

Parents' Responsibilities Towards Child Support Owed From The Perspective Of Khi And Law

Guvo Deswarth Purba¹ Febry Anggina Nasution²

¹Tebingtinggi Police Station

²State Islamic University of North Sumatra

E-mail: inafistebingtinggigv@gmail.com febryangginanasution@gmail.com

Info Articles	Abstract
Article History Received : 2019-07-03 Revised: 2019-07-11 Published: 2019-07-30 Keywords: <i>Legal Responsibility, Child Support, Parents.</i>	This study aims to investigate and analyze the legal responsibility of parents for child support debts from the perspective of the Islamic Law Code (KHI) and the Law. In this study, the researcher reviewed the definition and concept of support, the legal responsibility of parents in providing support to children, the period of parental responsibility, the economic capacity of parents, and the legal consequences that may be faced by parents who do not fulfill their support obligations. This study uses a document analysis method with reference to relevant articles in the KHI and the Law. The researcher also involved a comparative study between the perspectives of Islamic law and positive law to gain a more comprehensive understanding of the legal responsibility of parents for child support debts. The results of this study are expected to provide a deeper understanding of the legal responsibility of parents in providing support to children who are in debt. In addition, this study is also expected to provide guidance for legal practitioners, family experts, and the general public in understanding and handling cases related to the legal responsibility of parents for child support debts.

I. INTRODUCTION

The legal responsibility of parents for child support debts is a crucial issue in family law. From the perspective of the Compilation of Islamic Law (KHI) and the Constitution, there are provisions governing parents' obligations to provide support to their children. This study aims to further examine parents' legal responsibility for child support debts from the perspective of Islamic law and positive law. First, it is important to understand the concept of support in this context. Support is the obligation of parents to meet their children's living needs, such as food, clothing, shelter, education, health care, and other needs. This obligation applies as long as the child is still under the parents' responsibility. From the perspective of the KHI, parents' legal responsibility for child support debts is regulated in detail. The KHI stipulates that parents have an obligation to provide support to their children within their economic means. If parents are unable to provide full support, they are still

required to provide support according to their ability.

Meanwhile, the law also regulates parents' obligations to provide for their children. The law requires parents to provide for their children according to their financial means. If parents are unable to provide full support, they are required to provide to the extent of their ability. The period of parental responsibility is also important in this context. The period of parental responsibility lasts until the child reaches adulthood or is able to provide for their own needs. During this period, parents are fully responsible for any child support owed.

Furthermore, in this study, researchers will further analyze the legal responsibility of parents for child support debts from the perspective of the Indonesian Islamic Law (KHI) and the Law. Researchers will examine the definition and concept of support, the legal responsibility of parents in providing support, the period of parental responsibility, the

economic capacity of parents, and the legal consequences for parents who do not fulfill their support obligations. A better understanding of the legal responsibility of parents for child support debts can provide clear guidance for parents in fulfilling their support obligations towards their children. In addition, this study can also provide broader insights into legal protection for children in the context of support. Thus, this study has significant relevance in deepening the understanding of the legal responsibility of parents for child support debts, as well as its implications in the context of family law and child protection.

II. RESEARCH METHODS

This research employs a normative juridical approach, namely legal research conducted through the review of library materials or secondary data. This research focuses on the analysis of legal norms contained in statutory regulations and Islamic legal provisions, particularly regarding parental legal responsibility for child support debts.

The approaches used in this research are the statutory approach and the conceptual approach. The statutory approach is carried out by examining various relevant legal regulations, such as the Compilation of Islamic Law (KHI), Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, and Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Meanwhile, the conceptual approach is used to understand legal concepts such as maintenance, parental responsibility, and child protection based on legal doctrine and expert opinions.

III. RESULTS AND DISCUSSION

A. Definition of the concept of livelihood according to KHI and law

A parent's obligation to their child is to provide sustenance and lawful food. This

obligation is more precisely a father's obligation in the family, as the Prophet Muhammad (peace be upon him) said to Sa'd Ibn Abi Waqhas, "Make your food good, and your prayer will be answered" (Narrated by Muslim). In Islamic law, the obligation to provide sustenance for children begins with a valid marriage. This obligation must be fulfilled when there is a bond between husband and wife, and the wife does not violate her husband's orders. However, if the wife commits an ungodly act or leaves the house without her husband's permission, then the husband is not obligated to provide sustenance. Islam divides sustenance into two aspects: physical sustenance and spiritual sustenance.

