



FATHERLESS PRACTICE AND ITS RELATION TO CHILD CARE IN ISLAMIC FIQH AND MARRIAGE LAW IN INDONESIA

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Abstract

The phenomenon of fatherless, which is increasingly prevalent in Indonesia, has become a serious concern due to its negative impact on children's development, both physically, mentally, and spiritually. This study aims to analyze the perspective of Islamic Fiqh and the Marriage Law regarding the role of fathers in child care, identify the father's obligations in child care according to Islamic Fiqh and the Marriage Law, and determine the impact of fatherless practices on child growth. This study uses a library research method with a qualitative approach. The data used are primary data and secondary data obtained from various sources of literature, such as books, journals, and official documents. Data collection techniques were carried out through literature studies, and data analysis used content analysis. The results of the study show that Islamic Fiqh and the Marriage Law in Indonesia both emphasize the importance of the father's role in child care. Fathers have an obligation to provide sustenance, educate and guide children, as well as provide affection and attention. However, fatherless practices in Indonesia are caused by several factors, such as high divorce rates, unbalanced parenting patterns, patriarchal culture, and the death of the father. The impact of fatherless on children's growth and development can be in the form of father hunger, which is a condition of psychological damage that results in low self-esteem, difficulty adapting, slow psychological maturity, difficulty managing emotions, and lack of decision-making ability.

Keywords: *Fatherless, Islamic Fiqh, Marriage Law in Indonesia*

Abstrak

Fenomena fatherless yang semakin marak di Indonesia menjadi perhatian serius karena berdampak negatif pada perkembangan anak, baik secara fisik, mental, maupun spiritual. Penelitian ini bertujuan untuk menganalisis perspektif Fiqih Islam dan UU Perkawinan mengenai peran ayah dalam pemeliharaan anak, mengidentifikasi kewajiban ayah dalam pemeliharaan anak menurut Fiqih Islam dan UU Perkawinan, serta mengetahui dampak praktik fatherless terhadap pertumbuhan anak. Penelitian ini menggunakan metode library research dengan pendekatan kualitatif. Data yang digunakan adalah data primer dan data sekunder yang diperoleh dari berbagai sumber literatur, seperti buku, jurnal, dan dokumen resmi. Teknik pengumpulan data dilakukan dengan studi literatur, dan analisis data menggunakan analisis isi (content analysis). Hasil penelitian menunjukkan bahwa Fiqih Islam dan UU Perkawinan di Indonesia sama-sama menekankan pentingnya peran ayah dalam pemeliharaan anak. Ayah memiliki kewajiban untuk memberikan nafkah, mendidik dan membimbing anak, serta memberikan kasih sayang dan perhatian. Namun, praktik fatherless di Indonesia disebabkan oleh beberapa faktor, seperti tingkat perceraian yang tinggi, pola asuh yang tidak seimbang, budaya patriarki, dan kematian ayah. Dampak fatherless terhadap tumbuh kembang anak dapat berupa father hunger, yaitu kondisi kerusakan psikologis yang mengakibatkan rendah diri, kesulitan beradaptasi, kematangan psikologis yang lambat, kesulitan mengelola emosi, dan kurangnya kemampuan mengambil keputusan.

Kata Kunci: Fatherless, Fiqih Islam, UU Perkawinan di Indonesia

PENDAHULUAN

The biggest problem in the world today is not economic or social, but the breakdown of the family. The world is losing fathers. The fatherless generation is growing, and the absence of a father's love, while seemingly insignificant, is a profound issue. A father's love is a source of security for a child, providing them with the strength to face life's challenges. If we see many people who are easily discouraged, selfish, cruel, and so on, it's often because they lacked a father's love during their childhood. (Ir. Jarot Winarko, M.pd., et al.)

The absence of a father figure in a child's life isn't immediately apparent. The feeling of loss initially manifests as a question, a yearning for a father's presence in the child's mind. If the child doesn't receive a satisfactory answer to their longing and sense of loss, they will carry it within their hearts and continue searching. This unease will linger in their thoughts until they find the answer they seek. Even if a family, including the mother and siblings, tries to fill the void left by a father, it cannot truly replace the ideal image of a complete family – one that includes both parents and children, physically and emotionally present. (Siti Fadjryana Fitroh, 2014).

