

Protection Of Children In Law And Islamic Law

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ABSTRACT

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Children are one of the assets of national development, which should be considered in terms of quality and future. Without reliable quality and a clear future for children, national development will be difficult to carry out and the future of a nation will also be difficult to imagine.

Islam views children as an expensive gift with a sacred status. This expensive gift is a mandate that must be guarded and protected by parents in particular, because children are parents' assets and national assets. Islam has paid great attention to the protection of children. Protection in Islam includes physical, psychological, intellectual, moral, economic, and others. This is translated in the form of fulfilling all their rights, guaranteeing the needs of clothing and their food, maintaining their good name and dignity, maintaining their health, choosing good associates, avoiding violence, and so on.

The method used by the author in compiling the paper uses the literary method, taking data from the literature as well supporting data from several literature related to the Protection of Children in Law and Islamic Law.

The conclusion that can be drawn is that parents, state and religion actually provide great protection for children in their growth and development. This can be seen in Law No. 35 of 2014 concerning Child Protection and Law No. 11 of 2012 concerning the Juvenile Justice System. And in Islamic Law it is regulated in the Al-Quran Surah Al-Nahal verse 78, sura Al-Anfal verse 28 and and in the Hadith namely H.R. al-Bukhari, H.R. al-Nasâ'i, H.R. IbnMajah, H.R. Muslim and H.R. Ahmad.

1. Introduction

Children must be cared for and protected by all their interests, physical, psychological, intellectual, rights, dignity and worth. Protecting children is not only the obligation of their biological parents but it is the obligation of all of us. As a religion full of compassion (rahmatan lil alamin), Islam pays special and serious attention to children, starting from when the child is still in the womb of the mother until the child is nearing adulthood. Many children are neglected, drop out of school, suffer from malnutrition, are exploited, become victims of sexual crimes, drug crimes, accidents, murders

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and other acts of violence. Such children usually come from impoverished families, children who receive less attention from their parents, children whose parents left them (orphans), children resulting from parents' divorce, children born from adultery, and there are also the effects of their father's polygamy, and others.

2. Literature Review

Regarding education and children's awareness of their rights, many hadiths of the Prophet SAW were found which show that the Prophet SAW tried to strengthen and empower children from an early age. These hadiths include the following:

"Hadith from Qutaibah, from Mâlik, from Abî Hazm, from Sahal bin Sa`ad r.a. that Rasulullah SAW was served a drink while on his right there was a child and on his left there were several adults. The Prophet SAW asked the child: "Do you allow me to give drinks to these adults first?" The boy said: "No. By Allah, I did not give up my share to any of them." Then the Prophet SAW handed over the drink to the little boy. (H.R. al-Bukhari)

This is a very valuable lesson from the Prophet SAW about the protection of children's rights. How many incidents in society where children's rights are not respected, looked down upon, and violated arbitrarily just because there is a wrong perception that respectable adults should take precedence. Reluctance and respect for parents is positive and encouraged by religion, but certainly not in the context of permissible violations of children's rights. Education and awareness of rights Children have also been carried out by the Prophet SAW in a child rearing dispute trial between a husband and wife. This is recorded in the following hadith:

"Hadith was narrated from Muhammad bin `Âbdi al-A`lâ, from Khalid, from Ibn Juraij, from Ziyâd, from Hilâl bin Usâmah, from Abî Maimunah, from Abu Hurairah that a woman came to Rasulullah SAW and said: "I ransomed you with my father. and my mom. In fact, my husband wanted to take my child even though he was very useful to me and fetched water for me from the Abî Inabah well." Then the woman's husband came and said: "Who will challenge my right to my child?" The Messenger of Allah asked the (disputed) child: "O child. This is your father and this is your mother. Choose whomever you want." Then the child was released (to his mother) ". (H.R. al-Nasâ'i) 7

In cases regarding the struggle for child custody, as can be followed through the media of television, newspapers, and so on. It often happens that the disputing parties think from the perspective of their respective rights and claims by forgetting the rights and wishes of the child. The Prophet SAW taught through the cases in the hadith above that those who have rights are not only fathers and mothers or other parties, but children also have rights, opinions, and desires. Precisely the rights, opinions, and desires of the child must be heard and considered more because they are the most interested parties. The first form of protection given in the hadiths of the Prophet SAW, in the aspect of *min jâ nib al`adam*, is the existence of legal provisions that prohibit all actions that can harm and violate children's rights. The prohibition of committing this crime includes all forms of acts that violate children's rights. As the words of the Prophet SAW:

"Hadith from Abu Bakr bin Abî Syaibah and Hannâd bin al-Sirrî, from al-Ahwash, from Syabîb bin Gharqadah, from Sulaimân bin `Amr bin al-Ahwash, from his father who heard the Prophet SAW say during the pilgrimage of Wada`: "O people . Remember, which day is more sacred?" The crowd replied: "The day of the Great Hajj." The Prophet SAW said: "Indeed your blood, your wealth, and your wealth are sacred among you as holy is your day, this month, in your country. Remember, it is not ever someone who commits a crime but the consequences will be befalls himself. Parents may not be mean to their children and a child may not be mean to their parents." (H.R. Ibnu Majah 1991-1997)

