



Philosophical Values for Children's Legal Rules in the Positive Law of Islam Indonesia

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Abstract

The obligation to provide for a child is prioritized by a father, but if it is not capable, then the mother will take it. Ages earn a living from 0 to 21 years or get married. If a civil servant then the child salary is 1/3. The philosophy of child care obligations in Islamic UUP, if viewed from the axiological aspect of the benefit of the law, then the livelihood of children is a medium to achieve people's welfare, with the fulfillment of children's livelihood means that they have prepared quality human resources in the future. Because in their livelihood three children aspects of fulfilling basic needs of children, namely primary needs, children's spiritual (psychological) needs and children's intellectual needs. From the axiological aspect of legal justice, the fulfillment of children's livelihood is full of the values of theological justice, social justice and gender justice. Whereas from the axiological aspect of legal certainty, the existence of legal sanctions on family law legislation serves as social control as a preventive measure to prevent acts of neglect of the child and repressive (forcing) parents to provide for the child by paying them later, as guarantee of child rights (child rights).

Keywords: *Philosophical, Obligations, Child Labor, UUP*

Introduction

The birth of a child as a legal event that occurs due to husband and wife relations, brings consequences in the form of rights and obligations reciprocally between parents and children. Children have certain rights, both rights which are children's material needs, such as; clothing, food and shelter, and children's immaterial rights, such as; the right to worship, the right to get attention and affection, as well as the right to social interaction. One of the children's rights that is very important to be fulfilled by their parents is the right of living (alimentation). Fulfillment of children's livelihood rights, is a form of manifestation of the

purpose of marriage, as a powerful medium that plays an active-offensive role in protecting offspring (*hifz an-nasl*) (Mas'ud 2015). In addition, the fulfillment of children's livelihood, which includes aspects of housing needs, clothing, food, medical expenses and education costs, is suspected to be able to support the life and growth of the baby optimally. Of course, this is a visionary step to print children into a superior generation, who are ready to carry out the obligations as caliphs on earth (Q.S al-Baqarah [2]: 30) (Azizi 2016).

To achieve this goal, a conducive atmosphere is needed in the household environment, the way is to divide the role between husband and wife. Both have their respective portions in caring for and raising their love fruit. Islam in this case has provided a formulation regarding the rights and responsibilities of husband and wife, the husband is obliged to bear the burden of living on his wife and children in a manner that is humorous, according to the level of ability (As-Subki 2010), as the word Allah in QS al-Baqarah [2]: 233. As with the husband, according to QS an-Nisa [4]: 34, the wife is obliged to obey her husband, maintain honor, maintain the secrets and property of the husband, both when the husband is at home and the husband is not at home (Nurudddin and Tarigan 2016).

These Islamic principles are then formulated into several regulatory products in Indonesia, two of which are the Compilation of Islamic Law as Indonesian *fiqh* products and Law No. 1 of 1974 which became a mirror of the existence of Islamic law in the positivistic legal realm in Indonesia. Article 34 paragraph 1 of the Marriage Law No. 1 of 1974 states the obligation of a father to protect his wife and provide all the necessities of living in accordance with his ability (Ministry of Religion of the Republic of Indonesia 2010). A father is also responsible for living for his child both during the marriage (article 80 paragraph 4 of the Indonesian Islamic Law) (Ministry of Religion of the Republic of Indonesia 1997), as well as post-divorce, at least until the child is 21 years old (article 156 d KHI and article 41 b of the Marriage Law/1974) (Ministry of Religion of the Republic of Indonesia 1997; 2010).

While the wife has an obligation to serve all her heart to her husband, as long as he is in the corridor that is justified by Islamic law, and regulates daily household needs as well as possible (article 83 KHI and article 34 paragraph 2 of the Marriage Law /1974) (Ministry of Religion of the Republic of Indonesia 1997; 2010).

