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Protection of Child Rights in Perspective of Human Rights in Indonesia (Analysis Approach to Islamic Law)

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Protection of Child Rights in Perspective of Human Rights in Indonesia (Analysis Approach to Islamic Law)

Dr. Iman Jauhari ^α & S. H., M. Hum ^σ

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I. INTRODUCTION

Children are the hope of the future. Children also have existence. The existence of the child as a child, as a man who is the totality of life and humanity. Each child is attached with basic rights as human rights that can not be ignored. However, in the reality of the world, there are many forms of exploitation, violence, discrimination and abuse of children's rights, both real and perceived and hidden.

In fact, children are still exploited, both economically as labor, street children, or sexual exploitation as prostituted children. Because of that, the enforcement of children's rights have not been able to enforce and have not been consistent, although legal instruments relatively are available.

According to data released by UNICEF in 2005 revealed that two (2) million children were killed; and 4 (four) to 5 (five) million disabled children living by war. In some countries such as Uganda, Myanmar, Ethiopia, and Guatemala, children are subject to conscription policy.¹ According to the International Labor

Organization - ILO, there are approximately 200 million children economically active work or outside the home because of poverty and urbanization.² International Labor Organization (ILO) as a United Nations special agency in charge of international labor issues was revealed that the amount of 7% (seven percent) of children in Latin America are involved in labor, in the Asian region were estimated to be 18% (eighteen percent) children become child labor, and the greater part of which are in Africa estimated to be 25% (twenty five percent).

Meanwhile in Indonesia, according to data released by the Central Bureau of Statistics (BPS), an estimated number of 2.4 (two point four) million children aged 10 (ten) to 14 (fourteen) years are economically active, not to mention children under the age of 10 (ten) years. Figures released by BPS was conservative, that is still small compared with reality-age children are out of school learning that amounted to 6.5 (six point five) million. Even researchers from several institutions who are concerned with the problem of child labor refer to larger numbers, such as Irwanto revealed 6 (six) million children work, and other studies have estimated that approximately 10 (ten) million.³

With regard to child labor and school dropouts, the result of the conflict in Aceh war as DOM, in 1989-1998 there were 4521 (four thousand five hundred and twenty-one men) children become orphaned. Then the riots in Jakarta on May 13-15, 1998 engulf tens of thousands of lives. Shootings and riots in Solo, Central Java on 14-15 May 1998, riots in Medan, North Sumatra dated May 2 to 8, 1998, riots in Luwu, South Sulawesi, 11-13 September 1998, heinous murder in Banyuwangi, September-October, 1998, Trisakti and Semanggi tragedy May 12, 1998 and November 13 to 14, 1998, riots in Ketapang, Jakarta, 22 November 1998, riots in Porsea, North Sumatra, 23 November 1998, riots in Kupang, NTT, 30 November 1999, riots in Poso, Sulawesi Selatan, December 25, 1998, Authority operations in Aceh, December 1998 - January 1999, shooting Tengku Bantaqiah, July 23, 1999 the number

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¹ Muhammad Joni dan Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak Dalam Perspektif Profesi Hak Anak*, (Bandung: PT. Citra Aditya Bakti, 2006), p. 1

² ILO, "IPEC Programme Document", 1993, p. 4.

³ Irwanto, 1997, *Perlindungan Anak Prinsip dan Persoalan Mendasar*. Makalah pada Seminar Kondisi dan Penanggulangan Anak Jermal, LAAl. Medan, p. 8

of students who brutally murdered 79 people, riots in Karawang, West Java, January 7, 1999, riots in Ambon, Maluku, 19 to 23 January 1999, the riots in Haruku, Saparua, Maluku, 14 February 1999, riots in Sambas, West Kalimantan, February 22 to 25, 1999, riots in Halmahera, Maluku, 23 to 24 February 1999, the riots in Ternate, P. Hunt, and Ambon Maluku, March-April 1999 and February 2009 March, plus Sampit riots in East Kalimantan.⁴

Through the United Nations (UN) that have endorsed the Convention on the Rights of the Child (UN's Convention on the Rights of the Child) on 20 November 1989, which until now has bound 191 (one hundred and ninety-one) participating countries (state parties), then the effort of promotion, dissemination and enforcement of the rights of children driven to the whole world, especially in countries that have ratified the Convention on the Rights of the Child (CRC).

Indonesia as a member of the United Nations and the parts of the international community have ratified the CRC in 1990. Ratification of the CRC was done through Presidential Decree (Decree) No. 36 Years of 1990. Indonesia is the earliest country to ratify the Convention on the Rights of the Child.

Islamic dimension in putting human rights of the children are very broad and noble teachings of social life. Indonesian society is a collection of a bunch of marginal human, and every human being, without exception, always experience a period called childhood. So that child rights is seen as the seed of a society. In this view, Abdur Rozak Hussein stated as follows: If the seeds of the child in the community is good then surely the public will be formed into a society that is good also, further said: Islamic states that children are the seeds that will grow to form a society in the future will come.⁵

Children need to have legal protection to guarantee their rights. They are country's most important asset. They are the successor to the ideals of national struggle. It is to be hung all the expectations of the nation in the future. Therefore, it is appropriate that the most attention is given in order to meet a better tomorrow. They need to be given to good education, health, affection and attention in addition to food and clothing, so that they can develop their personal properly.