The evil act referred to in the hadith above can be equated with acts of violence against children (child abuse) as is popularly discussed by experts today. Terry E. Lawson, a child psychiatrist, mentions four types of child abuse, namely: emotional abuse, verbal abuse, physical abuse, and sexual abuse. Emotional abuse can occur in the form of neglect when a child demands attention or ignoring a child when they want to be hugged or protected. Verbal abuse can occur when parents yell at their children or use harsh words at them. Physical abuse can include hitting a child, either by hand or using a tool, including murder. Meanwhile, sexual abuse is an act that sexually abuses a child. Included in these acts of violence are economic violence, such as neglecting children's livelihood rights, children's inheritance rights, and forced employment of children to meet the financial needs of the family. All kinds and forms of neglect of children's livelihood rights, children's inheritance rights, and forced employment of children to meet the financial needs of the family. All kinds and forms of violence against children that were put forward were prohibited by Rasulullah SAW in the hadiths that would be presented.

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This is a form of protection of children's rights, in this case rights related to the soul. It is strictly forbidden to kill these children found in the following hadith:

It was narrated from Hisham bin 'Ammar, from Yahya bin Hamza, from 'Amri bin Muhajir that he heard his father Muhajir bin Abi Muslim narrate from 'Asma' bint Yazid bin Sakan and Asma' was his slave that in fact he heard Rasulullah SAW say: "Do not kill your children secretly (secretly).

The prohibition against killing children applies in all places and circumstances, both in times of peace and even during times of war. The Prophet forbade killing children in war as stated in the following hadiths:

"Hadith from AbuBakar bin AbiSyabah, from Muhammad bin Bisyr and Abu Usamah, from 'Abaidullah bin 'Umar, from Nafi, from Ibn 'Umar said that in some wars women were found killed. So Rasulullah SAW forbade killing women and children." (H.R Al-Bukhari, Sahih al-Bukhari in Mausuh al-Hadith al-Syarif, (Global Islamic Software Company, 1991-1997)

Acts of violence should not be carried out, especially against girls. The emphasis on girls is because women have soft nature and feelings so they are very incompatible with acts of violence. However, that does not mean that boys can be treated roughly. The Prophet SAW said:

"Hadith from Qutaibah, from Lahiah, from Abi 'Usysyanah, from 'Uqbah bin 'Amir that Rasulullah SAW said: "Do not treat your daughters roughly, because in fact they are human beings who are gentle and sensitive in their feelings." (Muslim bin Hajjaj al-Naisabury, *Sahih Muslim*, (Beirut: Dar Ihya'al-Turâts al-Arabi, 1972),

Lawson describes that all types of mental disorders (mental disorders) have something to do with the bad treatment that humans receive when they are small. Violence against children is a personal problem if it only affects a few children. The causes can be traced to the psychological causes of the individuals involved. The solution can also be done individually. Acts of violence were prohibited by the Prophet SAW even though the aim was to educate children. In the verses of the Al-Quran and hadith it is possible to "beat" a child or wife in the context of education, but that does not mean it is permissible without limit. The act of imposing sanctions on . beatings is carried out as a last resort with the consideration that this action will bring about improvement, not the other way around. The beatings were carried out in ways and tools that were not harmful.

Thus, beating is not a good way or method of education in the Islamic view, but a way that can only be used under certain conditions. The Prophet SAW himself also prohibited the act of beating children and their families as seen in the following hadith.

"Hadith from 'Abdullâh, from his father, from Abû al-Yamân, from Ismâ'îl bin 'Ayyâsy, from Shafwân bin 'Amr, from 'Abdirrahmân bin Jubair bin Nufair al-Hadhramî, from Mu'âdz said that Rasulullah SAW willed 10 thing to me. Don't associate Allah with something even if you are killed and burned. Do not disobey your parents even though they tell you to leave your family and your wealth. Do not leave the obligatory prayer forever because whoever misses the obligatory prayer on purpose, Allah's guarantee will be released from him. Never drink khamr because it is the upstream of all abominations. Avoid immorality because immorality justifies the anger of Allah 'Azza wa Jalla. Avoid running from the war even though the enemy will destroy you. If the enemy is spreading pestilence and you are in the midst of an army, then stay where you are. Give a living for your family (children and wife) according to your ability. Don't raise your stick to educate your family. And instill in them the fear of Allah." (H.R. Ahmad).

Prohibitions against all kinds and forms of acts of violence against children were emphasized by the Prophet SAW because all of this could have a broad and long-lasting negative impact on the child.

