

## CHILDREN'S RIGHTS AND OBLIGATIONS IN ISLAMIC LAW

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### Abstract

*Children are a trust given by God to their parents. In their lives, children also have rights and obligations that must be fulfilled. Rights and obligations must be balanced. Similarly, children, in addition to demanding their rights, must also be accompanied by carrying out their obligations. In the context of child protection, Islamic law has a more in-depth perspective "than" conventional law in general. In this study, the method used is normative legal research. With the aim of understanding children's rights, parental obligations towards children and the concept of legal protection for children in legislation. In terms of child protection, positive law, especially that applicable in Indonesia, only regulates parental care (alimony) for children, child recognition, and child legitimacy. Regarding indicators regarding the protection of children's rights, Islamic law has discussed this in detail. Law No. 4 of 1979, verses of the Qur'an and the hadith of the Prophet that discuss the rights that must be obtained by children include: The right to life and growth. The right to protection and care from the torment of hellfire. The right to livelihood and welfare. The right to education and teaching. The right to justice and equality, the right to love, and finally, the right to play.*

*Anak merupakan amanat yang diberikan Allah kepada kedua orang tuanya. Dalam kehidupannya, anak juga mempunyai hak dan kewajiban yang harus dijalankan. Hak dan kewajiban haruslah berjalan dengan seimbang. Sama halnya dengan anak, selain menuntut hak, juga harus diiringi dengan mengerjakan kewajiban-kewajibannya. Dalam konteks perlindungan anak, hukum Islam memiliki perspektif lebih mendalam "ketimbang" hukum konvensional pada umumnya. Dalam Penelitian ini metode yang digunakan adalah penelitian hukum normatif. Dengan tujuan untuk mengetahui hak-hak anak kewajiban orang tua terhadap anak dan konsep perlindungan hukum anak dalam perundang-undangan. Dalam hal perlindungan anak, hukum positif terutama yang berlaku di Indonesia-hanya mengatur seputar pemeliharaan orang tua (alimentasi) terhadap anak, pengakuan anak, pengesahan anak. Berkaitan dengan indikator tentang perlindungan terhadap hak-hak anak, hukum Islam telah membahasnya dengan detail. UURI No 4 tahun 1979, ayat-ayat al-Qur'an dan hadits Nabi yang membicarakan mengenai hak-hak yang harus diperoleh anak antara lain: Hak untuk hidup dan tumbuh berkembang. Hak mendapatkan perlindungan dan penjagaan dari siksa api neraka. Hak mendapatkan nafkah dan kesejahteraan. Hak mendapatkan pendidikan dan pengajaran. Hak mendapatkan keadilan dan persamaan derajat. Hak mendapatkan cinta kasih dan yang terakhir ialah Hak untuk bermain.*

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**Keywords:** *Children's Rights, Obligations, and Legal Protection*



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## A. INTRODUCTION

Children are a trust given by God to their parents. They are a hope for the future, not just as a means of continuing the family line, but also as a continuation of ideals and struggles. In their lives, children have rights and obligations that must be fulfilled. Rights and obligations must be balanced. Likewise, children, in addition to demanding their rights, must also fulfill their obligations.

As creatures of God Almighty and social beings, children, from conception until birth, have the right to life and liberty and receive protection from their parents, family, society, nation, and state. Legal child protection can include legal protection for children in the fields of civil law and public law. Every child has human rights, just as adults have rights. However, not many parties consider and are willing to take concrete steps to protect children's rights. Children are very easily victims of all forms of violence or crime because they are not yet able to do things to protect themselves properly.<sup>1</sup>

When a child is born, they are extremely helpless, perhaps the weakest living creature at birth compared to other creatures of God, such as animals. Chicks, for example, can walk after hatching a few hours. Human children are born extremely weak and need the help and dependence of those closest to them, namely their parents. The helplessness of newborns in developmental psychology is said to be due to the undeveloped state of the body and nervous system. According to Hurlock, the helplessness of babies is due to several factors, including: the inability to maintain homeostasis; the inability to control motor activities; the inability to communicate; the undeveloped state of the sense organs and the inability to learn.<sup>2</sup>

The aforementioned helplessness of infants serves as a foundation for development and education, enabling them to grow and develop into independent adults. Effective and supportive parental care can aid a child's development. Both the Quran and the Hadith of the Prophet Muhammad (peace be upon him) explicitly emphasize children's importance. Children have rights that must be met, including food, clothing, and shelter.

