

Legal Interpretation: Critical Reasoning for the Development of an Islamic Paradigm that is Friendly to Women And Children

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Abstract:

At this time there are still many misinterpretations about the teachings of Islam that related to the position of women and children. Cultural construction and interpretation of religious experts who use inappropriate mindsets in viewing and understanding religious texts is also a crucial factor as the cause of inequality in relations between groups in the social order of Muslims. The characteristics of Islamic teachings are also humanist, which can be seen from the efforts to protect human rights as can be seen in terms of their vision, mission, and goals. Islamic teachings in the context of granting human rights to women, fully recognize and respect the position of women as creatures of Allah SWT. Islam has removed all forms of injustice that befell women and raised their status as human dignity. Islam does not limit and restrain women's steps in developing their potential. In the context of providing protection and rights for children, the seriousness of Islam in dealing with the status of children is increasingly legitimate with the many verses of the Al-Qur'an that discuss the status of children. Islam's alignment with child protection is a priority. The instruments related to this seem to have been neatly arranged to create a generation of good and compassionate people.

Keywords: Islamic teaching; gender; woman.

Introduction

Crimes against women and children are now exposed as real facts, both on a national and international scale. We can read about this social phenomenon about crimes against women and children from many national and international mass media. Various social problems for women and children can be found every year. Examples include the widespread cases of rape against women and children, exploitation of children, discrimination against women, human trafficking, and domestic violence which places women and children as victims.¹ Cases of crimes

¹ Sulistiyowati Irianto, *Perempuan Dan Hukum* (Jakarta: Yayasan Obor Indonesia, 2006).

involving women and children continue to occur every year in Indonesia. One of the latest criminal cases that occurred involved 15 years old Mawar (pseudonym) and 16 years old Melati (pseudonym) who were victims of human trafficking and sexual exploitation of minors utilizing job offers on social media Facebook, with five other adult women. These seven victims were framed with the lure of jobs which were then involved in the prostitution business. During the practice of the forbidden transaction, the seven victims were placed in a hotel room under strict supervision. They were not allowed to leave the room without the permission of the bodyguard who was hired by someone else because their cell phones were confiscated.²

Cases of crimes against women and children do not stop there. There are hundreds of other crimes such as cases of violence against women and children recorded in Indonesia. Data on cases of violence against women in Indonesia from year to year has increased dramatically. If in 2012 there were more than 600 cases, in 2013 there were 992 cases. Of the number of cases, the dominant ones are cases of domestic violence as many as 372 cases and cases of dating violence totaling 59 cases (official data from LBH APIK Jakarta).³ Meanwhile, based on the report on the SIMPONI PPA of the Ministry of Women's and Children's Empowerment, there were 3,122 cases of violence against children that occurred until June 3, 2021. From this data, the number of sexual violence still dominates.

In the case of another crime (human trafficking crime) that places women and children as oppressed parties, it is also recorded in the records of several organizations and institutions in Indonesia. The International Organization for Migration (IOM) noted that during 2020 the number of cases of Trends, Patterns, and Mechanisms for Handling the Crime of Trafficking in Persons (TIP) received by IOM increased to 154 cases, and interestingly, TIP does not only occur across countries, but the number of TIP cases in Indonesia country also rose. The majority of victims of exploitation received by IOM throughout 2020 were sexual exploitation. The Ministry of Women's Empowerment and Child Protection (KPPPA) recorded an increase in TIP cases during the pandemic, from 213 cases (2019) to 400 cases (2020). Data recorded by IOM in Indonesia also highlights the increasing number of victims of child trafficking in 2020, 80 percent of whom are sexually exploited.⁴

Broadly speaking, the factors that cause crime can be divided into two parts, the first from within the individual (internal) which is further divided into general internal factors and specific internal factors. The second factor is the factor that comes from outside the individual (external). Crime can occur due to several factors such as a person's personality traits, motivation, intelligence, internalization of the wrong, inner conflict, fantasy, and psychopathological tendencies, which means

² Rizka Nur Laily M, "Modus Tawaran Kerja Dominasi Kasus Perdagangan Anak Di DIY, Keluarga Perlu Waspada," Merdeka.Com, 2021, <https://www.Merdeka.Com/Jateng/Modus-Tawaran-Kerja-Dominasi-Kasus-Perdagangan-Anak-Di-Diy-Keluarga-Perlu-Waspada.Html>.

