



## Understanding Child Support in the Pattern of Child Protection based on the Principle of Child Protection

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### **Abstract**

Children have human rights (HAM) as those of adults. Unfortunately, discussions regarding children's rights are not as intense as adult rights or women's rights. There are not many parties that discuss and take concrete actions related to the protection of children's rights. In fact, children are a reflection of the future, assets of family, religion, nation and state. This study aims to describe and analyze the meaning of child support in the pattern of child protection in Indonesia based on the best interests of the child. This normative legal research utilized a philosophical and statutory approach. Analytical techniques used to process legal materials were analytical prescriptive methods, hermeneutics (interpretation) of law and *ijtihad*. The legal materials used were primary legal materials including laws on child protection and secondary legal materials consisting of all literature and publications relevant to the field of child protection law. The results showed that there are at least two meanings of child support in the pattern of child protection in Indonesia based on the principle of child protection: child support as a guarantee for child welfare and child support as a futuristic value in child protection.

**Keywords:** *Meaning; Livelihood; Protection; The Best Interests of the Child*

### **Introduction**

The study of children and their rights will always be an interesting issue throughout the history of life. In Indonesia, this issue always obtains a huge response from various parties including the government, child watchdog organizations, and the community. The responsiveness of various parties in Indonesia for studies of children and the protection of their rights is due to two basic reasons. The first one is that children are the next generation of the ideals of the nation's struggle. It is in line with Letter C of Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014 and Law Number 17 of 2016, which emphasizes that "children are the buds, the potentials and the younger generation to succeed the ideals of the nation's struggle". The second one is that children are a gift from Allah SWT. Besides to maintain the survival and to conserve offspring, children are assets and have

investment value in the world and the hereafter with rewards from Allah that flow endlessly for both parents.

Moreover, children have a high position or value in social life based on various religious, economic, and socio-psychological perspectives (Rakhmawati, 2015). From a religious perspective, children are a gift from Allah SWT, which originated from the couple Adam and Eve who were blessed with many children. From economic perspective, children are the assets of parents in old age, while from a socio-psychological perspective, children are entertainment for parents, a sense of pride, and as evidence of parental fertility.

In the context of child protection, Allah SWT commands parents to raise children appropriately and to responsibly educate good and pious children. Islam pays great attention to child protection efforts. Islam further details the rights of children and reminds explicitly the obligation of parents and society to pay attention to and fulfill the rights of these children, both before and after birth (Shafiyarrahman, 2003). The concern of Islam is manifested in the granting of children's rights to ensure the growth and development of children to become perfect human beings both physically and spiritually.

Child growth means physiological changes as a result of the process of maturing physical functions that take place normally in healthy children in passage (certain time circulation) (Kartono, 2007). Meanwhile, development is a psycho-physical change as a result of the process of maturing psychological and physical functions in children, supported by environmental factors and the learning process in a certain passage of time towards maturity.

Indonesia is one of the countries that has ratified the convention on the rights of the child into statutory regulations, which is codified in the child protection law. One of the entry points in this law is the fulfillment of the rights of Indonesian children in all fields to ensure their survival needs and the need to improve their quality of life. One of the children's rights that can guarantee the necessities of life and improve their quality of life is the responsibility of biological father to fulfill child needs (*nafkah*).

Various studies on child support and protection have been carried out by various previous researchers. A study conducted by Heti Kurnaini, which was inspired by the thoughts of A. Hamid Sorong, revealed that child support is the main obligation of fathers in protecting children (Kurnaini, 2017). This study has a strength that the father's negligence on child needs can be sued in court. A research by Muhammad Tahir and Stephan Larmar suggested the importance of religious values in guarding children's growth and development (Tahir & Larmar, 2020). The strength of this research is that it emphasizes the importance of religious values in child protection efforts. Additionally, a study by M. Abdul Fatah Santoso affirmed that children's rights that must be fulfilled can be categorized into three: social, educational and financial rights (Santoso, 2017). The strength of this study is that it provides solutions to fulfill children's rights through child-friendly education. In fact, the weakness of the three studies is that they do not discuss the meaning of child support in the pattern of child protection. Therefore, this research article aims to describe and analyze the meaning of child support in the pattern of child protection in Indonesia.

