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THE CHILD RIGHTS IN ISLAMIC LAW WITH A SPECIAL FOCUS ON ACEH

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Abstract: Child rights has become global concern, indicated from several law instruments which legislated by several countries in the world. In international context, United Nations has created several laws, including protocols and resolutions to protect rights of children. Those laws have consisted of soft-law which sometimes having no hard sanctions. In Indonesian context, there are a number of law instruments protecting child rights such as Law of Child Protection. However, the Law have not fully covered the implementation of Islamic law in Aceh. A number of Qanun (bylaws) in Aceh have not specifically protected child rights. There are still a lot of norms in Islamic criminal law not defining child rights. In Islamic law, Al-Quran and Prophet Muhammad have paid serious attention on children rights. Islamic law has given greatest care to safeguarding all that is needed to guarantee a wholesome psychological climate for the rearing of children, an environment wherein they learn about the world formulate their norms and behaviour.

Keywords: Child Rights, Islamic Law, Islamic Law in Aceh

Abstrak: Hak-hak anak telah menjadi perhatian global, sebagaimana ditunjukkan oleh instrumen-instrumen hukum yang telah disahkan di beberapa negara di dunia. Dalam konteks internasional, Perserikatan Bangsa Bangsa (PBB) telah menciptakan beberapa undang-undang, termasuk protokol dan resolusi untuk melindungi hak-hak anak. Undang-undang tersebut terdiri dari hukum lunak, yang terkadang tidak memiliki sanksi berat. Dalam konteks Indonesia, terdapat beberapa instrumen hukum yang melindungi hak-hak anak, contohnya: Hukum Perlindungan Anak. Namun, undang-undang tersebut belum sepenuhnya mencakup pelaksanaan hukum Islam di Aceh. Beberapa Qanun di Aceh belum secara khusus melindungi hak-hak anak. Selain itu, masih banyak norma dalam hukum pidana Islam yang tidak mendefinisikan hak anak. Dalam hukum Islam, Al-Quran dan Nabi Muhammad SAW telah memberikan perhatian serius terhadap hak-hak anak. Hukum Islam telah emberikan perhatian besar untuk melindungi semua yang memerlukan perlindungan, demi menjamin iklim psikologis yang sehat untuk membesarkan anak-anak di lingkungan di mana mereka belajar tentang dunia yang merumuskan norma dan perilaku mereka.

Kata Kunci: Hak Anak, Hukum Islam, Hukum Islam di Aceh

Introduction

Islam is revealed mainly to render blessing for the whole universe (*rahmat al-'alamin*), and Islamic law is intended to uphold five main objectives (*maqasid al-shari'ah*) of protecting life, faith, intellect, progeny and property. This protection is even more emphasized among the weaker and marginalized members of the human society, such as children, especially orphaned children, women, the poor and the destitute. However, the reality on the field does not always reflect these ideals. This paper seeks to find out the points of convergence and divergence between Islamic law and the 'secular' laws concerning child rights and protection.¹ In doing so, the discussion is also focused at determining the specific Islamic injunctions that support the major provisions of the convention and laws.² The last section of the paper will shift focus on the conditions of the implementation of shari'ah and the conditions of child rights and protection in Aceh, the only province of Indonesia which has the authority to implement shari'ah comprehensively.

Children In Islamic Countries

More than one quarter of the world's 2 billion children live in Muslim countries - members of the Organization of the Islamic Conference - where they represent more than 40 percent of the Muslim population. OIC member states have committed to achieving the Millennium Development³ and 'World Fit for Children'⁴ goals, and by ratifying the Convention on the Rights of the Child have affirmed the principles of children's rights. Much progress has been in these areas, but much remains to be done.⁵

In OIC countries, about 4,3 million children under five die each year from preventable diseases and malnutrition - over 60 per cent of them before reaching their first birthday. About 6 million children under five suffer from malnutrition in the form of stunting, with low height for their age. About 23 per cent of the total population have no access to safe drinking water, and 45 per cent lack adequate sanitation. Children in sub-Saharan Africa, in particular, are facing a life-threatening crisis as a consequence of armed conflict, HIV/AIDS and poverty.

