

Comparative Study Of Islamic Law And Positive Law On Children's Obligation To Support Parents

Saipudin¹, Nanang Abdul Jamal²

Institut Al-Ma'arif Way Kanan, Indonesia. Izzasaifudin@gmail.com

Institut AL-Ma'arif Wy Kanan, Indonesia. nanangabduljamal@gmail.com

Abstract

Keywords:

Maintenance, Parents,
Islamic Law, Positive
Law.

Article history:

Received: 19-02-2025

Revised 15-05-2025

Accepted 09-08-2025

This study aims to determine the Comparative Study of Islamic Law and Positive Law on the Obligation of Children to Provide for Parents. The results of this study indicate that both from the perspective of Islamic law and positive law require a child to provide for both parents. In Islamic law and positive law emphasize the obligation to provide for parents and in Islamic law and positive law both are imposed on children, both male and female. While the difference is seen from the requirements of parents, according to Islamic law parents are in a state of poverty while in positive law the requirement for support for parents is when parents need help from children.

Corresponding Author:

Saipudin

Institut Al-Ma'arif Way Kanan, Indonesia. Izzasaifudin@gmail.com

INTRODUCTION

Islam encourages the formation of families and invites people to live under the protection of the family. A family is formed and begins with the bond of marriage between a man and a woman. The purpose and wisdom of marriage is to gain peace of life, gain love and affection, and good relationships in the household. Which can run well if supported by the fulfillment of basic living needs for household life. The obligation to provide a living is to uphold the purpose of the marriage. With the fulfillment of material needs and also supported by non-material needs, it is hoped that it can become a family that receives the blessing of Allah SWT.

The obligation of children to respect and care for their parents can be found based on the provisions of Law Number 16 of 2019 concerning Marriage, Article 46 paragraphs 1 and 2, that every child has an obligation to respect and obey all orders and prohibitions given by them and when the time comes after adulthood if the parents and family in a straight line upwards need their help, then the child is obliged to care for and help them according to their ability.

The obligation of children to provide support for their parents is included in the implementation of religious orders and laws. One of the arguments regarding the obligation to provide a living is explained in Q.S At Talaq verse 7.

Meaning: "Let those who are able provide for their parents according to their ability. And those whose sustenance is restricted should provide for them from the wealth that Allah has given them. Allah does not burden a person except what Allah has given them. Allah will later provide relief after hardship."

Despite differences of opinion regarding the provisions for providing for parents, scholars agree that children are required to provide for their parents. This is a direct command from Allah SWT. which is stated in the holy verses of the Qur'an as a form of doing good to both parents.

In addition to the provisions of Islamic law, positive Indonesian law also explains the matter of children's support for their parents. In the Civil Code Chapter XIV Article 321 it states that:

"Every child is required to provide for both parents and to their blood relatives in the ascending line, if they are in poverty."

Based on the provisions in Article 46 of the Marriage Law, every child has an obligation to respect and obey all orders and prohibitions given by them and when the child becomes an adult, if the parents and family in the direct line upwards need their help, then the child is obliged to care for and help them according to their ability.

RESEARCH METHODS

The research method applied in writing this thesis is to use a qualitative research method that is descriptive analysis in nature. Descriptive is describing and depicting complex social realities or depicting what a theme is to be presented. While analysis is the process of arranging the sequence of data, organizing it into a pattern of basic measurement units.

RESEARCH RESULTS

1. According to Islamic Law

Each of the scholars of the four schools of thought has a basis for establishing a law. In connection with the establishment of mandatory laws regarding child support for parents by school scholars, namely the Hanafi, Maliki, Syafi'i and Hambali schools, according to the author's analysis, this is by referring to the arguments contained in the main source of law, namely the Koran.

The Hanafi School in this case refers to the word of Allah in surah An Nisa verse 36 and Al Isra' verse 26

Meaning: *"And give to close families their due, to the poor and those on a journey and do not squander (your wealth) wastefully."*

Surah An Nisa verse 36

Meaning: *"Worship Allah and do not associate anything with Him. and be good to both parents, close relatives, orphans, poor people, close neighbors and distant neighbors, and colleagues, Ibn Sabil and your servants. Indeed, Allah does not like those who are arrogant and boast."*

According to the Hanafi school of thought, this verse shows that the law is obligatory to provide for mahram relatives because of marriage. This means that everyone who is still considered a mahram is obliged to provide for. Therefore, parents are obligated to support their children because parents are mahram for their children.

Meanwhile, according to the Shafi'i and Maliki schools, it refers to the word of Allah in surah Al Isra verse 23 and surah Luqman verse 15

Meaning: *"And your Lord has commanded you not to worship other than Him and to do good to your parents as well as possible. If one of them or both of them reaches old age in your care, then never say to both of them the word "ah" and do not shout at them and say to them noble words."*

Meaning: *"And if both of them force you to associate with Me something that you have no knowledge of, then do not follow either of them, and associate them well in the world, and follow the path of those who return to Me, then only to Me will your return be, then I will tell you what you have done"*

The Maliki and Shafi'i schools are of the opinion that the verse above shows that it is obligatory to provide for parents because one of the proofs of doing good to parents is by providing them with support.