³ Busriyanti., "Islam Dan Kekerasan Terhadap Perempuan," *Religió: Jurnal Studi Agama-Agama* 2, No. 2 (2012): 118–3.

⁴ Bilal Ramadhan Citra Listyarini, "Kasus Perdagangan Orang Di Indonesia Naik Pada 2020," Republik.Co.Id, 2021, <https://www.Republika.Co.Id/Berita/Qr7v11330/Kasus-Perdagangan-Orang-Di-Indonesia-Naik-Pada-2020>.

crime or evil actions, namely reactions to psychological problems. In addition, crime can occur because of the psychology of a criminal.⁵

Giving the right understanding and interpretation related to the substance and universal values that are essential in this case, namely the understanding of religion is one of the things that can be a solution in changing the internal factors of an individual that can reduce a person's potential in committing a crime. Based on data from the World Population Review, the current Muslim population in this country (2020) reaches 229 million people, or 87.2% of the total population of 273.5 million people.⁶ Islam as the majority religion in Indonesia has an important role in reducing crimes against women and children and creating a friendly environment for both. This means that the provision of understanding in the form of an appropriate interpretation of the values contained in the teachings of Islam can be one solution to the formation of a social environment that places women and children in the right position according to their dignity as human beings.

At this time there are still many misinterpretations of the teachings of Islam related to the position of women and children. Cultural construction and interpretation of religious experts who use inappropriate mindsets in viewing and understanding religious texts is also a crucial factor as the cause of inequality in relations between groups in the social order of Muslims. This misinterpretation eventually gave birth to the view that men by nature have been given the highest position in the construction of the social order of society compared to other groups, especially women. Many interpretations of religious texts then place women as number two creatures. Women and children are then considered as the property of men which can be treated as they wish, including in ways that are not following the pure essential values of Islam. Given the large role of Islam as an aspect that can reduce the potential for violence through the internal thoughts of individuals, the authors in this article try to provide an explanation of the essential values of Islamic teachings in viewing and giving high rights and respect to women and children as human beings. Allah SWT. dignified in efforts to develop an Islamic paradigm that is friendly to women and children.

Result and Discussion

Protection of Women and Children According to Positive Law

The protection of women and children in Indonesia is a social phenomena that always attracts attention from various circles. The emergence of cases that place women and children as victims makes the conditions and security and safety of people and children at an alarming point. As the cases that surfaced involving children, among others; biological parents who have the heart to abuse and rape their children to satisfy their lusts, as happened in Sidoarjo last January.⁷ In addition, many children are also exploited on the streets, on trains, on buses, and in

⁵ Aditya Ghulamasyah, "Tinjauan Kriminologi Tindak Pidana Pencurian Dengan Kekerasan 'BEGAL'" (Universitas Muhamadiyah Malang, 2017).

⁶ Kormen Barus, "Jumlah Penduduk Muslim Indonesia Meningkat, Powercommerce Asia Tangkap Peluang, Luncurkan Halal Plaza," Industry.Co.Id, 2020, <https://www.Industry.Co.Id/Read/65748/Jumlah-Penduduk-Muslim-Indonesia-Meningkat-Powercommerce-Asia-Tangkap-Peluang-Luncurkan-Halal-Plaza>.

⁷ Hilda Meilisa, "Bejat! Ayah Di Sidoarjo Perkosa Anak Kandung, Ancam Bunuh Jika Lapor Ke Ibu," detikNews, 2021, <https://news.detik.com/berita-jawa-timur/d-5593352/bejat-ayah-di-sidoarjo-perkosa-anak-kandung-ancam-bunuh-jika-lapor-ke-ibu>.

other places. Other cases also continue to emerge such as cases of sexual abuse against children, cases of child trafficking (trafficking), and cases of pedophilia such as the one that happened at the Jakarta International School (JIS), as well as cases of physical violence, psychological violence, sexual violence, and other cases of economic violence. This is an indication of how weak the implementation of legal protection for children is.

