



The Qur'an and Islamic Legal Perspectives on Child Protection

Iman Jauhari*

Department of Law, Faculty of Law, Universitas Syiah Kuala, Indonesia
<https://orcid.org/0000-0003-3790-0259>
imanjauhari@usk.ac.id

Zamakhsyari Bin hasballah Thaib

Islamic Education, Faculty of Islamic Studies. Universitas Dharmawangsa, Indonesia
<https://orcid.org/0000-0002-3698-3980>

M. Jafar

Department of Law, Faculty of Law, Universitas Syiah Kuala, Indonesia
<https://orcid.org/0000-0002-4143-8565>

TM Ali Bahar

Land Titles Registrar Banda Aceh, Indonesia

M. Jamil

Faculty of Islamic Studies, Indonesia
<https://orcid.org/0000-0001-5656-9667>

Muhammad Yusuf

English Department, Universitas Sumatera Utara
<https://orcid.org/0000-0003-0772-4565>

Zaini Dahlan

Department of Young Learners Education, Universitas Islam Negeri Sumatera Utara, Indonesia
<https://orcid.org/0000-0002-9638-7144>

Doi: <https://doi.org/10.46222/pharosjot.104.417>

Abstract

This article seeks to examine the perspective of Islamic law on child protection issues, by specifically comparing the teachings of Islamic law on child protection with the Child Protection Law no. 23 of 2002 in Indonesia. This research was based on a literature review with a descriptive analytical and comparative approach being taken. Among the main conclusions in this study are inter alia, that Islamic law provides the best protection for children when compared to conventional domestic legislation and international conventions on child protection. In the Indonesian context, even though the Child Protection Law no. 23 of 2002 has been enacted, there are still many deficiencies in the articles that can be perfected by observing Islamic teachings. The rights of children in Islam start from the time of forming a family, by choosing a good life partner, and it is prohibited to for a spouse to commit adultery as this can devastate the couple and the children if there are any. Furthermore, Islam also protects children before birth by giving them the right to live and it vehemently opposes and prohibits abortion and promotes the obligation to provide *nafaqah* (financial support a husband must provide for his wife during marriage and for a time after divorce), for pregnant women. After a child is born, Islam also provides protection by providing material and immaterial rights for children. In addition, Islam also provides protection for children in special conditions, such as children who are adopted and children with disabilities.



Keywords: Islamic law, Child protection, legal aspects, Indonesia.

Introduction

Human rights which are the major concern of today's world community, in the view of Islam, begin with granting rights to children. The children are considered to be God's gifts that are very valuable individuals. In one of the Qur'anic *ayah* (verse), it is stated that property and children are jewelry (*zīnah*) in life. In other words, children can make someone's life more beautiful and better. A person's life will become more meaningful, not only in the present physical world but also in the hereafter, with the presence of qualified children physically, mentally, and spiritually. Such children in Islamic terms are called pious children (*waladun sālihun*), who can help make their parents happy after they die in the world, among others, through prayers that they always recite or say.

In the context of social life, nation and state, children are the embryo of a society. The children are the buds, the potential owning and young generation who are the successors of the ideals of the nation's struggle. They have a strategic role and have special characteristics that ensure the continuity of the existence of the nation and state into the future. Good and bad of any society is very much determined by the extent to it cares for and protects its children. A smart, good, and creative generation will be born if the needs of children which are material, psychological, social, and a moral education are meaningfully fulfilled.

Because of the importance of childhood, almost all religions and laws in the world give special attention to efforts to meet children's basic needs. Various declarations, conventions, and other international legislation born after the Second World War emphasize the importance of protecting vulnerable groups, including children. Children's rights are part of human rights contained in the 1945 Indonesian Constitution and the United Nations Convention on the Rights of the Child (UNCRC - 20 November 1989- General Assembly resolution 44/25). This is a legally-binding international agreement stating the needed civil, political, economic, social and cultural rights of every child, irrespective of their of their race, religion or individual abilities.

In the Indonesian context, even though Law No.39 of 1999 regarding human rights already includes the rights of children, the implementation of the obligations and responsibilities of parents, family, society, government and the state to provide protection to children is set forth in a special law concerning child protection, namely Law no. 23 of 2002 concerning child protection (UU PA). Protection referred to, as stipulated in article 1 paragraph 2 of the Child Protection Law, is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity and protection from violence and discrimination. However, what is meant by child is someone who is not yet 18 years old, including children who are still in *utero* (in the womb).

Although many laws have been made regarding human rights, including children's rights, in reality there are still many problems that exist. This is because many of the laws and conventions that are made are not comprehensive. For example, child protection will not be fully guaranteed as long as the family is not built on the basis of the whole family concept i.e. it must consist of father and mother bound by a legal marriage. This partial solution is because human rights in the view of modern society are natural, owned by a person under any circumstances, even in a state of moral and mental damage. And because it is natural, under conditions of different conceptions and interests in society, the strong will dominate the weak.