Globalization, poverty and inequality have aggravated these problems and created new ones. Rural to urban migration has caused a growth of slums and shantytowns, and the breakdown of families has forced increasing numbers of children to fend for themselves. Ongoing conflicts in some countries have destroyed social structures that may have already been weak. These phenomena have placed tremendous strain on the abilities of states to provide basic social services for all and to protect vulnerable children.

- 1 See also Muhammad Siddiq Armia, 'Implementing Islamic Constitutionalism: How Islamic Is Indonesia Constitution?' (2018) 15(2) Al 'Adalah Journal 437-450.
- 2 Justice R. Mughal, and Ahmad Munir, 'A Review of the Book' (2018) Rights of the Child in Islam: Theory, Mechanism, Practices and Convention on the Rights of the Child by Muhammad Munir. See Also Abdullah Saeed. Human Rights and Islam: An Introduction to Key Debates Between Islamic Law and International Human Rights Law (Edward Elgar Publishing 2018). See also Asha Bajpai, Child rights in India: Law, policy, and practice (Oxford University Press 2018).
- 3 Millennium Development Goals (MDGs) was adopted by the Millennium Summit in September 2000, which consists of the eight goals; (a) eradicate extreme poverty and hunger, (b) achieve universal primary education, (c) promote gender equality and empower women, (d) reduce child mortality, (e) improve maternal health, (f) combat HIV/AIDS, malaria and other diseases, (g) ensure environmental sustainability, and (h) develop global partnership for development.
- 4 A World Fit for Children' was a document emerged from the Special Session of the UN General Assembly on Children, held on May 2000, in which 190 high-level national delegations, including 69 Heads of State adopted it by consensus and served to complement the goals defined at the UN Millennium Summit.
- 5 Information and data in this section are gathered from Investing in the Children of the Islamic World (New York: UNICEF 2005).

Education is a precondition for economic development and the fight against poverty, and the Qur'an sets the education of girls and boys as a high priority. Yet despite progress, primary school participation remains below 60 per cent in 20 OIC countries. Gender disparity persists, and as a result, only 26 out of 57 OIC members are on course to achieve the MDG target of gender parity in primary education in 2005.

The protection of children against abuse, violence and exploitation is an essential element of Islam. In many countries, the long silence on many protection issues is being broken, especially by the media – a sure sign of progress. But millions of children are still victimized by exploitation, and countless others are affected by violence at home, in schools, on the streets, in institutions and through the juvenile justice system. The lack of empirical data or clear evidence combined with the stigma that surrounds some of these issues makes it difficult to know the true extent of these problems and can hinder protection efforts.⁶

In the face of these and other problems, OIC countries are building upon the strength of Islamic traditions – self-help, solidarity, and protection of the vulnerable – to reaffirm their commitment to their children. The CRC (Convention of the Rights of the Child) and other international human rights instruments have been ratified; now the challenge is to implement them.

The Value Of Child In Islam

Islam views childhood with hope and aspiration, seeing to it as something to look forward to, seek and long for. When it is achieved, the fruit reaped is happiness of the soul, delight of the heart and elation of the chest. According to Qur'anic text, progeny is a gift from the Almighty Allah to His faithful servants. It is also one of the bounties bestowed upon them by God, as well as being a fulfilment of the hope that sincere servants of God long for. 'Unto Allah belongs the sovereignty of the heavens and the earth. He creates what He wills, or He mingles them, males and females, and He makes barren whom He wills. He is the Knower, Powerful.' (Ash-Shura, 42:50).

The Qur'an, the first source of Islamic religion, and the Sunnah, the prophetic traditions considered by Muslims as the second source, use several terms and phrase to refer to the children in the society. These primary sources refer to children as *amanah* (trust), *mata'* (gift/wealth), *fitnah* (test), *qurrat al-'ayn* (comforting for your eye). A child's birth is not coincidental but part of the Divine Plan. A child is born in the state of *fitrah* or purity. s/he must bear any burden of his/her parents or ancestors' mistakes. Besides a gift, children are also a test. Muslims are frequently tested by Allah. Children are a test or trial for each and every Muslim. Their actions or lack of actions will be judged by God. 'Your wealth and your children are more of a trial, whereas Allah! With Him is a great reward.' (Q, 64:15).