Physical sustenance is the provision for physical needs such as food, clothing, and shelter. In Surah Al-Baqarah, verse 233 of the Quran, the importance of physical sustenance commensurate with the husband's means is emphasized. Meanwhile, spiritual sustenance is the wife's spiritual needs, which the husband must provide, such as providing attention, care, and meeting her spiritual needs fairly. (Ahmad Musthafa Al-Maragi, 1969)

In addition to providing a living, a husband also has an obligation to maintain a good relationship with his wife. This includes avoiding actions that could hurt his wife's feelings and fulfilling promises made together. A husband must also pay attention to his wife's spiritual needs, such as providing attention and happiness. In Islam, a complete family life is a man's responsibility. This obligation is balanced with the woman's obligation to provide sexual services. There is an exchange between husband and wife, where the husband enjoys his wife's body and the wife enjoys her husband's livelihood. The man's position is strong in sexual relations,

while the woman has power over livelihood. Furthermore, in this case, the fuqaha emphasize that the primary responsibility in maintaining the integrity of family life lies with the man. In research conducted by Hussein, his view concludes that this obligation is balanced with the woman's obligation to provide sexual services. There is an exchange between husband and wife, where the husband enjoys intimacy with his wife, while the wife enjoys her husband's livelihood. As a result, this creates a strong and dominant position for men in sexual relations, while women have dominant power in terms of livelihood. Furthermore, according to Imam Syafi'i, the level of living obligations in Islam is based on individual income. Poor men are sufficient to meet the basic needs of their wives, while wealthy men are required to provide two meals a day, side dishes, and meat in greater quantities. The obligation to dress appropriately is also important in Islam. In Indonesia, the obligation to provide living expenses is regulated by marriage law. This law recognizes the obligations of husbands and wives in maintaining society through marriage. The articles in this law place husbands and wives in a balanced position in managing the household. In addition, husbands and wives are also required to have a permanent residence and respect and be faithful to each other. In the household, it is important to understand and fulfill the obligation to provide living expenses and halal food as a responsibility of parents towards their children. This is the basis for creating a harmonious and loving family life. (Husain Syahatah, 2005)

B. Legal Responsibility Of Parents To Provide Maintenance

Article 80 Paragraph 4 Letter (c) of the KHI emphasizes that the responsibility for family support, including the child's living

expenses and education, is borne by the father. Likewise, after a divorce, Article 105 of the KHI states that child maintenance costs remain the father's responsibility. This shows that child maintenance costs, both before and after the divorce, remain the responsibility of a husband. The ex-wife also has the right to child maintenance or hadhanah for children under 12 years old. In addition, she is also entitled to the unpaid dowry, by paying it in full if qobla al dukhul, or half if after qobla al dukhul, in accordance with Article 149 letter (c) of the KHI.

The provisions regarding parental responsibility for children after divorce are regulated in Article 41 of the Marriage Law. This article explains that parents remain obligated to support their children even after their marriage has ended. In divorce cases in Sidoarjo until January 2016, there were various court decisions regarding the right to child support from ex-husbands. After the divorce decision is issued, the male parent (father) still has an obligation to provide support and provide the rights that the child should receive. Article 41 of the Marriage Law explains this and is generally known by everyone.

However, in reality, after a divorce decree is issued, many male parents (fathers) fail to fulfill their obligations to provide for, care for, protect, and educate their minor children. There are various reasons why a father neglects his responsibilities to his children, such as working outside the area, remarrying and prioritizing his new family, or placing the burden of child rights on his ex-wife because she believes she is capable of caring for and supporting the children she left behind.

These cases often occur in early divorces. Parental obligations to children after a divorce should not fall entirely on the ex-wife. A father cannot escape his responsibility to care for and support his children until they reach

adulthood. Children also need the attention and affection of their biological fathers to maintain a healthy relationship as they grow older.

Considering the existing problems, it can be concluded that children's rights have not been fully fulfilled by parents, society, or the government. Having observed this phenomenon, it would be interesting to consider this research as a thesis, with the title "A deeper examination of parental responsibilities towards children after divorce within the context of Islamic law". (Sobri Mersi Al-Faqi, 2011)

C. Economic Capacity Of Parents

The Compilation of Islamic Law (KHI) and laws in many countries recognize that not all parents have the financial capacity to provide full support for their children. Therefore, mechanisms exist to address this issue. One such mechanism is alimony tailored to the parents' economic capacity. The KHI and laws generally permit parents to provide support according to their means, taking into account their income and financial resources.

In addition, there is also social assistance that can be provided to families unable to provide for their children fully. The social assistance system or welfare assistance provided by the state can help these families meet their children's needs. State responsibility can also be an important factor in providing assistance to families experiencing economic difficulties in supporting their children. The state can also take responsibility for providing assistance to families in need.

Furthermore, if a change in a parent's economic circumstances results in their inability to provide support in accordance with the previous provisions, the Indonesian Compilation of Islamic Law (KHI) and the law

may allow for changes in the support obligation to reflect the parent's new economic capacity. In cases of disputes regarding support, the court has the authority to examine the parents' economic capacity and determine a fair support obligation based on the actual economic circumstances. The implementation of these provisions may vary from country to country, and the final decision depends on the applicable legal authority in each country. (Shaykh Hasan Ayyub, 1999)

D. Period Of Parental Responsibility

Legislation generally does not differentiate between parental responsibilities for sons and daughters. However, the limits of parental responsibility for adult children have not been explicitly regulated. Article 26 paragraph (1) of Law 35/2014 states that parents have the obligation and responsibility to care for, maintain, educate, and protect children. They are also responsible for developing children according to their abilities, talents, and interests. In addition, parents are also expected to prevent child marriage and provide character education and moral values to children. According to the Child Protection Law, a child is someone who is under 18 years of age, including children who are still in the womb. Therefore, the obligations and responsibilities of parents apply until the child reaches 18 years of age.