Responsibility for the maintenance of children is the responsibility of all parties (government, communities and families). Family (parents) are the first and foremost responsible for the maintenance of the child, who is mentioned in Law No. 4 of 1979 on Child Welfare.

In the appendix of Presidential Decree No. 129 of 1996 on the National Action Plan on Human Rights of Indonesia stated that "the implementation of human rights conventions in which was passed on the promotion and enhancement of the content of the protection of rights, namely: a) increase the role available national institutions (Presidential Instruction No.2 of 1989 on the National Committee for Children Welfare Development) in order to implement the Convention on the Rights of the Child, b) establish a child protection agency as an independent body in the field of child protection.

Based on the background of the problem, the issues discussed in this paper is how definition of human rights in general, children's rights in national law and Islamic law, and legal protection of children in the national law and Islamic law.

The method used in this study is a content analysis,⁶ research that is in-depth discussion of the contents of written documents from the book and other scientific literature relevant to the legal protection of children in the perspective of human rights in Indonesia, an analytical approach to the study of Islamic law.

II. DEFINITION OF HUMAN RIGHTS IN GENERAL

The term of human rights or basic human rights, which is the translation of foreign terms such as "droits de l'homme" section of the "declaration des drits et du citoyen de l'homme" (France), or "menselijke grondrechten" (Netherlands), "fundamental human rights" (UK), and "huququ al asasiyah" (Arabic). In general, more widely used in Indonesian terms of human rights.

Actually, the human rights it is an area that is not clearly limit the issues covered in it. However, it should be examined some meaning or definition put forward by scholars. It is intended to address problems that have been mentioned above. The understanding of human rights are the "rights of human beings by nature and cannot be separated rather than intrinsically and because it is sacred".⁷ Meanwhile, Marbangun Hardjowirogo⁸ believes that human rights are rights that allow it to live unmolested and life as a citizen of a life together. Then G.J. Wolhoff⁹ gives the sense that human rights are a number of rights as if rooted in the human person where such rights cannot be removed or lost from the human life. Thus, human rights are basic rights or fundamental rights brought by humans from

⁶ R. Babbie, *The Practice of Social Research Practice* (Belmont: Wadworth, 1977), p. 75.

⁷Kuncoro, *Hak-Hak Asasi Manusia dan Pancasila*. (Jakarta: Pradnya Paramita, 1976), p. 19.

⁸ Marbangun Hardjowirogo. *Hak-Hak Manusia*. (Jakarta: Yayasan Idayu, 1991), p. 7

⁹ G.J. Wolhoff, *Pengantar Ilmu Hukum Tata Negara Republik Indonesia*. (Jakarta: Tinta Mas. 1990), p. 143.

⁴F.S.Swanoro, "Maraknya Pelanggaran HAM Berat di Indonesia", Analisis CSIS.Tahun XXIX/2010, No.2, Jakarta, hlm. 211-212.

⁵Abdul Rozak Husein, *Hak Anak Dalam Islam*, (Fikahati Aneska, 1992), p. 19

birth as a gift from Almighty God. These rights are the basis of other rights and obligations.¹⁰

Moreover, human rights are also listed in the Preamble to the Charter of the United Nations which reads "for the sake reinforce belief in human rights, the price and the degree of human dignity, the same rights, both men and women and for all nations large and small ... "further provisions concerning human rights are set out in several articles of the UN charter such as Article 1. 13. 55. 56. 62 and 76."¹¹

The view of the conception of human rights in addition to what has been described above, was also found by the Islamic conception. Human rights in Islam is defined as a legal ownership, rights and precious possessed by every individual from birth regardless of difference, race, tribe, nation or religion.

Because of the nature of human rights, then anyone who tried to seize the moral sanction as an anti-human actions. In the Qur'an there is a very real gesture that every individual has the right to life and the primordial obtain the same dignity and noble life before God and fellow human interaction. So much so that a person's right to life that Allah has strongly condemned the murder (Surah 2:72, 2:85, 2:91, 3:112. 4:93, 6:151).

According to the version of Islam, which is the first human rights violations occurring in the world once it is the murder of the son of Adam, Habil (Abel), by his brother Qabil (Cain) (Cain killed Abel because not willing to see Abel has a happy life (as husband and wife) with Cain's twin brother, Iqlima, who is pretty good-looking.

Supposedly, according to Cain, Iqlima it must be mated by Adam to the Cain and Abel mated with his own twin sister who has a less attractive face that is Labudda. As a result of the dissatisfaction and reckless, then Cain killed Abel. Thus excerpts history of human rights violations told by Allah in the Qur'an Surah Al-Maidah: 30)

Human life is sacred and should not be violated by anyone. That holiness should not be revoked except by the power of Shari'ah and through the adopted procedures. It is expressly stated in Q.S. Al-Maidah: 32 which means "he who kills a human being, not because that person kills another person, or for spreading mischief in the land, it is as if he has killed all mankind.

