islamic Law, Formal Law*

## Introduction

The scholars stipulate that the maintenance of the child law is mandatory, as is the obligation to maintain it while in the marriage bond. The legal basis is to follow the general command of God to pay for children and wives. In the word of Allah in surah Al-Baqarah verse 233: *It means: "and mothers should breastfeed their children for two whole years, for those who want to breastfeed perfectly. And it is the duty of the father to bear their sustenance and clothing in a proper manner. A person is not burdened more than he can afford. Let not a mother suffer for her child, nor a father for her child. The heirs are like that. If they want to wean by Agreement and consultation between them, there is no sin on them. And if you want to breastfeed your child to another person, then there is no sin for you to pay in an appropriate manner. Fear Allah and know that Allah is seeing of what you do."*

For two whole years, for those who want to breastfeed perfectly, the obligation of the father is to bear their living and clothing in an appropriate way. A person is not burdened more than he can afford. Let not a mother suffer for her child, nor a father for her child. The heirs are like that. If they want to wean by Agreement and consultation between them, there is no sin on them. And if you want to breastfeed your child to another person, then there is no sin for you to pay in an appropriate manner. Fear Allah and know that Allah is seer of what you do many think that the task of male behavior after marriage is to earn a living. Trying to meet household needs by making a lot of money. In fact, when men are married and have children, their role is not only to earn a living. Moreover, in Islam, there are many other roles that must be performed as a husband and also a father (husband). Then, as a wife, the mother must also know what the role of the husband in the family according to Islam. Therefore, the mother (wife) who is a companion of the husband to always be with him in creating a happy family until the end of life.

1. Providing a living for the family. The role of the father (husband) in the family according to Islam, including to provide for the wife and children is an obligation in Islam. In surat An-Nisa verse 34, Allah says, (Q.S. An-Nisa 34): *"The men are the leaders of the women, because they have preferred some of them over others, and because they have spent some of their wealth."*
2. The Leader in the family. As Allah has said in surah An-Nisa verse 34 that men are leaders for women because they have been given advantages. Thus, the role of fathers in the family according to Islam is as a leader of the family.
3. Become a protector for children and wives. Among the advantages that God gives to men can be seen from the physical construction. Physically, God blesses men with stronger muscles and a more robust and sturdy body shape. So, it is natural that the role of a father in the family according to Islam, is as a protector for his wife and children.
4. Behave fairly towards the wife's child. Behaving fairly towards the wife is also the role of Papa in the family according to Islam. If a man has more than

- one wife, do not lean on one. He must be able to behave fairly towards his wives in terms of property and attention.
5. Helping the housework. Let a husband help with the housework. Not only did he leave all the affairs of the house to his wife, but he also took part in doing so. This behavior is what the Prophet exemplifies. When the Prophet Muhammad SAW was asked what he did when he was in the midst of his family, Aisha RA said, "The Messenger of Allah sallallaahu 'alaihi Wasallam used to help his family work at home. When the time for prayer has come, he stands up and immediately goes to prayer" (H.R. Muslim).
  6. Playing and joking with children. As a man who has children, the role of father in the family according to Islam is to enjoy playing and joking with children. He must be able to become a fun playmate for his child. This behavior is also exemplified by The Messenger of Allah. He often joked with his grandchildren, Hasan and Husein. He also used to play with his grandchildren. In a hadith narrated by Imam Tabrani from Jabir's friend, he said, "When I met the Prophet Muhammad and I met him walking four feet (playing horses) and on his back, there is Sayyidina Hasan and Sayyidina Husayn and Rasulullah also said 'the best camel is the camel you two (Messenger of Allah) and the best of the fair are you two'," (al-Hadith).
  7. Providing education to children according to Islamic teachings. The role of the father (husband) in the family according to Islam is very important is to provide education to his son. The education provided is certainly in accordance with the teachings of Islam. The figure of the father (husband) is needed to form a good character and morals for children. The figure of father is very influential in this matter. Although it is said that a mother is the first school for children, a father is likened to the principal. He is responsible for the quality of his protege.
  8. Being an example for children and wives. As a husband (father) in the family who is the head of the family, he is a figure who must be able to set an example to children and wives. A figure who can be a role model in various ways. Setting a good example for a father is very important. Because, when his son grows up, the figure of a father will be very influential. For the boy, his father will be a role model. He would wish he could be a good man like his father. As for the daughter, her father was her first love. She will look for a man who would become her husband has a character like her father.
  9. Finding a companion for his son. When the child has grown up and entered puberty, then parents are allowed to find a companion figure for him. For girls, the role of the father in the family is also the guardian of the marriage. This is in accordance with his word, surat An-Nur verse 32: "*And marry those who are single among you, and those who are worthy of your male and female servants. If they are poor, God will grant them with his grace. And Allah is All-Encompassing, All-Knowing. Marry your children (unmarried) and those whose marriage is due from your male or female servants. If they are incapable, then Allah will give them wealth from his grace*" (Q.S. An-Nur: 32).
  10. Praying for children and wife. If you read the story of Abraham who would

