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Children with Special Needs In the Eyes of Islamic Law and the State

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ABSTRACT

This study aimed to analyze the legal view Islam and law Positive on the rights of children with disabilities. This research is categorized as field research, and is a type of qualitative research. Then this research also uses an empirical sociological approach, namely non-doctrinal research that is based on primary data. The results of this study show that children with disabilities in South Tangerang City are divided into two categories, namely adults and children. The number for adults is 28 people and for children there are 22 people. People with disabilities are given various trainings that can foster creativity and increase their confidence so they don't feel isolated. In addition, people with disabilities are assisted to open up and undergo the skills process free of charge during the training. The law for the protection of children with disabilities in the Qur'an is contained in two verses, namely: Qs. Abasa 1-10 and Qs. Al-Fath 17. Then the Positive law is contained in Article 5 Paragraph (1) of the Law of the Republic of Indonesia Number 8 of 2016 concerning Persons with Disabilities.

Keywords : Disability, Islamic Law, Positive Law

INTRODUCTION

Marriage is an important event in human life, because it is not just private concerns married couples, but also concerning the affairs of the family and society(Islamic,2017).In general, marriage is considered as something sacred and therefore every religion always connects marriage rules with religious principles. Every living being has the human right to continue their offspring through marriage. Scholten explained that marriage is a legal relationship between a man and a woman to live together eternally which is recognized by the State.

Living together between a man and a woman as husband and wife and has fulfilled the legal provisions, this is what is commonly referred to as a marriage (Oelangan, 2018). What is meant by marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead, which must also be recorded according to the applicable laws and regulations such as as outlined in Article 1 and Article 2 of the Marriage Law No. 1 of 1974. In the marital relationship between husband and wife

there is a sacred agreement, namely Mitsaqan Ghalidza, a holy and solid agreement, forming an eternal and eternal happy family (Al-Qur'an). an Surah An-Nisa': 21). Islam recommends marriage, because the holding of marriage has fulfilled religious orders with the aim of establishing a sakinah, mawaddah and rahmah household (Mawahib, 2019).

Marriage requires a glue that serves to unite two people. If there is a lot of adhesive, the marriage will become stronger and not easily shaken in various problems (Halomoan, 2016). On the other hand, if the adhesive is only a little, the marriage will end easily, it's just a matter of time. The presence of children is the most basic bond in marriage. If there are children, a husband and wife should try to maintain the marriage. Because children are their responsibility. The family as the smallest unit in society does not escape the rules and/or laws that are determined either by the State or by society and religion. Law Number 1 of 1974 concerning Marriage is the basis for the management of a legal marriage. In Law Number 4 of 1979 concerning Child Welfare Article 1 paragraph (4) the family is defined as the smallest community unit consisting of father, mother and child (Salihin, 2021).

Referring to Law Number 4 of 1997, persons with disabilities which are discussed with the term persons with disabilities are defined as, any person who has physical and/mental disorders, which can interfere or become obstacles and obstacles for him to perform properly, which consists of: a. . People with physical disabilities, b. People with mental disabilities, c. People with physical and mental disabilities.

Children are the hope of the nation in the future, the rights that children must obtain from their parents since the child is born in the world based on applicable laws and regulations. Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children as well as various interests related to the welfare of children. Humans are rights holders, starting from the moment he is born and ending when he dies, even a child who is still in his mother's womb can be considered a right holder (Rachman, 2020).

The more modern a country should be, the greater its attention should be in creating conditions conducive to the growth and development of children in the context of protection. The protection provided by the state to children covers various aspects of life, namely economic, social, cultural, political, and legal aspects. The Constitution of

the Republic of Indonesia Article 28B paragraph (2) explicitly regulates the rights of every child to survival, growth and development and the right to protection from violence and discrimination. This provision is followed up in Law Number 23 of 2002 concerning Child Protection Article 23 paragraph (1). Law Number 23 of 2002 concerning Child Protection Article 1 paragraph (15) also states that children are given special protection. As for what is meant in Article 1 paragraph (15) of Law Number 23 of 2002 concerning Child

Protection, child protection aims to ensure the fulfillment of children's rights so that they live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from economic and sexual exploitation of children (Baharun, H., & Awwaliyah, 2018). Thus, the laws and regulations have clearly explained the existence of equal rights for children to get protection, maintenance, development and growth in carrying out their lives.

Every child needs guidance and affection until he reaches adolescence, and it is parents who are obliged to guide the child into adulthood. Both parents are obliged to maintain and educate their children as well as possible. The obligations of parents as referred to in paragraph (1) of this article are valid until the child marries or can stand alone, which obligations continue even though the marriage between the two parents is broken. However, if you have parents with disabilities, of course it will be difficult for children to get protection, maintenance, development and growth in carrying out their lives. Persons with disabilities have equal opportunities in all aspects of life and livelihood is carried out through the provision of accessibility (Nasir, SA, & Jayadi, 2021).

