

CHILDREN PROTECTION IN ISLAMIC LAW PERSPECTIVES

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Abstract:

Children protection is a discussion of human rights. Maintaining and protecting offspring or children including human rights are known as part of human rights in Islam. The concept of human rights, commonly known as HAM, in Islamic Law is called *ad-Dharuriyat al-Khamsah* (five basic principles in Islamic law) which becomes the main goal of the whole Islamic Shari'a. Through literature review and case study related to children protection, this article is described. Children protection in the perspective of Islamic Law is the implementation of *hifdz al-nasl* and *hifdz an-nafs* that Islam is very concerned about the protection and rights of children while rejecting all forms of violence and oppression as well as persecution of children. Children protection in Indonesia has been ruled by the rules of Law No.23 of 2002 concerning Children Protection, Law no. 23 of 2004 concerning the Elimination of Domestic Violence and the Convention on the Rights of the Children.

Keywords: Children Protection, *Al-dharuriyat al-khamsah*, *hifdz an-nafs*, *hifdz an-nasl*

INTRODUCTION

Children are born into the world in fitrah and holy condition. Children are the mandate of Allah SWT for parents to educate, guide and protect them from various threats and violence. There are many cases of violence and threats recently occurred to children and even from people who should keep and protect children from such distress.

Children are the gift of Allah SWT that must be praised, it is the most beautiful gift for parents to be the successor of the generation who can give the reward for them when they have died. He is the mandate of Allah which must be kept properly. Because dignity and rights as human beings inherented in their souls must be upheld.

The most basic rights for humans is the right to live (Hamid, 2000). This human rights is the rights mentioned in the 1945 Constitution and the United Nations Convention on the rights of children. Human rights (HAM) is a matter of principle that must be fulfilled in order to maintain human existence and dignity. In Islam the concept of human rights is very central because humans are seen as being glorified by Allah, more than any other creature in the universe, as stated in the holy Qur'an, surah al-Isra [17]: 70.

In terms of nation and state, children are the budding and future generation of the state and nation and have strategic function that guarantees the continuity of the struggle of the nation and state in the future.

ISLAMIC LAW AND CHILDREN PROTECTION

The study of children protection is inseparable from the discussion of human rights, because children are small humans who should be protected. Children are under 18 years old people, including those who are still in the womb. Children protection is a form of the implementation of human rights, because children's rights are integral part of human rights themselves.

Among Muslims, the discourse of Human Rights (al Huquq al Insaniyah) is not something new because Islam actually has a clear concept of human rights which is often known as *ad dharuriyat al khams* (five basic principles in Islam). These five basic Islamic concepts according to fiqh scholars are believed to be the main goal of the entire Islamic syari'ah which is often referred to as *Maqasid al-Shari'ah*. This means that human rights and also *al-Dharuriyat al khams* should be used as common benchmark in terms of humanity in any part of the world.

Islam is a religion that upholds humanity, which teaches peace, compassion, equality and justice. The implication is that every Muslim is obliged to provide protection for these five basic rights regardless of class, race, ethnicity and even gender. Like human rights, *ad Dharuriyat al Khams* has basic principles in elaborating the mission of Islam as *Rahmatan lil Alamin*. These principles consist of *hifz al din*, *hifz al nafs*, *hifz al aql*, *hifz an nasl* and *hifz al-mal* (islami.co, 2017).

Hifz al din, implies that Islam guarantees the right to the maintenance of the religion and beliefs of the people. In addition, Islam also guarantees religious freedom and prohibits religious coercion to followers of other religions. The strong doctrine that states the existence of freedom in religion is included in the concept of *La ikraba fiddin* (There shall be no compulsion in [acceptance of] the religion.) (Q.S. al-Baqarah [2] : 256), *Lakum Dinukum Wahyadin* (For you is your religion, and for me is my religion) (Q.S. Al- Kafirun [109] : 6), Allah SWT states in the holy Qur'an, surah Yusuf [10] : 99:

وَلَوْ شَاءَ رَبُّكَ لَآتَمَنَ مَنْ فِي الْأَرْضِ كُلُّهُمْ جَمِيعًا أَفَأَنْتَ تُكْرِهُ النَّاسَ حَتَّىٰ يَكُونُوا مُؤْمِنِينَ

'And had your Lord willed, those on earth would have believed - all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?'