In addition, the Central Statistics Agency (BPS) also recorded the number of cases of violence against women in 2017 as many as 12,550, in 2018 as many as 16,214 cases and in 2019 there were 13,821 cases. Unfortunately, with such a large number of cases, cases that received further treatment had a relatively small number or percentage. The number of cases that received treatment in the form of law enforcement in 2017 was 1,154 cases, in 2018 there were 1,177 cases and as many as 773 cases in 2019.⁸ Meanwhile, BPS also recorded the prevalence of violence against girls (by type of violence) in 2013 there were 1,180 cases of physical violence (11.8%), 410 cases of sexual violence (4.1%), cases of emotional violence as many as 940 (9.4%).⁹ Cases of these crimes continue to be recorded to this day.

The ongoing crimes that place women and children as the oppressed have been responded to by policymakers both at the global and national levels. On a global scale, the Declaration of Human Rights, which stands as the main pawn of international instruments that protect human rights, is capable of being the parent that gives birth to several other instruments engaged in the provision and protection of rights for women and children around the world, such as the United Nations Standard. Minimum Rules For The Administration Of Juvenile Justice, United Nations Rules For The Protection Of Juvenile Deprived Of Their Liberty, United Nation Guidelines For The Prevention Of Juvenile Delinquency, Convention On The Political Rights Of Women (UN 1952) ratified by Indonesia with Law no. 68 of 1958 concerning Approval of the Convention on the Political Rights of Women, the Convention on The Elimination of Discrimination of All Forms of Discrimination Against Women (UN 1979) which was implemented by Indonesia through Law no. 7 of 1984, and the Declaration On The Elimination Of Violence Against Women (UN 1973).¹⁰

On a national scale, if you look deeper into the legal instruments for the protection of the rights of women and children, long before the birth of the Declaration of human rights, conventions, and other international legal instruments, Indonesia has pledged to establish the 1945 Constitution, namely, in the Preamble which reads *"Indeed independence it is the right of all nations and therefore colonialism in the world must be abolished, because it is not in accordance with humanity and justice"*. This pledge to protect and grant rights is also reaffirmed in the body of

⁸ Badan Pusat Statistik, "Jumlah Kasus Dan Persentase Korban Kekerasan Terhadap Perempuan Yang Mendapat Layanan Komprehensif 2017-2019," N.D., <https://www.bps.go.id/indicator/34/1823/1/jumlah-kasus-dan-persentase-korban-kekerasan-terhadap-perempuan-yang-mendapat-layanan-komprehensif.html>.

⁹ Badan Pusat Statistik, "Prevalensi Kekerasan Terhadap Anak Perempuan Menurut Jenis Kekerasan (Persen), 2013," 2017, <https://www.bps.go.id/indicator/27/1822/1/prevalensi-kekerasan-terhadap-anak-perempuan-menurut-jenis-kekerasan.html>.

¹⁰ Mugiyati Sapardjaja, Komariah Emong, Sutriya, *Kompendium Tentang Hak-Hak Perempuan* (Jakarta: Badan Pembinaan Hukum Nasional, Departemen Hukum Dan Hak Asasi Manusia RI, 2008), p.56.

the 1945 Constitution in Chapter XA on "Human Rights" and in Law no. 39 of 1999 concerning Human Rights.¹¹

In the context of international law that specifically provides protection and respect for women, several legal instruments clearly state women's human rights. For example, regarding the right to be seen as equal before the law, Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) reads:

1. *States Parties shall accord to women equality with men before the law.*
2. *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*
3. *States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*
4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."*

Women's rights in the form of protection and freedom from all forms of discrimination in the household have also been regulated in Article 16 paragraph 1 *Convention on the Elimination of All Forms of Discrimination against Women: States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

- (a) *The same right to enter into marriage;*
- (b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
- (c) *The same rights and responsibilities during marriage and at its dissolution;*
- (d) *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;* (e) *The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*
- (f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases, the interests of the children shall be paramount;*
- (g) *The same personal rights as husband and wife, including the right to choose a family name, a profession, and an occupation;*
- (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration."*

In the context of child protection in Indonesia, it develops and turns into a shared obligation and responsibility, namely the state, government, and society. Each of these elements has its share, duties, and responsibilities in protecting

¹¹ Sapardjaja, Komariah Emong, Sutriya.

children. The purpose and objective are so that children can live, grow, develop and participate optimally following human dignity, and get protection from violence and discrimination. Therefore, for each child to assume responsibility as a budding, potential and young generation, the successor to the ideals of the nation's struggle, children need to get the widest opportunity to live and develop optimally, physically, mentally, socially, and morally noble. So to realize this, it is necessary to take preventive measures to protect and provide guarantees for the fulfillment of their rights. In this context, the state and even the international community have formulated rules on child protection.