The division of the role of parents to maintain, care for children and educate children, has been arranged in such a way as to maintain the integrity of the household, but it cannot be denied that the ripples whacking the household ark to end divorce often occur. The divorce phenomenon in Indonesia, which from year to year shows a significant increase, needs attention by the parties involved, because the impact of divorce is quite serious, one of which is the impact experienced by children. Children are the direct victims of divorce from their parents. Therefore, children's civil rights should not be ignored, especially the right of living for children (Muchsini 2010).

The problem of giving children a living is also haunting after the divorce case is decided by the court and sentenced the ex-husband to continue to provide the child with each month until the child is mature or independent. Based on the results of research conducted in the Cianjur Religious Court, West Java in 2010 by Stijn Van Huis from Van Vollen hoven Institute of the University of Leiden in the Netherlands, revealed the problem of execution or implementation of a difficult decision to enforce if the ex-husband or father is reluctant to carry out the decision volunteer. Though many wives have been desperately fighting for their children's rights before the court (Jauhari 2011).

On the other hand, one of the triggers that led to the inefficiency of the juridical provisions of children's livelihood was the attitude of the judges who adhered to the views of *ulama fiqh* who considered that the livelihood of a child did not become a father's debt and died after the past. For example, the ruling of the Supreme Court No.608 K / AG / 2003 dated March 23, 2005 "rejected" the past lawsuit for children 's livelihood or better known as the mad'yah income (Mughtar 2014; Rusyadi and Hafifi 2010), in the Supreme Court's ruling it reads as follows: "That the obligation of a father to provide for his child is *lil intifa* 'not *li tamlik*, then the negligence of a father who does not provide his child (*madliyah* child income) cannot be used (Decision of MA RI No .608 K / AG / 2003, 867-885) (Mappiasse 2003).

Based on the prologue above, the author focuses on the discussion of how the legal provisions of the obligations of the child according to the UUP of Indonesian Islam and its philosophical values?

Discussion

Child Livelihoods in Islamic Marriage Indonesia's Formal Legal Perspective

Husbands as heads of households and wives as housewives each have the right to do legal actions. Besides that, there are rights and obligations that must be fulfilled and found by each other. If the husband or wife neglects their obligations, each party of the husband or wife can file a lawsuit against the Court (Sudarsono 2009).

Likewise, with obligations in fulfilling a living, both include an inner birth to the wife or a living for the child. This is one of the points that must be obtained in marriage, so if there is a violation or negligence, the aggrieved party has the right to submit it to the competent court. All that is mentioned in this matter has been regulated in Chapter VI of Law Number 1 Year 1974 concerning Rights and Obligations of Husbands and Wives and Chapter X concerning Rights and Obligations of Parents Against Children (Sudarsono 2009).

Normatively, the law in Indonesia, especially regarding the right of livelihood for children, both in marriage and post-divorce can be said to be enough to protect the interests

of children. Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage, states that: "the husband is obliged to protect his wife and provide all the necessities of living according to his ability". This means that the husband is fully obliged to provide a living for his family (child and wife) (Ministry of Religion of the Republic of Indonesia 2010).

According to Article 34 paragraph (1) Law Number 1 of 1974 concerning Marriage, both the wages of the wife and child are the responsibility of the husband or father of the children. Article 34 paragraph (3) of the Marriage Law states that if a husband or wife neglects their respective obligations, they can file a claim to the Court (Sudarsono 2009).

More specifically in Article 45 paragraph 1 and 2 states that: 1). Both parents must maintain and educate their children as well as possible. 2). Parental obligations referred to in paragraph (1) of this article are valid until the child is married or can stand alone, which obligation applies even though the marriage between the parents is broken (Projodikoro 2012).

Then the provision of providing income for children is strengthened by the existence of Article 80 paragraph (4) parts b and c, Compilation of Islamic Law which states that: "In accordance with his income, the husband bears: b). Household costs, maintenance costs and medical expenses for his wife's child; c). Education costs for children" (Ministry of Religion of the Republic of Indonesia 1997).

In positive law absolute living as a child civil rights arises because of personality rights and rights that are in family law. Not only individual rights that bind the child to the obligation of the father, but at the same time as material rights to the object, namely the income that the father must give to his child. Child's livelihood is a legal consequence that must be fulfilled by father. If a father does not fulfill a living which is the right of the child, then he is deemed to have committed an illegal act because he has abandoned his obligation So important, that the unpaid living becomes a debt (Mappiasse 2003).