In article 25 of the Medina Charter, it is stated that "Jews are free to hold on to their religion and Muslims are free to hold on to their religion". The foundation of the freedom to maintain and run this religion leads the community to be wise and wise to accept differences in religion and beliefs that will always exist in society.

Hifz an-Nafs, refers to giving the right to every human being to live, grow and develop properly. This concept is always in tandem with the concepts of justice, independence and safety. The basic doctrine of maintaining this right is stated in various surah in the holy Qur'an, Q.S. al-Hajj: 66

وَهُوَ الَّذِي أَحْيَاكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يُحْيِيكُمْ ۗ إِنَّ الْإِنْسَانَ لَكَفُورٌ

'And He is the one who gave you life; then He causes you to die and then will [again] give you life. Indeed, mankind is ungrateful.'

Q.S. al-Sajadah 7-9.

الَّذِي أَحْسَنَ كُلَّ شَيْءٍ خَلَقَهُ وَبَدَأَ خَلْقَ الْإِنْسَانِ مِنْ طِينٍ * ثُمَّ جَعَلَ نَسْلَهُ مِنْ سُلَالَةٍ مِنْ مَاءٍ مَهِينٍ * ثُمَّ سَوَّاهُ وَنَفَخَ فِيهِ مِنْ رُوحِهِ وَجَعَلَ لَكُمُ السَّمْعَ وَالْأَبْصَارَ وَالْأَفْئِدَةَ قَلِيلًا مَّا تَشْكُرُونَ *

Who perfected everything which He created and began the creation of man from clay (7). Then He made his posterity out of the extract of a liquid disdained (8). Then He proportioned him and breathed into him from His [created] soul and made for you hearing and vision and hearts; little are you grateful (9).

Both surah in the Qur'an instruct us to be grateful and to preserve the human life both physically and spiritually, and forbade humanity to infringe on the ownership of the right to live.

Islam teaches to preserve and respect the security and safety of human beings, and to be honored as glory, human dignity as a gift from Allah SWT. The impact is the assurance of the tranquility and conditions of a polite and civilized society (civil society), (Q.S. Al-An'am [6]: 151), (al-Baqarah [2]: 179).

Hifẓ al aql, provides assurance of freedom of expression, freedom of opinion, and freedom of scientific studies and other human resources development activities because of the fact that Allah equips human beings with the intellect so that they are perfect creatures as well as instructs humans to maintain the quality of thinking by prohibiting them to drunk and nafza.

Hifẓ nasl is a protection against offspring; Islam teaches to preserve and respect family systems (descendants), so that each individual has a clear family ratios and lines for the sake of society in order to create a peaceful and calm life. (QS Al-Rum [30] : 21). Therefore Islam does not justify acts of deviant relations such as free sex, prostitution, and LGBT (lesbian, gay, bisexual, and transgender) as well as sexual exploitation of minors (islami.co, 2017).

And *hifẓ mall* means a sense of security for the privacy of every individual, entitled to the protection of property and the well-being, everyone has the right to own property as well as forbid to take and seize it in vanquished ways. In practice Islam also teaches the concept of Infaq, shodaqoh and zakat as a reflection of caring for others and as a doctrine that human welfare is the right that can be realized by sharing among others.

Allah SWT states in the holy Qur'an surah al-Isra verse 70 *'And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.'*

The substance of the verse is Allah makes it easier for Adam's children to take everything on land and in the oceans to earn a decent living.

Demonstrating that Islam actually places humanity at a very high position and guarantees the rights that it holds.

If only the values contained in ad dharuriyat al khams are truly a benchmark of humanity, there will be no violence at any level, poverty and disparity in education, as well as injustice in humans including children.

The fact that Islam cares about and protects the children is the hadith of the Prophet (peace and blessings of Allah be upon him): "It is a sinful person who ignores the person who is his dependent." (HR Abu Daud Nasa'i and Judge)

This Hadith explains the neglect of the children, thus Islam prohibits the neglect of the children, neglecting it is included in the category of violence against the economy.