Furthermore, Article 45 paragraphs (1) and (2) of Law 1/1974 also regulates the obligations and responsibilities of parents towards their children. Both parents are obliged to care for and educate their children as best as possible. This obligation applies until the child is married or can support himself. Even if the marriage between the two parents ends, the parents' obligations remain in effect. However, the definition of "can support himself" is not explained in detail. However, it

is interpreted to mean that the child already has the ability to meet his own needs without relying on his parents.

Thus, researchers can understand that laws and regulations have not explicitly regulated the limits of parental responsibility towards adult children. In the case of a child who has reached the age of 18 and is married, the child is no longer the responsibility of the parents in accordance with Article 26 paragraph (1) of Law 35/2014 and Article 45 paragraph (2) of Law 1/1974. However, if the child is still unable to stand alone, there is nothing wrong with parents continuing to help the child.

If parents do not carry out their responsibilities, Article 26 paragraph (2) of Law 35/2014 states that these obligations and responsibilities can be transferred to the family. Family in this context refers to the smallest unit in society consisting of husband and wife, or husband, wife and children, or father and children, or mother and children, or blood relatives in a straight line up or down to the third degree. If the child's parents and family cannot carry out these responsibilities, a person or legal entity that meets the requirements can be appointed as the child's guardian. (Family Jurisprudence. Translation by M Abdul Ghoffar, 1999)

E. Legal Consequences For Parents

Legislation generally does not differentiate between parental responsibilities for sons and daughters. However, the limits of parental responsibility for adult children have not been explicitly regulated. Article 26 paragraph (1) of Law 35/2014 states that parents have the obligation and responsibility to care for, maintain, educate, and protect children. They are also responsible for developing children according to their abilities, talents, and interests. In addition, parents are

also expected to prevent child marriage and provide character education and moral values to children. According to the Child Protection Law, a child is someone who is under 18 years of age, including children who are still in the womb. Therefore, the obligations and responsibilities of parents apply until the child reaches 18 years of age.

Furthermore, Article 45 paragraphs (1) and (2) of Law 1/1974 also regulates the obligations and responsibilities of parents towards children. Both parents are obliged to care for and educate their children as best as possible. This obligation applies until the child is married or can stand on his own. Even if the marriage between the two parents breaks up, the parents' obligations still apply. However, the definition of "can stand on his own" is not explained in detail. However, it is interpreted that the child already has the ability to meet his own needs without relying on his parents. Thus, researchers can understand that laws and regulations have not expressly regulated the limits of parental responsibility towards adult children. In the case of a child who has exceeded the age of 18 and is married, the child is no longer the responsibility of the parents in accordance with Article 26 paragraph (1) of Law 35/2014 and Article 45 paragraph (2) of Law 1/1974. However, if the child is still unable to stand on his own, there is nothing wrong with the parents still helping the child.

If parents do not carry out their responsibilities, Article 26 paragraph (2) of Law 35/2014 states that these obligations and responsibilities can be transferred to the family. Family in this context refers to the smallest unit in society consisting of husband and wife, or husband, wife and children, or father and children, or mother and children, or blood relatives in a straight line up or down to the third degree. If the child's parents and family cannot carry out these responsibilities, a

person or legal entity that meets the requirements can be appointed as the child's guardian. (Sayyid Quthb, 2001).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

In conclusion, based on statutory regulations, a father has a responsibility as head of the household to provide for his wife and children. This responsibility includes providing a living, protecting them, and meeting the needs of the household within his means. While still a child, a child has the right to ask his parents to fulfill their obligations, including providing a living. However, statutory regulations do not explicitly define the limits of parental responsibility towards adult children. If parents or family members fail to fulfill their obligations, the child can obtain a qualified guardian. Neglect by a father of a child can be subject to criminal sanctions, such as imprisonment or a fine. Therefore, it is important for parents to fulfill their obligations and responsibilities towards their children in order to protect and meet their needs.

B. Suggestions

it is recommended that parents, particularly fathers as heads of households, consistently fulfill their legal and moral responsibilities toward their children by providing adequate financial support, protection, education, and overall welfare according to their capabilities. Furthermore, the government and relevant institutions should establish clearer regulations regarding the limits and scope of parental responsibilities toward adult children to prevent legal ambiguity and ensure better protection of

children's rights. Legal awareness among parents should also be strengthened through education and socialization programs concerning family law and child protection regulations. In addition, mechanisms for guardianship and legal protection should be made more accessible for children whose parents fail to fulfill their obligations. Strengthening law enforcement against child neglect is also essential to ensure accountability and to protect the best interests and well-being of children. Ultimately, cooperation between families, communities, and state institutions is necessary to create an environment where children's rights are safeguarded and their needs are adequately fulfilled.

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