Islam does not justify someone forcing his will on others, because the imposition of the will violates the rights of the man himself. Even more, the coercion of religious believe (in this case Islam) was not allowed. It is explicitly mentioned in Surat Al-Kahf: 29, which means "God gives freedom to all his servants if he would like to be a believer or not".

The same thing in another verse of Surat Al-Kafirun: 6, Allah affirms "lakum dii nukum wa liyaa diin", that is, there is no compulsion in religion (Sura Al-Baqara). That's the common thread of respect for human rights in Islam. In terms of faith in the creator, Allah gives freedom of choice to His servant, especially relating to other areas. In this case Islam upholds these rights.

Furthermore, Islam does not declare human rights was only at one place, but scattered in several verses of the Qur'an. Basic rights that are fundamental to the development of rights rights that declared the following, among others: the right to life (Surah Al-Maidah: 30-32), freedom (Surat ash-Shura: 41), the right of equation (Al -Ahqaf: 19), the right to justice (Surat an-Nisa ': 49), the right of protection against tyranny (Surat al-Ahzab: 58), the right to protection from torture (Rawahu Hadith Ibn Majah with a sahih sanad), the rights of individuals in the name of minority (Surat al-Hujarat: 12), the right to shelter (Surat al-Tawbah: 6), minority rights (Surat al-Baqara: 225), the right to work in the life (Surah Ash-Shura: 38), the right of free speech (Surat al-Ahzab: 60-61), the right of freedom of religion (Surah Al-Kafirun: 6), the right to preach (Surah Yusuf: 108), economic rights (Surah Al-Maidah: 120), the protection of the rights owned (Surat al-Baqara: 188), the rights and obligations of workers (Surat al-Ahqaf: 19), the right to enjoy basic foods (Surat al-Ahzab: 6), the right to build a family (Surat an-Nisa: 1), the rights of wives (Surah Ath-THALAQ: 6), the right to education (QS Al-Isra: 23-24), and the right of individuals to protect privatization (Surat al-Hujarat: 12).

Then, when viewed in the Constitution of 1945, provisions governing human rights are more than any other problems, and a number of chapters on human rights, which consists of Articles 1, 2, 3, 18, 26, 27, 28, 29, 30, 32 and Article 34 of the Constitution of 1945, Article number 12.¹²

M. Yahya Harahap, in Iman Jauhari said there are some things that need to be recognized by law enforcement officers, namely:

- Human rights has developed into "ideology" that global (universal), so that human rights become a "concern" of the international community.
- Ruler (government) should be the "servant" of society, so that people really feel there is "protection".
- Some of the keywords of Human Rights, (1) "to take steps", in the form of a series of efforts to positive action to improve the quality of human rights protection, (2) "to guarantee" human rights in the sense of relief for any violation of human rights, (3), "to ensure" rights in the sense of any right response is worth of human rights (4), "to recognize", in the sense of acknowledging that human rights are

¹⁰A. Mansyur Efendi, *Tempat Hak-Hak Asasi Manusia Dalam Hukum Internasional/ Nasional*. (Bandung: Alumni, 1980), p. 20.

¹¹M. Djamil Usamy, "Jaminan Hak Asasi Manusia (Suatu Kajian Yuridis Empiris). *Kanun Jurnal Ilmu Hukum*. No. 22 Edisi April 1999, F.H. Unsyiah. Darussalam - Banda Aceh. p. 3.

¹²*Ibid*, p. 6-7.

inherent to any individual or group, (5) "to under take", in the sense of trying to protect all human rights in all times and places, (6) "to promote", in the sense of improving the quality of human rights protection in the life sector.¹³

III. CHILDREN'S RIGHTS ACCORDING TO NATIONAL LAW AND ISLAMIC LAW

The term child means many things, especially if said child was followed in other words, such a derivative child, little boy, country boy and so on. The concern here is the definition of a child in civil law, particularly in relation to the family, such as biological children, boys and girls, legitimate children and illegitimate children, the eldest and youngest children, stepchildren and legitimate adopted children, foster child, children's nephew, the son of a banana, discordant children (illegitimate) and so on.¹⁴

Child development is a stage in human development, life and development of children seen in a historical question. We should pay attention to other developmental stages to identify and educate children, such as stages of development earlier or later life, all of which are not seen as sheets of loose scattered life, but as a straight path to the divine pleasure.¹⁵

Therefore, for the sake of children and their future, then the people of Aceh, where his wife had died, frequently do the marriage by marital "ganto tika" or so-called "change mat" with his wife's sister, who is not married yet. It is given to the maintenance of the babies, because when babies are left to be taken care by his/her stepmother who has very close family ties, they do not worry things happen that are not desirable to the future of their children.¹⁶

In connection with the above description, it can be seen constitutionally the meaning of child, Article 1 Convention on the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1989 stated "the child is any person under the age of 18 years unless to the child that adulthood is attained earlier". Whereas in point 2 of Article 1 of Law No. 4 of 1979 on Child Welfare mentioned "Child is a person who has not attained the age of 21 (twenty one) years and has never been married". Children are God's mandate that has to be maintained and educated properly. Without supervision or maintenance of the parents, it is

difficult for a child expected to be useful for religion and the state.