The children protection signals required by Allah SWT are also stater in His word, which means: *'O you who have believed, be persistently standing firm for Allah, witnesses in justice, and*

do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah ; indeed, Allah is Acquainted with what you do. (Q.S. Al-Maidah: 8)

The above verse came down from the incident that hit Nu'man bin Basyir. Narrated by Bukhari Muslim, at one point Nu'man bin Basyir received a gift from his father, then Umi Umrata bint Rawahah said, "I will not be pleased until this event is witnessed by the Messenger of Allah." The question was then brought to the Messenger of Allah. To be witnessed. The apostle then said, "do all your children get the same gift?" Nu'man's father replied "no". The Apostle said again "fear Allah and do good to your children". Some narrators mention, "Indeed I do not want to be a witness in fraud." Hearing the answer then Nu'man's father left and canceled the grant to Nu'man. (Ibnu Katsir)

The essence of the above verse is the spirit of upholding justice and protection of children. Islam has an absolute standard by the merging of divine basic norms and basic human principles. Islamic law is a broad pattern of human behavior and the authority of the highest will of Allah SWT.

Based on the research on the rights of the children, Azhariah Fathia conducted that children protection in the form of the embodiment and strengthening of the rights of the children (*min jâhib al-wujûd*) is carried out in two forms (Fathia, 2012):

First, the realization and strengthening of the rights of the children in the form of fulfilling the needs of the children in the form of facilities, infrastructures, and conducive conditions to his life and life so that he can live, grow, and develop well in accordance with the true dignity and dignity of humanity. All of the children's needs, both infrastructure and conducive environment, are the children's rights and the obligation of parents (including the State and society) to make it happen.

Secondly, educating the children to realize that they have certain rights in his life, in addition to the obligations, which must be respected, implemented, and protected. The Prophet (peace and blessings of Allah be upon him) pointed out that the Prophet SAW seeks to strengthen and empower the children early on. Such hadiths are as follows:

Hadith from Qutaibah, from Mâlik, from Abî Hazm, from Sahal bin Sa'ad r.a. that Rasulullah SAW served a drink while on his right there was a child and on the left there were some adults. The Prophet (PBUH) asked the little boy: "Do you allow me to give this adult a drink first?" The boy said: "No. In the name of Allah, I do not give my share to any of them." Then the Prophet SAW handed the drink to the child. (Al Bukhori)

Furthermore, Islamic attention to children's safety and protection is seen in some verses of the holy Qura'n, as follows:

1. Babies should get good nutrition and perfection, as the word of Allah in surah al-Baqarah verse 233:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ
وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تَكْلَفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ
وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۚ وَإِنْ
أَرَدْتُمْ أَنْ تُسْرِضُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ
وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be

harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.

According to the verse, according to Quraish Shihab, Allah advocates very much, or even as if He obliges *al-walidat* to breastfeed (ASI) a year to her baby. According to verse 233 of Surah al-Baqarah the term *al-walidat* is used intentionally instead of *al-ummahat*, because the word *al-walidat* means mothers, biologically or not, while *al-ummahat* means biological mother. By this, the holy Qur'an outlines that breastfeeding is best for infants which should be given for two years, either by the biological mother or not. Meanwhile, the father of the baby is obliged to (Shihab, 2002):

- Fund breastfeeding to ensure the maternal health and breastfeeding is always available, continue also burden the father with the feeding and mating of the baby's mother (wife) if the mother is in a state of *ba'in*.
 - in *raj'i* divorce condition, the obligation of foods and clothes of baby's mother (father's wife) is on the basis of father's obligations in the relationship of husband and wife. The father's obligation according to Quraish Shihab is because the child carries the father's name.
2. Nutrition protection as illustrated in point 1 is intended for children to be assured for both good physical growth and mental development.
 3. Feeding the baby according to Quraish Shihab should not always be 2 years (24 months) because surah al-Ahqaf verse 15 states that pregnant and breastfeeding period is 30 months. If referring to Surah Al-Baqarah verse 233 then perfect breastfeeding is 24 months. However, the above verse shows how important a mother is to breastfeed children (Shihab, 2002).
 4. Islam also outlines the physical protection of the children, so they get a right of decent living. This picture is derived from the Qur'anic accusation against the person who killed his son.¹
 5. Protecting the education to be given to the children described in surah Luqman verse 13 - 19 included tauhid education, religious education and *abklak al-karimah* education.²