The legal aspect of protecting children is realized by the presentation and recognition of Law no. 23 of 2002 concerning Child Protection as stated in Article 2 which states that child protection is carried out based on the Pancasila principle and based on the 1945 Constitution of the Republic of Indonesia and concerning the basic principles of the convention on children's rights. Furthermore, Article 59 of Law no. 23 of 2002 also states that special protection must be given to children. Article 64 paragraphs 1 and 2 of Law no. 23 of 2002 also states that children in positive law perspective are children who conflict with the law and child victims of crime. In addition, the protection of children has also been guaranteed constitutionally in the 1945 Constitution as the constitutional basis.¹² This aspect further strengthens the basis of child protection. Continuously, the efforts to protect children are a necessity of the various elements and elements that exist in this country. So that the welfare of children will be maintained, considering that children are one of the valuable assets for the progress of a nation in the future.

In terms of quality, protection for children should have the same degree and level as protection for adults. Everyone has the same position before the law (equality before the law). The state must play an active role together with the whole community to realize and provide adequate protection to children from various forms of violence and manipulation by irresponsible people who use children as vehicles for their crimes so that children as the next generation of the nation can stand firmly in entering an increasingly harsh life in the future.

The Development Of An Islamic Paradigm That Is Friendly To Women And Children

Islam has opened a space for universalism about basic human rights. Islam has broken down the gates and freed women and children from the shackles of ignorance, where women and children are treated as property, without the slightest right to themselves. The basic Islamic concept of Human Rights (HAM) has existed for a long time even before the concept of human rights in Western countries was born. The concept of basic rights already exists in the body of Islam itself, as taught by the Prophet Muhammad. The concept of respect for humans can be found in Islamic sources, namely the Al-Quran and Al-Hadith.¹³ Al-Qur'an and Hadith are sources of Islamic teachings that have characteristics that cover all aspects of human life. It not only regulates human relations with Allah SWT but also regulates human relations with each other and with the natural environment.

¹² Yesika, "Eksplorasi Anak Dalam UU Perlindungan Anak Menurut Perspektif Hukum Islam.", p.3.

¹³ Nazar Naamy, "Hak Asasi Perempuan Dalam Islam," *Qawwam* 12, No. 2 (2018): 103–12, <https://doi.org/10.20414/Qawwam.V12i2.792>.

Islamic teachings are comprehensive and universal for the welfare of all human life. Muslims are obliged to obey all the teachings of Islam, as a consequence of their faith and Islam.¹⁴

The characteristics of Islamic teachings are also humanist. It can be seen from the efforts to protect human rights as can be seen in terms of its vision, mission, and objectives, namely that Islam has the characteristics of not only prospering the life of the world or the hereafter but also prospering physically and spiritually as well as individual and social universally. Islamic teachings aim to maintain and protect all human rights, namely the right to life (*hifdz al-nafs*), the right to religion (*hifdz ad-din*), the right to think (*hifds al-aql*), the right to have offspring (*hifds al-nasl*), and the right to obtain, own and use property (*hifds al-mal*).¹⁵

The verses of the Qur'an in the context of protecting and respecting the rights of women as creatures of Allah SWT have clearly shown that Islam as a religion places all human groups in a balanced position. These verses are contained in Surah al-Isra verse 70 which means: *"And indeed We have honored the children of Adam. We raised them on land and sea, We gave them sustenance from the good and We gave them a perfect advantage over most of Our creations."* (Q.S. al-Isra: 70) and also contained in the Qur'an surah al-Hujurat verse 13 which means *"O mankind, We created you from male and female and We made you into tribes and nations so that you may know each other. Verily, the most honorable of you in the sight of Allah is the most pious of Him."* (Q.S. Al-Hujurat: 13).