Sugiri said "as long as the process of growth and development in her/his body, the person is still a child and into adulthood when a new development and growth process was completed, so the age limit for children is the same as the beginning of becoming an adult, which is 18 years for women and 20 years for men, as well as in the United States, Yugoslavia, and other western countries".¹⁷

Children as one element of a family, have interpersonal relationships in the family, such as in this case is the child's relationship with their parents, children with other fellow children, children with relatives members of the parents, mothers or father.

According Koentjaraningrat in Soerjono Soekanto, a family function as:

1. Groups, in which the individual can basically enjoy major support from others and security in life.
2. Groups in which the individual when he was a kid and have not got a care, helpless and the beginning of their education.¹⁸

The definition of "family" here is pure family by family system (family system principal), comprising the father, mother and child, not the family according to the extended family system, which consists of father, mother, son, grandfather, grandmother, in-laws, nephew and so on, as found among the people of Indonesia.

A family according to pure family system is the smallest family unit in society and the state. If this smallest unit is good and prosperous, then by itself the state and society would be good and prosperous. Therefore, Islam is concerned about the formation and development of the family. It is evident that in the Qur'an and hadith are dozens of verses from some of the letters and dozens of hadith, which discuss family issues.

Article 1 point 4 of Law No. 4 of 1979 stated that "the family is the smallest community unit consisting of father and/or mother and child". While in the preamble of the convention of children's rights is mentioned that "The family as the core group of the community and as a natural environment for the growth and well-being of all, its members and particularly children should be given required protection and assistance in order to have a fully responsibilities in society".¹⁹

View of the child in the religious sense will be constructed in accordance with the Islamic view that makes it easy to conduct a study in accordance with the concepts of the Quran and the hadith of the Prophet Muhammad. Islam regards the definition of a child as a noble position. Children have a position or get a special

¹³ Iman Jauhari, "Tinjauan Sosiologi Hukum Terhadap Pelanggaran HAM di Indonesia", *Majalah Hukum*, No. 1 Vol. 4 Edisi April 1999, F.H. USU. Medan. p. 91

¹⁴ H. Hilman Hadikusuma, *Bahasa Hukum Indonesia*, (Bandung: Alumni, 1992), p.83

¹⁵ H. Syamsul Bahri Tanrere, "Pendidikan Anak Dalam Islam", *Buletin Dakwah*, No. 39 Tahun Ke XXVI, 1999, Medan, p. 1.

¹⁶ Iman Jauhari, "Penanganan Kasus-Kasus Perkawinan Poligami di Daerah Istimewa Aceh" *Majalah Hukum*, vol. 5 No. 1 Edisi Februari 2000, FH. USU, Medan, p. 73

¹⁷ Romli Atmasasmita, *Problema Kenakalan Anak-Anak dan Remaja*, (Bandung: Armico, 1986), p. 34

¹⁸ Soejono Soekanto, *Intisari Hukum Keluarga*, (Bandung: Alumni, 1980), p. 53

¹⁹ Muhammad Joni dan Zulchaina Z. Tanamas, 1999, *Op.Cit*, p. 133.

place in Nash of Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of *akhlakulkarimah*, so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The problem of child in view of the Qur'an are parents' responsibility.

In the meaning of Islam, the position of the child is a lend from Allah SWT to both parents, the community, the nation and the state as the heir of the teachings of Islam (Allah Revelation) that will be prosperity in the world as *rahmatan lilalamin*. This understanding gives the rights to children to be recognized, believed, and secured as the implementation of deeds received by the children from the parents, the community, state and nation. The provision is stated in Surah Al-Isra (17) verse 31, which means: "And kill not your children for fear of poverty. We shall provide sustenance for them as well as for you. Surely killing them is an enormous sin".²⁰

The right has two meanings, namely: First, "a set of rules and texts that govern the basics that should be adhered to in relation to our fellow man, either the person, or the treasure". Second, "the power to master something or something is obligatory upon a person for the other kind". Rights according to common sense, "a provision by which the Personality 'set a rule or a legal burden".²¹

Children's rights are absolute in view of the dimensions of belief and religious life of Islam, consisting of:

- 1) The right to protect the child while still in the womb of his mother (Surah Al-Baqarah (2) paragraph 233);
- 2) The right to breastfeed for two years (Surah Luqman (31) verse 14).
- 3) The right to get education, teaching, coaching, and true moral claims (Sura Al-Mujaadilah (58) verse 11 and the hadith of the prophet, it means I am not sent Muhammad but to enhance morals of mankind);
- 4) The right to inherit the property of his parents (Surat an-Nisa (4) of paragraph 2, 6 and 10).
- 5) The right to earn a living from their parents (Surat al-Qasas (28) verse 12).

