

Theme: Child Protection in the Perspective of Islamic Law and  
the Convention on the Rights of the Child (A Study at the  
Social Service Department of Medan City)

## **Child Protection in the Perspective of Islamic Law and the Convention on the Rights of the Child (A Study at the Social Service Department of Medan City)**

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### **ABSTRACT**

The problem of child protection in the context of this study is all matters related to the fulfillment of children's rights, both those regulated in Islamic legal sources and regulations in the field of child protection which are derivatives of the KHA which have been ratified. In the context of this research, both Islamic law and the CRC are seen as a legal system. Through this research it is hoped that it can provide an overview of the role of Islamic law and the CRC respectively as a legal system for child protection, the inhibiting and supporting factors that influence the function of the role. The main problem in this research is first, what is the role of Islamic Law and the Convention on the Rights of the Child on Child Protection. Second, what are the supporting and inhibiting factors of the role of Islamic law and the Convention on the Rights of the Child in protecting children. Third, what is the role of the Medan City Social Service in overcoming child protection problems. This study uses a qualitative approach. researchers will describe and analyze how Islamic law and the Convention on the Rights of the Child (KHA) view child protection from their respective perspectives and will then be analyzed as a whole. Specifically, the research tradition used in this study is a type of grounded theory study. Based on the results of the study, it shows: First, the protection of children in an Islamic perspective includes: Be fair in giving, maintain the good name of the child, protect the child from bad associations, and protect the child from neglect with a guaranteed living. Meanwhile, in the perspective of the Convention on the Rights of the Child, child protection has been included in the Child Protection Act which is a refinement of the ratification of the CRC by the State of Indonesia. Second, the role of the Medan City Social Service is influenced by supporting and inhibiting factors in carrying out its role in child protection. In carrying out its functions in the field of social welfare, the Medan City Social Service is supported by the Community Social Welfare Institution (LKSM), which is a Social Welfare Institution. Third, the role of the Medan City Social Service according to the Islamic perspective is to protect children from bad associations and protect children from. This role is carried out as an institution that carries out the state's obligations in carrying out the care and protection of children from neglect. In general, the fields and sections of the Medan City Social Service are not only focused on empowering and protecting children. In the field of child protection, the most central role of the Medan City Social Service is in the field of social rehabilitation, which is carried out by the social rehabilitation section for children and the elderly outside institutions and/or institutions

**Keywords:** *Protection, Convention on the Rights of the Child, Law*

### **1. Introduction**

The integration of Islamic law with the Convention on the Rights of the Child (CRC) has not been fully contextualized within the framework of state governance, including in social welfare policy aspects at the local level. Both Islamic law and the CRC share detailed and clear concepts regarding the status and role of children as human beings with fundamental rights within the family, society,

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and in national and state life. According to Hasyim Purba, the legal theme of child protection can be examined from three perspectives of *das sollen*: philosophical, theoretical scientific, and phenomenological. In the philosophical context (in reference to divine revelation), the most succinct aspect in legal perfection is the balance of rights and obligations. From a theoretical scientific perspective, the theme of child protection law is viewed through regulations and legislation. In the context of the Indonesian constitution, child protection is grounded in Article 34 of the 1945 Constitution, which states that the poor and abandoned children are cared for by the State; Article 29b, paragraph 2, asserts that every child has the right to survival, growth, and development, as well as protection from violence and discrimination; and Article 28d mentions everyone's right to recognition, guarantee, protection of fair legal certainty, and equal treatment before the law. From a phenomenological perspective, child protection is viewed based on primary and secondary data that explain the condition of children.