In Indonesia, attention to children's rights has apparently existed before the UN convention on the rights of the child. It is proven that in 1979, Law No. 4 of 1979 concerning Child Welfare was born in Indonesia. In this law (Chapter II, Article 2) it is emphasized that there are four groups of children's rights, namely: first, Children have the right to welfare, care, upbringing and guidance based on love both in the family and in special care to grow and develop naturally; second, Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens; third, Children have the right to care and protection, both during

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<sup>1</sup>Jamal Abdur Rahman, *Tahapan Mendidik Anak Teladan Rasulullah*, terj. Bahrun Abu Bakar Ihsan (Bandung: Irsyad Baitus Salam, 2005), hlm. 5.

<sup>2</sup>Elizabeth B. Hurlock, *Perkembangan Anak*, Terjemahan Med Meitasari Tjandrasa & Muslichah Zarkasih. (Jakarta: Erlangga, 2005), hlm. 16.

pregnancy and after birth; Fourth, Children have the right to protection against the environment that can endanger or hinder their growth and development naturally.

In world organizations such as the United Nations began to pay attention to the fate and welfare of children by setting November 12 as Children's Day which is celebrated every year. Children's Day coincides with the date of the establishment of the Declaration of the Rights of the Child in 1989. This UN convention on the rights of the child has become an international law ratified by 187 countries, and Indonesia was among the first to ratify it in 1990. Talking about children's rights, in Indonesia itself, the issue of rights and obligations for children has not been fully realized, one form of rights that has not been realized here can be exemplified by the problem of stunting, this problem occurs because children do not get their rights in terms of fulfilling nutrition and food intake. In Indonesia, the issue of stunting has been highlighted because the stunting rate in Indonesia remains quite high, at 21.6%, according to the 2022 Indonesian Nutritional Status Survey (SSGI). Although this figure has decreased from 24.4% in 2021, significant efforts are still needed to achieve the target of reducing stunting by 14% by 2024. At this time, it is crucial to ensure adequate energy and protein intake for children to prevent stunting. This undermines children's rights and obligations to access all forms of facilities.

Given the UN's and Indonesia's concern for children's rights, many people are questioning the true meaning of children's rights and obligations according to Islamic teachings, so that all forms of discrimination against children can be minimized, whether in terms of nutrition, schooling, or the so-called provision of food, clothing, and shelter. This question arises from the belief that Islam is a perfect religion, and it certainly contains a clear explanation of this crucial issue.

Besides children's rights, another important aspect that requires attention is the children's obligations to their parents. There needs to be reciprocity between children and parents. In legal terms, this reciprocal obligation between parents and children is called alimony.<sup>3</sup> This is a reciprocal obligation between both parents or blood relatives in the upward line and children and their descendants.

Looking at the current reality, most children can only demand their rights and forget their responsibilities as children. This is proven by the many cases reported about children neglecting their parents, and the murder of parents by their own children.<sup>4</sup>, parental neglect, and many other cases. An example of parental neglect

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<sup>3</sup>Muhammad Zaki, "Perlindungan Anak Dalam Perspektif Islam", *ASAS*, Vol. 6, No. 2, Juli 2014, hlm.1

<sup>4</sup>Seperti contoh kasus pembunuhan orang tua yang dilakukan oleh anaknya sendiri (1/4/2014). Yaitu bernama Maria Vincentia yang tega membunuh ayah kandungnya sendiri (bernama Heri Sondah) dan juga ibu tirinya dikarenakan harta warisan. Kasus lain yaitu seorang anak yang tega membunuh kedua orang tuannya dikarenakan tidak dibelikan motor (11/12/2014). Lihat di <http://www.tribunnews.com/regional/2014/03/02/maria-tega-bunuh-orangtuanya-demi-harta-waris>, diakses pada tanggal 28 Oktober 2018 pada pukul 23.57 WIB.

is the story of Grandma Maimion (67 years old), who was placed in a nursing home by her children because her children refused to care for her.