THEORY BASIS

All human beings have the right to have the opportunity to enjoy the provision of public facilities. The existence of public facilities is also not only to be enjoyed by those who have normal bodies, but for those with disabilities also have the same rights. The existence of persons with disabilities often receives less attention. Persons with disabilities have the same position, rights and obligations as non-disabled people (Aisyah, N., & Amalia, 2020). As part of Indonesian citizens, it is appropriate for persons with disabilities to receive special treatment, which is intended as an effort to

protect against vulnerability to various acts of discrimination and especially protection from various violations of human rights. This special treatment is seen as an effort to maximize the respect, promotion, protection and fulfillment of universal human rights.

People with special needs are people who live with special characteristics and have differences with people in general (Sudrajat, 2011). Because of these different characteristics, special services are needed so that he gets his rights as a human being who lives on this earth. People with special needs have a very broad definition, including people who have physical disabilities, or low IQ abilities.

According to Law Number 19 of 2011 concerning the Ratification of the Rights of Persons with Disabilities, persons with disabilities are people who have physical, mental, intellectual, or sensory limitations for a long period of time who in interacting with their environment and community attitudes may encounter obstacles that make it difficult to participate. full and effective based on equal rights. Law Number 4 of 1997 concerning Persons with Disabilities in the main points of the preamble of the convention point 1.

According to law number 8 of 2016 Article 1 paragraph (1) explains, Persons with Disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long period of time who in interacting with the environment may experience obstacles and difficulties in participating. fully and effectively with other citizens based on equal rights (Hayat, 2019).

People recognize the term disability as a person with a disability (Anshari, et al., 2021). This is what makes us visually define persons with disabilities as individuals who have lost limbs or body structures such as legs/hands, are paralyzed, blind, deaf, and so on. Thus, disability is identified with disability, this is what causes undercoverage, so that data collection on disability that refers to the concept of disability will produce underestimated data.

Persons with disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations for a long time who in interacting with the environment can experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights (Solihah, 2018). . UU no. 8 of 2016 and the difference with Law no. 4 of 1997, including the terms used, from the word "people with disabilities" it was replaced by "persons with disabilities". The definition of

disability put forward by Disabled People's International (DPI) is the loss or limited opportunity to take part in normal life in society and on an equal basis with others due to physical and social barriers.

Persons with disabilities face greater difficulties than society in general, because they have obstacles in accessing public services, such as access to transportation, buildings, jobs, and education (Itasari, 2020). Some of these examples are obstacles in the daily life of persons with disabilities. Disability is not a reason to eliminate persons with disabilities in obtaining rights and maintaining life. Persons with disabilities according to Law no. 4 of 1997 article 1 consists of people with physical disabilities, people with mental disabilities and people with physical and mental disabilities.

Physical disability is a disability that causes disturbances in bodily functions, including body movement, vision, hearing, and speech. Mental disability is a mental and/or behavioral disorder, either congenital or as a result of disease. Physical and mental disability is the condition of a person who has two types of disabilities at once (Muqoddas, 2018). According to Law no. 8 of 2016 article 4 concerning persons with disabilities consists of 4 types, namely persons with physical disabilities, persons with intellectual disabilities, persons with mental disabilities and/or sensory disabilities. The variety of persons with disabilities as referred to in paragraph (1) can be experienced singly, multiplely, or multiplely for a long period of time determined by medical personnel in accordance with the provisions of the legislation (Mangku, 2020).

RESEARCH METHOD

The type of research used in this paper is qualitative research. Research is called qualitative research if the type of data and data analysis used is narrative in nature, in the form of statements that use reasoning. Qualitative research generally describes the problems of attitude, behavior, and experience whose data collection is carried out through free and in-depth interviews. The aim is to describe in depth the cases studied. This study also uses an empirical sociological approach. Empirical sociology is research that starts from primary data, namely data obtained directly from the object of research, such as society as the first source in a study. In other words, this research emphasizes the search for answers to social phenomena that occur in the implementation of the law, so that it will answer significant questions of social law or legal effectiveness.

Primary data is the main source of data obtained directly as a source of data in this study, namely in the form of Laws, Regional Regulations and also interviews with the Head of the Social Service. Secondary data is a source of additional data obtained indirectly from library studies in the form of books, journals, theses, articles, expert opinions or other data sources that are relevant and related to this research.

Analysis of the data analysis process of data decomposition, research and systematic arrangement of interview transcripts, field notes, and other materials so that researchers can present their findings. Analysis of the data used is descriptive qualitative data analysis.