Furthermore, Article 47 is stated as follows: 1) Children who have not reached the age of 18 years or have never held a marriage are under the control of their parents as long as they are not revoked from their powers, 2) Parents represent the child regarding legal acts inside and outside the Court (Jauhari 2011).

The power of this parent can be revoked but the parents are not exempt from the obligation to provide for the cost of living for the child. This matter as stipulated in article 49 of Law Number 1 Year 74 concerning Marriage, is as follows: 1). One or both parents can be deprived of their authority over a child or more for a certain time at the request of another parent, the child's family in a straight line up and an adult sibling or an authorized official with a court decision on matters: a) . he greatly neglects his obligations to his child. b). He behaves very badly. 2). Even though parents were deprived of their power, they were still obliged to provide maintenance costs for the child (Projodikoro 2012).

As for the provisions of article 41 letter b, based on the provisions it can be interpreted that the demands of divorce with the demand for the fulfillment of a child's life are two different things. So, from that, it could be that the demands for the fulfillment of the child's income are separate from the demands for divorce. Everyone who holds the rights of others for their benefit, he is responsible for spending them. This is a general rule. Likewise in a marriage (Sударsono 2009).

The declaration of the rights of children initiated by the UN cannot yet be seen as a positive legal provision. Therefore, the Indonesian government issued a decree of the President of the Republic of Indonesia (Keppres) No. 36 of 1990 concerning the ratification of the Convention on The Right of The Child. A wise move by the Indonesian government, carried out in 1979 by enacting Law Number 4 of 1979 concerning Child Welfare. However, the operation of the Law does not reflect a more transparent process of upholding children's rights (Wijayanti 2010).

Child Labor After Islamic Divorce Formal Indonesian Legal Perspective

The right of livelihood for children after divorce in Article 41 of Act Number 1 of 1974 concerning marriage, determines that due to the termination of marriage the husband still has an obligation to provide for his children. This provision is also confirmed by Article 105 letter (c) Compilation of Islamic Law that maintenance costs are borne by his father. However, in Article 41 letter (b) of the Labor Law it also states that if you cannot in fact fulfill these obligations, the Court can determine that the mother is carrying these costs. Then for child livelihood rights in Article 149 section d, Compilation of Islamic Law is explained when marriage is broken because of divorce, then ex-husband is obliged to: d). Give *hadhonah* fees for children who have not reached the age of 21 years (Rahmanda 2015).

Child rights after divorce get maintenance, milk, care (KHI Article 105 letters b and c), education and financing (Setiasari 2008). Then in Article 45 mentioned as follows: 1). both parents must care for and educate their children as well as possible. 2). Parental obligation referred to in paragraph (1) is valid until the child marries or stands alone, which obligation continues even though the marriage between the two breaks (Ministry of Religion of the Republic of Indonesia 1997).

The obligation of my father to make a living is legalized in the positive law of Indonesia, namely through the Marriage Law Number 1 of 1974 which is later strengthened by the Compilation of Islamic Law. Moreover, with the issuance of Law Number 23 of 2002 concerning Child Protection and Law Number 4 of 1979 concerning Child Welfare. In it Law Number 1 Year 1974 is regulated about the obligation for fathers to provide their children with income, even after a divorce (Rahmanda 2015).

According to Article 3 of Law Number 23 of 2002 concerning Child Protection states

that, “child protection aims to ensure the fulfillment of children’s rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence and discrimination, for the sake of the realization of quality, noble and prosperous Indonesian children” (Thalib 2014).

Child protection is an effort to protect children in order to carry out their rights and obligations. Law on child protection is a law (written and unwritten) that guarantees that children can truly exercise their rights and obligations. Article 2 of Law Number 4 of 1979 concerning Child Welfare formulates children’s rights as follows: Children have the right to welfare, care, care and guidance based on compassion both in the family and in special care to grow and develop naturally (Husein 2012).