In view of the international community, the rights of children to be actual, since talked about in 1924, the birth of the Geneva Convention classifies human rights in the field of welfare, where the convention is also published children's rights. On December 10, 1948, the Universal Declaration of Human Rights was born, or more popularly known as the Universal Declaration of Human Rights issued by the United Nations; child rights grouped into human rights in general. Since it is very

difficult to separate human rights on the one hand with the child rights on the other. On November 20, 1959, the United Nations deems it necessary to formulate the Declaration on the Rights of the Child, then known as the Declaration of the Rights of the Child.

Child rights in view of the declaration of children's rights as set out by the UN in 1959 include rights as follows:

- a) The right to special protection and the opportunity that is guaranteed by law (Article 2 of the DRC);
- b) The right to obtain the name and nationality or citizenship provisions (provisions of Article 3 of the DRC);
- c) The right to obtain a guarantee for the healthy growth and development (Article 4 of the DRC);
- d) Special rights for children with disabilities (mental and physical) in the education, care, and treatment (Article 5 DRC);
- e) The right to love and understanding (DRC provisions of Article 6);
- f) The right to education free of charge, at least in the elementary and junior high schools (the provisions of Article 7 DRC);
- g) The right to precedence in the protection / relief (DRC provisions of Article 8);
- h) The right to be protected from abuse, cruelty of war, and the oppression of the regime (the provisions of Article 9 DRC);
- i) The right to be protected from racial discrimination, religious, or other discrimination (Article 10 DRC).

Declaration on child rights initiated by the United Nations, can not be regarded as a provision of positive law in the community association socialized with children. The fact of the constitutional provisions of rights of children in Indonesia, that the absence of laws and regulations that protect the lives of children. The Indonesian people still need to ratify the Declaration of the Rights of the Child into a law or other regulations that are more restrictive to the rights of children in Indonesia. Protection of children's rights in Indonesia, formulated within a legal framework which is not much different with the legal provisions adults in general. For example, in Act No. 39 Year 1999 on human rights, child rights grouping in general to in Article 56 through Article 66 of Law No. 39 of 1999 on Human Rights. Form and meaning of the child's human rights formulation conclude that children's rights contained in the Declaration on the Right of the Child, which was ratified into the new provisions of the rights of Indonesian children.

In principle I Declaration of Rights of the Child, 1959 stated:

Children should enjoy all the rights set forth in this Declaration. Every child, without exception whatsoever, shall receive these rights, without distinction or discrimination of race, color, sex,

²⁰ *Al-Qur'an dan Terjemahannya*, Departemen Agama RI, p. 428-429

²¹ Tengku Muhammad Hasbi Ash Shiddieqy, 1997, *Pengantar Fiqh Mu'amalah*, Semarang: PT. Pustaka Rizki Putra, p. 121

language, religion, political or other views, proposals have national or social origin, property, birth or other status, both himself and his family.²²

Furthermore, children's rights convention that has been adopted by the UN General Assembly on November 20, 1989 also adopted by the Indonesian government by way of signing on January 26, 1990 in New York, United States, and on August 25, 1990 issued a decision of the President of the Republic Indonesia No. 36 1990 on Ratification of the Convention on the Rights of the Child.

Convention on the rights of the child, has a different outlook compared to previous international instruments. The difference was primarily, it appears from the way children seen and treated, not merely as the paradoxical placed with adults, but it is treated as a human being "filled" with all the rights that are inherent attached to the child as being humans.²³

Article 2 of the Child Welfare Act No. 4 of 1979 defined the rights of the child as follows:

- (1) Children are entitled to welfare, treatment, care and guidance based on love and care in the family and in the special care to grow and develop properly.
- (2) Children are entitled to care and the ability to develop a social life, according to the personality of the nation and to be a good citizen.
- (3) Children are entitled to care and protection, both during in utero and after birth.
- (4) Children are entitled to protection of the environment that can harm or inhibit the normal growth and development.

In the general explanation of the Child Welfare Act No. 4 of 1979, because a child spiritually, physically and socially has not had the ability to stand alone yet, then it becomes obligatory for the previous generation to assure, maintain and safeguard these interests should be done by those who nurture him under the supervision and guidance of the state, and where necessary, by the state itself. Because of this obligation, it is responsible for the care of children must also protect him from the distractions that come from the outside and from the children themselves. So the government appointed foster parent in the form of institutions such as orphanages and raised other foster parents.

Furthermore, in the explanation of Article 9 of Law No. 4 of 1979 on Child Welfare stated that the parental responsibility for the welfare of the child containing the obligation to maintain and educate the child so the child can grow and develop into a smart, healthy, filial to parents, noble character, fear of

Almighty God and willing and capable to continue the ideals of the nation.

Children are expectations of the parents, the nation that will continue the development of the state. Abdullah Bin Abdul Muhsin At Turkey says that: Childhood is a period of sowing, establishment piling, foundation-making, which can be referred to as the period of the formation of character, personality, and character of a man, so that they later have the strength and ability and be able to stand strong in pursuing a life.²⁴

Because of the children physically or mentally not able to stand alone, then the parents should be obliged to maintain and educate them. Parental obligation ends when the child is already able to earn a living themselves.

Act 1 of 1974 also provides protection to minors from adverse actions parents. In Article 48 stated "parents are not allowed to move right or pawn goods still owned by his son who is not yet 18 years old and hold a marriage unless the interests of the child so requires."