This is very unethical for a child to do. A child should know his role and obligations as a child, not just be busy demanding his rights. One of the obligations that a child must fulfill is to be devoted to his parents or *birrul walidain*.<sup>5</sup> In accordance with what has been stated in QS. an-Nisa': 36,<sup>6</sup> Devotion to parents or *birrul walidain* is done in all things, whether in words, deeds or intentions.<sup>7</sup>

Included in being devoted to both parents is not hurting the feelings of both parents with harsh words, this is in accordance with what is stated in QS. al-Isra': 23.<sup>8</sup> Not only that, doing good to parents is also a form of gratitude to Allah and parents. Of course, being filial to your parents not only while they are still alive,<sup>9</sup> Even when parents have died, a child can do good, namely by praying for forgiveness for them, as stated in Surah al-Isra' verse 24.<sup>10</sup> From the descriptions above, it can be seen that rights and obligations are inseparable. Therefore, the author is interested in discussing "Children's Rights and Obligations in Islamic Law."

## B. METHODS

This research uses normative legal research methods.<sup>11</sup> Normative legal research is research that only processes and uses secondary data related to the issue

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<sup>5</sup>Rima Sekarani I, N., Minta Dijemput Pulang, Nenek Ini Terlalu Sedih Tinggal di Panti Jompo, lihat di <https://www.suara.com/lifestyle/2024/09/29/092425/minta-dijemput-pulang-nenekini-terlalu-sedih-tinggal-di-panti-jompo>, pada tanggal 29 september 2024, pada pukul 12.49 WIB.

<sup>6</sup> Sembahlah Allah dan jangan memperseketukan-Nya dengan sesuatu pun, berbuatlah kebajikan kepada kedua orang tua, kerabat, anak yatim, orang miskin, tetangga dekat dan jauh, teman sejawat, orang yang sedang dalam perjalanan dan hamba sahaya yang kamu miliki. Ayat ini berbicara tentang aturan dan tuntunan kehidupan rumah tangga dan harta waris, memerlukan tingkat kesadaran untuk mematuhiinya. Ayat ini menekankan kesadaran tersebut dengan menunjukkan perincian tempat tumpuan kesadaran itu diperlukan. Dan sembahlah Allah Tuhan yang menciptakan kamu dan pasangan kamu, dan janganlah kamu sekali-kali memperseketukan-Nya dengan sesuatu apa pun. Dan berbuat baiklah dengan sungguh-sungguh kepada kedua orang tua, juga kepada karib-kerabat, anak-anak yatim, orang-orang miskin, tetangga dekat dan tetangga jauh walaupun tetangga itu nonmuslim, teman sejawat, ibnu sabil, yakni orang dalam perjalanan bukan maksiat yang kehabisan bekal, dan hamba sahaya yang kamu miliki. Sungguh, Allah tidak menyukai dan tidak melimpahkan rahmat dan kasih sayang-Nya kepada orang yang sombong dan membanggakan diri di hadapan orang lain.

<sup>7</sup>A. Mujab Mahalli, *Kewajiban Timbal Balik Orang Tua Anak* (Yogyakarta: Mitra Pustaka, 1991), hlm. 24.

<sup>8</sup>Janganlah kamu membunuh orang yang diharamkan Allah (membunuhnya), kecuali dengan suatu (alasan) yang benar. Siapa yang dibunuh secara teraninya, sungguh Kami telah memberi kekuasaan kepada walinya. Akan tetapi, janganlah dia (walinya itu) melampaui batas dalam pembunuhan (kisas). Sesungguhnya dia adalah orang yang mendapat pertolongan.

<sup>9</sup>Nur I'anah, "Birr al-Walidain Konsep Relasi Orang Tua dan Anak dalam Islam", *Buletin Psikologi*, Vol. 25, N0. 2, 2017.

<sup>10</sup>Rendahkanlah dirimu terhadap keduanya dengan penuh kasih sayang dan ucapkanlah, "Wahai Tuhan, sayangilah keduanya sebagaimana mereka berdua (menyayangiku ketika) mendidik aku pada waktuku kecil."

<sup>11</sup>Menurut Ronald Dworkin, penelitian hukum normatif ini disebut juga dengan istilah doctrinal, yaitu penelitian yang menganalisis hukum baik yang tertulis di dalam perundang-undangan (*law as it*

of "children's rights and obligations." The type of research used is normative juridical, so the approach taken is a statutory approach. The statutory approach is the primary approach in this research, because the main focus in this research is how legal protection for the fulfillment of children's rights and obligations.<sup>12</sup> Thus, this research focuses on legislation. This aligns with the purpose of normative legal research methods, namely to determine and understand whether and how positive law relates to a particular issue.<sup>13</sup> A legislative and conceptual approach is deemed necessary for further study, as well as complementing the juridical-normative approach. A legislative approach is needed to gain an understanding of how legal protection ensures the fulfillment of children's rights and obligations.