Legal protection for children after divorce is no different at all with legal protection for children before the divorce. That is due to the absence of the term ex-child. So, the rights given by the father or mother to the child remain the same as before the divorce (Jauhari 2011).

Chapter III of the Law on Child Protection regulates the rights and obligations of children. The rights of the child are clearly regulated in the provisions of Article 4 through Article 18, while the obligations of the child are included in Article 19. The rights of the child stated in the Law on Child Protection include the rights:

- 1) To be able to live, grow, develop and participate fairly in accordance with the dignity and human dignity and get protection from violence and discrimination.
- 2) For a name as identity and citizenship status.
- 3) To worship according to religion, think and create according to the level of intelligence and age in parental guidance.
- 4) To know their parents, be raised and cared for by their own parents.
- 5) Obtaining health services and social security in accordance with physical, mental, spiritual and social needs.
- 6) Obtain education and teaching in the context of personal development and the level of intelligence in accordance with their interests and talents.
- 7) Obtain extraordinary education, rehabilitation, social assistance and maintenance of social welfare levels for children with disabilities.
- 8) Obtain special education for children who have excellence.
- 9) Declare and hear his opinion, accept, seek and provide information in accordance with the level of intelligence and age for his own development in accordance with the values of decency and propriety.
- 10) To rest and take advantage of free time, associating with children of the same age, playing, recreation and creating according to their interests, talents and level of intelligence for self-development.

- 11) Get protection from discrimination, exploitation (both economic and sexual), neglect, cruelty, violence, abuse, injustice and another mistreatment.
- 12) To be cared for by their own parents unless there are reasons and / or legal rules that indicate that the separation is in the best interest of the child and is the final consideration.
- 13) Obtain protection from the targets of persecution, torture or inhuman punishment.
- 14) Obtain freedom in accordance with the law.
- 15) Obtain humane treatment and placement that is separated from adults, obtain legal assistance or other assistance effectively in every applicable legal step, as well as defend themselves and obtain justice in front of an objective and impartial Child Court in a closed session to the public for every child deprived of his freedom.
- 16) For confidentiality, for every child who is a victim or perpetrator of sexual violence or who is dealing with the law.
- 17) Obtain legal assistance and other assistance, for every child who is a victim or criminal offender.

According to the perspective of legislation in Indonesia, the obligation to pay for children is more prioritized for a father, but if the father is in fact inadequate, then the mother will take up the cost. Children who have the right to earn a living from their father are only legitimate children, while out-of-wedlock children (adultery children) are not entitled to earn a living from their father. The amount or amount of income given to the child is adjusted by the ability of the father. Livelihoods provided to children include household costs, care costs, medical expenses and education costs for children. The age limit for earning a child is from the age of 0 to 21 years or until the child is married, whether they are still married or divorced, except for children who have physical disabilities. For a civil servant, the distribution of salary for a living in the event of a divorce is 1/3 (Azizi 2016).

Legal provisions for someone who neglects the obligation to pay for children can be subject to civil or criminal sanctions. The civil sanctions are classified into three types, namely: a) a person can be sued to court for reimbursing the cost of a child's living which is not given to the child, as stated in article 34 paragraph 3 of Marriage Law No. 1/1974 (Azizi 2016).

In the positive law, the right to live a child is still valid for the past period, because the obligation to fulfill the child's living starts from 0 (zero) to 21 years (twenty-one years), during that age, the child's unpaid income in the past it can still be prosecuted, provided that a father does have sufficient wealth and he is reluctant to give it, but if a father is poor, sick or has difficulty getting a job, the mother also carries the burden of the cost of living for her child; b) someone can be deprived of foster rights to his child because he

neglects his obligation to fulfill the child 's income, as stated in article 49 paragraph 2 of the Marriage Law and Law No. 4/1979 concerning Child Welfare; c) for civil servants who do not want to implement salary distribution provisions in the event of a divorce, with one severe disciplinary sentence based on Government Regulation Number 30 of 1980. While criminal sanctions for someone who neglects the obligation to pay for a child are imprisonment for a maximum of 5 (five) years and / or a maximum fine of Rp100,000,000.00 (one hundred million rupiah) as stated in article 77 b of Law 35 of 2014, or with a maximum imprisonment of 3 (three) years or a maximum fine of Rp.15,000,000.00 (fifteen million rupiah), as stated in article 49 of Law Number 23 Year 2004 (Azizi 2016).