And those who pray, 'Our Lord! Grant unto us spouses and offspring who will be the comfort of our eyes, and give us (the grace) to lead the righteous (Q, 25:74).

A. Yusuf Ali gives a note on this verse with the following statement. 'We must also pray for the maintenance of God's law after us, through our wives and descendants: in our eyes they should not be mere accidents or playthings, but a real comfort and fulfilment of our spiritual longings. Perhaps, through them, as well as through ourselves, we may, by God's

6 Megan Goodwin, 'They Couldn't Get My Soul: Recovered Memories, Ritual Abuse, and the Specter (s) of Religious Difference' (2018) *Studies in Religion/Sciences Religieuses* 47.2: 280-298. See Also Soliman, Hassan Hussein, Alsharqawi Ibrahim Nagwa, and Mustafa Ahmed Younis. 'Is Tourism Marriage of Young Girls in Egypt a Form of Child Sexual Abuse? A Family Exploitation Perspective' (2018) *Journal of child sexual abuse* 27.2: 122-140. See Also Nazila Isgandarova. *Muslim women, domestic violence, and psychotherapy: Theological and clinical issues* (Routledge, 2018).

grace, be able to give a lead for truth and righteousness.⁷

More than one quarter of the world's two billion children live in Muslim countries – members of the Organization of the Islamic Conference – where they represent more than 40 per cent of the Muslim population.⁸ Addressing their needs and guaranteeing their rights will in large part determine the success and failure of efforts by the world community during the next decade to combat poverty, accelerate human development and ensure peace and security for all.⁹

In response to globalization, the Islamic community, or *ummah*, needs to carefully balance an openness to other cultures while protecting the rights of its children to learn and grow according to the values of Islam. All children – girls and boys, in all situations, always and everywhere – have the right to live and thrive, to reach their full potential. This key principle as described in *shari'ah*, the right path ordained by God, guides the implementation of provisions for children that have been established by Islam, including provisions for the family environment, health education, cultural activities, special protection, civil rights and freedoms.

It is therefore not surprising that the Convention on the Rights of the Child has been embraced by all Muslim countries. Ratification of the landmark human rights instrument commits countries to a code of obligation for children. It puts the rights of children at the forefront of global struggle for human rights, to be ensured but adult society as a matter of obligation, moral imperative and development priority. As does the Convention, Islam establishes the best interests of the child as primary consideration in actions and decisions concerning children; and the principles of *shari'ah* place corresponding obligations on the family, on society and on the state. These standards are used to guide laws, practices, budgets and policies. Governments, in particular, are encouraged to create an environment and provide the resources that ensure children receive the full benefits of these rights.

Members of the Organisation of the Islamic Conference have affirmed their commitment to children by adopting the Millennium Declaration, the Millennium Development Goals and the goals of 'A World Fit for Children', the outcome document of the United Nations General Assembly's Special Session on Children in 2002. A resolution on Child Care and Protection in the Islamic World was issued by the Cultural Affairs Committee of the Organization of the Islamic Conference and adopted by the member states at the Islamic Summit Conference in Malaysia, October 2003.

Islam and 'A World Fit for Children' share the same vision: a world in which all children get the best possible start in life; in which all children have access to free, high-quality, basic education, in which all children are protected against measles, malaria and malnutrition, are free from the terrors of war and have ample opportunity to their full human potential.¹⁰ Some advances have been made in some Muslim countries, however, in general the progress is generally lacking behind compared to other countries.¹¹ The

7 A. Yusuf Ali, *The Holy Qur'an: Translation and Commentary* (Brentwood: Amana Corp 1983) 943.

8 The 57 members of OIC are usually grouped into three subregions: African, Arab and Asian/other. Statistical data are mainly derived from *The State of the World's Children 2005*, additional calculations by UNICEF for the OIC region and sub-regions.

9 Investing in the Children of the Islamic World, UNICEF, OIC & ISESCO.

10 E Francis Peters, *The Children of Abraham: Judaism, Christianity, Islam*. Vol. 34. (Princeton University Press 2018). See Also Abd Rahman Hendun Syah, et al, 'Children as Victims in the Social Media: The Islamic Perspective' (2018) *Advanced Science Letters* 24.1: 286-288.