The CRC encompasses several aspects that have been transformed into more concrete regulations, detailed in Law No. 35 of 2014, amending Law No. 23 of 2002 on Child Protection. The Indonesian constitution has mandated accordingly since the ratification of the CRC and the issuance of Law No. 4 of 1979 on Child Welfare. Article three states, "Children have the right to care and protection, both while in the womb and after birth." Furthermore, Article four stipulates, "Children have the right to protection from environmental conditions that may endanger or hinder their normal growth and development." In dangerous situations, children have the primary right to assistance and protection. In this study's context, child protection is viewed from the perspectives of divine revelation, constitutional references later translated into local policies, particularly in the Social Services Department of the Medan City Government, and references derived from primary and secondary data in the field of child social welfare. The Medan City Social Services Department reported in 2020 the distribution of social assistance through the 2020 food program, benefiting 70,672 families with a realization of 55,266 families (78.20%); the Covid-19 Social Assistance Program in 2020 targeted 63,155 families with a realization of 55,568 families (88.01%); the 2020 Social Welfare Program (PKH) as stipulated by the Ministry of Social Affairs of Indonesia reached a quota of 50,156 families with a realization of 47,524 families (94.75); and provided facilities and infrastructure for social welfare services to 109 registered organizations, including 48 orphanages, 13 drug rehabilitation centers, 2 elderly homes, and 46 other institutions.

The Medan City Social Services Department was established under the Regulation of the Mayor of Medan Number 40 of 2017, amending Regulation Number 1 of 2017, concerning the Position, Organizational Structure, Duties and Functions, and Work Procedures of Regional Apparatus. As a government authority in the social sector, it is responsible for Planning, Implementation, Monitoring, and Evaluation of Programs and Activities related to Social Affairs in Medan City. Specifically, child welfare issues fall under the social rehabilitation sector, under the Social Rehabilitation Section for Children and the Elderly outside of Institutions, though also related to other sections within the Department. To integrate these concepts, a systemic approach is needed to elucidate the positions and roles of the CRC and Islamic law in child protection and the role of the Medan City Government, particularly in the Social Services Department, in implementing existing policies.

To provide an integrative perspective of Islamic law and the CRC, child protection cannot be viewed partially, casuistically, or sectorally but rather through a more comprehensive approach. This starts from the fundamental concepts underpinning both perspectives, leading to an understanding of the effectiveness of law enforcement in the local context, specifically in Medan City, through social policies enacted. Philosophically, this study will explore child protection issues by referring back to the grounded theory that initiated the concept of child protection, namely Human Rights Theory; on the other hand, it will also explore the principles of *usul al-fiqh* related to the sources of Islamic law.

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The teachings of Islam on child protection are reinterpreted in the context of social welfare and linked with the Indonesian constitution, particularly policies enacted by the Ministry of Social Affairs of Indonesia and their implementation by the Medan City Social Services Department. This requires *ijtihad* that can reidentify, redefine, and reclarify the sources of Islamic law and compare them with the concept of child protection used in the international sphere.

## 2. Methods

This research is descriptive in nature. It aims to analyze the background, current state, and conditions of the subject under study, as well as its interactions with the environment. In the context of this research, the subject is child protection in the perspective of Islamic law and the Convention on the Rights of the Child, with a case study at the Social Services Department of Medan City. The selection of research subjects or informants is done using purposive sampling method. This method is the most relevant way of sampling for the research objectives, where samples are deliberately chosen based on specific requirements (attributes, characteristics, features, criteria most relevant to the research objectives) and are not randomly selected.

## 3. Results and Discussion

According to UNICEF Indonesia, citing 2018 data, approximately 12 percent of Indonesian children live below the poverty line, compared to only 9.8 percent of the general population. Poverty in terms of income is most prevalent among younger children and gradually decreases as they age. On average, the length of schooling for children in Indonesia is 8.75 years. However, this figure drops to 4.73 years for children with disabilities. While 95 percent of children nationally complete basic education, the graduation rate for children with disabilities is only 56 percent. This gap widens in secondary education, indicating that access barriers for children with disabilities increase with age. 62 percent of teenagers without disabilities successfully complete upper secondary education, compared to only 26 percent for students with disabilities. Current data on children who do not receive parental care are not available, but it is estimated that there are 2.2 million Indonesian children who do not live with their parents. Government regulations on child care enacted in 2017 will help reintegrate 500,000 children from institutions to families, improve child care standards by institutions other than families, and protect children by prohibiting physical punishment by social institutions (UNICEF, 2020).