slaughter Prophet Ismail, surely many wondered. How can the figure of Ismail as a child remain obedient to his father despite being abandoned for a long time. With enough of Tawhid's answer, Ismail firmly answered his sincerity to be slaughtered. This is not to be missed by the prayer that he prayed to Allah SWT. The prayer of Prophet Ibrahim is written in the Quran surah Ibrahim verse 40, *"My Lord, make me and my children the ones who keep up the prayer, Our Lord, grant me my prayer."*

That is the role of the father in the family according to Islam that must be known. Hopefully understanding the role of the Father in the family will decrease the number of children who lose their father figure.

The obligation to pay for a growing child not only applies as long as the father and mother are still tied to the ropes of marriage but also continues after the divorce.

In the UUP no. 1 the year 1974, Chapter IX on the position of children Article 42, a legitimate child is a child born in or as a result of a legitimate marriage. Article 43 paragraph 1, children who are born out of marriage only have a civil relationship with their mother and mother's family.

Then, Chapter X regulates the rights and obligations between parents and children. Chapter 45 Verse 1: both parents are obliged to take care and educate their children as well as possible. Paragraph 2: the obligations of the parents referred to in Paragraph (1) of this article shall apply until the child is married or can stand alone, which obligation shall continue even if the marriage between the two parents breaks up.

### **How Prophet Muhammad was very Affectionate towards Children**

Reported in About Islam, Thursday (29/10), the Prophet Muhammad SAW never held back his love for children and always expressed affection for them. In one Hadith Abu Hurairah RA, stated that: *"I went together with Rasulullah SAW at one time during the day but he didn't talk to me and I didn't talk to him until he reached Banu Qainuqa`market. He went back to Fatimah's tent and said, "Is the little man (meaning Al-Hasan) there?" We had the impression his mother had held him to bathe and dress him up and decorate him with a sweet bouquet. Not much time had passed until he (Al-Hasan) came running until the two hugged each other, then the Prophet said, "O Allah, I love him, love him and love those who love him." (HR Muslim)*

From Anas ibn Malik *radhiyallahu anhu*, said, *"I have never seen anyone more compassionate towards children than the messenger of Allah. His son, Ibrahim, was being treated by a nurse in the hills around Medina. She would go there and we would go with her and she would enter the house, pick up her son, and kiss him, then come back." (HR Muslim)*

If the parents leave and ignore the blessings from Allah (his son), and do not give rights by taking care and caring and protecting it, then there will be destruction and corruption. The child will feel miserable with both parents, even the community and the environment around him (Azis, 2007: 195).

Children in the dictionary of Indonesian language (1998: 35) are defined as small human being who is only 6 (six) years old. While in Islam, children according to the language of "little children" are opposed to "*akbar*" adults or the big one (Yanggo, 2004: 1). As for the definition of Children In Law No. 23 of 2002 in Article 1, that is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (the Law of Republic of Indonesia No 23 of 2002, 2011: 109).

Parents will always love their children if they obey everything they command except for orders that violate religion. Even if the child does not do what is told by his parents, then the child deserves to be given a warning (non-harsh hitting). But the blow meant not to destroy or hurt the child, it is just a warning. They are children, including boys and girls. They should be taught to carry out the command of Allah SWT and understand the conditions and pillars in carrying out the command of Allah (establish prayer), so strike with a blow that is not hard and does not leave marks and does not allow hitting the face. (Armansyah, 2007: 23).

Parents are examples (*democracy*) for their children in everyday life. A democracy will backfire for parents if the example is not good for their children. The good and evil exemplified by the parents to their children will shape their parts of characters. In terms of "*Fruit falls not far from the tree*" this means that the nature possessed by both parents will affect the child. So, an older person should be able to educate well, namely by exemplifying what is told by an older person to his child? From there we can see the characteristics of good and bad children, then this study focused on the protection of children from the nature of children who are not good so that there was a beating to the child. Beating children in this study does not mean to hurt but so they would be regretful (do not want to repeat the same mistake) and not revenge on the child because the child is God's creation that deserves to be loved.

## Method

This study uses descriptive research that aims to describe the various phenomena of actual reality that become the object of research to be more in-depth and obtain the desired data by looking at and studying the protection of children from the perspective of Islamic law and law.

## Discussion

### The Nature of the Child in Qur'an

#### 1. Child themes in the Qur'an

Child is the best and most precious gift of Allah SWT to every married couple He chooses. Not every person gets this gift. Therefore, the child is priceless by anything. Children become a place where parents pour out their love, so it is imperative for everyone who receives the gift to take care of it as well as possible, as a form of gratitude for the gift that has been God give it.