The two verses above explain the nobility and equality of human dignity regardless of their background, skin color, gender, language, and so on. All humans in Islam are seen as equal and the superiority that humans have over other humans is only in the aspect of their closeness to Allah SWT.¹⁶ Another statement in the Qur'an which explains most explicitly about the equality of rights and obligations between men and women is found in Surah al-Ahzab verse 35 which means: *"Indeed, Muslim men and women, believing men and women, keep in obedience, men and women who are righteous, men and women who are patient, men and women who are humble, men and women who give charity, men and women who fast, men and women who keep their honor, men and women who mention (name) a lot.) Allah, Allah has provided forgiveness and a great reward."* (Surat al-Ahzab: 35).

From the historical aspect, women (especially in the Arabian Peninsula) in the era before the arrival of Islam had a low and contemptible position. In Ancient Egyptian society, the preferred woman was a woman who was scantily clad so that everyone could see her nakedness. At this time too, many women served as belly dancers for welcoming parties. Intercourse between women and men is also not bound by norms so that many women are harmed and their self-esteem is lowered. Then in the next period, namely in Babylonian culture, a woman must feel sleep with her king. How the glory of a woman is abolished, the wife also has to work full-time in her husband's house and when the wife is old and unattractive then the husband is invited to find a new wife.¹⁷ The absence of giving rights and glorifying

¹⁴ Supriyadi, "Kasus Perlindungan Hak Pendidikan Anak Dalam Tinjauan Hukum Islam Dan Ham," *Jie (Journal Of Islamic Education)* 3, No. 2 (2019): 221, <https://doi.org/10.29062/jie.v3i2.102>.

¹⁵ Supriyadi.

¹⁶ Naamy, "Hak Asasi Perempuan Dalam Islam.", p.103-112.

¹⁷ Mashur Malaka, "Keterlibatan Perempuan Di Berbagai Aspek Dalam Perspektif Islam," *Shautut Tarbiyah, Ed. Ke-31 Th. Xx, November 2014*, No. November (2014): 65-79.

women's degrees continued until finally Islam came down and began to be spread in 610 AD.

Islamic teachings in the context of granting human rights to women, fully recognize and respect the position of women as creatures of Allah SWT. dignified. Islam was revealed as a carrier of mercy to all the world The fundamental values that underlie Islamic teachings such as peace, liberation, and egalitarianism include equality between all human groups, and this is reflected in many verses of the Qur'an. Stories about the important role of women in the time of the Prophet Muhammad, such as Khadijah, Siti Aisyah, and others put women in an equal position. The same applies to his attitude which respects women and treats them as partners in the struggle.¹⁸ According to Faqihuddin Abdul Kodir, that Friends of Umar bin Khattab r.a. stated on various occasions that *“By Allah, we at the time of Jahiliyah never took women into account. Then Allah sent down some verses about them and gave them rights. We realized then that it turns out that they also have autonomous rights in which we can no longer intervene.”* (Hadith of Bukhari, book 77, chapter 31, no. 5843).¹⁹ Islam has removed all forms of injustice that befell women and raised their status as human dignity. Equality between humans, both male, and female, ethnicity, nation, and lineage is the essence of Islamic teachings and the only difference between Muslim all around the world in front of Allah is their piety. Islamic teachings essentially give great attention and respect to women. Unfortunately, the position of women in the view of Islamic teachings currently are not practiced by society.

However, until now there are still many Muslims who are trapped in misinterpretations and perspectives regarding the position of women in Islam. There are still many who think that women are placed in a position below men based on interpretations and understandings that are based on teachings on the procedures and ethics of women in the household like women need to ask permission from their husbands when they want to leave the house while husbands are not burdened with the same thing. , women are obliged to obey their husbands while husbands do not need to obey their wives, divorce is in the hands of the husband, not the wife, and other forms of obligations in the household. These things are finally interpreted and generalized that women in the eyes of Islam will always be in an inferior position compared to men. Whereas this kind of interpretation cannot be justified because the superiority of a man is only found in domestic matters for the sake of harmony in the family.

Regarding problems and other aspects of social life, Islam does not limit and restrain women's steps in developing their potential. For example, women's rights in politics, women's rights in choosing a livelihood, as well as women's rights to education and other women's human rights have been clearly stated that rights are fully in the hands of women. One of the verses that are often raised by Islamic thinkers about gender equality and women's human rights is taken from the Qur'an Surah at-Taubah verse 71: which means *“The believers, both men, and women, are allies of one another. They enjoin good, forbid evil, establish Prayer, The believers, both men, and women, are allies of one another. They enjoin good, forbid evil, establish Prayer, pay Zakah,*

¹⁸ Lili Zakiyah Munir, *Memposisikan Kodrat Perempuan Dan Perubahan Dalam Perspektif Islam* (Bandung: Mizan, 1999).