In Islam, human rights are the glory (*takrīm*) that Allah gives to every human being, regardless of race, color, sex, and religion (QS. Al-Isrâ'/17:70). This verse states:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ﴿٧٠﴾



From that verse, it can be inferred that it not just a gift from someone to another, or a ruler to his people. Respecting these rights is part of worship to Allah, because He has established and commanded people to maintain these rights. Human rights in Islam are closely related to efforts to maintain the objectives of the Shari'a (*maqâsid shari'a*) for human life, both primary (*dharûriyat*), maintaining religion, soul, mind, property and self-respect, secondary (*hâjjiyat*) by regulating patterns of relationships between people and tertiary (*tahsîniyat*) in the form of morals and traditions that are considered to be noble.

These principles are very clear if we look at the Islamic protection of children, which starts not only when the foetus begins to be conceived as in conventional law, but from before household life is built, namely in the process of choosing a life partner and thus a future father and mother. This protection takes place in three phases; first: when the family was formed; second: when the child is in the womb; third: after the child is born, namely by providing the rights that must be fulfilled for the child's survival.

In addition, Islam also provides protection for children in special conditions, such as when the child is left behind by the father who supports him (orphaned), or is abandoned by his parents (*al-Iaqîl*), or when the child has a disability, both physically and mentally. These are the issues that are unpacked in this paper.

Research Method

This study used a literature review approach, which is a form of research whose data is obtained from relevant literature. This research also used a normative juridical approach. In research or in a study of normative legal science, one explains the law or looks for meaning and gives legal value - only the concept of law is used and the steps taken are normative steps.

The data collection method that had been used was a relevant documentation gathering method. The documentation method involved seeking out data related to variables or problems originating from academic works, books, transcripts, notes, magazines, manuscripts, newspapers, and others.

The data sources used were both primary data sources and secondary data sources. As for the primary data sources that were used, among others, the Qur'an, hadiths, laws, Islamic jurisprudences, and books that explicitly discuss Childs' rights were utilised. Secondary sources used included inter alia the internet, documents, magazines, tabloids.

Result and Discussion

Children's Rights When Forming a Family

Various international laws relating to human rights, especially children, do not pay attention to the importance of the legal family formation phase for child protection. In the Convention on the Rights of the Child and the Declaration issued by the International Conference on Children in 1990, the role of the family in child protection begins when the foetus is conceived and after birth. Likewise, Law no. 23 of 2002 concerning child protection states similar issues. In the elucidation of the law, it is stated that "child protection measures need to be implemented as early as possible, from the foetus in the womb until the child is 18 years old."

Islam considers the importance of the life and health of children from the moment of family formation, by laying down sound principles from a scientific, social, and health perspective. Therefore, Islam regulates the process of choosing a life partner (husband and wife) and establishes it through a legal relationship (marriage), so that children will be guaranteed offspring and grow into good and healthy children. These principles include:

1. Choose a good life partner

Islamic scholars and geneticists are of the view that there is a close relationship between children and parents, or their previous grandmothers, namely in the form of traits inherited through genes carried by chromosomes in the human body, both male and female. The transfer of these traits is not always continuous from one generation to another, but sometimes appears after several generations (Galsafi, 1969). In the holy Qur'an, it is stated that the nature and behavior of parents greatly affect their children. Pay attention to the prayer of the prophet Noah:

﴿٢٦﴾ وَقَالَ نُوحٌ رَبِّ لَا تَذَرْنِي عَلَى الْأَرْضِ مِنَ الْكَافِرِينَ دَيَّارًا

﴿٢٧﴾ إِنَّكَ إِن تَذَرَهُمْ يُضِلُّوا عِبَادَكَ وَلَا يَلِدُوا إِلَّا فَاجِرًا كَفَّارًا

"My Lord! Leave not of the Unbelievers, a single one on earth! For, if Thou dost leave (any of) them, they will but mislead Thy devotees, and they will breed none but wicked ungrateful ones." (QS. Noah/71:26-27)

This is because those who disbelieve will cause destruction on the earth, and will give birth to generations of destroyers like their parents and predecessors.

Likewise with Maryam when returning to her hometown with a child (*al-Masîh*) who was born without a father, the people there were astonished, because Maryam came from a good descent, so it was impossible to do things that were not good, until giving birth a child out of wedlock. They said: "O sister of Aaron! Thy father was not a man of evil, nor thy mother a woman unchaste!"