Children are not just gifts or gifts from Allah, they are the mandates from Allah. As a blessing, child should be maintained and protected properly. Protecting children is not only the duty of biological parents, but it is the duty of all of us. As a matter of faith (*rahmatan lil alamin*) Islam gives special and serious attention to children. The attention that Islam gives to children is not only after the child is born into the world, but long before the child is born into the world, i.e. since choosing a partner and being in the womb.

The special attention given by Islam to children can be seen from the various expressions or terms of children in the Qur'an. The Qur'an refers to the child in a variety of terms as well as the variety of designations for humans. Just tamsil, to refer to humans, the Qur'an uses the term *Al-basyar*, *Al-insa*, *al-naas*, *Al-ins*, *abdullah*, *khalifatullah*, *bani Adam*, and so on. This variety of terms is certainly not without intent. Each of them contains a different sense according to the context.

As the mention of human beings in the Qur'an which uses various terms, the mention of children in the Qur'an also uses various terms. The position of the child in the Qur'an. Islam views children as an expensive gift. An expensive gift from Allah must be maintained and protected by the people around him in general, and especially by his family. In addition to being an expensive gift, Islam also looks at children in two ways, namely in terms of positive and negative. The placement of children in both aspects is basically an appeal to the family and people around him to make a child as a good person.

A child will be a gift or favor when parents succeed in educating him to be a good and devoted person. But if the parents fail in educating him, the child is not a gift or favor but a disaster for his parents. Therefore, as parents or families we must educate and take care of children as well as possible, because children are an investment. If we succeed, then both in this world until later in the hereafter we will benefit.<sup>1</sup>

The mention of the child in the Qur'an uses two connotations, namely positive connotation and negative connotation. This mention (both positive connotation and negative connotation) can be seen and traced from several verses in the Qur'an and the Hadith of the Prophet Muhammad pbuh. Here are some of the verses of the Qur'an and the Hadith of the Prophet Muhammad pbuh that mentions the connotation of the child.

### **Child as a Living Jewelry in the World**

A child is the most beautiful and most precious gift given by God to each desired pair-Him. Children are priceless by anything. The child becomes a place where parents pour out their affection. Children are also an adornment in married life. This has been explained by Allah Subhanahu wa

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<sup>1</sup> Budhy Munawar-Rachman, *Encyclopedia of Nurcholish Madjid*, Islamic Thought in the Canvas of Civilization, (Jakarta: Mizan, 2006), p. 200

Ta'ala through His word in Q.S. Al-Kahf [18]: 46. "*Wealth and children are the adornment of the life of this world, but continuous good deeds are better in the sight of your Lord and better for hope.*"

After God's word, the world is filled with all its glory in God's word mention two of the ornaments of the world that people are often proud of and drive him off guard and haughty. This verse states: wealth and children are the adornment of the life of the world. All of them are not eternal and can deceive people, but the continuous practice of righteousness because it is done for the sake of Allah is better for you that your reward is with your Lord and better and more reliable.<sup>2</sup>

Wealth and children become jewels in this world because humans are very concerned about both. Many possessions and children can give honorable life and dignity to the parents who own them. In this verse the child is likened to the "adornment" of life in the world. In the sense of "jewelry" it contained the meaning of something beautiful and pleasant. Therefore the child can grow up beautifully and fun for others, especially his own parents.

Children are decorations that serve to beautify a family. The crying of the baby, the whining of the child when he was asking for something, his funny Babble, the step of the child who limped while learning to walk, all of them are beautiful scenes in a family. The couple of husband and wives will feel less perfect life, if they do not have children. Perfection and beauty of the household will increase when there are children in the middle of the family. In addition, children can also defend and help their parents.

The above verse describes the child as a living adornment. But it should be noted that in addition to being a pleasant thing, the word "jewelry" also means something that is not essential so as many people experience, it can outwit or appear as a fake. The child is also equal to wealth, it can turn into a troublesome "false" property. In this verse also deliberately put the word *al-baqiyatu* over the word *al-salihat*, because he intended to underline the impermanence of property and children serve only as earthly decoration. It is as if this verse says, "The wealth and the children you are proud of and the adornment of the world are two things that are reliable and good, but not eternal.

