

CHILD PROTECTION FROM THE PERSPECTIVE OF ISLAMIC LAW AND THE CONVENTION ON THE RIGHTS OF CHILDREN IN MEDAN CITY

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Abstract

In particular, handling children's problems is included in the social rehabilitation sector which is under the Social Rehabilitation Section for Children and the Elderly Outside of Homes and/or Institutions, although it is also related to other sections within the Medan City Social Service. The importance of this study is to carry out integration between the concept of human rights in the global context and human rights in Islam. It still needs to be reduced to an integrated child protection concept, so that it can be implemented in the form of policies in the local context, especially in the field of social welfare. To derive these two concepts, a systems approach is needed that can explain the position and role of the CRC and Islamic law in child protection and the role of the Medan City Government, especially within the Medan City Social Service, in implementing existing policies. This research uses a qualitative approach to describe and analyze how Islamic law and the Convention on the Rights of the Child (CRC) view child protection from their respective perspectives and will then be analyzed as a whole. The role of the Medan City Social Service relating to the field of child protection is carried out through the duties of the Social Rehabilitation Sector, in point (g) that "Guidance, development and control of social service efforts in the field of social rehabilitation services for street children, abandoned children, delinquent children and service provision for neglected elderly people and social rehabilitation of delinquent children.

1. INTRUDACTION

The integration between Islamic law and *the Convention on the Rights of the Child* (CRC) or the Convention on the Rights of the Child (KHA) has not yet been fully integrated into the context of state life, including policy aspects in the field of social welfare in the local context. In fact, both Islamic law and the KHA have a clear and detailed concept regarding the position and role of children as human beings who also have human rights in the family, society and even in national and state life.

According to Hasyim Purba, the legal theme of child protection can be seen from three *das sollen perspectives*, namely: philosophical studies, theoretical studies of science and studies of phenomena, facts and reality. At the level of philosophical studies in a general context (revelation to revelation). From a philosophical perspective, the most concise thing in perfecting law is the balance of rights and obligations. From the perspective of a theoretical study of science, the legal theme of child protection is seen from statutory regulations. In the context of the Indonesian constitution, child protection is based on Article 34 of the 1945 Constitution stated that, the poor and neglected children maintained by the State; Article 29b paragraph 2 states that every child has the right to survive, grow and develop, and has the right to protection from violence and discrimination; and Article 28d also states that everyone has the right to recognition, guarantees, protection of fair legal certainty and equal treatment before the law. Meanwhile, from the perspective of studying reality, facts or realities and phenomena, child protection is seen from primary and secondary data which explains the child's condition (Akmaluddin, 2021).

Wicipto Setiadi stated that the Indonesian legal state which is based on Pancasila and the 1945 Constitution takes a prismatic or integrative concept from two conceptions of the rule of law (*rechtsstaat and the rule of law*) so that the principle of legal certainty in *the rechtsstaat* can be combined with the principle of justice in *the rule of law*, because when It is already difficult to draw a substantive distinction between *rechtsstaat* and *the rule of law*. Legal certainty must be upheld to ensure that justice in society is also upheld, although in practice this combination often leads to excesses in the law enforcement process. However, the most important thing is that the core similarity between these two conceptions is that they both aim to provide protection for human rights (Judicial, 2014).

This is of course related to the theory of legal certainty put forward by Gustav Redbruch. According to Redbruch, legal objectives are identified and reviewed from three principles, namely: Legal certainty (*rechmatigheid*) through juridical review; justice (*gerechtigheid*) through philosophical review; and usefulness (*Zwechmatigheid, doelmatigheid, utility*) (Rommy, 2019).

Abdul Hakim Siagian emphasized that the extraordinary contribution of Islamic teachings in modern life in the formation of world legislation or international instruments - even to this day - is that children have rights and no obligations until they grow up and become mukallaf (*burdened with obligations*). This confirms that, in the context of Islamic law, when the sources of Islamic law originating from *the texts* are interpreted into modern reality, there are quite a lot of verses in the Qur'an that tell stories about humans and specifically regarding children. After the child becomes an adult based on his age and psychological condition, the assignment of obligations then follows. Meanwhile, in the global context, child protection instruments are contained in *the Convention on the Rights of the Child* (CRC) or the Convention on the Rights of the Child (CRC). The KHA contains several things that are displayed, reduced to more concrete regulations, and explained in Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection.

Our Constitution has mandated this, since the ratification of the CRC and the issuance of Law no. 4 of 1979 concerning Child Welfare. In article three (3) it is stated that: "Children have the right to care and protection, both while in the womb and after birth." Furthermore, article four (4) states that: "Children have the right to protection from the environment which can harm or hinder their normal growth and development." In dangerous situations, children have the first right to receive help, assistance and protection (Akmaluddin, 2021).