3. Methodology

This type of research uses a descriptive qualitative approach. The qualitative approach utilizes a theoretical basis as a guide to the focus of research with facts in the field. A qualitative approach is a process of research and understanding based on methodology that investigates a social phenomenon and human problems. For this reason, the author will use a field / field research approach, namely the method of collecting data.

4. Results and Discussion

4.1 Protection of Children in Positive Law

Children as part of the future of a nation is an important initial link in efforts to prepare and realize the future of the nation and state. However, if a child receives less attention from his immediate environment, it is easy for him to commit acts that deviate from the legal norms in force in society. Acts limited to delinquency often eventually lead to criminal acts that require serious legal handling, in the process of law enforcement against children who commit crimes.

Criminal acts are not only committed by adults, but children also take part in committing a crime. Criminal behavior committed by children creates problems globally, because childhood is where children should play and study, but in reality today's children are no less competitive with adults to commit crimes. In the practice of law enforcement against crimes committed by children, the State distinguishes crimes committed by adults and those committed by children, the State makes it easier for crimes committed by children because children are the nation's bud and the next generation of the nation so that every child perpetrator crimes that enter the criminal justice system must be treated humanely as contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Justice System, namely non-discrimination, the best interests of the child, the right to life, survival and development, respect for the opinion of the child and protection against behavior, acts that violate the law or are not in accordance with the norms in force in society that are carried out by children.

4.2 Child Protection in the Qur'an

Child protection in the view of the Qur'an includes:

Children as creatures who do not know anything, as Allah says in Al- Nahal verse 78 which states:

(النحل). ة والفند والبصار السمع لكم جعل و شينا تعلمون ال أمهاتكم بطون من أخرجكم وهلا

Meaning: "And Allah brought you out of your mother's belly in a state of not knowing anything and He gave you hearing, sight, and heart, so that you are grateful." Al Nahal 78.

All the power of the five senses is obtained by humans gradually. Each time it grows, the power of hearing, sight and reason increases until adulthood. The gift of the five senses to humans, so that humans can worship Allah well.

5. Conclusion

Based on the description above, it can be concluded that State Protection of Children can be seen in Law No. 35 of 2014 concerning Child Protection and Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. And in Islamic Law it is regulated in the Al-Quran Surah Al-Nahal verse 78, sura Al-Anfal verse 28 and in the Hadith namely H.R. al-Bukhari, H.R. al-Nasa'i, H.R. IbnMajah, H.R. Muslim and H.R. Ahmad. In the Al-Quran and these hadiths, various ways and policies are carried out to protect children and their rights. The first way is to guarantee the realization of rights..

References

Abdurahman Muhammad Abdullah bin Al-sheikh, *Interpretation of Ibn Kasir, library of Imam Ash-Syafi'i*, volume 8, Bogor 2004

Al-Bukhari, *Sahih al-Bukhari in Mausuh al-Hadith al-Syarif, Global Islamic Software Company, 1991-1997*), cet. 2nd, hadith no.17.

Al-Nasa'i, Sunan al-Nasa'i, *in Mausuh al-Hadith al-Syarif, GlobalIslamic Software Company, 1991-1997*, cet. 2nd, hadith no.3439

Fathi al-Duraini, *al-Manahij al-Ushūliyyah fi Ijtihād bi al-Ra'yi fi al-Tasyri'* Damascus: Dar al-Kitab al-Hadith.

Greetings: *Journal of Social and Cultural Shari'a*. Volume 4 No. 2, 2017, ISSN: 2356-1459. E-ISSN: 2654-9050 - 228

Indonesian Child Welfare Foundation, *Acts of Violence against Children*, Indonesia Interactive, website, 1999-2003.

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Ibnu Majah, *Sunan Ibnu Majah, in Mausū`ah al-Hadith al-Sharif*, Global Islamic Software Company, cet. 2nd, hadith no.2002., 1991-1997

Jalaluddin Imam Al- Mahali and Imam As-Suyuti Jalaluddin, *Tafsir Jalalain translation Bahrun Abu Bakar*, Bandung, Sinar Baru Algensindo, 2009

Jalaluddin Rahmat, *Acts of Violence Against Children, Indonesian Child Welfare Foundation: Indonesia Interactive*, website, 1999-2003

Ministry of Religion of the Republic of Indonesia, *Al-Qur'an Organizing/Interpreting Foundation Revised Translation by Lajna Pantashih Mushaf of the Qur'an Ministry of Religion of the Republic of Indonesia*.

Muhammad Sa'ad bin Ahmad bin Mas'ud al-Yubi, *Maqashid al-Syari'ah al-Islamiyyah wa 'Alaqtuha bi al-Adillah al-Syar'iyyah*, (Riyadh: Dar al-Hijrah, 1418 H/1998 AD) , et. number 1.

Shihab Quraish, *Interpretation of Al-Musbah Volume 7*. Jakarta Lentera Hati, 2005.

Suhail Husain al-Fatlawi, *Huquq al-Insan fi al-Islam*, Beirut : Dar al-Fikr al-'Arabi, 2001.