11 Gustav F Papanek, *Pakistan's Development: Social Goals and Private Incentives* (Harvard University Press 2018). See Also Rogge, Nicky, and Konttinen Emilia, 'Social Inclusion in the EU Since the Enlargement: Progress or Regress?' (2018) *Social Indicators Research* 135.2: 563-584.

present condition of Muslim children is still far from satisfactory. In OIC countries, about 4,3 million children under five die each year from preventable diseases and malnutrition – over 60 per cent of them before reaching their first birthday. About 6 million children under five suffer from malnutrition in the form of stunting, with low height for their age. About 23 per cent of the total population have no access to safe drinking water, and 45 per cent lack adequate sanitation. Children in sub-Saharan Africa, in particular, are facing a life-threatening crisis as a consequence of armed conflict, HIV/AIDS and poverty.

Globalization, poverty and inequality have aggravated these problems and created new ones. Rural to urban migration has caused a growth of slums and shantytowns, and the breakdown of families has forced increasing numbers of children to fend for themselves. Ongoing conflicts in some countries have destroyed social structures that may have already been weak. These phenomena have placed tremendous strain on the abilities of states to provide basic social services for all and to protect vulnerable children. Education is a precondition for economic development and the fight against poverty, and the Qur'an sets the education of girls and boys as a high priority. Yet despite progress, primary school participation remains below 60 per cent in 20 OIC countries. Gender disparity persists, and as a result, only 26 out of 57 OIC members are on course to achieve the MDG target of gender parity in primary education in 2005.¹²

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In the face of these and other obstacles, OIC countries are building upon the strength of Islamic traditions – self-help, solidarity and protection of the vulnerable – to reaffirm their commitments to their children. The Convention on the Rights of the Child and other international human rights instruments have been ratified; now the challenge is to implement them. Active partnership among OIC governments, as well as with regional and international financial institutions and the private sector, will be essential to provide the necessary funding and technical expertise.¹³

One of the important sources of cultural strengths in Islam is the family. Since independence from colonial rule (in the 1950s and 1960s), the family unit has been subject to a variety of economic and political pressures. High rates of unemployment have prompted millions of men and also women to search for work outside their original countries as far as Europe. Inflation has also meant that large numbers of women, for the first time have taken jobs outside their homes. Conflict in Lebanon, Afghanistan, and Iran, in other parts of the Muslim world, has led to family disruption through violent deaths and forced migration. The movement in almost all Islamic countries from rural to urban predominance has

12 United Nation Children's Fund, *Progress for Children: A Report card on Gender Parity and Primary Education* (no. 2 UNICEF) New York, April 2005.

13 Alok Srivastava, 'Standardizing evaluation process: Necessary for achieving SDGs—A case study of India' (2018) *Evaluation and program planning* 69: 118-124. See Also Robert Richstein, and Lins Elmar. 'Venture capital for German high-tech new ventures: disentangling the role of human capital for funding success' (2018) *International Journal of Entrepreneurship and Small Business* 33.1: 88-111. See Also T Lauchlan Munro . 'Strategies to shape the international order: exit, voice and innovation versus expulsion, maintenance and absorption' (2018) *Canadian Journal of Development Studies/Revue canadienne d'études du développement* 39.2: 310-328.

further challenged the customary lies of family life.

It is worth to mention that Islamic family law (*al-ahwal al-syaksiyyah*), one of the most important branches of Islamic law, is the axis upon which Muslim families are founded. It governs the relationship of family members, which play a vital role as a basis for the Islamic social order and is a real cohesive force, which makes civilization possible. As a matter of fact, within the family system the basic Islamic values and its teachings are transmitted. Therefore, understandably, family is a positive permanent value of Islam, as well as, necessary institution in the *Shari'ah*. Besides, enjoying a common life, as well as, raising children as the new generation, the institution of family is an important place of security, protection and nurturing of love. This is greatly contributing toward societal stability through the preservation or moral values on one hand and on the other toward individual preservation of physical health.¹⁴