Thus, in the context of this study, the theme of child protection can be seen from the perspective of revelation references, constitutional references which are then reduced to policy in the local context, especially within the Medan City Government Social Service, and references sourced from primary and secondary data in the social sector. child welfare. The issue of child protection in the context of this study is everything related to the fulfillment of children's rights, both those regulated in Islamic legal sources and regulations in the field of child protection which are derivatives of the ratified CRC. Both Islamic law and the CRC, in the context of this research, are seen as legal systems.

Nationally, data from the Director of Child Social Rehabilitation at the Ministry of Social Affairs also shows that, as of August 2017, the number of street children in Indonesia has reached almost 17,000 children. Data from the National Team for the Acceleration of Poverty Reduction states that in 2018, the total number of Indonesian children who were not in school reached 4.6 million. Meanwhile, the number of early childhood children aged 7-12 years who do not attend school is in the range of 1.3 million, children aged 13-15 years in 33 provinces number almost 1 million, while children aged 16-18 years reach 2 million children (Akmaluddin, 2021).

Meanwhile, in the local context, the Medan City Social Service stated that in 2020 it had distributed social assistance through the basic food program in 2020 with the number of families receiving non-cash food assistance benefits amounting to 70,672 KPM with a realization of 55,266 KPM (78.20%); for the 2020 Cash Social Assistance Covid-19 Response Program, the target is 63,155 KPM with a realization of 55,568 KPM (88.01%); PKH Social assistance in 2020 is in accordance with the provisions of the Indonesian Ministry of Social Affairs. The quota is 50,156 KPM and the realization is 47,524 KPM (94.75); has provided social welfare service facilities and infrastructure in 2020 to 109 LKS/LKSAs registered with the Medan City Social Service, consisting of 48 Children's Orphanages, 13 Drug Homes, 2 Nursing Homes, 46 LKS/Foundations. Supervision, control and control of PMKS in 2020 from the results of control operations in the field were also carried out. It was recorded that 372 people had been caught, 146 of whom were children. Data on the results of control operations in 2020 saw an increase of 182 people or 95.79% from 2019, namely 190 people (Lakip Medan, 2022).

The Medan City Social Service itself was formed based on Medan Mayor Regulation Number 40 of 2017 concerning amendments to Medan Mayor Regulation Number 1 of 2017 concerning Position, Organizational Structure, Duties and Functions, and Work Procedures of Regional Apparatus. The Medan City Social Service is one of the Medan City Regional Apparatus Organizations which carries out government authority in the social sector. As with the duties and functions of the Social Service which carries out Government affairs in the Social Sector, the Medan City Social Service also carries out Planning, Implementation, Monitoring, Evaluation of Programs and Activities related to Social Sector Affairs in Medan City (LAKIP Medan, 2022).

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in the global context and human rights in Islam. It still needs to be reduced to an integrated child protection concept, so that it can be implemented in the form of policies in the local context, especially in the field of social welfare.

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2. RESEARCH METHOD

This research uses a qualitative approach. According to Creswell, theory in qualitative research uses lens theory *or* perspective theory to help researchers in various kinds of questions and how to collect data and analyze data, so that researchers are expected to be more professional in mastering all theories and have extensive knowledge and *human instruments*. , namely, the researcher as a research instrument (John, 2014) (John, 2014). So, related to the title of this research, the researcher will describe and analyze how Islamic law and the Convention on the Rights of the Child (KHA) view child protection from their respective perspectives and will then be analyzed in full.

3. RESULTS AND DISCUSSION

A. The Role of the Medan City Social Service in Child Protection

The Social Service plays a role in carrying out regional government affairs based on the principle of autonomy and sacrificing playing time and getting the education that should be received at that age. The Child, Family and Elderly Welfare Section, which is assisted by other SKPD (Regional Work Units), has the function of formulating technical policies in the social sector, carrying out social affairs including social services and empowerment, social assistance and protection, administering social affairs, developing social services and empowerment, as well as social assistance and protection. In fact, the Medan City Social Service really lacks facilities.

The Medan City Department only has one facility for fostering street children, namely Bengkel Bina Karya (LBK) on Jalan Datuk Wan Abdul Rahman, and still collaborates with the provincial orphanage, namely the Youth Development Social Institution (PBSR) on Yos Sudarso Jalan in Rumbai District. Street children between the ages of 6 and 18 are trained, sent to school, given skills, and taught about social and religious matters by experts to change their behavior for the better. However, this only lasted 6 months in the orphanage.

In addition, children under the age of 15 who are on the streets will be returned to their parents (Sri dan Khayla, 2009). According to the Social Services Module for Street Children, Department of Social Affairs (2006), in handling street children, the Department of Social Affairs has developed 3 (three) models of social services for street children, namely: (1) *Community Based Social Services*: Social services for street children are developed in the community environment. where street children and families live. This service is carried out by involving all street children and families as well as other community members in the service process; (2) *Street Based Social Services*, namely social services for street children are developed in street environments or other public places, where street children live their lives on the street; and (3) *Center Based Social Services*, namely social services for street children are developed in special service institutions in the form of orphanages or similar. Children are taken from the streets or other public places (Raja, 2020).