To guarantee the fulfillment of children's rights in addition to the role of government, the role of the family (parents) and the school community will determine the realization of children's rights in family and community life.²⁵

All children's rights are protected by law will be effective for the life of the child if the following requirements are met:

1. economic and social factors that can support the child's family;
2. Value of culture that provides opportunities for children's growth;
3. Solidarity of community members to improve the lives of children.²⁶

IV. LEGAL PROTECTION ON CHILD IN REGULATIONS AND ISLAMIC LAW

One of the legal protection of children is the welfare of children. Child welfare is a child's life system that can ensure growth and development with a reasonable, good spiritually, physically and socially. It is stipulated in Law No. 4 of 1979 on Child Welfare. Preamble of this Act refers to Article 34 of the Constitution of 1945, which says: The poor and neglected children maintained by the state. Thus, if the provisions of Article 34 of the Constitution of 1945 was enacted, consequently, the lives of the poor and neglected children will be guaranteed.

²² Ian Brownlie, *Dokumen-dokumen Pokok Mengenai Hak Asasi Manusia* (penterjemah Briansyah), (Jakarta: UI-Press, 1993), p. 145

²³ Bagir Manan, et all, 1997, *Peradilan Anak di Indonesia*, Bandung: Mandar Maju, p. 86

²⁴ Abdul Rozak Husein, *Op.Cit*, p. 13.

²⁵ Yusuf Thaib, *Pengaturan Perlindungan Hak Anak Dalam Hukum Positif*, (Jakarta: BPHN, 1984), p. 132.

²⁶ Irma Setyowati Soemiro, *Aspek Hukum Perlindungan Anak*, (Jakarta: Bumi Aksara, 1990), p. 21.

Barda Nawawi Arief uses the term "legal protection of children" and is defined as legal safeguards against various freedoms and rights of children (fundamental rights and freedom of children) as well as a wide range of interests related to child welfare.²⁷

Child protection is an effort to hold each child may exercise his rights and obligations. The protection of children is the embodiment of justice in a society. Thus the protection of children should be sought in many areas of life of the state and society. Child protection activities is a legal action brought as a result of the law. Hence, it needs legal guarantees for the protection of the child's activities. Law assurance²⁸ needs to be put in the continuity of children's protection and prevent abuses that brought unintended negative consequences in the implementation of child protection. From the broad outline then that child protection can be divided in two senses, those are:

1. Judicial child protection, including protection in:
 - a. Public law
 - b. Civil law
2. Non judicial protection, including:
 - a. Social field
 - b. Health
 - c. Education

So the juridical protection of children is, concerning all the legal rules that have a direct impact on the lives of children in the sense of a person's legal order for the child's life.²⁹

In connection with the above description that the issue of legal protection for children is one of the approaches to protect Indonesian children. Therefore, the problem cannot be approached solely juridical, but need a broader approach, namely economic, social and cultural.

According to Article 4 Law No. 23 of 2002 on Child Protection stated that children are entitled to live, growth, and develop properly and get protection from harm and discrimination.

According to Arif Gosita, child protection is "an attempt to protect the children to exercise their rights and obligations. Child protection law is the law (written or unwritten) that ensures the children can actually carry out their rights and obligations."³⁰

Bismar Siregar said that the legal aspects of child protection are more focus on the children's rights and not their obligations, because the child has not been burdened with the obligation legally.³¹

In a society, each person has their own interests, which are not only equal, but sometimes there is a conflict. Civil law determines that the people in relationships and interactions within the community have to know and respect each other to respect the rights and obligations between people, so that the interests of each can be guaranteed and is not disturbed.³²

Bismar Siregar, et al said that the issue of legal protection for children is one of the approaches to protect Indonesian children. Therefore, the problem can not be approached solely juridical, but need a broader approach, namely economic, social, and cultural.³³

In Islamic law, the immature person is called saqhir or sabi, whereas an adult called baligh. Law of the child shall remain in force, until the child was older. It is in the Word of Allah, which means: "And you shall test the orphans until they old enough to get married. Then if you think that they are smart, clever enough to maintain the property then let you handed them the treasure. (Q.S. An-Nisa (4): 6).³⁴

So to make the perfect transaction, we must wait until the child was older. And here, the meaning of adult is old enough to reproduce, and there are signs of adult males on son, there are signs of adult women in the daughter. This is a reasonable adult, where those signs are not there before the age of 12 (twelve) years for the boys or 9 (nine) years for the girls. Therefore, if a child says he was grown, after he reaches this age, then his statement is acceptable, because he alone is to understand more about whether he/she is adult or not, and children usually do not want to lie in this matter.³⁵

Then, if for example the child has passed this age but the indicated signs are not visible yet, then both the son and daughter, both alike to wait until they are 15 (fifteen) years, in the opinion of Abu Yusuf and Muhammad Ibn ' Hasan, and 18 years for son, 17 years for daughter, according to Abu Hanifah. This provision is taken from the hadeeth narrated by Abdullah Ibn Umar, he said: "I am faced with the Prophet Muhammad to register, to the battle of Uhud, and at that time I was 14 (fourteen); then he would not let me join. Then I was exposed to him for Khandak war, being at that time I was 15 (fifteen) years; then he let me go".