## **Research Methods**

This study utilized normative legal research methods, with a philosophical and statutory approach. Sources of legal materials used included primary, secondary and tertiary sources of legal materials. Legal materials were collected by using literature studies of materials in the form of laws and regulations, decisions and other sources of legal materials. Legal materials were analyzed using analytical prescriptive methods, hermeneutics (interpretation) of law and *ijtihad*. The three methods were expected

to obtain research results with a deep ecology paradigm; legal construction based on wisdom that is able to translate and deeply operationalize law (Rahardjo, 2011).

## ***Results and Discussion***

### **Concepts and Principles of Child Protection in Indonesia**

Children, philosophically, are part of the younger generation, as one of the human resources who are the potential and successor to the ideals of the nation's struggle in the future. Children have a strategic role and have special characteristics that require special guidance and protection (Nashriana, 2011). The term child protection in juridical regulations in Indonesia is found in Article 1 paragraph (1) of Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014 and Law Number 17 of 2016, which stipulates that "child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, participate optimally in accordance with human dignity, and receive protection from violence and discrimination."

Maidin Gultom defines child protection as all efforts made so that every child can perform their rights and obligations in order to ensure the normal growth and development physically, mentally and socially (Gultom, 2012). Accordingly, one of the ways to achieve justice in a society is through child protection. In the Islamic concept, child protection is intended so as not to leave the child in a weak state in terms of physical, psychological, economic, health, intellectual, moral and so on. Importantly, before birth, children have the right to get the guarantee that their needs are fulfilled so that they are born healthy, smart, nutritious, and not neglected.

Based on the aforementioned description, the essence of child protection is all efforts made to create conditions so that every child can perform their rights and obligations for their development and growth naturally in terms of their physical, mental and social conditions. Child protection is also a manifestation of justice in a society. Thus, it is necessary that children's support is sought in various fields of state and social life.

Furthermore, the basic principles of child protection in Indonesia, as stipulated in Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014 and Law Number 17 of 2016, are the principle of non-discrimination; the principle of the best interests of the child; the principle of the right to survival and development; and the principle of respect for the views of the child.

The first one, the principle of non-discrimination is all rights that are recognized and contained in the Convention on the Rights of the Child which must be applied to every child without any discrimination. This principle can be implemented by implementing child protection that is free of any form regardless of ethnicity, religion, political beliefs and other opinions, nationality, gender, economy (wealth, poverty), family, language and birth and the position of the child in family status. To implement this principle, the government has an obligation to take appropriate steps. It means that discrimination is not allowed even though every human being, including children, has differences. Protection of children from discrimination is a right protected by law and any kind of violation of the right shall be punished, especially in the field of child care. Accordingly, the state must be the main protector and ensure protection of all children from all forms of discrimination.

The second one, the principle of the best interests of the child is that the best interests of the child must be the main consideration in all actions concerning children carried out by the government, the society, the legislature, and the judiciary. This principle reminds all child protection administrators that the considerations in making decisions concern on the future of the child and are not based on the standards and interests of adults. Decisions that adults think are good are not necessarily good for the

child's interests. Adults usually have the intention to provide assistance and help, but what really happens is the destruction of the child's future.

The third one, the principle of the right to survival and development is a large concept of a child's life that must be viewed as a whole for the sake of the child's own interests. This principle has a very clear message that the state must ensure the survival of every child is guaranteed, because that right is something inherent in the child and not a gift from the state. Thus, to guarantee the right to survival of children, the state must provide a conducive environment, adequate living facilities and infrastructure as well as access to basic children's needs. This principle views the importance of state recognition and assurance for the survival and development of children.