Meanwhile, according to the Hambali school of thought, it refers to the word of Allah in Surah Al Baqarah verse 233

This means: *"Mothers should breastfeed their children for two full years, that is, for those who wish to complete breastfeeding and the father's obligation to feed and clothe mothers in a virtuous manner. A person is not burdened but according to the level of his ability. let not a mother suffer misery because of her child and a father because of his child, and the heirs are also obliged to do so. If both of them want to wean (before two years) with their consent and deliberation, then there is no sin on either of them. and if you want your child to be breastfed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do."*

According to the Hambali school of thought, the verse above shows that maintenance is obligatory for every close family member who receives an inheritance. There is a kinship between the heirs that makes them more entitled to the property of the person who is inherited than others. Therefore, it is appropriate to specifically specify the obligation of maintenance for them, of course in this case including the maintenance of parents.

The scholars of the four schools of thought agree on the obligation of a child to provide maintenance to both parents. However, regarding the conditions that require maintenance to both parents, there are similarities and differences of opinion between the scholars of the four schools of thought.

2. According to Positive Law

In the legal literature, three types of legal consequences are known, namely:

- a. Legal consequences in the form of the birth, change or disappearance of a certain legal situation.
- b. Legal consequences in the form of the birth, change or disappearance of a certain legal relationship.

c. Legal consequences in the form of sanctions, which are not desired by the legal subject (unlawful acts).

One of the legal consequences of a valid marriage is the birth of a legal relationship between parents and children. This legal relationship creates rights and obligations that must be fulfilled and implemented properly. The rights and obligations between parents and children are regulated in Law No. 16 of 2019 concerning Marriage, namely articles 45 to 49. More specifically, the article that explains the obligations of children to their parents is article 46 paragraphs 1 and 2, which read:

- 1) Children are obliged to respect their parents and obey their good will.
- 2) If the child is an adult, he is obliged to maintain according to his ability the parents and family in a straight line upwards, if they need his help.

Looking at the contents of the article, it does not directly explain the order to support parents. In addition, in the explanation of Law No. 16 of 2019 concerning Marriage, there is no more detailed information from article 46. The article only contains the obligation to respect and obey parents and the obligation to maintain the family in a straight line upwards.

The author found a similar concept from article 46 paragraph 2 of Law No. 16 of 2019 concerning Marriage with Article 321 of the Civil Code which reads:

"Every child is obliged to provide for his parents and blood relatives in the ascending line, if they are poor."

The similarity in concept between Article 46 paragraph 2 and Article 321 of the Civil Code is seen in the context of the child's obligation to his parents and blood relatives in the ascending line. Therefore, another understanding referred to in Article 46 paragraph 2 of Law No. 16 of 2019 concerning Marriage is the understanding of the child's obligation to provide for his parents.

In terms of this obligation to provide for, it is known that the one who is burdened with the obligation to provide for is the child. It can be said that the child is a legal subject in the obligation to provide for his parents. What is meant by a legal subject is everything that according to law can be a supporter (can have) of rights and obligations. However, every supporter or bearer of rights and obligations does not always mean that they are able or capable of carrying out their own rights and obligations. Therefore, the Marriage Law stipulates that the obligation to provide support is only imposed after the child has become an adult. This means that a child who has become an adult can be interpreted as being capable of acting or carrying out legal acts. So far, the age limit for adults in the sense that someone is considered capable of acting according to the laws in force in Indonesia has varied widely. However, in the matter of obligations between parents and children, if we refer to Article 45 paragraph 2 which states that the obligations of parents referred to in paragraph (1) this article applies until the child is married or can stand on his own. So the author is of the opinion that what is meant by adults in terms of children's obligations to parents in the Marriage Law is that the child has married or

can stand on his own. Then it is further explained in the Compilation of Islamic Law, Article 98, that the age limit for children who are capable of standing on their own or adults is 21 years, as long as the child is not physically or mentally disabled or has never been married.

If associated with the adult age limit of 21 years, there are two realities that occur that at the age of 21 it is not uncommon for someone to have obtained a job and can support themselves and even their family. On the other hand, at the age of 21, someone is still in the education stage, namely at the college level. For this reason, the meaning of the sentence "stand alone" in Law No. 16 of 2019 and the Compilation of Islamic Law has two meanings. First, having skills so that they can earn income that meets their living needs. Second, getting an education that makes them achieve human nature.

The next requirement stated in Article 46 paragraph 2 is that parents need help. According to the author's understanding, this means that if parents do not need help or it can be interpreted that parents do not ask their children to provide for them, then the child is not required to pay the child's living expenses. This obligation will only begin if the parents have wanted the child to provide for them. Regarding how much living expenses are given to parents, Article 46 paragraph 2 explains that this obligation is carried out according to a child's ability. If it is associated with the obligation to provide support to parents, the law does not explain how this obligation can be terminated or ended. However, if it is associated with the elimination or termination of the obligation in the sense of legal science, then according to the author's analysis, the obligation to provide support to parents can end with three factors.