Thus, the current debate throughout the Islamic world on the place and function of the family is a crucial deliberation, for it involves not only the suggestion that family responsibilities shall be passed from the family unit to the state, but the definition of the basic individual rights; those of women, men, and children. The status of women is not an isolated issue but at the core of the whole debate, for the woman has always been seen as the centre of the family unit, the hub around which all its economic, personal, and political activities revolved. Discussion of *shari'ah* family law reflect these concerns, as Qur'anic family law defines relations between men and women through legislation of marriage, divorce, child custody, inheritance, and polygyny (the Qur'an allows a man to take up to four wives if he can treat them justly and equally).¹⁵ Therefore, family law is central to the *shari'ah*, if not to Islamic religion itself.

Child Rights In Islamic Law

Observing how Islam teaches the value of children, it is not surprising to find out that Islamic law pays utmost attention to securing all that is needed to guarantee a wholesome psychological climate for the rearing of children, a climate wherein they learn about the world formulate their norms and behaviour.¹⁶

The first Islamic Ministerial Conference on the Child was held in Rabat, Morocco on November 2005. This historic two-day meeting was concluded by issuing a strong declaration calling for an end to harmful traditional practices, elimination of gender disparity in education, and urgent action to address the unacceptable high rates of child and maternal mortality in some Islamic countries.

The conference, co-organized by ISESCO (Islamic Educational, Scientific and Cultural

14 Annelies Moors, 'Debating Islamic family law: Legal texts and social practices' A social history of women and gender in the modern Middle East (Routledge, 2018) 141-175. See Also G Christine Schenk, 'Islamic leaders and the legal geography of family law in Aceh, Indonesia' (2018) The Geographical Journal 184.1: 8-18. See Also F Mervat Hatem, 'Modernization, the state, and the family in Middle East women's studies', A social history of women and gender in the modern Middle East (Routledge 2018) 63-87.

15 At present, these verses have been understood and interpreted in various ways in Muslim countries. The present legislation in Indonesia, for example, permits polygyny marriage only with strict prerequisites, including the permission from existing wife (ves) and it should be decided by the religious court. See Indonesian Matrimonial Act No. 1/1974, and Book I of the KHI (Islamic Law Compilation).

16 H Glen Elder, Children of the great depression (Routledge 2018). See also Yan Liu, et al, 'Parental Rearing Behaviors and Adolescent's Social Trust: Roles of Adolescent Self-esteem and Class Justice Climate' (2018) Journal of Child and Family Studies 27.5: 1415-1427. See Also Gali Tangir, et al, 'Children's Adjustment in a Climate of Political Violence: Comparing Mother and Child Reports' (2018) Journal of Child and Family Studies 27.1: 131-140.

Organization), UNICEF and the OIC, was hailed as a major success by the more than 200 participants. It was attended by ministers from nearly 50 Islamic countries – including Indonesia – and representatives of more than 20 international, Arab and Islamic organizations. ‘The tremendous success of this conference reaffirms the central value of children in Islamic Ummah to build a just, peaceful, and prosperous world by investing its children.’ Said Abdulaziz Othman Altwajiri, Director-General of ISESCO.¹⁷

The Declaration recalls the Resolution on Child Care and Protection in the Islamic World adopted by the 10th Session of the Islamic Summit Conference (Putrajaya, Malaysia, October 2003), which stipulated the necessity to safeguard children’s rights and fulfil the obligations of the states thereon. It also recalls the OIC Covenant on the Rights of the Child adopted by the 32nd Islamic Conference of Foreign Ministers held at Sanaa, Republic of Yemen, June 2005).

The ministers in charge of child affairs in the members states or the Organization of the Islamic Conference (OIC), and Heads of Arab, Islamic and International Governmental and Non-Governmental Organizations attended the meeting declared their commitments:

- (1) To respect and ensure the rights of each child in our societies without discrimination of any kind, irrespective of race, colour, sex, language, religion, political opinion or social status;
- (2) To adhere to the general principles of child rights, inter alia, the best interest of the child, non-discrimination, participation, survival and development, which provide the framework for all action concerning children and adolescents alike;
- (3) To preserve and enhance our common Islamic heritage to increase the awareness of the Muslim Youth of the values of Islam, and instil into them a sense of pride in the achievements of the glorious Islamic civilization; and to contribute to more understanding and tolerance among peoples and religions;
- (4) To publicize the values of Islam with regard to women and children through mass media and to disseminate the true and honourable image of Islam and the essence of its eternal Sharia.