What are the causes of this situation? The rise of the fatherless phenomenon is largely due to parenting paradigms influenced by local culture. The stereotype of the father is shaped by cultural norms that deem men unfit to care for children and discourage their involvement in parenting. Meanwhile, the challenges of parenting are constantly increasing. Add to this the growing material needs of modern society, which prioritize work and the pursuit of material goals, leading to a reduction in quality time spent with children. Ultimately, the amount of time parents spend with their children decreases, and the quality of that time suffers. (Munjiat, Siti Maryam 2017).

The 'fatherless' phenomenon in Indonesia is fueled by several key factors, including high divorce rates, imbalanced parenting styles, the dominance of patriarchal culture, and the death of fathers. However, discussions about 'fatherlessness' tend to focus more on imbalanced parenting and patriarchal culture. Parenting styles that rely solely on mothers and patriarchal cultures that marginalize the father's role in child-rearing reinforce the notion that the father's role in the family is insignificant. This contributes to the growing number of children who grow up without active involvement from their fathers.

The 'fatherless' phenomenon not only violates the 1974 Marriage Law but also contradicts religious values that uphold the father's crucial role in the family. The absence of a father figure in the family can have negative impacts on a child's development, physically, mentally, and spiritually, and it violates a child's right to receive care and affection from both parents. Therefore, this research aims to delve deeper into the impact of 'fatherlessness' on children from legal and religious perspectives, seeking comprehensive solutions to address this issue.

DISCUSSION

The Role and Obligations of Fathers in Child Maintenance from the Perspective of Islamic Fiqh

1. Father's Obligation in Child Maintenance

The father's obligation in child maintenance in Islam is not only limited to physical aspects such as providing maintenance and education, but also includes psychological and emotional aspects. Here are some of the father's obligations in child maintenance in Islam;

a) Providing Nafkah (Food, Clothing, etc.):

A father has an obligation to provide sufficient and proper maintenance to his child, which aims to ensure the child's welfare and survival. This provision helps children avoid the hardships of life in this world and ensures their basic needs are met.¹ As mentioned in QS. Albaqarah:233.

At this point, the author can conclude that the obligation to provide maintenance by a father is an important part of maintaining the survival of the family. Providing adequate and proper maintenance shows a father's responsibility and concern for his family. In addition, the principle of providing maintenance according to ability also emphasizes the importance of justice and wisdom in meeting family needs.

b) Teaching Science and Religion:

Fathers have an obligation to teach children about science, especially religious knowledge such as the five daily prayers, the science of monotheism, reading the Qur'an, and good manners. If parents feel that they do not have sufficient time or ability in religious matters, they have the right to pay someone else to teach Islamic knowledge to their children.²

This second point explains the obligation of a father (and parents) to teach children about science, especially religious knowledge such as the five daily prayers, the science of monotheism, reading the Qur'an, and good manners. If parents feel that they do not have enough time or ability in terms of religion, they have the right to pay someone else to teach Islamic knowledge to children.

c) Responsible as a Family Leader:

The leader in this household is the man (husband). And the one who appoints men as leaders is God Himself. as mentioned in QS. Annisa:34.

¹ "Kewajiban Orang Tua terhadap Anak," Yatim Mandiri, diakses 25 Agustus 2024, [tautan ke artikel] (<https://yatimmandiri.org/blog/parenting/kewajiban-orang-tua-terhadap-anak/>).

² Hidayatullah, Muhammad Fahmi. "Paradigma Pendidikan Keluarga: Supervisi dan Motiv Keterlibatan Orang Tua dalam Pelaksanaan Ibadah." *Jurnal Tarbiyatuna: Kajian Pendidikan Islam* 2.1 (2018)

To this point, Allah says in Surah An-Nisa verse 34 that men are the leaders of women, because Allah has given some of them more than others, and because men have spent some of their wealth. The role of the father as the leader of the family includes guidance, protection, and maintaining the welfare of the family, as well as teaching Islamic teachings, moral values, ethics, and good behavior to family members.

From the results of the analysis above, it can be concluded that the obligations of a father in child maintenance in Islam include providing livelihood, teaching science and religion, and being responsible as a family leader. Fathers have a great responsibility in maintaining the welfare and education of children, as well as guiding the family in religious teachings, morals, and good behavior. As the leader of the family, fathers are also expected to carry out their role by example and consistency in carrying out the teachings of Islam.