Seeing the magnitude of the influence of the innate traits of parents on children, Islam recommends choosing a life partner who comes and grows in a healthy and good environment. From this, Islam forbids marrying people who do not have a good religion (QS. Al-Baqarah/22:221)

﴿٢٢١﴾ وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَ ۚ وَلَا مَؤْمِنَةٌ خَيْرٌ مِّنْ مُّشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا ۚ وَلَعَبْدٌ مُّؤْمِنٌ خَيْرٌ مِّنْ مُّشْرِكٍ وَلَوْ أَعْجَبَكُمْ ۗ أُولَٰئِكَ يَدْعُونَ إِلَى النَّارِ ۗ وَاللَّهُ يَدْعُو إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ لَعَلَّهُمْ يَتَذَكَّرُونَ ﴿٢٢١﴾

and they do not choose a partner just because of wealth and beauty. In a hadith, Rasulullah reminded one not to marry beautiful women who grew up in an environment that was not good. Women like that are called *khadrâud dimân* (Al-Qudâ'i, 1985). Among the rights of children that must be fulfilled by a father, as said by Umar Ibn al-khattab, is to find a good mother for the child to be born.

2. Prohibits adultery (*zinâ*)

Islam prohibits adultery and criticizes and threatens its perpetrators for the protection of children and offspring (QS. Al-Isrâ'/17:32 and QS. An-Nûr/24:2). Children born without a legal father will easily be neglected and lose affection. Therefore, reproduction is one of the important goals of marriage, and it is always mentioned in the holy Quran alongside a legal marriage relationship.

Allah says:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ ﴿١٧٣﴾

“And Allah has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best: will they then believe in vain things, and be ungrateful for Allah's favours?” (QS. An-Nahl/16:72)

Rights of The Child Before Birth (Foetus)

The foetus begins when the male sperm and female ovum meet and produces fertilization which continues to grow until finally a birth takes place. The continuity of this process is fully guaranteed by Islam by setting various provisions in order to maintain its survival. Among the rights of the foetus in this phase are the following:

1. Right to live

Islamic scholars agree that it is forbidden to carry out an abortion or the act of aborting a foetus in the womb, except in a state of pregnancy which allegedly threatens and endangers the safety of the mother. To determine the law of abortion, Islamic jurists divide the three periods of foetal life; first: the period before the foetus is 40 days old; second: the period after 40 days until the foetus is 4 months (120 days); third: after 4 months (120 days) of birth. This periodization is based on the word of Allah in QS. al-Hajj/22:5 and QS. al-Mukminun/23:12-14, and its meaning is explained by a hadith of the prophet which states that a person (while in the womb) goes through the process of *nutfah*, *'alaqah*, and *mudgah*, each for 40 days, so that the total is 120 days. After that the spirit is blown through the angel, and it is determined by one's sustenance, age, occupation, and whether he is happy or miserable (Al Bukhari, 2002). Departing from this hadith, the majority of Islamic jurists state that it is haram to carry out the act of abortion whoever the perpetrator is; father, mother, or other than both, unless there are medical reasons as previously explained.

2. Obligation to provide a *nafaqah* for pregnant women

In QS. An-Nisâ/4:34 it is mentioned that the leadership of men in the household is closely related to their responsibility to provide *nafaqah* to their wives. Therefore, it is obligatory for a husband to provide for his wife, namely from lawful assets, because every 'meat' that grows from haram property, as stated in a hadith of the Prophet, is the fire of hell that most deserves it. This obligation cannot be separated even if the relationship between husband and wife is fractured or separated (At-Timidzi, 1996). A husband who divorces his wife is still obliged to support her if she is pregnant. Allah says:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمِلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُم فَاسْتَزِضِعْ لَهُ أُخْرَى ﴿٦٧﴾

“Let the women live (in 'iddat) in the same style as ye live, according to your means: Annoy them not, so as to restrict them. And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense: and take mutual counsel together, according to what is just and reasonable. And if ye find yourselves in difficulties, let another woman suckle (the child) on the (father's) behalf.” (QS. At-Talâq/65:6)



According to Islamic jurists, the obligation to provide for a pregnant wife also applies to a wife who is not entitled to receive *nafaqah* because of disobedience (*nusyûz*) or a damaged marriage (*nikâh fâsid*). If the father is not there, or is unable to support him, then this obligation falls on the closest relative to the father (Sâbir, 1986). Pregnancy is the time which is invariably the most uncomfortable for a mother. The Holy Qur'an describes this suffering in terms of weakness after weakness (*wahnâ 'alâ wahnin*), that is, a condition that is very weak and powerless one for one to make efforts. The suffering experienced by a woman during pregnancy and childbirth is very heavy, so Allah states in QS. al-Ahqâf/46:15 that it is a compulsion for women to accept it. In such conditions, it is impossible for a woman who is divorced to earn her own *nafaqah*, because in addition to making her tired, it can also threaten the safety of the foetus in her womb.