Official data from the Medan City Government states that in 2020, the number of children aged 0-19 years in Medan City was 777,013. Victims of violence against women and children in 2019 totaled 95 people, of which 72.63 percent were female victims. Of the 95 victims, 36.84 percent were children under 18 years old. In 2020, the number of violence victims decreased to 58, with 89.65 percent of them being female. All victims of violence received services from P2TP2A and/or the Police. Specifically in the field of social services, data from the Medan City Social Services in 2017 reported that 488 street children were successfully collected and received guidance, consisting of 305 boys and 143 girls. Of these, 327 worked as street musicians, and 121 as street vendors or newspaper sellers (Medan City Government, 2021).

Medan City Regional Regulation No. 12 of 2008 on Social Order, which regulates public order, does not specifically address street children. In protecting street children, the Social Services and Burials Department undertakes activities, including: (1) assisting street children by providing services such as training, education, healthcare, and psychological counseling; (2) issuing rules that penalize individuals who donate money to street children with future punishment and imprisonment to minimize the number of street children; and (3) planning to establish a phone center for reporting

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street children and other issues (Sri Sudiarti & Khayla Maya Amalia). At the district/city level, policies related to child protection include Medan City Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City. This regulation is considered ineffective in reducing the number of beggars. As stated by the Head of the Medan City Social Services Department, despite routine enforcement in accordance with Medan City Regional Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City, the limited resources, especially with only one patrol vehicle for monitoring, restrict their ability to effectively address the issue. This regulation falls into the category of problematic regulations, as outlined in the book "Collection of Problematic & Controversial REGULATIONS" by Ismantoro Dwi Yuwono (2012). Additionally, research shows that the public lacks understanding of regulations created for the benefit of the region, and calls on law enforcement to address begging in public places as a violation under the Criminal Code and Medan City Regulation No. 6 of 2003. The local regulations issued have yet to effectively address these societal issues, with primary contributing factors being economic, educational, and religious understanding within families.

Regarding child care issues, as previously explained, the challenges and weaknesses found in the Medan City Social Services Department include suboptimal enforcement and the lack of a social welfare institution for child protection and care. In implementing rehabilitation programs, the Medan City Social Services Department is not directly involved in rehabilitating children. Rehabilitation programs are carried out by the North Sumatra Provincial Social Services Department, which owns the welfare institutions. Communication between the Medan City and North Sumatra Provincial Social Services Departments is also very limited due to the vast geographical coverage handled by the North Sumatra Provincial Social Services Department, serving as a reference not only for Medan City but also for other districts/cities in North Sumatra. New challenges arise when the capacity of welfare institutions owned by the North Sumatra Provincial Social Services Department is full, creating a dilemma for the Medan City Social Services Department, which currently does not have its own welfare institutions, preventing the follow-up rehabilitation efforts after enforcement actions.

The lack of facilities and infrastructure owned by the Medan City Social Services Department can be addressed by seeking alternative solutions, such as collaborating with privately-owned social welfare institutions while still under the supervision of the Medan City Social Services Department, with operational permits issued by the department. Efforts to establish a social welfare institution owned by the Medan City Social Services Department in Tuntungan have been planned and are expected to be completed in 2022. So far, in carrying out its role, the Medan City Social Services Department still relies on shelter facilities or orphanages that are still owned by the North Sumatra Provincial Social Services and Manpower Office, such as Punge Orphanage in Binjai, which is regularly used to place street children caught in raids. As a result, the frequency of these raids continues to decrease every year due to the decrease in budget allocation for raid and empowerment of street children. In 2014, raids were initially conducted quarterly, but since 2018, they can only be done once a year, capturing as many as 362 children. The end result of the rehabilitation program should provide two options for child care: reuniting the child with their family and community to ensure their basic rights and grow in a loving and responsible family environment, or caring for the child in child development centers, such as those found in Lombok, West Nusa Tenggara. The Convention on the Rights of the Child and Law No. 35 of 2014, which is a conversion of Law No. 23 of 2002 regarding child protection, explicitly represents efforts to fulfill the rights of children and child protection, including the right to life, the right to growth and development, and the right to participate in government decisions regarding children.

