Children Under Islamic Law

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Abstract: Children under Islamic Law examines many aspects of children's lives and rights within the framework of Islamic Law in a comprehensive and insightful way. The book explores various facets of children's experiences, such as their identity, education, welfare and protection, as viewed through the lens of classical Muslim jurists and contemporary scholars. In this essential resource, the contributing authors examine diverse topics such as the definition of children in Islamic jurisprudence, their participation in religious activities, the role of Takaful (Islamic insurance) in safeguarding their future, and the significance of Hibah (gift) in supporting their well-being. Furthermore, the book provides an in-depth analysis of the Zakat (almsgiving) system and its impact on homeless children, the Islamic perspective on wet nursing, and the importance of vaccination in safeguarding their health. The book delves into the complex arena of children's rights when they are in conflict with Islamic criminal law, offering an insightful examination of the pre-trial procedures designed to protect and support children. This book is an indispensable resource for scholars, students and practitioners in the fields of Islamic studies, law, sociology and child welfare. Providing a holistic understanding of the rights and responsibilities of children within the Islamic legal system contributes to the ongoing conversation on the best interest of the child and helps bridge the gap between traditional Islamic values and contemporary needs.

Keyword: Children, Islamic, Muslim, law.

CHILDREN UNDER ISLAMIC LAW

Editor
MOHD AL ADIB SAMURI

Penerbit UTHM

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PREFACE

We praise Allah for the opportunity to publish this book on 'Children Under Islamic Law'. Children are considered a blessing from Allah in Islam and are afforded a great deal of protection and respect. As a result of their inherent dignity, children are entitled to love, care, and support from their parents and the larger community. Among the rights of children in Islam are the right to life, protection from harm, education, and the right to be treated with kindness and respect. In order for children to grow and develop to their full potential, adults must ensure that their rights are upheld.

Children's rights discourse is relevant and significant in Islam because it helps ensure they are treated with respect and care. This can help to prevent child abuse, neglect, and other forms of harm that can severely impact the well-being of children. It also helps to create awareness of children's rights and adults' responsibilities towards them. Society can also benefit from fostering a culture of respect and care for children, as children become healthy, happy, and productive members of society.

In order to safeguard the best interests of children worldwide, Muslims can participate in many ways, such as by supporting organisations and initiatives that strive to do so. It is critical for children to be protected and advocated for in their own communities, including by speaking out against child abuse and neglect and promoting effective parenting. It is imperative to support policies and laws that protect the rights of children

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on both national and international levels. Education of others regarding children's rights, including sharing information about how to safeguard children effectively. Set an example of kindness, respect, and care for children by being a positive role model. Muslim participation in these and other efforts can help ensure that children worldwide enjoy their rights and live fulfilling, healthy lives.

As part of public discourse, this book presents a nuanced perspective on children's rights within the Islamic context. With references to classic and contemporary debates, this book discusses the scholarly debates concerning children under Islamic law. A religious perspective can offer insight into many issues related to children in today's world, raised by various stakeholders. This book further enriches the discourse surrounding Malaysian children by incorporating an Islamic context. It describes puberty, children attending mosques, takaful savings, hibah for children, zakat for homeless children, vaccinations for children, and criminal procedures against children who violate the law.

We would like to express our gratitude to the Universiti Kebangsaan Malaysia for the research grant GUP-2021-064 entitled 'Modul Advokasi Hak dan Tanggungjawab Kanak-Kanak bagi Dasar Kanak-Kanak Fitrah Negeri Kelantan.'

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CHAPTER 1

Children in Islamic Discourse: An Introduction

Mohd Al Adib Samuri

Introduction

Islam considers children vulnerable groups that cannot care for themselves and emphasises protecting and caring for their best interests. They are the assets of the ummah, whose members will be the next generation of Muslims, so their interests must be safeguarded for the sake of continuity and growth. It has been proven that children who grow up in good conditions and with dignity have the potential to become productive adults for their society and their country. The Islamic scholars have, therefore, outlined in detail children's rights, regardless of their religion, race, or social status. Parents, society, and the state have a responsibility to ensure that this right is fulfilled and to make sure it is upheld. Saeidi et al. (2014) explains that Islam recognises the family as a basic social unit and defines the rights and obligations of parents and children. It is the responsibility of the parents to meet their children's biological, psychological, intellectual, and religious needs, as well as to develop moral values in accordance with religious requirements. More likely, a community that values and nurtures its children will be stable, harmonious, and prosperous. With the proper education from family and society, children can grow up to be responsible and respectful individuals. The purpose of this book is to explore various aspects of Islamic law that enable explicit provisions to ensure that the rights of children are protected.

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CHAPTER 2

What is a Child? A Discussion by Classical Muslim Jurists

Mohd Al Adib Samuri

Introduction

Childhood encompasses many facets that cannot be confined to puberty. Puberty is an important milestone in human development, but childhood has a multitude of social, psychological, and cultural elements that go far beyond biological maturation. Many argue that individuals under 18 who have reached puberty should not be considered children. The debate refers to the classical Islamic jurists, who believed puberty was a dividing line between childhood and adulthood (Wizarah Awqaf wa al-Su'un al-Islamiyyah, 1983). Thus, this chapter will critically examine the classical scholarly debate on the determination of puberty.