3. Abort some of the Islamic obligations for pregnant women

Several recent studies have shown that the physical and psychological conditions of pregnant women will affect the foetus they are carrying. Therefore, for the sake of maintaining health and growth, Islam provides relief (*rukhsah*) and convenience for pregnant women in carrying out the provisions of Islamic law. For example, Islam provides relief (*rukhsah*) in the form of permissibility for pregnant women or breastfeeding not to fast during the holy period of Ramadan. According to Hasan Al-Bashrî, Athâ ibn Abî Rabâh, ad-Dahhâk, and other scholars from among the *tabi'in*, pregnant or nursing mothers may not fast in the month of Ramadan, and change it on another day, without having to pay *fidyah* (a religious donation to help those in need), as only those who are sick and do not fast. This view is held by the Maliki school of thought. according to Imam as-Shafi'i and Ahmad Ibn Hanbal, both of them may not fast but must change on another day and pay *fidyah*. Both of these opinions allow not fasting for pregnant women, based on the understanding of the phrase in the verse about fasting which reads:

“...but if any of you is ill, or on a journey, the prescribed number (Should be made up) from days later. For those who can do it (With hardship), is a ransom, the feeding of one that is indigent.”

Islamic jurists make an analogy of pregnant women or breastfeeding with those who are sick and cannot fast or those who can fast, but with difficulty, like the elderly (Al-Qurthubî, 1993). In addition, in Islamic law, a woman who is pregnant and has been proven to have committed an offense, must have her execution postponed if the sentence endangers the health of the foetus. Once upon a time a woman (*al-Gâmidîyyah*) came to the Prophet and confessed that she had committed adultery with someone (Mâ'iz). Prophet Muhammad PBUH decided that the execution of the sentence (stoning) for the woman could only be carried out after she gave birth and had completed the 2-year breastfeeding period.

Protection of Children After Birth

After the mother gives birth, there is a certain period through which the child goes in need of nurture and protection. That period is quite long when compared to the childhood of other living beings, that is, until the time when it is considered ripe to assume responsibility. The Holy Qur'an calls it by reaching *asyuddahu*, which is a mature age, both physically and mentally, so that it is entitled to have full responsibility, especially material ones. This period of formation and preparation certainly needs protection. Therefore, from an early age, Islam provided rights to children, both immaterial (*huqûq ma'nawiyah*) and material (*huqûq mâddiyah*).

Immaterial Rights of Children

1. The right to be given a good name

Islam provides guarantees in the form of the right for children who are born into the world to be given a good name, as an identity to differentiate them from others. In a hadith, the Prophet

stated that among the rights of children that must be fulfilled by their parents, namely they need to educate them and give them a good name (Al-Munawi, 1971).

A good name gives good hope and optimism in one's life. Because of that, the Prophet Muhammad PBUH always invited his companions (*sahabah*) to give the names of his other brothers with a good name (Al-Baihaqi, 2003). Rasulullah said: "The right of a believer that must be fulfilled by other believers is to give the best and most favorable name." This is in accordance with what Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرْ قَوْمٌ مِّنْ قَوْمٍ عَسَىٰ أَنْ يَكُونُوا خَيْرًا مِنْهُمْ وَلَا نِسَاءٌ مِّنْ نِّسَاءٍ عَسَىٰ أَنْ يَكُنَّ خَيْرًا مِّنْ أُمَّهَاتِكُمْ إِنَّ لِلنَّاسِ عِندَ اللَّهِ مَا كَانُوا يَفْعَلُونَ ﴿١١﴾

"... Nor defame nor be sarcastic to each other, nor call each other by (offensive) nicknames: Ill-seeming is a name connoting wickedness, (to be used of one) after he has believed..." (QS. Al-Hujurât/49:11)

Rasulullah really likes names that convey the meaning of love, kindness and beauty. On the other hand, he dislikes bad names such as *al-‘Ashi* (immoral), *as-Syaithân* (satan), *al-Gurâb* (crows), and always replaces them with better ones (Abu Dawûd, 2009). Indeed, a good name is one of the important elements, which psychologically has a big influence on fostering self-confidence and stability for others. therefore, a civil registry office in Japan once refused to record the name a father proposed for his child, because the child's name meant devil (Mukhaimir, 1997).

2. Descent rights

What is meant by descent here is kinship arising from blood ties, so that descent rights mean the right to have a clear father and mother. Descent in the view of Islam is a very valuable gift from Allah. Allah says:

"It is He Who has created man from water: then has He established relationships of lineage and marriage: for thy Lord has power (over all things)." (QS. Al-Furqân/25:54)

Descent rights are very important, because from them various other rights, such as education, care, property and inheritance are born. Islamic attention to the importance of descent will cause neglected children and lose their rights. Islam strongly criticizes and threatens parents who deny the child's lineage (descent). In a hadith, Prophet Muhammad PBUH said: "A person who denies his son's line will be hindered from Allah, and will be humiliated in front of the crowd on the Day of Resurrection" (Abu Dawûd, 2009).