¹⁹ Naamy, “Hak Asasi Perempuan Dalam Islam.”, p.103-112..

and obey Allah and His Messenger. Surely Allah will show mercy to them. Allah is All-Mighty, All-Wise."²⁰ In general, this verse is understood as a description of the obligations for men and women in various fields of life as outlined in an order to do what is right and prevent what is evil.

In the context of providing protection and rights for children, the seriousness of Islam in dealing with the status of children is increasingly legitimate with the many verses of the Qur'an that discuss the status of children. Islam's alignment with child protection is a priority. The instruments related to this seem to have been neatly arranged and arranged to create a generation of good human beings and be merciful *Lil 'Alamin*. Therefore, the protection of children has also been taught from an early age, namely by giving the right to life to the fetus that is in the mother's womb before it is born. This is illustrated in the word of Allah Q.S. Al-An'am verse 140 means "*Indeed those who kill their children lose because they are ignorant and do not know and they forbid what Allah has provided for them by merely inventing against Allah. Verily they have gone astray and they have not been guided.*" (Q.S. al-An'am: 140).

The Qur'an is full of stories about children, especially pious children who are descendants of the Prophets. There is the story of the little Prophet Ismail in the letter Asshoffat, the story of the little Prophet Yusuf in the letter Yusuf, and the story of Luqman's advice to his son in the letter Luqman. All of these stories convey messages about education and child protection. A child will be a gift or a favor when his parents succeed in educating him to be a good and devoted person. If parents fail to educate the child, it is not a gift or a favor but a disaster for the parents. Allah SWT in the Qur'an has mentioned the child as the jewel of the world's life, as a cooler for the eyes or the jewel of the heart of his parents. At the same time, Allah also reminds us that the child is a test for his parents, and sometimes the child can even turn into an enemy of his parents. In the Qur'an, there are four typologies of children:²¹

a. Children as Jewelry Living in the World

Children are jewelry in domestic life. In the Qur'an Surah Al-Kahf verse 46, it is stated which means "*Wealth and children are the adornments of the life of the world, but eternal and righteous deeds are better in reward with your Lord and better for hope.*" (Q.S. Al-Kahf: 46). This verse states, that the child serves as a decoration that beautifies a family. The cry of a baby, the whimper of a child asking for something, his funny chatter, the limping of a child's steps are beautiful sights in a family. Husband and wife always feel less than perfect life, if they do not have children. The perfection and beauty of the household can only be felt if there are children in it.

b. Children as Cooling

The Qur'an also states that the child is a cooler for the eyes of the heart (*qurrata a'yun*). It is said so because when the eyes look at a child there will be a feeling of happiness. Children are a priceless treasure for parents. Allah also mentions the human child as a cooler of the heart and teaches us a prayer so that the child who is born becomes a cooler for his parents in QS: Al-Furqan:

²⁰ Djamila Usup, "Kedudukan Dan Perlindungan Hukum Terhadap Perempuan Dalam Islam," 2005, p.5.

²¹ Zaki Ahmad, "Perlindungan Anak Dalam Perspektif Islam," *ISLAMICA: Jurnal Studi Keislaman* 4, no. 1 (2014): 143, <https://doi.org/10.15642/islamica.2009.4.1.143-153>.

74 which means *"Our Lord, bestow upon us our spouses and our descendants as a conditioner and make us leaders of those who are pious."* (Q.S. Al-Furqan: 74).

c. Child as a Test

Al-Qur'an Surah Al-Anfal verse 28, Allah says which means *"Know that your wealth and your children are only a test."* (Q.S. Al-Anfal: 28) Also in QS: Al-Munafiqun verse 9, Allah reminds every believing parent which means *"Do not let your wealth and your children distract you from the remembrance of Allah."* (Q.S. Al-Munafiqun: 9). Children in the perspective of the Qur'an, function as jewelry for life and conditioning the heart, in fact, they are a test for their parents. With the favor of children, parents are tested by Allah SWT, whether to take their children to the road to hell or the road to heaven. If parents succeed in educating and fostering their children to be pious and devoted children, it means that their parents have passed the test. On the other hand, if his parents love their children so much that they neglect to remember Allah, it means that they have failed the test that Allah has given them. Failure must be accounted for before God later.