Philosophical Content Value of the Rules of Childhood Formal Indonesian Legal Perspective

The values of philosophy contained in the rules of living for UUP Islam are as follows (Azizi 2016);

- 1) Judging from the axiological aspect of the benefits of law, livelihood for children is a medium to achieve community welfare, with the fulfillment of children's livelihood means that they have prepared quality human resources in the future, because in the livelihood of children there are three basic needs. child. First, fulfill the physical needs of children which cover their basic needs such as nutritious food, clean clothing and shelter, as well as the cost of caring for children from the womb so that children can grow physically healthy in the future. Second, fulfilling the spiritual needs (psychic) of children, because children who earn a living on a regular basis will establish good communication with their parents, from there he will feel the love and attention of parents. Third, fulfill the intellectual needs of children, because by fulfilling the educational needs of children both with religious knowledge and other general knowledge, children are expected to be ready to face the global competitive climate in the world of work (Azizi 2016).
- 2) From the axiological aspect of legal justice, the fulfillment of children's livelihood is loaded with the values of theological justice, social justice and gender justice. First, the theological value of justice means divine justice, so someone who has fulfilled a living for his child means that he has done justice because he has obeyed God's commands, and vice versa someone who does not fulfill his obligation means he has done unfairly because he does not obey God's command. Secondly, the value of social justice emphasizes the principle of help and equality, the principle is formulated in the rules of giving support to adopted children and living for children born outside of legal marital ties. Third, the value of gender justice is contained in the imposition of equal obligations between husband and wife in terms of providing, caring for, and raising children. The three values of justice are important

to be applied in the community to build social contracts based on religious morals, help children who live in social difficulties, and build principles of equality in the family (Azizi 2016).

- 3) From the axiological realm of legal certainty, the existence of legal sanctions on family law legislation in Indonesia serves as social control as a preventive measure to prevent acts of neglect of the child's livelihood, as well as repressive efforts so that in the event of neglect of the child's income can restore the livelihood rights of children by paying for it later, with these efforts means that the state has upheld Islamic principles that guarantee the right of livelihood of children (Azizi 2016).

Conclusion

Based on the discussion above, it can be concluded, that according to the legislative perspective in Indonesia, the obligation to pay for the child is more prioritized for a father, but if the father is in fact inadequate, then the mother will bear the cost. The amount or amount of income given to the child is adjusted by the ability of the father. Livelihoods provided to children include household costs, care costs, medical expenses and education costs for children. The age limit for earning a child is from the age of 0 to 21 years or until the child is married, whether they are still married or divorced, except for children who have physical disabilities. For a civil servant, the distribution of salary for a living in the event of a divorce is 1/3. The values of philosophy contained in the rules of living for UUP Islam are as follows:

- 1) In terms of the axiological aspect of the benefits of law, livelihood for children is a medium to achieve people's welfare, with the fulfillment of children's livelihood means that they have prepared quality human resources in the future, three aspects of fulfilling children's basic needs. First, fulfillment of physical needs. Second, fulfill the spiritual (psychological) needs of children. Third, fulfill the intellectual needs of children.
- 2) From the axiological aspect of legal justice, the fulfillment of children's livelihood is loaded with the values of theological justice, social justice and gender justice. First, the value of theological justice means divine justice. Second, the value of social justice emphasizes the principle of help and equality. Third, the value of gender justice is contained in the imposition of equal obligations between husband and wife in terms of providing income.
- 3) From the axiological realm of legal certainty, the existence of legal sanctions on family law legislation in Indonesia serves as social control as a preventive measure to prevent acts of neglect of children's livelihoods, as well as repressive (forced) efforts so that in the event of neglect of the livelihood of children.

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