RESEARCH RESULTS

Islamic View of Children with Special Needs

Basically, Islam never distinguishes between normal children and children with disabilities. All children in Islam must be protected. The essence of child protection in Islam is the appearance of love which is manifested in the fulfillment of children's basic rights and protection from violent and discriminatory behavior. If this is the case, then child protection in Islam means showing what Allah has bestowed in the hearts of both people, namely in the form of love for children by fulfilling all the needs of children's basic rights so that children can live, grow and develop optimally and protect them. from violent criminal acts that reflect unfair behavior towards children as a mandate from Allah SWT.

The appearance of love and the fulfillment of children's basic rights can be achieved if the child is in normal condition. However, when children are in abnormal situations such as being orphans, neglected children due to poverty, natural disasters, political and economic crises and having disabilities or disabilities, then children need protection and treatment. That is called the special protection rights for children. Therefore, Islam is very concerned about the rights of children. The fulfillment of children's basic rights is an integral part of the implementation of the fulfillment of human rights.

In the Islamic perspective, children's rights are gifts from Allah SWT that must be guaranteed, protected and fulfilled by parents, families, communities, governments and the state. This means that the rights of children that should be fulfilled properly are not

only the responsibility of both parents, but also the responsibility of all aspects of the community around the child's environment. In Islam, there are five kinds of human rights known as Maqashid al-Shari'ah, namely the maintenance of religious rights, the maintenance of the soul, the maintenance of honor and offspring, the maintenance of reason and the maintenance of property.

Religious Rights

The maintenance of religious rights for a person in Islam is called hifz al-din. The maintenance of the religion of a newborn child in the world is under the responsibility of both parents. The religion adopted by a child must follow the religion adopted by both parents until the child can decide for himself to continue following the religion he has adhered to since birth or choose the religion that is best for him.

The right to have off Spring

One form of the right to maintain offspring in Islam can be seen in the concept of maintaining honor. The honor of a child can be realized by acknowledging his identity as a child of his biological parents. Therefore, in Islam the adoption of a child should not cause the child to eliminate the origin of his descendants.

The Right to Associate and Work

Islam pays great attention to the social rights of everyone, especially for vulnerable groups such as the poor, women and children by imposing physical and social principles. Concepts like this are very in line with Islamic teachings which state that Islam has pioneered the world in overcoming the problem of poverty in society by providing Bait al-Maal and Zakat. government, employees, workers and ordinary people. Family guarantees, both clothing and food for each child, are on the shoulders of a father.

The State's View on Children with Special Needs

Child Protection Law no. 35 of 2014, defines a child as a person who is not yet 18 years old, including a child in the womb. In the preamble to the Act, it is stated that a child is a mandate and gift from God Almighty who has inherent dignity and worth as a human being as a whole. Furthermore, it is said that children are buds, potentials and the younger generation to succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. - the breadth to grow and develop

optimally physically, mentally and socially and with noble character. For this reason, it is necessary to make efforts to protect children's welfare by providing guarantees for their rights and treatment without discrimination.

Protection of children is regulated in Law no. 35 of 2014 concerning child protection in article 1 paragraph (2) explains, 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 protection from violence and discrimination.

According to article 13 of the Child Protection Act, children are entitled to protection from discrimination, exploitation, neglect, cruelty, injustice and other legal treatment. The legal basis used in carrying out the fulfillment of rights rests on the 1945 Constitution and the convention on children's rights which are in line with the principles of fulfilling children's rights in Islamic teachings which are absorbed into Law no. 23 of 2002 which was later amended by Law no. 35 of 2014.

The affirmation of children's rights in Law no. 35 of 2014 is the legalization of children's rights which are absorbed from the Conversion of Children's Rights and national legal norms. Thus, articles 4 to 19 of the Child Protection Act create legal norms regarding what children's rights are, namely children's rights to life, growth and development, protection and fair participation. Law No. 23 of 2002.

CONCLUSION

In an Islamic perspective, children's rights are gifts from Allah SWT that must be guaranteed, protected and fulfilled by parents, society, government and the state. For this reason, Islam recognizes five kinds of human rights which are often referred to as maqashid al-Shari'ah, namely the maintenance of religious rights, the maintenance of the soul, the maintenance of honor and offspring, the maintenance of reason and the maintenance of property. Whereas in positive law it is stated that persons with disabilities have the same rights in life and livelihood. This is enshrined in Law no. 8 of 2016 article 5 paragraph (1) regarding persons with disabilities.

There are several factors that cause children to become persons with disabilities, one of which is the lack of health care. The maintenance of children's health is an

obligation, both physical and mental health maintenance. In order to avoid disability, efforts to implement child health care must be carried out since the mother's womb.

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