d. Children as Parent's Enemy

If parents are wrong and wrong in educating their children, then the child will become an enemy to his parents. This is what the Qur'an Surah At-Taghabun verse 14 implies which means *"O you who believe, verily among your wives and your children are enemies to you, so be careful with them."* (Q.S. At-Taghabun: 14). According to this verse, children can become enemies of their parents when they no longer obey their parents or their religious rules. For example, children are already deeply involved with crime and are difficult to stop. When parents advise, the child does not listen and even opposes. A child who apostates because he married someone of a different religion, is also an enemy to his parents. A child who has been influenced by immoral acts, such as alcohol, drugs, gambling, adultery, becomes a friend to Satan and an enemy to a believing parent. When that happens, children have become a source of disaster for a family and society. So that children no longer bring happiness, but cause suffering to their parents.

Strictly and clearly, Islam has given instructions to its people to protect their children. More specifically, Islam never mentions and mentions gender differences and the sex of a child. That is, all children get the same portion and rights to be protected for the development and growth of children naturally, both physically and mentally, and socially. This is intended so that later in life the parents do not leave weak offspring.²² Therefore, the seriousness of Islamic law on child protection is absolute and is a very original sacred teaching originating from divine revelation long before the emergence of the foundation or foundation of positive legal instruments related to the protection of children throughout the world.

Children in Islamic teachings have a "special" position. Children have a broad meaning and scope, namely children are entrusted by Allah to their parents, society, nation, and the state as heirs of Islamic teachings which will prosper the

²² D W I Hilana Yesika, "Eksplorasi Anak Dalam UU Perlindungan Anak Menurut Perspektif Hukum Islam," 2014.

world as *rahmatan lil 'alamin*.²³ Therefore, children's rights must be recognized and believed in and secured as the implementation of practices accepted by children from their parents, society, nation, and state. In the context of interpreting obligations and granting rights to children, Islam has regulated it in such way. This is described in the hadith of the Prophet Muhammad which means *"From Zabri he said, I heard Anas bin Malik say; An old man came to the Prophet sallallaahu 'alaihi wasallam and people slowed down to widen the path for him, so the Prophet sallallaahu 'alaihi wasallam said: "It is not from our group who does not love our little children and does not respect our parents (adults)." (HR. Tirmidhi No. 1842).*

Allah commands his servants not to leave their children weak because basically, they have rights that must be fulfilled by their parents. Broadly speaking, children's rights are grouped into seven types:²⁴

- a. Children's rights before and after birth
- b. Children's rights in the sanctity of descent. This is the most important thing because the clarity of lineage will greatly affect developments in the next period. As in QS Al-Ahzab verse 5 which means *"Call your adopted sons after their true fathers; that is more equitable in the sight of Allah. But if you do not know their true fathers, then regard them as your brethren in faith and as allies. You will not be taken to task for your mistaken utterances, but you will be taken to task for what you say deliberately. Allah is Most Forgiving, Most Compassionate."*(Q.S. Al-Ahzab: 5).
- c. The right of the child to give a good name.
- d. The right of the child to receive breastfeeding. As in QS. Al-Baqarah verse 233 means *"If they (i.e. the fathers) wish that the period of suckling for their children be completed, mothers may suckle their children for two whole years. (In such a case) it is incumbent upon him who has begotten the child to provide them (i.e. divorced women) their sustenance and clothing in a fair manner. But none shall be burdened with more than he is able to bear; neither shall a mother suffer because of her child nor shall the father be made to suffer because he has begotten him. The same duty towards the suckling mother rests upon the heir as upon him (i.e. the father). And if both (the parents) decide, by mutual consent and consultation, to wean the child, there is no blame on them; if you decide to have other women suckle your children there is no blame upon you, provided you hand over its compensation in a fair manner. Fear Allah and know well that Allah sees all that you do."* (Surat al-Baqarah: 233).

This responsibility is truly the responsibility of parents as God's command to protect themselves and their families from the fire of hell. As the Word of God in QS. At-Tahrim verse 6 which means *"O you who believe, protect yourselves and your families from the hellfire whose fuel is people and stones; guardians of the angels who are harsh, harsh, and do not disobey Allah in what He commands them and always do what is commanded."* (Surah At-Tahrim: 6).