In addition to the four basic commitments, the declaration also contains special appeals in the fields of health, HIV/AIDS, child protection against violence, exploitation and abuse, and education. The declaration also contains section on coordination and follow-up programs.¹⁸ The conclusion of a study on the convergences and divergences of the CRC and Islamic Law conducted by Institute of Islamic Studies, University of the Philippines may appropriately represent the main point of this section:

The study recognizes that the Convention on the Rights of the Child and Islamic law are complementary to each other on those provisions that do not run contrary to Islamic principles. On the level of implementation, the CRC mandates all the State Parties to follow the provisions state therein, while Islamic Law calls for individual responsibility of Muslim and adherents of Islam. The points of convergences affirm the universality and applicability of both the CRC and Islamic Law. Both laws recognize the crucial role of the family in the growth and well-being of the children. The idea of reciprocal rights between parents and children, the concept of *amanat*, of a child being a trust, and the concept of a child birth as part of the divine plan, and as a precious gift are some of the strong points in this study that accommodate

17 First Islamic Ministerial Conference on the Child ends with landmark declaration.’ Policy advocacy and partnership for children’s rights. UNICEF. See <http://unicef.org/ppolicyanalysis/index_29771.html>

18 See also Rabat Declaration on Children in the Islamic World.

major provisions of the CRC in advancing the child's best interest and protection against discrimination.¹⁹

However, the issue of implementing those sacred and honoured provisions of Islamic law, complemented and strengthened by the secular legal system both at the international and national levels, seems not that easy and simple. Even though the OIC approved Cairo Declaration on Human Rights in Islam as early as 1990, the fate of human rights condition in Islamic countries are not the good as their formulations in the Declaration. Similarly, the Covenant on the Rights of the Child in Islam which approved by the 32nd Islamic Conference of Foreign Ministers in 2005, so far has no member state of Islamic countries, not even the country who sponsored it at the first place, signed and ratified it.²⁰

Laws On Children In Indonesia

Indonesia has 76 million children, the fourth-largest child population in the world. As a result of the development problems faced by our country, children's health and education are at risk – more than two million children under age 5 are malnourished and nearly one-third between the ages of 5 and 9 are not in school. Girls and boys also face other dangers, such as child trafficking and child labour. Children under age 18 comprise 30 per cent of all sex workers in Indonesia. The morality rate of children under 5 is 36 in 1,000 births.

The rights of the children are an integral part of human rights in general, as have been promulgated in the amended 1945 Constitution and later on enacted further in Law No. 39/1999 concerning Human Rights.²¹ This Law has included specific provisions on the rights of child, the obligations of parents, family, community, government and state to provide special protection for children. Before the CRC, Indonesia had already promulgated Law No. 4 Year 1979 concerning the Welfare of the Children.

The government of Indonesia has ratified the UN Convention on the Rights of the Child (CRC) through the Presidential Decision No. 36 year 1990. It looks twelve years for Indonesia to have a new Law on Child Protection (Law no. 23/2002). This new law has been guided not only by the CRC but also the important document 'A World Fit for Children' which contains the main principles of child protection and welfare.

Indonesia has also a law regulating the special court for children (Law No. 3 year 1997). ILO Convention No. 138 concerning the Minimum Age for Admission to Employment has also been ratified in the form of Law no. 20 year 1999, and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in the form of Law No. 1 year 2000. However, it is the Law No. 23 year 2002 which is considered the most comprehensive and more in line with the existing international practices.

Article 2 of Law No. 23/2002 articulates that the child protection is guided by Pancasila and based on the 1945 Constitutions as well the basic principles of the CRC, namely: (a) non-discrimination, (b) best interest of the child, (c) rights to life, survival and development, and (d) appreciation of child opinion. The definition of the child is also accorded to the CRC provision, which states that 'a child is someone who is not year 18 years of age,

19 Carmen A. Abubakar & Marrina A, Morados, *The Convention on the Rights of the Child and Islamic Law: Convergences and Divergences: The Philippine Case* (Diliman, Quezon City: Institute of Islamic Studies, University of the Philippines, 2006).