¹ See Qs. Al-An'am verses 140 and 151: "Surely losing the slaughter of their children, for ignorance they do not know [513] and they forbid what Allah has provided for them by a lie against Allah. Indeed, they have gone astray and they are not guided." (Qs.al-an'am: 140)

² "And (remember) when Luqman said to his son, when he instructed him:" O my son, do not associate with Allah, ascribing partners to Allah is a tremendous injustice. "14. and We command mankind (kindness) to his parents; her mother had conceived her in a weakening state, and weaning it in two years [1180]. be grateful to me and to your parents, to me only to you. And if they persecuted you to associate with me something which you have no knowledge of them, then follow them not, and take them in the world with kindness, and follow the way the one who returns to Me, then only to Me is your return, Then I tell you what you did. "16 (Luqman said):" O my son! If there is a weight of mustard seed, in the heavens or in the earth, He will bring it forth: Lo! Allah is Subtle, Knowing. 17. My son, establish regular prayer and enjoin the good and avoid the evil Be patient with that which afflicts you: this is indeed the duty of Allah. 18 And do not turn your faces away from men rage arrogant) and do not walk in the earth arrogantly. Lo! Allah loveth not the arrogant and boastful. 19. and moderate you in walking [1182] and softening your voice. The worst of all is the sound of a donkey.

From this description, it can be concluded that children protection in the view of Islam by realizing the rights of the children in fulfilling both physical and educational needs. Children protection also has the meaning that the children as a successor of the lineage and future of the nation's future, therefore the children must be physically protected by providing nutritious, or psychological food by instilling religious beliefs since the children are in the womb and even when looking for a living partner.

CHILDREN PROTECTION IN INDONESIA

Commitment to the protection of children and women in Islamic teachings is stated in various literature, the Holy Qur'an, hadith and legal codification. Every children of Adam is seen as sacred and noble in Islam, many verses which state this, including QS. Al-Isra (17) verse 70. Every children is pure, he is entitled to receive care and education from his parents or guardian. Every child has physical and moral rights. Physical rights include ownership, inheritance, donation and support. Moral rights include: being given a good name, knowing who their parents are, knowing their ancestors' origin and getting guidance in the religious and moral fields.

Islam also calls on the commitment of the government and society to pay attention to the rights of abandoned children and orphans. An orphan, a child who is wasted, displaced, a victim of war has the same rights as other children. Ignoring children's education is a social sin that has a very bad impact on the future of a community, including religion and the country itself. Article 34 of the 1945 Constitution states that the poor and neglected children are cared for by the State. Allah SWT even reminded people not to lie in the name of religion, and not exploit orphans; displaced, and prohibit the deprivation of their rights.

Children are a group of people who are very vulnerable to becoming victims of a crime. This vulnerability is caused by various limitations and disadvantages that children have. Weak physics, limited thinking and knowledge, low bargaining position in the space of social interaction, incomplete family, and weak family economy make children become very easy and vulnerable parties to be approached by criminal acts, or in other words become victims of criminal acts.

Data on violence against children based on data from the Indonesian Children Protection Commission continues to increase in the year. As quoted by the following *Harian Terbit* (kpai.go.id, 2017):

The Indonesian Children Protection Commission (KPAI) stated that violence against children always increases every year. The results of monitoring of KPAI since 2011 to 2014, there was a significant increase. "In 2011 there were 2178 cases of violence, in 2012 there were 3512 cases, in 2013 there were 4311 cases, in 2014 there were 5066 cases," said Deputy Chairperson of the KPAI, Maria Advianti to Harian Terbit, Sunday (06/14/2015). The 5 highest cases with cases per field since 2011 to April 2015. First, there were 6006 cases of children faced by the law until April 2015. In addition, 3160 cases of cases of care, 1764 cases of education, 1366 cases of health and drugs and 1032 cases of pornography and cybercrime. Children can be victims or perpetrators of violence in three different locations, they are in the family environment, in the school environment and in the community. The results of 2012 KPAI monitoring and evaluation in 9 provinces showed that 91 percent of children were victims of family violence, 87.6 percent were in the school environment and 17.9 percent were in the community. "78.3 percent of children become perpetrators of violence and mostly

because they have been victims of previous violence or have seen violence committed to other children and imitated it," he explained.