- 1) Due to the death of the person who has the obligation. So if a child dies, the obligation to provide support to parents is automatically lost or ends.
- 2) This obligation has been fulfilled by the person concerned. As long as the parents still need to fulfill the child's support, the child is still required to provide support until the parents no longer need their help. However, if the parents feel that they no longer need their help in fulfilling the right to support, that is when the obligation to provide support ends.
- 3) There is a cause beyond human ability so that he cannot fulfill this obligation. For example, a child who was previously healthy in terms of reason, but due to certain circumstances he experiences loss of reason or is interpreted as being mentally ill or crazy, then in conditions like this the child who has the obligation to provide support to his parents because of his insanity loses his obligation. Someone who is crazy or mentally ill is considered incapable of acting or carrying out legal actions, resulting in them being unable to carry out their own rights and obligations.

3. Similarities and Differences in Children's Obligations to Support Parents from the Perspective of Islamic Law and Positive Law

The obligation of children to support their parents is clearly regulated in Islamic law. It can be seen in the Qur'an Surah Al Baqarah verse 233, Q.S. Al-Isra verse 23 and verse 26, Q.S. At-Thalaaq verse 7, Q.S. Luqman verse 15, Q.S. An Nisa verse 36. While in positive law we can find laws that discuss this obligation, namely Article 321 of the Civil Code and Law No. 16 of 2019 concerning Marriage Article 46 Paragraphs 1 and 2.

The conditions for a child to support their parents, according to Islamic law, are that the parents are poor, the parents are unable to work, the child is able or can work, the child has excess assets. Meanwhile, according to positive law, the following:

- a) Parents need help
- b) Children are adults (married or can stand alone)

In terms of paying child support, both Islamic law and positive law require it for boys and girls without any difference.

CONCLUSIONS

Based on the discussion in the previous chapters, the following conclusions can be drawn. 1) Both from the perspective of Islamic law and positive law require a child to provide maintenance to both parents. Islamic law formulated by scholars of the four schools of thought have all agreed on the obligation to provide maintenance to parents, based on the Koran. In addition, positive law through Law No. 16 of 2019 concerning Marriage explains the obligation of child maintenance to parents as stated in Article 46. 2) This study shows that the perspective of Islamic law and positive law requires a child to provide maintenance to both parents. While the difference is seen from the requirements of parents, according to Islamic law, parents are in a state of poverty, while in positive law the requirement for maintenance for parents is when parents need help from children

REFERENCES

- Al-bahuti al-Hanbali, Manshur bin Yunus, *Kasysyaf al-Qina'*, Beirut: Dar Kutub Ilmiyah, 2009.
- Ali, Zainudin, *Hukum Perdata Islam Di Indonesia*. Jakarta: Sinar Grafika. 2014
- Cholid Narbuko dan Abu Achmadi. *Metodologi Penelitian*, Jakarta : Bumi Aksara. 2018
- Faqih, Rahim, Aunur, *Hukum Waris Islam*. Yogyakarta: UII Press
- Kompilasi Hukum Islam (KHI) edisi lengkap*, 2022, Bandung: CV.Nuansa Aulia. 2017
- Lexy J. Moleong, *Metodologi Penelitian Kualitatif*. Bandung : Remaja Rosdakarya. 2017

- Mohammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Jakarta: Rajawali Pers. 2014
- Rasyid Sulaiman, *Fikih Islam*, Bandung: Sinar Baru Algensido.
- Saebani, Ahmad, Beni, 2016, *Fikih Munakahat 2*. Bandung: CV Pustaka Setia. 2020
- Simanjuntak, *Hukum Perdata Indonesia*. Jakarta: Prenadamedia, 2018,
Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan*. Yogyakarta: liberty, 2007
- Sugiono, *Metode Penelitian Kualitatif Kualitatif Dan R&D*. Bandung : Alfabeta. 2020
- Suharso, *Kamus Besar Bahasa Indonesia Edisi Lux*. Semarang : Widya Karya. 2011
- Syarifuddin Amir, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana. 2006
- Syarifuddin, Amir, *Hukum Perkawinan Islam Di Indonesia*. Jakarta: Kencana. 2014
- Syekh Al Alamah Muhammad, *Fiqh Empat Mazhab*. Bandung: Hasyimi. 2017
- Tim Penyusun, *Fikih Muyassar*. Jakarta: Darul Haq, 2020
- Fikri Maulana, "*Tinjauan Hukum terhadap Hak dan Kewajiban Anak dan Orang Tua dari Undang-Undang No. 1 Tahun 1974*", (Skripsi, IAIN Purwokerto, 2015)
- Ernawati, "*Kewajiban Anak Memberi Nafkah Kepada Orang Tua Menurut Hukum Islam*" (Fakultas Hukum Universitas Esa Unggul: Jurnal Forum Ilmiah Esa Tunggal, Vol.12, 2015)