Baligh, or puberty, is an Arabic term that means reaching or stopping. When a child reaches puberty, it marks the beginning of his legal accountability and recording of his deeds (Ibn Manzur, n.d.). Legally, it means ceasing to be minor, having legal capacity, and facing legal responsibility. According to some scholars, the Quran contains several verses classified as signs of puberty. Classical scholars have formulated several signs of puberty, including reproductive and physical changes (Ibn Abidin, 2000). Several signs of puberty are accepted by Muslim jurists, including semen ejaculation for men and women experiencing menstruation and pregnancy (al-Ghazali, 1417H).

The Quran 4:6 states children will reach their marriageable age at puberty, which scholars refer to when discussing puberty. Specifically, it says that Muslims should test the intelligence of

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CHAPTER 3

Wet Nursing According to Islamic Perspective

Amirah Huwaina, Zuliza Mohd Kusrin & Norsyamlina Che Abdul Rahim

Introduction

The concept of wet nursing, co-feeding or milk sharing is when an infant is breastfed by someone whose mother is not the infant's biological mother. This article examines the aspects of wet nursing by introducing its definition according to the Quran, *Hadith* and scholars of different schools of Islamic law. Discussion analyses the three requirements of wet nursing that invoke the *mahram* bond (unmarriageable kin with whom sexual intercourse is considered incestuous), namely, relating to wet nursing mother, breast milk and milk-child. According to Islamic law, the act of wet nursing, where a woman breastfeeds a child that is not her own, creates a kinship between the wet nurse and the child. This can lead to certain restrictions in Islamic marriage laws, including the prohibition of marriage between milk-siblings and the application of awrah rules, which require individuals to cover their *awrah* in the presence of certain close family members. The discussion also raises questions about the implications of technological advancements that make it possible to feed infants with breast milk using modern indirect methods. This issue of modern wet nursing is particularly relevant given concerns about undocumented wet nursing practices, which could result in marital relationships between milk siblings in the future.

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CHAPTER 4

Vaccination of Children According to Islam

Muhammad Nazir Alias, Muhammad Najib Abdullah, Mohd Sham Kamis, Mohd Farihal Osman & Muhamad Mu'izz Abdullah

Introduction

Vaccines are an effective means of controlling the spread of infectious diseases, especially among children. Many diseases do not yet have medications that can cure or treat them. The use of vaccines to prevent disease is a method that has been used for years, and the technology for creating these vaccines has become more sophisticated in recent times. The vaccine prevents the spread of infectious diseases by stimulating the body's immune system to produce immunity (Azimah Mohd Masri, Syamilah Musa & Mohd Norzi Nasir, 2015).

The vaccine consists of an antigen. The antigen is either a live virus, a killed virus, a purified virus protein, a bacterial toxin that has been weakened, or a part of the bacteria. Vaccines also contain additional components such as preservatives, stabilisers, and adjuvants. Each substance contained in a vaccine has its function and contributes to its quality, safety and effectiveness. Vaccines do not contain substances that are harmful to the body (KKM & JAKIM, 2015).

The Importance of Vaccines

The vaccine was first discovered in 1796 by Edward Jenner to protect against smallpox (Riedel, 2005). It then evolved until it could protect against 25 varieties of biological threats. The World Health Organization (WHO) recognises that vaccines are the

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CHAPTER 5

Children Attending Mosque from an Islamic Perspective

Mohammad Zaini Yahaya & Muhammad Adib Samsudin

Introduction

Bringing children to the mosque is one form of Islamic education as it gives them practical worship experience. However, among the Muslim community, some think that children should not be brought to the mosque for various reasons, including disturbing the peace and atmosphere of worship. They argue with several arguments, including the *Hadith* related to this issue. There is a conflict between educational motives and the ban on going to the mosque against children. Thus, this chapter re-analyzes the views and arguments related to this issue by referring to the Quran and *Hadith* to see the rationale of prohibition based on the discipline of *usul al-fiqh* (Islamic jurisprudence). Also analysed are the views of reputable jurists in their classical legal texts and the contemporary context to select the most appropriate view to be subscribed to at this time.