The fourth one, the principle of respect for the views of the child is respect for children's rights to participate and express their opinions in decision making, especially regarding matters that affect their lives and the desired toys. This principle confirms that children have personality autonomy. Consequently, children cannot only be seen as weak, accepting, and passive beings, but they are autonomous individuals who have experiences, desires, imaginations, obsessions, and aspirations that are not necessarily the same as adults. It can be concluded that the perspective of child protection is a way of looking at all problems by placing the child's position first and foremost which can be implemented by placing children's interest as the foremost thing. Importantly, the principle of respect for children's opinions is intended to give freedom to children in order to develop their creativity and intellect (intellectual intelligence) according to the child's age level. However, it is necessary to remember that the child's intellect must still be under the guidance of the parents.

### **The Meaning of Child Support in the Pattern of Child Protection in Indonesia**

Children's rights in Indonesia consist of five dimensions of children's basic rights: the rights to survival, protection right, development right, participation right, and identity rights as regulated in the provisions of Articles 4 to 18 of Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014 and Law Number 17 of 2016. The five dimensions of children's basic rights can be used as indicators of child welfare to measure or evaluate the level of achievement of efforts to fulfill children's rights, which at the same time can provide an overview of the quality of life of Indonesian children.

One of the principles in the pattern of child protection in Indonesia is the principle of child survival and development. An effort to realize this principle includes ensuring the fulfillment of children's needs through the fulfillment of their rights, namely fulfilling child needs, which is one of the rights of children from both parents. Thus, there are at least two meanings of child support in the pattern of child protection in Indonesia: 1) child support as part of child welfare guarantees, and 2) child support as a futuristic value in child protection in Indonesia.

*Firstly*, child support as part of child welfare guarantees. Child welfare as stipulated in Article 1 of Law Number 7 of 1979 on Child Welfare is defined as "an order in the life and livelihood of the child that can ensure proper growth and development spiritually, physically and socially". Louise Johnson and Schwartz Charles defined child welfare is "community activities and programs that care and are responsible for children so that children are able to take care of themselves" (Johnson et al., 1997).

One of the legal aspects of child protection is the protection of children's welfare; welfare in the family environment, in the environment of education and in the social environment. The aspect of child welfare is the embodiment of the basic principles of the best interests of children and the principles of the right to life, survival and development of children. Mulia Astuti, in *child and family services review*

*process*, affirmed that there are three variables in determining child welfare conceptualized in the following framework:

“*First*, welfare in the sense that the family has an increased capacity to meet the needs of their children. *Second*, welfare in the sense that children and adolescents receive appropriate services to meet their educational needs. *Third*, welfare in the sense that: children and adolescents receive adequate services to meet their physical and mental health needs” (Astuti, 2013).

From three variables of child welfare, welfare in the sense that the family has an increased capacity to meet the needs of their children is the most common welfare and has the most extensive coverage (Mallon & Hess, 2014). This variable includes consideration of needs and services to children, parents and foster parents as well as the involvement of children, adolescents, and families in problem solving.

Child support is part of the effort to fulfill children's rights as regulated in Islamic law and in laws and regulations governing child protection. In Indonesia, efforts to realize children's welfare are formulated through the following implementation efforts: *first*, child welfare efforts are carried out in a comprehensive manner in order to improve quality and effectiveness, for people with social welfare problems and for their supervisors and implementers. *Second*, child welfare efforts are carried out on a family and community basis, as an effort towards expanding the reach of social services for people with social welfare problems. *Third*, child welfare efforts are a shared responsibility between the government and the community and are carried out professionally in cross-program and cross-sectoral coverage. *Fourth*, child welfare efforts are directed at creating a conducive social welfare climate, based on the active role of the community in realizing the welfare and protection of Indonesian children.

There are at least three dimensions of children's basic rights that can be fulfilled through child support in an effort to realize children's welfare. These dimensions include: *first*, the right to survival, which is the right to preserve and maintain life (the right of live) as well as to obtain the highest standard of health and the best possible care. In the context of the child's right to survival, child support has an important meaning as an attempt to realize the right to survive the child. With the fulfillment of child need rights, children can continue to preserve and sustain their lives. Besides, child support can also play a role in realizing the provision of health services needed for children, used to obtain information and access to education and support basic knowledge about health and nutrition, and as a means of fulfilling children's primary needs.