The experience of Omar Abdullah is the reason that fifteen years is a measure of adult age, and it is the same for men and women, men are considered strong enough to engage in war.³⁶

School of Hanafy explained that the Head of State in charge of providing for the poor people, and the judge is entitled to make demands that poor people

²⁷Aminah Aziz, *Aspek Hukum Perlindungan Anak*, (Medan: USU Press, 1998), p.27.

²⁸ Arif Gosita, *Masalah Perlindungan Anak*, (Jakarta: Akademi Pressindo, 1989), p. 19

²⁹ Irma Setyowati Soemitro, *Op.Cit*, p. 13.

³⁰ Arif Gosita, *Op. Cit.*, p. 52-53.

³¹ Irma Setyoyawati Soemitro, *Op. Cit.*, p. 15.

³² Hasan Basri, *Psikiator dan Pengadilan*, (Jakarta: Ghalia Inbdonesia, 1982), p. 161

³³ Bismar Siregar, et.al, *Hukum dan Hak-Hak Anak*, (Jakarta: Rajawali, 1986), p. 22

³⁴ Al-Qur'an dan Terjemahannya, *Op.Cit*, p. 115.

³⁵ Bismar Siregar, et. al., *Op.Cit*, p. 24.

³⁶ Aminah Aziz, *Op.Cit*, p. 42.

were given a living by state. Their livelihood was so taken from the treasure-trove of heritage that no heir in the state treasury, which collects the scattered treasures, which no owner.³⁷

According to M. Yahya Harahap, the maintenance of the child becomes:

1. The responsibility of parents to supervise, provide appropriate services and provide for the child's life.
2. Maintenance in the form of supervision and care, and the child is living appropriately continuously until the child was older.³⁸

According to Paul Wetty: "Children need a sense of love, or serenity and understanding and encouragement from both parents (mother and father) as well as others. With summary we can say that the affection is to be fulfilled for all (every) child."³⁹

RI Suhartin C argues that: "For the sake of the good growth of children, the parents must meet physical needs such as eating, drinking and sleeping. The need for security or protection, the need to be loved by his parents, self-esteem needs and needs to express themselves both in writing and orally.⁴⁰ About earning of living, most of scholars agree that 'living and children's clothing from birth to adulthood is borne by the father'.⁴¹

Furthermore, Zaid H. Alhamidi suggests: "Be a mother to educate their children in the concerns and simplicity and fortitude in addition to educate and teach them (the children) faith, cleanliness, noble character, encouraging them to do good and prevent them from doing crime and nurture them with affection.⁴²

The obligation to maintain the child in Islam called hadhanah, which is the maintenance of a child that has not been able to keep an eye on himself, by way of organizing something that brings the benefit of children, to train and educate and nurture the soul and moral growth.⁴³

In Article 45 paragraph (1) of Law No. 1 of 1974 mentioned that "the obligation to maintain and educate the children is charged to parents". Obligation of the father is to meet living expenses in addition to caring for children, educating and guiding until they are adults. Such obligations are also borne by the mother, but the mother's obligation is more emphasis on the maintenance, education and child care. "Educating is to maintain, lead and manage all the rights of children."⁴⁴

In Child Welfare Act stated that the parent is the first persons who responsible for the creation of the welfare of children spiritually, physically and socially. Responsibility is borne by the parents as both physically and mentally children have not been able to take care of and feed themselves.

The existence of such responsibilities because there is a child's relationship with their parents based on blood ties. According to customary law, the legal effect of the presence of parents with children are:

1. The obligation of parents to take care of their children;
2. In the marriage of daughter, father becomes the guardian;
3. Prohibition of marriage between children and their parents.⁴⁵

In view of the Islamic law, the obligations of parents on the survival and development of children is entrusted (trust) that God entrusted to the child's parents. But according to Bismar Siregar, "What many of the parents who have children, but he forgot that the child is a blessing and also the trust of Allah SWT."⁴⁶

In a hadith narrated by Abu Dawud, the Prophet Muhammad said which means "to give a good name, giving good education physical education and spiritual education, to give the child the skills and marry him/her with each candidate in accordance with Islamic law".

Then Islamic teaching determines that believers should maintain himself and his family (wife and children) from the torment of hellfire, protect themselves from destruction also means protecting his family from the torment of the Fire.

Therefore, the parents not only care for the children in terms of outward, but also includes a broad sense, the achievement of a balance between body and soul and self-protection from disease.⁴⁷

Children are God's creatures that should be respected and honored as God's Word which means "And we actually have glorified the children of Adam" The Holy Quran, Surah Al-Isra (17) verse 70. Hence one should pay attention to and guide their children to the straight path and reasonable and maintain his honor.⁴⁸

Thus the legal protection of children should be made jointly by her father and mother and not by his mother alone because H. Abdullah Shah said "he has been quite busy due to take care and educate their

³⁷ *Ibid*, p. 44

³⁸ M. Yahya Harahap, *Op.Cit*, p. 123

³⁹ Paul Wetty, *Anak-Anak Yang Cemerlang*, (Jakarta: Bulan Bintang, 1980), p. 70

⁴⁰ R.I Suhartin. C, *Cara Mendidik Dalam Keluarga Masa Kini*, (Jakarta: Bhatara Karya, 1986), p. 47.