Article 16 of the Convention on the Rights of the Child establishes adoption as an alternative system of child care in a situation where the child is unknown to the family. In order to avoid misuse, the convention regulates its implementation with the following provisions:

- a. Adoption is an alternative child care
- b. Adoption must be legally recorded in accordance with the applicable laws and regulations.
- c. Ensure that the adoption process does not involve parties seeking to illegally extract material benefits.

This article is classified as vulnerable, because it opens up opportunities for child trafficking by international syndicates, or seeks other material benefits under the pretext of adoption. Although several provisions have been established to ensure the process takes place, misuse in the name of adoption still occurs frequently. The Honduran Republican Police have discovered several secret child fattening centers to be sent abroad as merchandise to be sold to adopters. A few months later, it was found that some of the fattened children were going to be sold to use their organs for surgery (Mukhaimir, 1997).



The adoption system has been around since time immemorial. In the holy Quran, it is stated that one of the rulers of Egypt (*al-Azîz*) adopted the prophet Yusuf as a son (QS. Yusuf / 12: 21). Likewise, the prophet Muhammad PBUH once raised Zaid ibn Harithah as a son by announcing it to the public. "*O people of Quraish, witness that Zaid Ibn Harithah is my son who will be my heir, and I will be his heir.*" At that time, Zaid was called Zaid Ibn Muhammad, not Zaid Ibn Harithah. This way of parenting was later canceled by the holy Quran through What Allah says:

"Allah has not made for any man two hearts in his (one) body: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells (you) the Truth, and He shows the (right) Way. Call them by (the names of) their fathers: that is juster in the sight of Allah. But if ye know not their father's (names, call them) your Brothers in faith, or your maulas..." (QS. Al-Ahzâb/33:4-5)

In the Indonesian context, the 2002 Child Protection Law also allows adoption of children. However, to avoid abuse in its implementation, in the second part regarding adoption in article 39, several other provisions are mentioned, namely:

1. Adoption of a child can only be done in the best interest of the child, and is carried out based on local customs and the provisions of the prevailing laws and regulations.
2. The adoption of a child as referred to in paragraph (1) does not terminate the blood relationship between the adopted child and the biological parents.
3. prospective adoptive parents must share the same religion as the adopted child candidate.
4. Adoption of children by foreign nationals may only be undertaken as a last resort.
5. In the event that the child's origin is not known, the child's religion is adjusted to the religion of the majority of the local population.

Article 40 states: "Adoptive parents are obliged to inform their adopted children of their origin and biological parents, with due observance of the readiness of the child concerned". The articles above are an attempt to compromise the demands of reality in society with religious values (Islam in particular) that must be maintained. However, the implementation practice must still receive supervision, both from the government and the community.

3. The right to life

Almost all legislation on child protection currently includes the child's right to live. Article 4 of the 2002 child protection law states: "*Every child has the right to live, grow, develop and participate fairly in accordance with human dignity, and to receive protection from violence and discrimination.*" However, never imagine that humans used to treat children in such a way. Before Islam came, in the Arab world or even in ancient Greece and other civilizations, children were the full property of parents who could be treated them as they saw fit and they could be killed or allowed to live. The custom of the Arab society before Islam came, was to kill children, male or female because of poverty or fear of being poor. This tradition is strongly opposed by the holy Quran. Allah says:

"...kill not your children on a plea of want; We provide sustenance for you and for them;..."
(QS. Al-An'âm/6:151)

In other verses, Allah also says:

"Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin." (QS. Al-Isrâ'/17:31)

Commenting on the above verse, the expert on the commentary of the holy Quran, ar-Razi stated: "Killing a child, if it is based on fear of poverty, then it is a prejudice against Allah, and if it is based on pity for girls (fearing that if they are allowed to live they will suffer shame), then this will destroy the survival of the world. The first attitude is against the majesty of Allah, and the second is against the nature of compassion for God's fellow creatures. Both traits are equally despicable" (ar-Râzî, 1995).



Even though conventional laws and Islamic law agree to guarantee the right to life to children, Islam has the advantage of having called for this very long before any person or institution called on parents not to kill their children for fear of poverty, even as has been mentioned earlier, Islam gives children the right to live since the child is still a foetus in the mother's womb.

4. The right to equality

In the past, before Islam came, Arab society and others differentiated the treatment of boys and girls. As a nomadic society (moving from one place to another) and always covered in wars, physical strength and war agility are the assets to sustain life. Therefore, the presence of boys was considered to be a matter of pride, in contrast to the existence of girls.