The achievement of fulfilling children's rights in Medan City in 2020 is generally described as part of achieving a Child Friendly City, as regulated in the Regulation of the Minister of State

for Women's Empowerment and Child Protection of the Republic of Indonesia Number 12 of 2011 concerning indicators for child friendly districts/cities, measured from four fulfillment clusters: children's rights, namely, 1) civil rights and freedom; 2) Family Environment and Alternative Care; 3) Basic Health and Wellness; and, 4) Education, Use of Free Time and Cultural Activities, where each cluster has its own measurements (Medan City Government, 2021).

Regarding special protection, based on data from the Medan City Labor Office in 2020, there are no child workers in the city of Medan. However, in reality, children who work in the informal sector still occur, such as street children, clown children or *silver children*, children of fishermen and scavengers, still appearing at every road junction in the city of Medan, in traditional shopping centers, and at fishing boat moorings. Ratio of children aged 5-17 years (disabled/non-disabled) who have accessed the internet. There was no data on the ratio of children aged 5-17 years (disabled/non-disabled) who had accessed the internet. School Enrollment Rate Ratio (APS) for children aged 7-17 years (disabled/non-disabled) Based on 2020 BPS data, it is known that the pure school enrollment rate for Medan city children at the elementary or Madrasah Ibtidaiyah level reached 93.26 while the Gross Enrollment Rate reached 105.90%. For junior high school and equivalent, the APM reached 79.88% and the APK reached 114.07%. Meanwhile, for high school and vocational and MA levels, including children with disabilities, the NER is further down, namely 61.79% and also linear with the GER of 86.13%. In general, the ratio of school enrollment rates has decreased compared to 2019. There is no data on the percentage of children aged 0-17 years living below the poverty line. Percentage of children aged 0-17 years who were neglected, no data was found on the percentage of children aged 0-17 years who were neglected (Medan City Government, 2021).

Meanwhile, services for children who need special protection in Medan City in 2020 are 64 social services (complaints), 4 health rehabilitation services, 7 legal aid services, 0 repatriation and social reintegration services, 31 mentoring services, and 3 child psychological therapy services. (Source: Medan City KLA Evaluation Data, 2020).

The role of the Medan City Social Service relating to the field of child protection is carried out through the duties of the Social Rehabilitation Sector, in point (g) that "Guidance, development and control of social service efforts in the field of social rehabilitation services for street children, abandoned children, delinquent children and service provision for neglected elderly people and social rehabilitation of delinquent children. In carrying out its duties and functions, the Social Rehabilitation Sector carries out 3 (three) sections including the social rehabilitation section for children and the elderly outside of institutions and/or institutions, the social rehabilitation section for persons with disabilities outside of institutions and/or institutions and the social rehabilitation section for the socially disabled, and victims of human trafficking (Medan City Government, 2021-2026).

Thus, in carrying out its role, the Medan City Social Service carries out programs, including: Controlling street children, coaching street children, training and supervision. Despite this, there is still a need for a more active role with a better approach, a role in building communication with various parties in overcoming the obstacles faced, better data collection, and proper rehabilitation equipped with adequate facilities and infrastructure throughout the coaching period (Fazlan, 2021).

B. Supporting and Inhibiting Factors of the Medan City Social Service in Child Protection

1) Supporting factors

In carrying out its functions in the field of social welfare, the Medan City Social Service is supported by the Community Social Welfare Institution (LKSM), which is a Social Welfare Institution. This institution is the potential and source of social welfare which is fostered and

developed by the Social Service in order to increase community participation in social welfare efforts, as for the types of social welfare institutions. Official data from the Medan City Social Service for 2021 records that LKSM in Medan City are as follows: Child Social Welfare Institutions/Children's Orphanages 48 LKSA, LKS/Foundations 45 LKS, Narcotics Institutions 13, Nursing Homes 2, Family Welfare Consultation Institutions 0, Business World Institutions (CSR) 0, Community Based Social Welfare Institutions 0 (Medan City Government, 2021-2026).

2) Obstacle factor

The obstacles to the Medan City Social Service in carrying out its role in the field of child protection, especially homeless and beggar children, are: 1) The large number of people who are homeless and beggars on the streets come from outside the city so it is very difficult for the Medan City Social Service to record them; 2) The lack of funds budgeted by the Medan City Government for general welfare; 3) limited number of Medan city social service employees; 4) the difficulty of approaching homeless people and beggars who are exploited as workers on the streets when they are being recorded; (5) there is no shelter for homeless people and beggars in Medan City; 6) difficulty of supervision; and 7) the difficulty of approaching homeless people and beggars who are exploited as workers on the streets when they are being recorded (Sri dan Eldzan, 2022).

C. CONCLUSION

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