The Rights and Obligations of Fathers in Child Maintenance from the Perspective of the Indonesian Marriage Law

1. Obligation of Maintenance

The obligation of maintenance in the Marriage Law in Indonesia is regulated in Article 34 paragraph (1) of Law Number 1 Year 1974 concerning Marriage. According to this article, the husband is obliged to protect his wife and provide all the necessities of household life according to his ability. In this arrangement, it does not stipulate the amount of maintenance that must be given, it only says according to the husband's ability. If the husband or wife neglects their obligations, each can file a lawsuit with the District Court or Religious Court.³

From the explanation of the points above, it shows that the obligation of maintenance in the Marriage Law in Indonesia is regulated in Article 34 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Article 34 paragraph (1) of Law Number 1 Year 1974 concerning Marriage explains that the husband has the obligation to protect and provide all the needs of household life to his wife according to his ability. In this arrangement, there is no provision that determines the amount of maintenance that must be given, but it is stated that the maintenance must be in accordance with the husband's ability.

If the husband or wife neglects their obligation to provide maintenance, the Article allows each party to file a lawsuit with the District Court or Religious Court. This indicates legal protection for parties who feel their right to receive maintenance is not being fulfilled.

2. Obligation to Educate and Guide Children

The obligation to educate and guide children in the Indonesian Marriage Law (UU) is regulated in several articles that emphasize the importance of the role of parents in developing children's potential. Here are some related articles:

- a) Article 45 of Law No. 1 Year 1974

³ Rahman, Nandang Fathur. "perbandingan kewajiban nafkah menurut hukum islam dan hukum positif di indonesia." *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3.2 (2022): Hal 194.

Mentioning that both parents are obliged to maintain and educate their children as well as possible. This includes the physical, spiritual, and intellectual aspects of the child.⁴

b) Article 46 of Law No. 1 Year 1974

Explains that children who are not yet 18 years old or have not yet entered into marriage are under the authority of their parents, unless it is abolished by the court.⁵

Regulations governing the obligation of parents to educate and guide their children show the importance of the role of parents in the formation of children's character and well-being. With the existence of laws governing this matter, it is hoped that parents can carry out their roles with full awareness of their responsibilities in developing the potential of their children to become qualified individuals and contribute positively to society.

3. Obligation to Provide Affection and Attention

The obligation to provide love and care in the Indonesian Marriage Law (UU) is listed in several articles that emphasize the importance of a harmonious and respectful husband-wife relationship. Here are some of the obligations listed in the Marriage Law:

a) Obligations of Husband and Wife According to Law Number 1 of 1974:

Husband and wife are obliged to love and respect each other. This is regulated in Article 1 of Law No. 1 of 1974, which states that marriage is a physical and mental bond between a man and a woman with the aim of forming a happy and eternal family based on the Almighty God.⁶

b) Obligations of Parents towards Children:

According to Article 45 of Law No. 1 Year 1974, both parents are obliged to maintain and educate their children as well as possible. This obligation applies until the child is married or can stand on his own, and continues even if the marriage between the two parents breaks up. As the author has discussed before.

The explanation above conveys that the obligation to provide love and attention in the Indonesian Marriage Law is contained in several articles that emphasize the importance of a harmonious and respectful husband-wife relationship. Article 1 of Law No. 1 of 1974 emphasizes that husbands and wives have an obligation to love and respect each other, with the aim of forming a happy and lasting family based on God Almighty.

In addition, Article 45 of Law No. 1/1974 also regulates the obligations of parents towards their children, which include the maintenance and education of the children as well

⁴ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan (UU 1974), *peraturan.bpk.id (Home page).pdf*. BAB X "Hak dan Kewajiban antara Orang Tua dan Anak" Pasal 45.

⁵ *Ibid*, BAB X "Hak dan Kewajiban antara Orang Tua dan Anak" Pasal 46

⁶ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan (UU 1974), *peraturan.bpk.id (Home page).pdf*. BAB I "Dasar Perkawinan" Pasal 1.

as possible. This obligation applies until the child marries or can stand on their own, and continues even if the marriage between the two parents breaks down.

4. Legal rules related to the child's right to receive care and affection from both parents

The rule of law regarding a child's right to receive care and affection from both parents has several important points in the rule of law:

- a) Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection:⁷
 - 1) Article 2:
emphasizes that children have the right to welfare, care, nurture, and guidance based on love both in their families and in special care to grow and develop naturally.
 - 2) Article 3:
states that children have the right to care and protection, both during the womb and after birth.
- b) Government Regulation No. 44/2017 on Child Protection:
States that children have the right to affection, attachment, safety, welfare, and civil rights. In addition, children also have the right to ensure proper care.⁸
- c) Convention on the Rights of the Child:
Emphasizes that the protection and care of children shall be based on the best interests of the child, without discrimination based on sex, religion, political opinion, and social standing.⁹
- d) Custody of Siblings:
If both parents are unable to care for the child, then custody can be given to relatives in a straight line upwards, including adult siblings. This depends on the decision of the panel of judges.¹⁰

From the points of legal rules related to children's right to receive care and affection from both parents, it shows a strong commitment to the protection and fulfillment of children's rights in Indonesia:

- a) Law No. 23/2002 on Child Protection affirms children's right to welfare, care, nurture, and guidance based on affection both in the family and special care. This shows the importance of a supportive environment for children's growth and development.