The holy Quran describes the condition of society before Islam, how the face of a father turned black (bright red), because he was sad and ashamed when he heard that he had a daughter. They shy away from their families so as not to see the creature that is female, or avoid the general public, so as not to be asked about the gender of the child they have just received. After that, he began to wonder whether he would let his daughter live with great affection, or would he dig a hole to bury the child's life in order to avoid embarrassment.

Allah says:

"When news is brought to one of them, of (the birth of) a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people, because of the bad news he has had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! what an evil (choice) they decide on?" (QS. An-Nahl/16:58-59)

There are so many verses in the holy Quran that explain the equality of rights between boys and girls, because they both come from the same origin (QS. An-Nisâ'/4:1, QS. Al-Qiyâmah/75:36-39). A person never chooses whether to be born male or female. All that happened because of the will of Allah. Humans cannot intervene to determine gender (QS. As-Syûrâ/42:49-50).

Prophet Muhammad PBUH ordered to be fair in treating children, and strongly criticized the discriminatory treatment between men and women. He said: "*whoever has a daughter and does not bury her alive, does not humiliate her, and does not discriminate against her, then she is put into heaven.*" In another hadith the Prophet Muhammad also said: "*Be fair to your children, just as you like to be treated fairly*" (Al-Baihaqi, 2003).

In Child Protection Law no. 23 of 2002 and also the Convention on the Rights of the Child it states that there must be the protection of children from discriminatory treatment in general, including those arising from sex differences. However, it is not explicitly explained whether this protection also applies to children born from extramarital relationships. In other words, does a child born from a legal relationship outside of marriage (*at-Tifl at-Tabî'i*) get the same rights as those born from a legal relationship? (*at-Tifl as-Syar'i*).

From this point of view, the principle of equal rights for children creates problems. Humanely and according to the principle of justice, it makes no sense for young children to bear the burden of sins committed by both parents. However, if equalized or legalized, this means justifying the reproductive process that occurs outside of a legal relationship. In other words, legalizing free sex will destroy the bonds of family life. Several studies have shown that the western world that legalizes free sex faces major problems in dealing with children born outside of legal relationships. Up to 60% of children are born outside of wedlock, even in some countries it reaches a high 75%. Meaning, 3 out of 4 children born came from the result of an affair (al-Bahî, 1982).

In Islam, free sex is forbidden, among other things, to protect children from unclear hereditary lines. Adultery cannot determine *nasab* (descent), because *nasab* is a gift from Allah that cannot be obtained through forbidden paths. The mention of a general prohibition on discrimination against children in the 2002 Child Protection Law is presumably to avoid the



polemic of differences around the rights of children born of illegitimate relationships. But that does not mean that sexual behavior is justified.

5. The right to education

Article 26 paragraph 3 of the Declaration of Human Rights states that “parents have the right to choose the type of education to be given to their children”. Article 49 of the Child Protection Law no. 23 states: “The state, government, family, and parents are obliged to provide the widest possible opportunity for children to obtain education.”

What is meant by education, in article 50, is directed at:

1. Development of attitudes and abilities of children's personalities, talents, mental and physical abilities to achieve their optimal potential.
2. Developing respect for human rights and basic freedoms.
3. Developing respect for parents, cultural identity, language, and own values, national values where the child lives, where the child comes from, and different civilizations from one's own civilization.
4. Preparation of the child for a responsible life, and
5. Development of respect and love for the environment.

Here, although it is not explicitly stated, the word education must be understood as including religious education. Because children, until the time they are close to maturity, are when they are able to distinguish between good and bad, unable to make choices, and even in many cases unable to understand complex problems, including choosing their own education and religion.

Religious education is important to protect children from abuses and violations of ethical and religious values. Children are a mandate for parents who will be held accountable in the afterlife. A child's heart, said Imam al-Ghazali, “is a precious pearl that has not been tainted by anything, he is ready to accept anything and be taken anywhere.” Or as Imam Ali said, “a child's heart is like an empty land ready to accept whatever is dumped / thrown there” (An-nabrawi, 2006; .