Based on the above verses, parents must love their children and the parent's right is to get respect. Talking about rights, there must be obligations on the other

²³ Iman Jauhari, *Advokasi Hak-Hak Anak Ditinjau Dari Hukum Islam Dan Peraturan Perundang-Undangan* (Medan: Pustaka Bangsa, 2008).

²⁴ Yesika, "Eksplorasi Anak Dalam UU Perlindungan Anak Menurut Perspektif Hukum Islam.", p.11.

side. Children's obligations are respect for both parents and their right is to get love. This principle is ideally inseparable.²⁵

However, there are still many cases where parents have the heart to kill their biological children because of economic factors. Islam in this case has taught that children must be cared for properly, which is why it is forbidden to kill their children under any circumstances, especially for fear of suffering (poor). As mentioned in the Qur'an Surah Al-An'am verse 151 which means *"Say to them (O Muhammad!): 'Come, let me recite what your Lord has laid down to you: that you associate nothing with Him; and do good to your parents, and do not slay your children out of fear of poverty. We provide you and will likewise provide them with sustenance, and do not even draw to things shameful - be they open or secret, and do not slay the soul sanctified by Allah except in just cause; this He has enjoined upon you so that you may understand.'"* (Q.S. Al-An'am: 151).

Children in the view of fiqh, are both a gift and a trust. Therefore, parents must take care and maintain it properly. Islam denounces the jahiliyyah tradition of killing their children because of economic hardship. Allah SWT says in QS. al-An'am verse 151 which means *"Do not kill your children for fear of poverty. We will provide sustenance to you and them; And do not approach the abominable deeds, both visible and hidden, and do not kill the soul which Allah has forbidden (killing it) except with what is right." That is what your Lord has commanded you so that you may understand. (his)."* (Surat al-An'am: 151).

Hanafi and Maliki scholars say that raising, caring for, and educating children is the right of the mother or her representative, she may abort this right even without compensation. According to the majority of scholars, hadanah is a shared right between both parents and children. According to Wahbah al-Zuhaili in the Encyclopedia of Islamic Law, the right of hadanah is the right of association between mother, father, and child. If there is a conflict between the three, then the priority is the rights of the child being cared for.²⁶ The Prophet sallallaahu 'alaihi wasallam said: *"From Abdullah bin Amr: There was a woman asked the Messenger of Allah, "O Messenger of Allah, my son used to come out of my stomach, my milk was as a spray for him, and this mare was for him as property. His father has now divorced and wants to ask for it." this child from me." The Messenger of Allah then said to the woman, "You are more entitled to your child as long as you are not married."* (Narrated by Abu Dawud).

If the child does not receive care from his parents, relatives, or substitute family, the last alternative is care based on a child social welfare institution that acts as a temporary substitute for parents for children who are placed in institutions and fulfills their rights. From this situation, it is feared that the child's condition is threatened if left unchecked, then the law to take it is *fard kifayah* in the opinion of the majority of scholars. If the child is taken by one of the community members, then the sins of the people fall. if all of them let it. Then all of them will sin. This is because saving abandoned children is included in the case of good deeds that are highly demanded by Islamic teachings.²⁷

²⁵ Supriyadi, "Kasus Perlindungan Hak Pendidikan Anak Dalam Tinjauan Hukum Islam Dan Ham.", p.8.

²⁶ Yesika, "Eksploitasi Anak Dalam UU Perlindungan Anak Menurut Perspektif Hukum Islam.", p.15.

²⁷ Yesika.

Conclusion

Islamic teachings place great emphasis on equality and justice in viewing all human groups. Historical research can also be a reflection of how the arrival of Islam at that time changed the paradigm regarding the position of women and children in the construction of the social order of pre-Islamic Arab society at that time which still considered women and children to be only "objects" of ownership of men who could be treated as they pleased. heart. For this reason, even harder efforts are needed to show and build a paradigm that Islam does not place women and children in a subordinate position or an inferior position compared to other social groups. It takes the efforts of scholars, religious experts, and Muslims themselves in forming a construction of the wheel of social life that can become a picture and a reflection that in essence, Islam is a religion that is gracious to women and children.

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