### C. THEORY

Rights and obligations child regulated in the provisions of Article 4-Article 19 Law 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This description provides information on:

1. Children's Rights, Children's rights are part of human rights that are guaranteed, protected, and fulfilled by parents, family, society, state, government, and local government. Regarding children's rights, the author groups them into several areas, namely: Individual or Personal Rights, To be able to live, grow, develop, and participate fairly in accordance with human dignity and dignity, and to receive protection from violence and discrimination. As a name for self-identity and citizenship status. The right to worship according to their religion, think, and express themselves according to their level of intelligence and age, under the guidance of parents or guardians. To know their parents, be raised, and be cared for by their own parents. In a state of neglect, they have the right to be cared for or adopted as a foster child or adopted child by another person in accordance with the provisions of applicable laws and regulations.
2. *Right to Health*, Obtain health services and social security in accordance with physical, mental, spiritual, and social needs. The Right to Education, Obtain education and teaching in the context of personal development and intelligence levels in accordance with interests and talents. Receive protection in educational units from sexual crimes and violence committed by educators, and/or other parties. Obtain special education for children with disabilities, and receive special education for children who have excellence.
3. *Rights in Social Society*, Expressing and having their opinions heard, receiving, seeking, and providing information in accordance with their intelligence level

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written in the book), maupun hukum yang diputuskan oleh Hakim melalui proses pengadilan (*law as it is decided by the judge through judicial process*).

<sup>12</sup>ohnny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), hlm. 295

<sup>13</sup>Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad Ke 20*, (Bandung: Alumni, 1994), hlm.140

and age for their self-development in accordance with moral and decency values. To rest and utilize free time, socialize with children of the same age, play, recreate, and be creative according to their interests, talents, and intelligence level for their self-development. Obtaining rehabilitation, social assistance, and maintaining the level of social welfare for children with disabilities.

4. *Right to Law*, Receive protection from discrimination, exploitation, both economic and sexual, neglect, cruelty, violence, abuse, injustice, and other mistreatment during the period of care. To be cared for by their own parents, unless otherwise determined in accordance with the provisions of laws and regulations. Receive protection from abuse in political activities, involvement in armed conflict, involvement in social unrest, involvement in events containing elements of violence, involvement in war, sexual crimes. Receive protection from being the target of abuse, torture, or inhumane punishment. Receive freedom by law. The arrest, detention, and criminal acts of imprisonment of children are only carried out in accordance with applicable law and can only be done as a last resort. Receive humane treatment and placement separate from adults. Receive legal assistance or other assistance effectively, in every stage of the applicable law. Defend themselves and obtain justice before an objective and impartial juvenile court in a closed trial. Children who are victims or perpetrators of sexual violence or who are in conflict with the law have the right to confidentiality. To obtain legal assistance or other assistance for those who are victims or perpetrators of criminal acts.
5. *Children's Obligations* Every child is obliged to: Respect parents, guardians, and teachers. Love family, community, and friends. Love their homeland, nation, and state. Perform religious duties according to their teachings. Practice noble ethics and morals.

Based on the explanation above, legal protection for children is absolute. In general, it is expected that children will receive legal protection as regulated in laws and regulations in the event of a dispute. The importance of legal protection for children is also accompanied by regular socialization to each parent with the hope that all children are able to know and understand the laws and regulations regarding the duties and functions as a child and parent in order to avoid discrimination and social inequality. According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so that humans can enjoy their dignity as human beings.<sup>14</sup>

## D. ANALYSIS AND DISCUSSION

### 1. Children's Rights According to Islamic Teachings

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<sup>14</sup>Setiono. *Rule of Law (Supremasi Hukum)*. Surakarta, (Program Pascasarjana Universitas Sebelas Maret. 2004), hlm. 3

Allah SWT created, honored, and placed the children of Adam on earth. He provided them with good things and favored them over other creatures. He created humans with purpose and wisdom.

Children are a gift and a blessing from Allah SWT who must be protected, nurtured, guided, educated, and their full potential must be developed according to their natural disposition. Furthermore, children are the next generation of humanity. Children are the fruit of their parents' love, the fruit of their hearts, a source of comfort, and even an investment in their protection, especially when they are adults and their parents are elderly. Islam explains the position of children in the family through numerous stories in the Quran. A child can be a savior for their parents in the afterlife, and some children will even crown their parents if they memorize the Quran in this world. However, children can also hinder their parents from entering Paradise if they commit reprehensible acts in this world. The following explains the position of children in the family according to the Quran.