Good religious and moral education for children will make it a conditioning for parents' hearts (*qurrata a'yun*) and maintain their survival, not only in this world but also in the hereafter when all relationships are cut off. Allah says:

“And those who believe and whose families follow them in Faith,- to them shall We join their families: Nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds.” (QS. At-Tûr/52:21)

The pattern of children's education in Islam is immortalized in the words of a wise man, Luqman, when educating his children, as stated in the QS. Luqman/31:13-19. There, three basic principles of children's education are collected, namely:

1. Faith (*Aqîdah*). Luqman began his advice by emphasizing the need to avoid *syirk* (associating partners with Allah), because *syirk* is a real form of tyranny. Then introduced also the nature of Allah who is omniscient. Allah is able to reveal everything however small, “...*the weight of a mustard-seed and it were (hidden) in a rock, or (anywhere) in the heavens or on earth...*”(QS. Luqmân/33:16)
2. Worship (*‘ibâdah*), that is, in the form of prayer orders, even all kinds of virtue. Luqman advised: “O my son!” (said Luqman), “If there be (but) the weight of a mustard-seed and it were (hidden) in a rock, or (anywhere) in the heavens or on earth, Allah will bring it forth: for Allah understands the finest mysteries, (and) is well-acquainted (with them).” (QS. Luqman/33:17)

Telling one to do *ma'rûf* contains a message to do it, because it is not natural to tell other people before you do it yourself. Meanwhile, what is meant by *ma'rûf* is anything that is recognized by the customs of the community as good, as long as it does not conflict with the values of *aqidah* (creed) and sharia.



3. Morals (*Akhlaq*), namely in the form of orders to do good and be devoted to both parents (QS. Luqmân/33:14), is the obligation to be gentle to others, and to be polite in walking and speaking (QS. Luqmân/33:19).

Material Rights of Children

Islam fully guarantees children's rights which are material in nature and obliges related parties to fulfill them, because at that time children could not try and work on their own. Among these rights:

1. Breastfeeding rights

Social scientists and medical experts agree that the mother is the person closest to the child, and breast milk is the best food for children. Therefore, Islam recommends, even obliges, mothers to breastfeed their children. Allah says:

“The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do.” (QS. Al-Baqarah/2:233)

In the Islamic view child breastfeeding is so important, therefore experts in Islamic law agree that a mother should be forced to breastfeed, even though the coercion is detrimental to the mother, in the following conditions:

- a. The child's father cannot afford to hire someone else to nurse the child, while the child is left with no money, and no one wants to breastfeed voluntarily.
- b. The child does not want to breastfeed voluntarily
- c. No one is able to breastfeed a child, either paid or voluntarily, except for the child's mother (Mukhaimir, 1997)..

In addition, to emphasize the importance of child breastfeeding, Islam encourages breastfeeding mothers to breastfeed children whose mothers died during childbirth, or were separated from their mothers for other reasons. Islam does not want the child to lose the right to breastfeed. For this reason, Islam gives high respect to breastfeeding mothers by giving them the right, like mothers, to be respected and upheld, including the prohibition of marrying them (QS. An-Nisâ'/4:23).

Breastfeeding period is stipulated in the holy Quran, as in the above QS. Al-baqarah/2:233 is 2 years. Some scholars understand the period of two years as the maximum limit, because in another verse it is explained that the period of pregnancy and breastfeeding is 30 months. The Prophet's friend and cousin who was very good at interpreting the holy Quran, Abdullah ibn Abbas, understood this verse that the breastfeeding period is 21 months, and if the gestation period is 6 months, then the breastfeeding period is 24 months (Al-Qurthubî, 1993). Despite being aware of the rights to breastfeeding children, the Convention on the Rights of the Child and the Child Protection Law of 2002 do not explicitly state this right. But in Islam we can easily find detailed instructions about it.

2. Right to get nafaqah

Islam requires parents, in this case the father, to be responsible for the child's maintenance, in the form of clothing, food, shelter, education costs and other expenses needed by the child until he reaches the age of being able to live independently; if a boy gets a job opportunity, and if a girl gets married. Allah says:



“Let the man of means spend according to his means: and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him. After a difficulty, Allah will soon grant relief.” (QS. At-Talâq/65:7)

The interpretation of the above verse according to the legal expert of the holy Quran, al-Qurthubî, "let the husband support his wife and young children according to their abilities". becomes the basis for the father's obligation to provide for the child (Al-Qurthubî, 1993)". In the condition that the father is unable to support, or his income is not sufficient for his children, Islamic legal experts oblige other parties, such as baitulmâl or closest relatives, to support him, but do not abort the father's obligations and consider him a debt that must be paid if there is ability.

The UNICEF report on the condition of children in the world says that the debt that developing countries must pay off quite a lot of their natural resources, so that many children in Africa and Latin America suffer because of their national debt. This debt must be paid with the child's opportunity to grow and develop properly and naturally. Therefore, UNICEF emphasized that forcing millions of children in the world to pay dearly for soaring state debts is contrary to civilization and humanity.