*Second*, the dimension of protection right (the right to protection), namely the rights in the convention of children's rights which include the right to protection from discrimination, acts of violence and neglect for children who do not have a family or refugee children. In this dimension, child support has a meaning as part of an effort to prevent children from various disturbances in their personal life, avoid various jobs that can threaten their health, education and development. In essence, child support is part of efforts to prevent child neglect, including economic neglect and psychological neglect.

*Third*, the dimension of development rights (the right to grow and develop). It is children's rights which include all forms of education (formal and non-formal) and the right to achieve a standard of living that is adequate for the child's physical, mental, spiritual, moral and social development (the rights of standard of living). In this dimension, child support clearly has a very important meaning for the continued development of children. Here, child support is a means to meet children's needs in obtaining education and obtaining information and guidance related to education and skills for children, is also very meaningful in fulfilling children's rights to play and recreation, and most importantly, preventing children from dropping out of school.

Child welfare is also an aspect of child protection in Islam. This aspect is clearly written in Al-Qur'an Surah An-Nisa' verse 9, in which Allah SWT says that humans should be afraid to leave their descendants as the next generation in a weak and not prosperous condition. It means that Allah SWT commands that we should have a sense of worry about leaving the child in a weak state in terms of physical, psychological, economic, health, intellectual, moral and so on. The order also contains a message that we should protect our children and grandchildren, since pregnancy, so that they are born healthy, smart, nutritious, and not neglected.

The perspective of justice theory purposed by John Rawls and Sayyid Qutb claimed that child support as a juridical instrument which has the meaning of guaranteeing children's welfare is basically a form of solidarity principle. In the perspective of justice according to John Rawls, child support can be interpreted as a form of social unity which is a form of harmony, balance and absolute unity between individuals and groups. It also means a form of general mutual responsibility between individuals and groups, within the family and within the community. The meaning of child support in the perspective of the theory of legal objectives (*al-Maqashid al-Syari'ah*) also has an important role as an effort to realize one of the main elements in the purpose of establishing the law, namely the maintenance of the element of *hifzh al-Nasl* (maintaining descendants) which essentially embodies guarantee of child welfare, both economic welfare (material) and immaterial welfare.

**Secondly**, child support as a futuristic value in child protection in Indonesia. In language, futuristic means directed, pointed in a certain direction, and related to the future.<sup>1</sup> Futuristic is an English word that is used to express something new, modern and has never existed before. In legal science, Sudikno Mertokusumo as cited by Muhammad Yasin introduced 'futuristic' as an interpretation of laws and regulations (Yasin & Elnizar, n.d.) A futuristic interpretation is an interpretation that uses meaning based on applicable legal rules, or is guided by laws that do not have legal force. Visser't as cited by Jimly Ash-Shiddiqy called this interpretation as anticipatory interpretation (Asshiddiqie, 2006). A recently passed law, in practice, does not necessarily take effect immediately, because legislators still have several years to prepare.

Based on the aforementioned futuristic definition, futuristic value in the context of child protection means that the fulfillment of child support is not only a time of fulfillment but also a guarantee of the future value of the child's life.

One of the consequences of having a valid marriage contract is the father's obligation to provide child support to his biological children. The father's obligation to provide child support starts from the moment the child is born, which is his/her inherent right. Thus, in the context of Islamic law, the jurists (*fuqaha*) have agreed that biological fathers are required to provide child support for their biological children. The obligation to fulfill child support has gone through a series of attempts to interpret the law in Al-Qur'an and hadith, which actually can also be understood logically. A father, in principle, supports himself in order to survive. Thus, by providing support for his child, he is actually supporting his child who is a part of him.