If parents succeed in educating their children properly, then the child will grow up to be a righteous child; namely including *Al-baqiyatu Al-salihat*<sup>3</sup> according to Muhammad s.a.w. it is an "asset" to guarantee the

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<sup>2</sup> Muhammad Quraish Shihab, *Tafsir al-Mishbah: Message, Impression and Harmony of the Qur'an*, Vol. 8, (Jakarta: Lentera Hati, 2005), p. 69-70

<sup>3</sup> Some scholars say that the meaning of *Al-baqiyatu Al-salihat* is the saying, "*Subhana Allah, wa al-hamdu lillah wa la ila ha illah, Allah wa Allahu akbar*" But there are also those who argue that what is meant is the five daily prayers. It seems that a good opinion is one that understands it in a general sense according to the plural of the word, so that it includes various righteous deeds. The righteous deeds are with Allah, his reward awaits him and he will be found in the hereafter, and this means that he will abide forever. See Muhammad Quraish Shihab, *Tafsir al-*

continued growth of happiness after death. But if parents fail to educate their children, then the child will grow into "slander "and like a false" jewelry "for their parents, which according to the description of the Qur'an is a child of Disobedience, a child who is a"manifestation of evil personality".

Children are a mandate as well as the gift of God Almighty, which we always have to keep because in his inherent dignity, dignity, and rights as human beings that must be upheld. Human rights are part of the human rights contained in the Constitution of 1945 and in view of the Qur'an and Hadith as well as the United Nations Convention on the rights of the child.

- a) General provisions of Article I: in this government regulation, an adopted child is a child whose rights are transferred from the family power environment of the parents, legal guardians, or other persons responsible for educational care, and raising the child, into the family environment of the adoptive parents based on a court decision or determination.
- b) The adoption of a child is a legal act that transfers a child from the sphere of power of parents, legal guardians, or other persons responsible for the care, education and upbringing of the child, into the family sphere of the adoptive parent.
- c) Parents are the father and/or biological mother, or father and/or stepmother, or father and / or adoptive mother.
- d) Adoptive parents are people who are given the power to care for, Educate, and raise children based on legislation and Customs. Childcare institutions are institutions or social organizations or foundations that are legal entities that organize the care of abandoned children and have received permission from the minister to carry out the process of appointing children of communities are individuals, families, groups and social organizations and/or community organizations.
- e) A social worker is a civil servant or person appointed by a care institution who has social work competence in the appointment of children.
- f) Social agencies are agencies whose duties include social areas both in the center and in the region.
- g) The minister is the minister who organizes government affairs in the field of social (government regulation: the appointment of children (PP RI No. 54 of 2007)).

Article 12:

(1) The terms of the child to be adopted, include:

- a) not yet 18 (eighteen) years old



- b) a child abandoned or abandoned;
- c) being in the care of the family or in childcare institutions and;
- d) requires special protection.

(2) The age of the adopted child as referred to in Paragraph (1) letter A includes:

- a) children not yet 6 (six) years old, is a top priority
- b) children aged 6 (six) years to not yet 12 (twelve) years, as long as there is an urgent reason; and
- c) children aged 12 (twelve) years to not yet 18 (eighteen) years, as long as the child requires special protection.

Article 13 prospective adoptive parents must meet the requirements:

- a) good interpersonal and communication skills
- b) minimum age 30 (thirty) years and highest 55 (fifty-five) years
- c) religion is the same as the religion of prospective adopted children
- d) well-behaved and never convicted of a crime
- e) minimum marriage status of 5 (five) years
- f) not a same-sex couple
- g) not having children or only having one child
- h) in an economically and socially capable state
- i) obtain the consent of the child and the written consent of the parent or guardian of the child
- j) make a written statement that the appointment of the child is in the best interest for the child's welfare and protection of the child.
- k) Social reports from local social workers
- l) Have taken care of the prospective adopted child for at least 6 (six) months, since the parental consent was granted; and
- m) Obtain permission from the minister and / or the head of social agencies (government regulation: the appointment of children (PP RI No. 54 of 2007)).

**Article 26: guidance on the implementation of the appointment of children carried out by the government and the community through activities:**

- a) Counseling;
- b) Consulting;
- c) Counseling;
- d) Assistance; and
- e) Training.

Article 27: (1) counseling as meant in Article 26 letter A is intended for the public to get information and understand about the requirements, procedures and procedures for the implementation of child adoption. (2)

counseling as meant in paragraph

(1) aim to;

- a) Increase understanding of child adoption
- b) Be aware of the consequences of the removal of the child; and
- c) Implementation of the appointment of children in accordance with legislation.

Article 28; (1) consultation as meant in Article 26 letter b, is intended to guide and prepare biological parents and prospective adoptive parents or other parties to have readiness in the implementation of the appointment of children. (2) consultation as referred to in Paragraph (1) aims to:

- a) Provide information about the appointment of the child; and
- b) Provide motivation to lift

Article 29; (1) counseling as referred to in Article 26 letter c, is intended to help overcome problems in the adoption of children. (2) counseling as meant in Paragraph (1) aims to:

- a) Help understand the problems of child adoption; and
- b) Provide alternative solutions to the problem of child adoption.

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