The state and government have an obligation and responsibility to provide support and facilities, such as schools, playgrounds, sports fields, places of worship, health centers, cultural centers, and

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recreational areas, for the implementation of child protection. As one of the major cities in Indonesia, it is reasonable for Medan City to face complex legal issues and legal violations. Various forms of legal violations can occur in the Medan City area, including the exploitation of children as street workers, which is considered a crime under public order as regulated in Article 504 paragraph (1) of the Criminal Code (KUHP). In an effort to reduce child exploitation as street workers in Medan City, the Medan City Government has issued Regional Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City. The prohibitions are outlined in Article 2 of Regional Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City, which states: paragraph (1): It is prohibited to beg or loiter in groups or individually or in any way that influences or arouses the sympathy of others; paragraph (2) It is prohibited to deliberately exploit others, such as babies, small children, or induce someone/some people to beg; paragraph (3) It is prohibited to persuade or entice others through words, signals, or other actions with the intent to engage in prostitution in public places or places known/visited by others, whether individually or in groups; paragraph (4) It is prohibited to deliberately call/summon someone or some people with the intent to engage in immoral or indecent acts; paragraph (5) Anyone who knows, sees, violates, or observes acts as referred to in paragraphs (1), (2), (3), and (4) of this Article is obliged to report to the authorities. Violations of the prohibitions outlined in Article 2 are subject to Article 5. Article 5 of Regional Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City states: paragraph (1) Anyone who violates the provisions of Article 2 of this regional regulation shall be punished with a maximum imprisonment of 6 (six) months and/or a fine of up to Rp. 5,000,000 (five million rupiah). paragraph (2) The act referred to in paragraph (1) is a misdemeanor.

The factors causing the exploitation of children on the streets include: lack of parental supervision, poor moral and mental health of children, and social environment. Legal regulation regarding the exploitation of children as street workers consists of: Criteria for Children in Legislation in Indonesia, Rights of Children Under Age as Workers in positive law, and Law No. 17 of 2016 concerning Amendments to Law No. 23 of 2002 Concerning Child Protection. Efforts to combat the exploitation of children as street workers are carried out both reactively and preventively. Reactive efforts include the establishment of regulations related to child exploitation, as outlined in various laws. Preventive efforts include providing legal, social, and economic assistance to the community, especially to families with children exploited as street workers in Medan City. With existing regulations, the government and law enforcement agencies should be able to enforce these rules properly against those who exploit children as street workers, in order to deter future offenses and prevent the recurrence of crimes involving the exploitation of children as street workers in Medan in the future. Preventing the crime of exploiting children as street workers in Medan is a collective responsibility, as children are the nation's future and their rights must be protected. Prevention can start from the family environment, with parents providing proper education to their children so that they engage in positive activities such as learning, rather than working on the streets. The community can also play a role in prevention through non-governmental organizations, and of course, the government can create legislation to ensure children's rights are protected, thereby preventing the exploitation of children from recurring.

Efforts to combat the crime of exploiting children as street workers should be carried out collectively, directed, and targeted. The Medan City Government is expected to increase the budget allocation for child protection so that children's rights can be fulfilled. The Medan City Social Services Department is expected to be more active in conducting raids, supervision, and control of child labor exploitation on the streets, and non-governmental organizations and all elements of society are expected to work together in prevention and monitoring of child labor exploitation on the streets

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through socialization and counseling to reduce and prevent the exploitation of children as street workers.

#### 4. Conclusion

The role of the Medan City Social Services Department from an Islamic perspective is to protect children from negative influences and safeguard them. This role is carried out as an institution that fulfills the state's obligation to provide care and protection for children from harm. In general, the departments and sections within the Medan City Social Services Department are not solely focused on empowering and protecting children. In the field of child protection, the most central role of the Medan City Social Services Department is in the field of social rehabilitation, which is carried out by the sections responsible for the social rehabilitation of children and the elderly outside of orphanages and institutions. Limited funding and human resources have made the role of the Medan City Social Services Department in child protection, from the perspective of Islamic law, not effectively and efficiently implemented. The role of the Social Services Department in accordance with Islamic law is practiced through the implementation of Regional Regulation No. 6 of 2003 on the Prohibition of Vagrancy and Begging and Immoral Practices in Medan City. Legal regulations regarding the exploitation of children as street workers consist of: Criteria for Children in Legislation in Indonesia, Rights of Children Under Age as Workers in positive law, and Law No. 17 of 2016 concerning Amendments to Law No. 23 of 2002 Concerning Child Protection.

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