Child support is one of the rights of children as a form of child protection, which is clearly stated in the definition of child protection as stipulated in Article 1 Paragraph (1) of Law Number 23 of 2002 on Child Protection as amended by Law Number 35 of 2014 and Law Number 17 of 2016. It is stated that child protection includes "all activities to guarantee and protect children and their rights so that they can live, grow, develop, participate optimally in accordance with human dignity, and receive protection from violence and discrimination." Based on the definition of child protection, child support is a form of justice

<sup>1</sup>National Agency for Language Development and Cultivation of the Ministry of Education and Culture, **Futuristic**, <https://kbbi.web.id/futuristis>, accessed on 31 January 2020, 12.00 p.m.

in society, because it is part of an effort to make sure that children's rights to live, grow and develop in the midst of a family and society are guaranteed and protected.

Besides being a form of justice in society, child support has a meaning as a futuristic value in child protection. The researchers argue that there are two basic values contained in fulfilling child support in child protection. *The first one* is the current value; the value of child support that can be felt directly by the child when child support is given. *The second one* is the futuristic value; the value contained in providing child support as a guarantee for the child's future.

Referring to the five basic rights of children as in the child protection law, the futuristic value in the fulfillment of child support can be analyzed at least through two activities to fulfill children's rights in the context of child protection. *The first one* is in the right to survival. In this basic right, child support is not only fulfilling current needs but also plays an important role in ensuring children's needs in the future since children can sustain life and improve the best quality of life.

*The second one* is in the development rights (the right to grow and develop), that the futuristic value of child support has an important role in the effort to meet children's needs for education that can guarantee their future life. Children can grow and develop physically, mentally, spiritually and socially which can make the future standard of children's life better. One of the futuristic values of child support can be seen from a child's psychological perspective in their development. In this case, child support is a form of parent's attention to their children. Any form of attention given by parents to their children will affect their psychology in undergoing the process of growth and development. Consequently, parents need to be well aware that the good or bad behavior of a child comes from the family. Children tend to repeat a behavior from the closest people and frequently provide comments to them.

As caregivers and mentors in the family, parents play a very important role in shaping the principles of behavior for their children. Attitudes, behavior, and habits of parents are always seen, assessed, and imitated by their children, which then consciously or unconsciously are imitated and then become a habit for their children as well. This happens because children are always memorizing everything they have experienced. Islam, as implied in the Al-Qur'an Surah An-Nisa' verse 9, instructs parents to always pay attention to the protection of their children. Islam strictly prohibits parents from leaving the child in a weak state in terms of physical, psychological, economic, health, intellectual, moral and spiritual.

The theory of legal protection for children as purposed by Suhail Husain al-Fatlawi in terms of child legal protection is manifested in two things: *first*, providing guarantees for the realization and implementation of human rights so that they can be enjoyed by every entitled person (*min janib al-wujud*), and *second*, safeguarding and protecting human rights from various forms of violations (*min janib al-adam*). Accordingly, the futuristic value of child support in child protection is child support as a form of parent's attention to children so that children are able to survive and improve the best quality of life.

Based on the perspective of child legal protection theory, child support is a manifestation of efforts to guarantee children's rights so that they can grow and develop optimally in accordance with human dignity. In the perspective of *maslahah* theory, the child support instrument has a futuristic value as an effort to maintain and realize one of the goals of *syara'*, namely the maintenance of offspring in terms of religion, spirit, and children's mind. Therefore, child support has relevance to the context of futuristic values, which in turn, with the fulfillment of child support, children will be able to face all the problems of their life in the future.

## Conclusion

In accordance with the principles of child protection in Indonesia, child support in the pattern of child protection has two major meanings: child support as a guarantee for child welfare and child support as a futuristic value in child protection. Child support as a guarantee for children's welfare has a role in realizing three principles in child protection including the dimension of the right to survival, the dimension of the right to protection, and the dimension of the right to grow and develop. In addition, child support as a futuristic value in child protection has at least a role in realizing two dimensions in the principle of pattern of child protection including the dimension of the right to life and the dimension of the right to grow and develop.

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