3. Inheritance rights

In the days of jahiliyyah, before Islam came, the inheritance rights were only owned by those who fought, rode horses, held arrows and swords, and then obtained spoils of war. therefore there is no opportunity for inheritance rights for children and women, because they are a weak group that cannot fight. This tradition was canceled by Islam by establishing inheritance rights and property ownership as well as men. Allah says:

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share.” (QS. An-Nisâ’/4:7)

In fact, the heirs who are still children are more entitled to receive assets than adults, because they cannot work and really need assets to cover their daily needs, so that they can grow and develop properly. The inheritance rights of children are not only owned when the child is born, but since they are still in the womb. In calculating inheritance, the inheritance rights of the foetus in the womb are calculated. If later he is born alive, then the right is fully accepted, but if he dies, the share is returned to another heir (Makhlûf, 1986).

Conclusion

From the above discussion, it can be concluded that Islamic law provides the best protection for children when compared to conventional legislation and international conventions on child protection. In the Indonesian context, even though the Child Protection Law no. 23 of 2002 has been enacted, there are still many deficiencies in the articles that can be perfected by observing Islamic teachings. The rights of children in Islam start from the time of forming a family, by choosing a good life partner, and it is prohibited for one to commit adultery. Furthermore, Islam also protects children before birth by giving them the right to live and prohibiting abortion and the obligation to provide *nafaqah* for pregnant women, and even about some of the sharia provisions for pregnant women. After the child is born, Islam also provides protection by providing material and immaterial rights for children. In addition, Islam also provides protection for children in special conditions, such as children who are adopted and children with disabilities.

References

Abu Dawûd. (2009). *Sunan Abu Dawûd*. Dar AR-Risalah Al-Alamiyyah.



Al-Bahî, M. (1982). *Al-Fikr al-Islâmî wa al-Mujtama' al-Muâsir wa Musykilât al-usrah*. maktabah al-Wahbah.

Al Bukhari. (2002). *Shahih*. Dar Ibn Kasir.

Al-Baihaqi. (2003). *Syu'ab al-Iman*. Maktabah ar-rusyd.

Al-Ghazâlî, A. H. (2011). *Ihya' Ulûmuddîn* (Vol. 3). Dâr al-manhaj.

Al-Hâritsî, J. bin A. (2006). *Fikih Ekonomi Umar bin al-Khattâb*. Khalifa.

Ali Ibn abi Thalib. (2004). *Nahj al-Balâghah*. Dâr al-kitâb al-Lubnânî.

Al-Munawi, M. abdul rauf. (1971). *Fayd al-Qadîr syarh al-Jâmi' as-Shagîr* (Vol. 2). dâr al-ma'rifah.

Al-Qudâ'i. (1985). *Musnad as-Syihâb*. Muassasah ar-Risalah.

Al-Qurthubî. (1993). *Al-Jâmi' li Ahkâm al-Qur'an* (Vol. 2). Al-Qurthubî.

An-nabrawi, K. (2006). *Mausu'ah Huqûq al-Insân fi al-Islâm*. Dâr as-salâm.

Ar-Râzî, F. (1995). *At-Tafsîr al-kabîr* (Vol. 20). Dâr al-Fikr.

As-Syarbînî, A. (1997). *Mughnî al-Muhtâj*. Dâr al-Ma'rifah.

At-Thabarî, M. I. jarîr. (2008). *Jami' al-bayan fi ta'wil Ây al-Quran* (Abdullah ibn Abdul Muhsin at-Turkî, Vol. 20). Dâr hajar li at-thibâah wa an-nasyr.

At-Timidzi, S. (1996). *At-Timidzi*. Dar al-Gharb al-islami.

Galsafi, M. taqi. (1969). *At-tifl bainal wirâsah wat tarbiyah*. Matba'ah Abad.

Ibn Asyûr, M. at-Tâhir. (1986). *At-Tahrîr wa at-Tanwîr* (Vol. 21). ad-Dâr at-Tunisiyah li an-nasyr.

Ibn Hanbal, A. (241H). *Al-Musnad*. Muassasah ar-Risâlah.

Makhlûf, S. H. (1986). *Al-Mawarîts fî as-Syarîah al-islamiyyah*. Matba'ah al-madanî.

Mukhaimir, A. azîz. (1997). *Huqûq at-tifl bayn as-Syarîah al-islamiyyah wa al-Qânûn ad-dawli*. matbûat Jâmi'ah Kuwait.

Sâbir, K. H. T. (1986). *Daur al-Umm fi tarbiyat at-Tifl al-Muslim*. Dâr al-Mujatama'.

Shihab, Q. (2007). *Secercah cahaya Ilahi*. Mizan.

Conflict of Interest Statement: The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.



This article is open-access and distributed under the terms of the Creative Commons Attribution Licence

The use, distribution or reproduction in other forums is permitted, provided the original author(s) and the copyright owner(s) are credited and that the original publication in this journal is cited, in accordance with accepted academic practice. No use, distribution or reproduction is permitted which does not comply with these terms.