For Muslims, a mosque is a sacred place of worship. It is a centre of worship and the dissemination of knowledge, particularly Islamic religious knowledge. The Quran mentions some of the main functions of the mosque, among them; 24: 36:

> *In houses (mosques), which Allah has ordered to be raised (to be cleaned and to be honoured), in them, His Name is remembered. Therein glorify Him (Allah) in the mornings, afternoons, or evenings.*

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CHAPTER 6

Takaful for Children According to the *Maqasid al-Shariah* Perspectives

Ihsan Ilahi Mohd Sabri, Nik Abdul Rahim Nik Abdul Ghani & Azlin Alisa Ahmad

Introduction

Takaful plays a critical role in protecting against the risks of economic instability, especially in the Islamic financial system. This is evidenced by the Malaysian government's effort through the Malaysian Central Bank (BNM) to encourage more Malaysians to have personal and family protection by introducing various innovations and initiatives in Malaysia's takaful industry. Among the improvements is the introduction of an affordable personal and family protection plan called 'Perlindungan Tenang' (Peaceful Protection), launched in 2017 (BNM, 2017). Apart from that, the government also introduced the MySalam takaful scheme, which is sourced from government funds and allocated to the B40 and M40 groups (MySalam Official Portal, 2020). These efforts demonstrate that personal and family protection is essential in facing a life full of risks.

The takaful industry is also encouraged to diversify product innovations to increase the penetration rate among Malaysians (BNM 2016). According to the report of BNM (2017), the penetration rate of Malaysians in family takaful and life insurance increased to 36.5% in 2017 compared to 34.5% in 2016, and it continued to rise to 41% in 2018 (BNM, 2018). Based on the BNM report, the penetration rate of family takaful is still low during the three years from 2016 to 2018, with no more than 50% of Malaysians participating despite showing an increase. Takaful companies

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CHAPTER 7

Hibah (Gift) and Children

Noor Lizza Mohamed Said

Introduction

Hibah (gift) is characteristically charitable and denoted as a gift of love. Islam has commanded hibah to satisfy human demands and needs. Apart from wills and waqf, this may be one of the most effective ways to manage Muslim assets prior to their death. According to the Quran (2: 177), which encourages Muslims to give their most prized material possessions to others, including their family members and orphans, estate management can guarantee children's welfare and needs. Giving property to family members, such as children, is considered an acceptable gift based on love and a way to help when the family is in a state of poverty. Similarly, giving property to poor orphans is more meaningful than giving property to those who are not orphans.

Accordingly, Islam outlines methods or rules for giving property to children, regardless of whether the child is a family member or not. The fact that they have not reached an age at which they are legally permitted to manage their property prevents them from managing it, including the prohibition on donating wealth to a third party or obtaining ownership of the wealth granted to them. Debates related to hibah and children will be discussed based on the Quran, hadith, ijma' (jurists' consensus) and other law sources to guide Muslims in executing hibah.

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CHAPTER 8

Zakat Aid for Homeless Children

Nurul Ilyana Muhd Adnan

Introduction

Malaysia has experienced various stages in terms of economy and development. This community has experienced an increase in the quality of life, as well as a rise in the cost of living. Meanwhile, the urban poor (as reported by the Department of Statistics Malaysia, 2020) also face the challenge of survival. Among the urban poor, there is a group of people who are homeless, unemployed, and hopeless. The most tragic aspect is seeing this happen to innocent children who become homeless.

Urban poverty, family conflict, social problems, and mental illness are all push and pull factors contributing to homeless people's existence in urban settings (Ahmad Yani et al., 2016). As a result, they chose the easy way out and slept on the streets, regardless of hygiene and safety concerns. This situation surely deserves clarification on the Islamic ruling of dispensing zakat funds to homeless children, as it could help alleviate their economic burden and distressing situation. Homeless children in these desperate conditions are qualified to receive zakat payments. They live on the streets, sidewalks, or in abandoned buildings without adequate food or shelter. They aren't getting proper education like everyone else is (Syazwani Drani, 2016). This indicates they are systematically similar to zakat recipients, such as destitute and poor people and *al-riqab* (enslaved people) who are eligible for zakat. However, neither the Quran nor the hadith

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CHAPTER 9

Pre-Trial Procedure on Children in Conflict with Islamic Criminal Law

Wafaa' Yusof

Introduction

Most Muslim countries have established specific laws for children, including criminal procedural rules. Furthermore, criminal procedural laws on children in conflict with the law have developed immensely in these countries. These legal reforms are derived from the Geneva Declaration of the Rights of the Child 1924 and the Declaration of the Rights of the Child adopted by the United Nations General Assembly on 20 November 1959. Muslim countries ratified the conventions and treaties as it does not conflict with Islamic law and the laws of their country. Cherif Bassiouni (1982) emphasised that Muslim countries are not barred from signing any international convention that protects human rights if the same protection rights are provided by Islamic law.

However, the position of children in Islamic criminal procedural law remains a question. Islamic criminal pre-trial procedures involving arrests, detention, search, and investigation procedures have been sanctioned but not in a structured, comprehensive, and specified form as a legal code. This procedure was earlier practised in the Islamic State. There is no exception to pre-trial procedures against children in conflict with the law. The basis for the application of these principles is the evidence from the Quran, Prophetic traditions (*hadith*), and reports of the Prophet's companions (*athar*), as well as the Islamic legal maxims and basic principles of Islamic law related to pre-trial procedures

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CHILDREN UNDER ISLAMIC LAW

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THE EDITOR

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