20 Report of the Secretary General on the Follow-up to the Cairo Declaration on Human Rights in Islam, 33rd Session of the Islamic Conference of Foreign Ministers held at Baku, Republic of Azerbaijan, June 2006.

21 See also Muhammad Siddiq Armia, 'Ultra Petita and the Threat to Constitutional Justice: The Indonesian Experience' (2018) 26(2) *Intellectual Discourse* 903-930.

including the foetus in mothers' wombs. The child protection is intended to guarantee the fulfilment of child rights so that s/he can live, survive, develop and participate optimally in accordance with human dignity and honour, as well as to get protection against violence and discrimination, for the sake of creating Indonesian children with good quality, noble character and well-developed.

In accordance with the provisions of the CRC, the rights of the child can be divided into four categories, namely the survival rights, the development rights, the participation rights and the protection rights. The survival rights contain the right to life, the right to adequate standard of living, the right to health, the right to parental care and support, and the right to social security. The development rights include the right to information, the right to education, the right to leisure, recreation and cultural activities, and the right to freedom of expression.²² Furthermore, the participations rights consist of the right to one's own opinion, the right to freedom of thought, conscience and religion, the right to freedom of association, and the right to privacy. Meanwhile the protection rights are the rights to a name, nationality and identity, the protection against child abuse and maltreatment, the protection against sexual abuse and exploitation, the protection against armed conflicts and the protection against dangerous drugs.

Children In Aceh

The children of Aceh may have suffered more than any other group in the Indonesia. Their lives had been disrupted by years of civil state in their province. Many lost family members, friends, homes, schools, neighbourhoods to the waves of tsunami and continuing natural disasters. Their lot of suffering has been heightened also by rampant corruption and endless mismanagement. The ideals of Aceh people to implement Islamic Shari'ah comprehensively (*kaffah*) have been materialized with the permission to implement Islamic Shari'ah as a consequence of granting special autonomy to Province of Aceh province. However, the question remains on whether in Shari'ah-implemented region, the fate of the children is better off than their fellow friends in non-Shari'ah provinces of Indonesia.

Some researchers have suggested that the conflict in Aceh as a religious conflict about setting up an Islamic state of which the implementation of shari'ah is the least of its demands is more a myth, than prevailing reality. It should also be pointed out the privileging religion and Islam as the sole dominant factor in social life in Aceh is much more complicated and sometimes problematic, for Islam, until it is politicised, is merely one aspect of culture life. The interaction between local customary laws, Islamic law and state-sponsored new legislations has been more dynamic and fluctuated, rather than monolithic and one-sided.²³

22 Mihaela Elena Fodor, 'Protection Of The Superior Interest Of The Child Under The European Convention Of Human Rights. Cases Against Romania' (2018) *Fiat Iustitia* 2: 85-95. See Also Celine Martin, 'The UPR and Its Impact on the Protection Role of AICHR in Southeast Asia', *The Universal Periodic Review of Southeast Asia* (Palgrave Macmillan, Singapore 2018) 201-212. See Also Vanessa Hearman, 'Between citizenship and human rights: the struggle for justice after Indonesia's 1965 mass violence' (2018) *Citizenship Studies* 22.2: 175-190.

23 Discussion on this subject is dealt with in various writings, among others, see Jacqueline Aquino Siapno, *Gender, Islam, Nationalism and the State in Aceh: The Paradox of Power, Co-optation and Resistance* (London: Routledge Curzon 2003). See also John Bowen, *Muslim through Discourse: Religion and Ritual in Gayo Society* (Princeton: Princeton University Press 1993). See also John Bowen, 'Qur'an, Justice, Gender: Internal Debates in Indonesian Islamic Jurisprudence' (1998) *History of Religions*, vol. 38, No. 1. See also Muhammad Siddiq Armia (2018) *Democracy through Election: A Study on the Conflict of Norms in Aceh's Election Process*, *Journal of Southeast Asian Human Rights*, Vol.2. No.1, pp. 323-335.