Based on the data above, children are vulnerable to violence even from a close environment in their lives, namely home and school. In fact, in terms of relationships with children, the Prophet taught parents to approach them with love and gentle. The Prophet's guidance is often overlooked, then violence against children arises.

So many cases of violence against children appear in various areas of people's lives. Optimizing the Law on the Elimination of Domestic Violence and the Law on Children Protection needs to be supported and enhanced, so that the future of Indonesian children is guaranteed, which in itself can guarantee the future of this nation

.The children protection law is stipulated by the Indonesian government after participating in ratifying the convention on the rights of CRC children through a presidential decree number 36/1990. Then the children protection law was born on October 22, 2002, namely UUPA no. 23 of 2002. The instrument of this Act realizes the fulfillment and protection of children's rights in Indonesia . The purpose of children protection is to realize the quality of Indonesian children, of a noble character, and prosperous. (Law No. 23 of 2002).

The enactment of children rights conventions for States that have ratified, and the existence of the Children Protection Act (UUPA) must be known by all parties to the Indonesian people. Both of them become legal umbrella in every children protection effort. Especially the LoGA, not only regulates prevention and protection, but also regulates sanctions and fines for violations of children's rights.

Children's rights are inherent to children. Protection and fulfillment of children's rights is the obligation of parents, adults, schools, communities, and all parties who ultimately refer to the government. This obligation has three main keywords that must be considered and become a reference for implementing these obligations, as follows (Undang-undang Perlindungan Anak No. 23, 2002):

1. Meeting the rights of the children,
2. Children protection, and
3. Appreciation for children or respect.

In the Convention on the Rights of the Children (CRC) and the Children Protection Act, both have general principles of children's rights. This general principle is agreed upon so that all children in the world have the same rights. The general principles are as follows:

1. The best interests of the children (the principle of the best interest of the children)
2. The right to grow and survive,
3. Non discrimination, and
4. Right of participate in society.

To carry out these principles, in the formulation of Article 3 paragraph (2) of the CRC it is affirmed that participating countries guarantee the protection of children and provide care for children in their jurisdiction. The state takes the role of allowing parents to be responsible for their children, as well as other legal institutions.

In the situation where the responsibilities of the family or parents cannot be carried out, the state must provide a "savety net" program. This social security is harmonized into Article 8 of Law No. 23/2002 which explicitly mentions it as children rights that must be carried out by the Government.

Even with the formulation of Article 3 paragraph (3) of CRC, the state must guarantee institutions, services, and facilities that are given responsibility for caring for children or protecting children in accordance with standards established by competent institutions. The state must make a standard for children's social services, and ensure that all institutions responsible for compliance with the standards referred to by conducting monitoring on their implementation. That is, children should not fend for themselves but the state must intervene in matters of protecting children's rights, because the state has an interest in the quality of its citizens.

The concrete case of legal actions that is done and occur in the community is that unregistered marriages affect the protection of children's rights³. Unregistered marriages will harm the interests and threaten the fulfillment, protection and enforcement of children's rights. As a legal event, marriage correlates directly with children born. Both concerning family law and children rights are guaranteed as human rights (child's rights are human rights).

The existence of a marriage that is not recorded, in any form and construction, is an obstacle and brings risks for the recognition and fulfillment of children's rights in family law. Although the children are biologically born from the process of reproduction, the meeting between the mother's ovum and the father's spermatozoa, whether it is sexual intercourse (coitus) or other means of technology, but the marriage is not recorded (especially the unwanted, unrecognized, and non marital children), it has an impact on civil relations, confession or lineage (formal), inheritance rights, maintenance and living costs, even affection and the responsibility of parents to grow and develop children.