Islamic law has very special basic principles and values. Islamic law pays extra attention to human rights regardless of whether they are small or big, adult or elderly—Islamic law is more comprehensive and complex. In the context of child protection, Islamic law has a more in-depth perspective “than” conventional law in general.

In terms of child protection, positive law, particularly that applicable in Indonesia, only regulates parental care (alimony), child recognition, and child legitimacy. Indicators regarding children's rights and obligations in positive law are not detailed. This is in contrast to child protection in the Islamic context. Islamic law provides detailed discussions regarding indicators of child rights protection. Discussions regarding child protection, starting with how to prepare children from the womb to adulthood. In fact, to anticipate behavior that can result in legal consequences, there are recommendations and advice on the criteria for choosing a better life partner.

Generally, people already understand that what is meant by rights is something that should be obtained or obtained for oneself from others. The opposite of the word right is obligation, which is something that must be given or done for the benefit of others. So what is meant by children's rights is everything, whether in the form of concrete or abstract things, that should be obtained or obtained by children from their parents or guardians. What is a child's right, means it becomes an obligation for their parents or guardians. In the introduction to this paper, it has been stated that there are four children's rights that have been formulated by the UN Convention on the Rights of the Child, and it has also been stated that there are five children's rights that have been formulated by Law No. 4 of 1979. It turns out that quite a lot of verses of the Qur'an and the hadith of the Prophet discuss the rights that children must obtain, including: The right to live and grow. The right to receive protection and care from the torment of hellfire. The right to receive sustenance and welfare. The right to receive education and

teaching. The right to receive justice and equality. The right to receive love and finally, the right to play.

Thus, there are at least seven types of children's rights outlined in Islamic teachings. This does not mean that these are the only seven rights, as there may be other rights that this paper has not covered due to time constraints.

## 2. Parents' Obligations Towards Children.

After knowing the rights and obligations of children, then the rights and obligations of parents towards their children according to the provisions of Law Number 1 of 1974 are the opposite, where the rights of children are the obligations of their parents and the rights of parents are the obligations of their children. Thus and based on the descriptions above, it is known that the rights of parents towards their children are: 1) Respected and obeyed by their children; and 2) Cared for by their adult children. Meanwhile, the obligations of parents towards their children are in the form of: Paying for their children's care and treatment; Providing for their children's education; Providing a decent place to live for their children; Providing assistance to children in carrying out legal actions; Providing a choice Choosing between their divorced parents to care for them; Providing hadhanah to their children; and Providing inheritance property at the right time.<sup>15</sup>

Meanwhile, parents' obligations towards their children are in the form of: Paying for their children's care and treatment; Providing educational costs for their children; Providing a suitable residence for their children; Providing assistance to children to carry out legal actions; Providing a choice Choosing between his divorced parents to care for him; Giving gifts to their children; and Providing inheritance in due course.

The provisions of Islamic law applied in the territory of the Unitary State of the Republic of Indonesia are compiled in a compilation of Islamic law which is strengthened in Presidential Instruction of the Republic of Indonesia Number 1 of 1999. The existence of this compilation of Islamic law is stated in the considerations of Presidential Instruction Number 1 of 1999, which states:

- a. That the Islamic scholars in the workshop held in Jakarta on 2 to 5 February 1988 have accepted three drafts of the Compilation of Islamic Law, namely Book on Marriage Law, Book II on Inheritance Law and Book III on Endowment Law;
- b. That the compilation of Islamic law in letter a by government agencies and by the community who need it can be used as a guideline in solving problems in this field;
- c. That therefore the Compilation of Islamic Law as mentioned in letter a needs to be disseminated. In order to implement Presidential Instruction Number 1 of 1991 mentioned above, implementing provisions were issued, namely

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<sup>15</sup>Departemen Agama RI, *Bahan Penyuluhan Hukum UU No.7 Tahun 1989 tentang Peradilan Agama, UU No.1 Tahun 1974 tentang Perkawinan dan Inpres No.1/1999 tentang Kompilasi Hukum Islam*, Direktorat Jenderal Pembinaan Kelembagaan Agama Islam 1999/2000, Jakarta, 1999, hlm.23.

Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 154 of 1991 concerning the Implementation of Presidential Instruction of the Republic of Indonesia Number 1 of 1991 dated June 10, 1991. In the provisions of the Decree of the Minister of Religious Affairs referred to above as the basis for the Compilation of Islamic Law, there are several provisions that regulate the rights and obligations of children and parents as explained below. In Article 77 paragraph (3) which states "husband and wife bear the obligation to care for and maintain their children, both regarding their physical, spiritual and intellectual growth and religious education". In this Article it is seen that the child's right is to receive care and be cared for by their parents in their physical, spiritual and intellectual growth.

In Article 80 paragraph (4) which states:

In accordance with income, the husband is responsible for:

- a. Support, kiswah and residence for the wife;
- b. Household expenses, maintenance costs and medical expenses for wife and children;
- c. Education costs for children.

By paying attention to the provisions of the above article, it is known that children's rights are:

- 1) Get care and treatment costs; and
- 2) Get education costs.

Article 81 paragraph (1) states that the husband is obliged to provide a residence for his wife and children, or ex-wife who is still in the iddah period. In this case, the child's right is to have a residence. Article 98 paragraph (1) and paragraph (2) states that:

- (1) The age limit for a child who is able to stand alone or is an adult is 21 years, as long as the child does not have a physical or mental disability or has never been married.
- (2) The parents represent the child in all legal actions in and outside the court. It is noted that the provisions of the above article state that children who are not yet adults have the right to receive legal protection from their parents for the actions they commit, both in and outside the court.

Then in Article 105 it states:

- (1) The maintenance of children who are not mumayyiz or under 12 years old is the mother's right.
- (2) The care of a child who is mumayyiz is handed over to the child to choose between the father and mother as the holder of the right to care.
- (3) The maintenance costs were borne by his father.

The aforementioned article states that a child has the right to choose between his or her parents to care for him or her in the event of a divorce. Furthermore, Article 106 stipulates:

Parents are obliged to care for and develop the assets of their children who are minors or under guardianship and are not permitted to transfer or pawn them except for urgent needs if the interests and welfare of the child require it or if it is a reality that cannot be avoided.<sup>16</sup>

In the article above, a child's right is to receive guarantees for the care and development of their assets by their parents or guardians. Article 156 letter b states "a child who is mumayyiz has the right to choose whether to receive hadlanah from his father or mother". The article above states that children have the right to receive hadlanah from their parents. Article 171 letter c states: "An heir is a person who, at the time of death, is related by blood or marriage to the testator, is a Muslim and is not prevented by law from becoming an heir."<sup>17</sup> From this provision, it is clear that children have the right to inherit property from their deceased parents. Based on the above description, it is implied that children's rights under Islamic law are the same as those under Law Number 1 of 1974, namely:

- 1) The right to life;
- 2) The right to receive care and medical expenses from his parents;
- 3) The right to be free from pain;
- 4) The right to avoid hunger;
- 5) The right to be free from fear;
- 6) The right to be protected from violence and abuse;
- 7) The right to receive education costs;
- 8) The right to education and teaching at school;
- 9) The right to obtain adequate residence;
- 10) The right to receive affection from both parents;
- 11) The right to receive assistance from parents to carry out legal acts;
- 12) The right to choose between his two divorced parents to care for him;
- 13) The right to express opinions;
- 14) The right to freedom and play;
- 15) The right to receive hadhanah from his father or mother if there is a divorce between his father and mother; And
- 16) The right to receive inheritance from one's parents.

While the obligations of children are not stated in Islamic law provisions, they still exist as described in Law Number 1 of 1974, which are:

- 1) Pray for both parents, because the prayers of a pious child accompany his parents until the hereafter;
- 2) Respect parents and obey their wishes well; And

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<sup>16</sup>Departemen Agama RI, *Bab I Penjelaskan Hukum UU No.7 Tahun 1989 tentang Peradilan Agama, UU No.1 Tahun 1974 tentang Perkawinan dan Inpres No.1/1999 tentang Kompilasi Hukum Islam*, Direktorat Jenderal Pembinaan Kelembagaan Agama Islam 1999/2000, Jakarta, 1999.

<sup>17</sup>Hadikusuma, H. Hilman. *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*, (CV. Mandar Maju, Bandung, 2003), hlm. 32.

- 3) When an adult is an adult, he is obliged to look after his parents and his immediate family if they need it.
3. The Concept of Legal Protection for Children in Legislation.