⁴¹ Tengku Muhammad Hasbi Ash Shidieqy, *Hukum Fiqh Islam*, (Jakarta: Bulan Bintang, 1969), p. 38.

⁴² Zaid H. Alhamidi, *Fiqh Islam*, (Jakarta: Attariah, 1981), p. 403.

⁴³ Zahary Hamid, *Pokok-Pokok Hukum Perkawinan Islam di Indonesia*, (Bandung: Bina Cipta, 1987), p. 70

⁴⁴ Sulaiman Rasyid, *Fiqh Islam*, (Jakarta: Attahiriah, 1976), p. 403.

⁴⁵ Soerjono Soekanto, *Hukum Adat Indonesia*, (Jakarta: Rajawali, 1981), p.,4.

⁴⁶ Bismar Siregar, *Renungan Hukum dan Iman*, (Jakarta: Fikira, 1988), p. 28

⁴⁷ Dewan Ulama Al-Azhar, Penterjemah Alawiyah Abdurrahman, *Perawatan Anak*, (Jakarta: Al-Bayan, 1991), p. 34

⁴⁸ Muhammad Ali Quthb, Translated by Bahrun Abubakar, *Op. Cit.*, p. 72

children. It is a big job, in addition to the feeling of greater affection than men affection".⁴⁹

H.M. Hasballah Thaib said, "in terms of severity of the work does not need to see the hardiness of the job but rather the value of the job for the benefit of family togetherness and their future and their children".⁵⁰ However, "their work in educating their children is a worship and struggle".⁵¹ So their children not to be wasted, because the child as God's mandate to be given legal protection to them.

Parents are responsible before God for his children's education. Because they are the generation who will hold the baton of religious struggle and caliph in the earth. Therefore, if the education of the children is well, then blessed are to the parents, both in this world and in the hereafter. Conversely, if the parents neglect on their education, it will be miserable, from the world up in the hereafter. Did not the Prophet have asserted: "Every of you are a leader, and will be held responsible over the people they lead (Reported by Imam Bukhari and Muslim).

Prophet also gave khabar excited to parents who successfully educate their children: "By Allah, that the instructions given by God to man through you is better for you than the wealth of many" (Bukhari and Muslim). Thus educate children to successfully get a guidance of God is incomparable richness value price.

Good news from the Prophet to parents, is also presented by Imam Muslim in a history that asserts: "When a person dies, all his deeds end, except three cases: *Shadakah jariah*, taken benefit science and pious children who pray for both parents".

Because of the above, then the person is obliged to maintain themselves from things that do not deserve, as well as first run religious orders as well. Because children are more likely to imitate and follow the customs that exist in the environment. That is, to educate children with examples of direct behavior is better than only with the advice in the form of speech. So, if parents have a habit of doing things that are good, then their children will be a pious man. Because since childhood has been forged by the good things,⁵² are: instilling values of Tawhid, educate Prayer, educate Morals, educate Honesty and Fairness.

V. CONCLUSION

Child protection is an effort to hold each child may exercise their rights and obligations. The protection of children is the embodiment of justice in a society. Thus the protection of children should be sought in

many areas of life of the state and society. Child protection activities is a legal action brought as a result of the law. Hence, it needs for legal guarantees for the protection of the child's activities. Legal certainty necessarily to arrange for the continuation of child protection activities and prevent abuses that brought unintended negative consequences in the implementation of child protection. Child protection can be divided in two senses are: a) the judicial protection of children, which includes the protection: public law field, and the field of civil law, b) non judicial protection, including: the social, health, and education. So this judicial protection of children is concerning all the legal rules that have a direct impact on the lives of children in the sense of a person's legal order for the child's life.

In view of the Islamic law, the obligation of parents on the survival and development of children is entrusted (trust) that God entrusted to the parents of the child. Islam regards the notion of children as a noble position. Child has a special position in the Nash Al-Quran and Al-Hadith. Therefore, a child within the meaning of Islam must be treated humanely and given education, teaching, the skills of *akhlakulkarimah* so that the child will someday be responsible in promoting themselves to meet the needs of favorable future. The parents responsible to problem of the children in the view of the Qur'an.

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⁴⁹ H. Abdullah Syah, *Harta Menurut Pandangan Al-Qur'an*, (Medan: IAIN Press, 1992), hlm, 37

⁵⁰ H.M. Hasballah Thaib, *Hukum Benda Menurut Islam*, (Medan: FH. Undhar, 1992), p. 34

⁵¹ H. Abdullah Syah, *Op. Cit.*, p. 47

⁵²) A. Mudjab Mahalli, *Kewajiban Timbal Balik Orang Tua Anak*, (Yogyakarta: Mitra Pustaka, 1999), p. 135

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