The 1999 regional autonomy laws, which were implemented in early 2000, were used by many local authorities as the basis for drafting limited shari'ah regulations to be enacted at the local level. For example, districts in West Java, South Kalimantan, East Java, Gorontalo and West Sumatra have circulated regional government regulations (*peraturan daerah*) that set out rules and penalties with regard to prohibitions on gambling, alcohol, narcotic substances, pornography and the like. So far, all these regional laws deal mostly with issues of public morality which are often defined in religious (Islamic) terms.

The regulations emanating from authorities at the local level give increased power over the public behaviour of Muslim residents in the local area. They can therefore categorize as expressions of local politics. The increased power is justified on the grounds that traditional local customary laws and culture (*adat*) are intertwined with shari'ah and that the norms of *adat* for social stability and well-being are also the norms established in the Qur'an.²⁴ Thus, the power of local leaders is extended considerably because they feel authorized to intervene in areas of public morality (massage various, brothels, *khalwat* and the like) in the name of social stability. The stress on the public morality is also observed even in Aceh province, even though they have already legal foundation to implement Islamic shari'ah comprehensively. The idea of implementing 'shari'ah' as a whole at the same time is out of question and perhaps to impossible to realize. So, the problem now is where and how to start, how to initiate? To answer this question, the policy makers have to have some kind of priority list. In my conviction, children should be the first, or a least one, priority.

The focus on public morality issues and petty problems has become an end in itself. So much energy has been spent on the effect, not dealing enough on causes, let alone in implementing a visionary program for the better generations in the future. It is only natural that the hopes are still high towards the shari'ah in helping the Acehnese people, in particular their weak, but potential, young members. The success of shari'ah program, or the lack of it, in Aceh will become focal point and primary example for other areas of Indonesia.

However, it is wise also to be aware that after some time there has been growing tendency of dissatisfaction towards the on-going process of shari'ah implementation. Some segments of society begin to feel restless with the slow coming of the much-awaited fruits. Therefore, there must be a decisive move towards granting shari'ah its full-fledged power in curing the real causes of various social ills and in promoting justice and welfare in the society, and more importantly in protecting and developing the young venerable generation. In this context, a bylaw concerning child rights and protection should surely be on the list of priority.

Conclusion

It should be realized that there are certain elements of the interpretation (*tafsir*) and formulations of Islamic law (*fiqh*) which in need of re-understanding and re-interpretation. However, the poor performance of human rights, especially concerning women and children, are also caused by many other conditions, among other economic, socio-cultural, and educational aspects. One cannot deny the role played by historical background of each community, especially the legacy of colonialism. Besides, the growing wave of globalization

24 Katie Dawson, et al, 'A controlled trial of trauma-focused therapy versus problem-solving in Islamic children affected by civil conflict and disaster in Aceh, Indonesia' (2018) *Australian & New Zealand Journal of Psychiatry* 52.3: 253-261. See Also Ahmad Aripin, et al, 'Iron Deficiency Risk Factors in Undernourished Children Aged 6-23 Months in Aceh, Indonesia' (2018) *Jurnal Gizi dan Pangan* 13.3: 145-156. See Also Siti Rusdiana, et al, 'Spatial Stochastic Modelling of Adolescent and Under-Five Children Nutritional Status: A Case Study from Aceh, Sumatera Island, Indonesia' *Proceedings of MICoMS 2017* (Emerald Publishing Limited 2018) 273-281.

has benefited more the developed nation-states, and made the developing countries more as objects and victims.

Shari'ah in Aceh, in fact in Indonesia, is at the cross-road of fulfilling its promise as a foundation to build *rahmatanlil al-'alamin*, and to establish *baldattayyibahwarabbghafur* (a welfare country under bounty blessing of God). The real expediency of using, or abusing, Islamic shari'ah, to quell the uproar, to gain short-term partial goals, but at the same time strained it from venturing into combating the real cause of injustice and poverty, will eventually put shari'ah as a target of blame when those are decreasing and the heat of reality are falling on the people. Or is it the real target?

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