Keeping offspring includes human rights known as part of human rights in Islam. The concept of human rights (Mas'udi, 2011), commonly known as HAM, in al Ghazali's opinion it is mentioned that *al-Kulliyat / al-Maqashid al-Khamsah*, or 5 (five) universal basic rights, namely (1) related to the protection of life and body (*Hifdz an-Nafs*); (2) related to reasoning protection (*Hifdz al-Aql*); (3) protection of religion / belief (*Hifdz ad-Din*); (4) protection of property (*Hifdz al-Mal*); (5) protection of honor and offspring (*Hifdz al-Irdl wa al-Nash*).

It is likely that the neglect of the children in the case of unrecorded marriage because it threatens the right to *nasab*, inheritance, maintenance and living expenses, and care. In reality, children born from unregistered marriages have an impact on the fulfillment of children's rights in family law, and simultaneously have an impact on the fulfillment of children's rights as human rights and as subjects of citizenship, such as rights to identity, birth certificates, relations kinship, citizenship.

Even worse for children born from unrecorded marriages with exploitative indications, or that are not recognized as *nasab* and excommunicated from social relations

³ According to the Indonesian Child Protection Commission (KPAI), the social construction of marital deeds is not recorded as distinguished from 3 (three) forms: (1) Unregistered marriages (unregistered marriages) that are exploitative in the form of "contract marriage" which in certain cases occurs between residents foreign countries with local women. (2) Marriage that is not listed because it does not have access to public services. (3) Unregistered marriages which aim only as an outlet for sexual desire. The KPAI opinion was conveyed when meeting with the Central Indonesian Ulema Council (MUI), which was delivered by Hadi Supeno (then Chair of the KPAI) who was received by the entire board of the MUI Center including KH Ma'ruf Amin, K.H. Kholil Ridwan, Dr. Anwar Abbas, and General Secretary of the MUI Center for Ichwan Syam [KPAI News, "KPAI Reminds Siri Marriage - Impact of Children's Social Problems", Jakarta, Edition II, 2010, p. 21].

with family / relatives so as to eliminate social status as children of their father, then perhaps the situation is as if it were a non marital child.

Factually, the reality of children born from marriage which is then qualified as non marital children is a social fact that is undeniable and unhidden. Therefore, the state should not be negligent and not protect by regulation. That fact is like the habits of the human world, because it is not only a specific Indonesian problem.

In fact, in various cases reported to the KPAI, unregistered marriages for polygamy were carried out by people who were educated, held positions, and had economic abilities which ultimately had long consequences for other legal problems. Sirri Machiha Muhtar's marriage case, aka Aisyah with Moerdiono, is an unregistered marriage law event that has an impact on the issue of identity and recognition of the child left behind by M.Iqbal Ramadhan (Warta KPAI, 2011).

The legal action led to the appearance of the Constitutional Court ruling No.46 / PUU_VIII / 2010 by conducting judicial review of article 2 paragraph (2) and article 43 paragraph (1) of the Marriage Law no.1 of 1974. The contents of the Constitutional Court's decision reject article 2 paragraph (2) and accept the provisions of article 43 paragraph 1 of the Marriage Law no.1 of 1974. namely as follows:

Refuse the judicial application for article 2 paragraph (2) of Law Number 1 Year 1974, with legal considerations, that marriage registration is important for order. Administrative records carried out by the State are intended to ensure that marriage is an important legal act in the life of the person concerned.