Article 1 paragraph 2 of Law No. 35 of 2014 concerning child protection states that child protection 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 dignity, and receive protection from violence and discrimination. Then in Article 1 paragraph 12 children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, states, governments and local governments. In Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 concerning child protection, regulates the issue of children's rights contained in Article 2 that children's rights apply to all children without exception. Children must be protected from all types of discrimination against themselves or discrimination resulting from the beliefs or actions of their parents or other family members. In Article 12 every child has the right to express their opinion and have their opinion heard and considered when making a decision that will affect their life or the life of another child. Article 13 states that every child has the right to express their views and to receive and convey information. This right can be limited if the views are detrimental or offensive to the child or others. Article 14 states that every child has the right to freedom of thought, belief, and religion, as long as this does not impede the rights of others. The right of parents to guide their children in these matters must be respected.<sup>18</sup>

Children are legal subjects who have rights and obligations and these rights provide enjoyment and breadth to individuals and carry them out, while obligations are restrictions and burdens. Article 1 number 12 of Law No. 35 of 2014, Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, society, government, and the state. Every child has the right to develop according to their talents and interests, parents have full responsibility for the growth and development of their children who are not yet adults. This responsibility gives parents the obligation to do the best for their children.

Law No. 35 of 2014 contains several provisions that differ from Islamic legal principles. The concept of fulfilling children's rights in the law focuses more on children's social rights after birth, while in Islam, children's rights are regulated in more detail, from the time a child is in the womb until birth.

Protection of children is regulated in Law Number 35 of 2014 concerning Child Protection, Article 1 paragraph (2) states that protection 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 honor, and receive protection from violence and discrimination.

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<sup>18</sup>Soebekti dan Tjitosudibio, *Kitab Undang-undang Hukum Perdata*, (Pradnya Paramita, Jakarta, 1980), hlm. 24.

Therefore, in the legal principle, lower regulations must not contradict higher regulations. In other words, higher regulations trump lower regulations. If the Child Protection Law is implemented as stated in its articles, for example, when Muslim parents warn their children to pray, hitting is permissible in Islamic jurisprudence, but in the law it can be categorized as violence against children. Meanwhile, Article 29 of the 1945 Constitution of the Republic of Indonesia guarantees the freedom of each citizen to embrace their respective religion and to worship according to their religion and beliefs. So, is it right for parents to be legally blamed?

## **E. CONCLUSION**

From the above descriptions of children's rights and obligations under the law, it can be concluded that Islamic law has very special basic principles and values. Islamic law pays extra attention to human rights regardless of age, whether small or large, adult or elderly—Islamic law is more comprehensive and complex. In the context of child protection, Islamic law has a more in-depth perspective than conventional law in general. In terms of child protection, positive law, especially that applicable in Indonesia, only regulates parental care (alimony) for children, child recognition, and child legitimacy. Indicators regarding children's rights and obligations in positive law are not broken down in detail. This is different from the issue of child protection in the context of Islam. Regarding indicators regarding the protection of children's rights, Islamic law has discussed them in detail. Law No. 4 of 1979, verses of the Qur'an and the hadith of the Prophet that discuss the rights that must be obtained by children include: The right to life and growth. The right to protection and protection from the torment of hellfire. The right to livelihood and welfare. The right to education and teaching. The right to justice and equality. The right to receive love and the last is the right to play. Law Number 1 of 1974 is where the rights of children are the obligations of their parents and the rights of parents are the obligations of their children. The obligations of parents towards their children are in the form of: Financing the care and treatment of their children; Providing education costs for their children; Providing a decent place to live for their children; Providing assistance to children to carry out legal acts; Providing a choice Choosing between their divorced parents for the obligations of parents towards their children according to the provisions for maintaining them; Providing hadhanah to their children; and Providing inheritance when the time comes. In Article 77 paragraph (3) which states "husband and wife bear the obligation to care for and maintain their children, both regarding physical, spiritual and intellectual growth and religious education". Protection of children is regulated in Law Number 35 of 2014 concerning Child Protection in Article 1 paragraph (2) it is stated that protection is all activities to guarantee and protect children and their rights so that they continue to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and

discrimination. Then in article 1 paragraph 12 children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities, the state, government and regional governments. In Law no. 35 of 2014 concerning amendments to Law no. 23 of 2002 concerning child protection, Article 2 regulates the issue of children's rights, which states that children's rights apply to all children without exception. Children must be protected from all types of discrimination against them or discrimination resulting from the beliefs or actions of their parents or other family members.

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