⁷ Indonesia. "Undang-Undang Nomor 4 Tahun 1979 tentang Kesejahteraan Anak." Accessed August 25, 2024. <https://jdih.kemenkeu.go.id/FullText/1979/4TAHUN1979UU.htm>

⁸ Indonesia. "Peraturan Pemerintah RI Nomor 44 Tahun 2017 tentang Pelaksanaan Pengasuhan Anak." Accessed August 25, 2024

⁹ indonesia. "Undang-undang Republik Indonesia Nomor 23 Tahun 2002 tentang Perlindungan Anak." Accessed August 25, 2024. <https://hkln.kemenag.go.id/download.php?id=188>

¹⁰ Hukumonline. "Ini Langkah untuk Mengasuh Anak Saudara Secara Sah." Accessed August 25, 2024. <https://www.hukumonline.com/klinik/a/ini-langkah-untuk-mengasuh-anak-saudara-secara-sah-1t541ee824ade8c/>

- b) Government Regulation No. 44/2017 on Child Protection affirms children's rights to affection, attachment, safety, welfare, civil rights, and certainty of proper care. This emphasizes the need for a safe and loving environment for children.
- c) The Convention on the Rights of the Child emphasizes that child protection and care should be based on the best interests of the child without discrimination. This emphasizes the principle of equality and indiscriminate protection of children.
- d) Sibling childcare becomes important if both parents are unable to care for the child, where custody can be given to relatives in a straight line upwards, including adult siblings, by a decision of a panel of judges.

From the results of the overall analysis of the rights and obligations of fathers in maintenance according to the Marriage Law in Indonesia, it can be concluded that fathers have an important responsibility in providing maintenance, religious education, justice in giving property, and doing good to parents. These obligations aim to create a harmonious, fair and loving family environment. By understanding and carrying out these obligations, it is hoped that a prosperous and happy family will be created based on religious teachings and applicable laws.

Discussion of Results

The analysis reveals a clear convergence between Islamic Fiqh and the Indonesian Marriage Law regarding the father's crucial role in child maintenance. Both perspectives emphasize the father's responsibilities in providing for the child's physical, emotional, and spiritual well-being. This shared understanding underscores the importance of a holistic approach to child rearing, encompassing not only material provision but also education, guidance, and emotional support.

The Indonesian legal framework further strengthens this concept by codifying the father's obligations and enshrining the child's right to receive care and affection from both parents. This legal framework provides a foundation for ensuring the child's well-being and protection.

The study findings have significant implications for promoting healthy family dynamics and fostering a society that prioritizes the well-being of children. By understanding and fulfilling these obligations, fathers can contribute to the creation of a harmonious, just, and loving family environment. This understanding is crucial for fostering a society that values and supports the development of future generations.

CONCLUSION

This study has explored the role and obligations of fathers in child maintenance from the perspectives of Islamic Fiqh and the Indonesian Marriage Law. The analysis reveals a strong emphasis on the father's multifaceted responsibilities, encompassing not only financial provision but also education, guidance, and emotional support.

From an Islamic perspective, the father's obligation extends beyond mere physical sustenance. He is tasked with providing for his child's well-being, both materially and spiritually. This includes ensuring their physical needs are met, imparting knowledge of science and religion, and serving as a moral and ethical guide for the family. The Quranic verses cited highlight the importance of justice and wisdom in fulfilling these obligations.

The Indonesian Marriage Law further reinforces these principles, codifying the father's duty to provide for his family's needs, educate and guide his children, and cultivate a loving and respectful environment. The law emphasizes shared responsibility between parents in child rearing, with both parents obligated to nurture and protect their children. The inclusion of legal provisions regarding child protection and the right to receive care and affection from both parents underscores the importance of a supportive and nurturing family structure for children's well-being.

While the two perspectives differ in their origins and approaches, they converge on the fundamental principles of parental responsibility. Both emphasize the father's crucial role in ensuring the physical, emotional, and spiritual development of his children. This understanding is crucial for promoting healthy family dynamics and fostering a society that prioritizes the well-being of children.

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