Received a material test article 43 paragraph (1) of Law Number 1 of 1974 and stated: ... "a child born outside of marriage has a civil relationship with his mother and his mother's family", contrary to the 1945 Constitution of the Republic of Indonesia throughout interpreted eliminating civil relations with men that can be proven based on science and technology and / or other evidence according to the law turns out to have a blood relationship as his father, so the verse must be read: "children born outside of marriage have a civil relationship with their mothers and his mother's family and with his man as his father, which can be proven based on science and technology and / or other evidence according to the law to have blood relations, including civil relations with his father's family".⁴

The Constitutional Court's decision was very pro-child, protecting the civil status rights of children from marriages that were not recorded. But this decision is considered very brave because it has implications for various things. According to Oyo Sunaryo Mukhlas⁵ on the UIN website Sunan Gunung Djati Bandung, it is stated that:

"If the reason for protecting the children is to have to" dismantle "sensitive articles, namely article 43 paragraph (1) of Law Number 1 of 1974, it seems too expensive. Because this article is actually a reinforcement article on article 2 paragraph (1) of Law Number 1 Year 1974 which materially provides pluralistic forces, so that for Muslim, the marriage must be adjusted to religious norms as formulated in the book of fiqh. Similarly, for non-Muslim citizens, they must be adjusted to their respective religious norms and beliefs. Thus, the formulation of article 43 paragraph (1) of Law Number 1 Year 1974 has no longer a common thread with article 2 paragraph (1) of Law Number 1 Year 1974. Even though

⁴ www.uinsgd.ac.id/.../menakar-kekuatan-dan-implikasi-putusan-mahkamah-konstitusi-nomor-46-tahun-2010-Cache

⁵ Guru besar Hukum Islam UIN Sunan Gunung Djati Bandung

the substance and values contained in those articles should be synergistic, complement and strengthen each other.

If the main reasons and considerations were the birth of the Constitutional Court's decision to protect children (hifdz al-Nafs) in order to obtain legal certainty regarding civil relations, the perpetrators had gone too far, and produced children in the womb, which was the main argument of the MK judges, namely in order to protect children, actually it can be disputed, because for non-marital relations such as adultery, cheating, cohabitation, who are responsible and have good intentions, there is room to provide protection for the children conceived by their mothers, namely through article 53 paragraph (1) of KHI, which allows pregnant marriages: "A pregnant woman out of wedlock can be married to a man who impregnates her." Although the maqashid aspect is not intended to legitimize illegitimate marital relations, but by acknowledging the biological relationship of her father, even if "shyly", then mafhum mukhalafah can be understood, there is a gap to acknowledge legal relationship outside of marriage. The impact will also bring up new problems.

The objections and concerns from the Islamic law professors above on the Constitutional Court ruling No.46 / PUU_VIII / 2010 are very acceptable because of the sentence of the Constitutional Court verdict: children born outside of marriage ... can be interpreted generally by society. The sentence can contain all types and marital relationships whether due to adultery, infidelity, and cohabiting. The decision of the Constitutional Court (MK) No.46 / PUU-VII / 2010 dated February 17, 2012, is abstract (in abstracto), which Inkonkrito is a court decision. Based on this, according to Chatib Rasyid, the Constitutional Court's ruling does not need to be contested or declared to be in accordance with Shari'ah because there is essentially no conflict with the Shari'ah (asuinbdg.wordpress.com, 2016).

In this regard, according to the author of the decision of the Constitutional Court number 46 / PUU-VIII / 2010 regarding marriage that is not recorded due to polygamy, it can actually be accommodated through article 7 paragraph 3 Compilation of Islamic Law concerning marriage rights with polygamous status, among the purposes of the court's marriage Religion to provide protection for children born from marriages that are not recorded and become the authority of the Judges of the Religious Courts to combine the stipulation of the marriage certificate into the ratification decision of the child.

CONCLUSION

Islam is very concerned on the protection and rights of children in which many verses of the Qur'an and Hadiths ordered to protect, nurture and educate children far before the occurrence of conception, it is since the choosing of a living partner. At the same time, Islam also rejects strictly all forms of violence and oppression as well as persecution of children.

Children protection in Islamic law is the five basic concepts of Islam as the main goal of setting up Islamic law called *maqasid al-Shari'ah*, especially *hifdz al-nafs*: protecting the right of every children to live, grow and develop appropriately and *hifdz al-nash*: protection against offspring, nurturing and respecting family systems (descendants), so each child has a clear family ratio and line for the sake of common good.

Children protection in Indonesia has been carried out by the law of the Children Protection Act and Children's Rights Convention. The legislation as the foundation of children protection law should be implemented in a synergistic manner at various levels of society in various fields.

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