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## Legal Protection Of Children With Special Needs In The Era Covid-19 According To Islamic law Perspective

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### ABSTRACT

*The Indonesian Ulema Council has issued a fatwa, one of which is a fatwa on the Ahmadiyya group to safeguard the orthodoxy of Sunni theology from deviant theology. This study aims to examine the MUI fatwa on Ahmadiyah from the perspective of Islamic law and human rights using the theory of religious freedom developed by Tore Lindholm. This normative juridical research uses a conceptual and historical approach. The primary data source is the Fatwa Compilation of the Indonesian Ulama Council Since 1975, books of interpretation, hadith, and fiqh. Data collection techniques using documentation and interviews. Interviews were conducted with informants from the Indonesian Ulema Council (MUI). The results showed that the MUI Fatwa regarding the Ahmadiyah group was based on two arguments. The first argument is that Islamic law is based on the Qur'an, hadith, and ijma' according to the interpretation of classical scholars. The second argument is the limitation of human rights because the Ahmadiyya group can pose a threat to public order. MUI considers that any group or theology that is declared "deviant" and not by the Qur'an, hadith, and ijma' is considered a threat to public order. This means that MUI still uses classical literature as a reference for its fatwas, but at the same time understands public order as a principle of human rights. This position shows that MUI has a dual role, namely as an agent of modernization and conservatism in human rights discourse.*

**Keywords:** Ahmadiyah, Fatwa, Human Rights, Majelis Ulama Indonesia

### ABSTRAK

Majelis Ulama Indonesia telah menerbitkan fatwa, yang salah satunya adalah fatwa tentang kelompok Ahmadiyah dengan tujuan untuk menjaga ortodoksi teologi Sunni dari teologi yang menyimpang. Penelitian ini bertujuan untuk mengkaji fatwa MUI tentang Ahmadiyah dari perspektif hukum Islam dan hak asasi manusia dengan menggunakan teori kebebasan beragama yang dikembangkan oleh Tore Lindholm. Penelitian yuridis normative ini menggunakan pendekatan konseptual dan historis. Sumber data primer adalah Kompilasi Fatwa Majelis Ulama Indonesia Sejak 1975, kitab tafsir, hadits, dan fiqh. Teknik pengumpulan data menggunakan dokumentasi dan

wawancara. Wawancara dilakukan dengan informan dari Majelis Ulama Indonesia (MUI). Hasil penelitian menunjukkan bahwa, Fatwa MUI tentang kelompok Ahmadiyah berdasarkan pada dua argumen. Argumen pertama adalah hukum Islam berdasarkan al-Qur'an, hadis, dan ijma' sesuai dengan penafsiran ulama klasik. Argumen kedua adalah pembatasan hak asasi manusia dengan alasan bahwa kelompok Ahmadiyah dapat menjadi ancaman bagi ketertiban umum. MUI menganggap bahwa setiap kelompok atau teologi yang dinyatakan "menyimpang" dan tidak sesuai dengan Al-Qur'an, hadits, dan ijma' dianggap sebagai ancaman bagi ketertiban umum. Artinya, MUI masih menggunakan literatur klasik sebagai acuan fatwanya, namun sekaligus memahami ketertiban umum sebagai prinsip hak asasi manusia. Posisi ini menunjukkan bahwa MUI memiliki peran ganda, yaitu sebagai agen modernisasi dan konservatisme dalam diskursus hak asasi manusia.

**Kata Kunci:** Ahmadiyah, , Fatwa, Hak Asasi Manusia, Majelis Ulama Indonesia

## Introduction

Children in the Big Indonesian Dictionary are defined as descendants. In addition, the child is essentially a person who is at a certain developmental period and has the potential to become an adult.

Children in a family are the fruit of love from parents as the successors of offspring, are gifts and at the same time a mandate from God Almighty.(Isnawan, 2018) Children should be taken care of because they have inherent dignity and worth as human beings who must be respected and upheld.

Every parent hopes to have healthy children, both physically and mentally, but not all couples are blessed with healthy children. Not all children can develop as they should, not all children are born in the world with good and normal conditions like other children. There are even children whose development is hampered so that it interferes with the child's confidence. Of course this will be more sensitive to risk. This can hinder the child's growth and development and must receive the same protection as other normal children.(Riandin, 2017) There are even some children who are born with less than perfect, these children are called persons with disabilities.

According to Wardhani, et al, if you have children with special needs, this can burden parents both physically and mentally. The purpose of the heavy burden is that

the different roles performed by parents are certainly not the same as those of normal children.(Anggraeni and Valentina, 2015)

However, it turns out that there are parents who are disappointed to have a child with special needs, then give their child care to someone else, even though parents should spend more time caring for their child. So that not a few children are abandoned by their parents.

Law No. 19 of 2011 concerning the Ratification of the Rights of Persons with Disabilities states that persons with disabilities are people who have physical, mental, intellectual, or sensory limitations for a long period of time who in interacting with the environment and attitudes of the community can encounter obstacles that make it difficult to participate. full and effective on the basis of equal rights.

People with physical and mental disabilities. Meanwhile, according to Article 1 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, it is stated that the definition of disability is anyone who experiences physical, intellectual, mental, and/or sensory limitations in the long term who in interacting with the environment can experience obstacles. and difficulties to participate fully and effectively with other citizens on the basis of equal rights.

Children with special needs require special handling, but not all sincere parents accept children with disabilities and give love.

The reactions of parents who have children with special needs vary, there are parents who panic, are sad, confused and finally deny the fact because they gave birth to children with disabilities, parents should take care and give love because children are a gift from God Almighty.

However, in reality children with special needs remain the most vulnerable and marginalized group in every society. Although the movement for human rights and economic development continues to improve, in general this group is still on the last line to enjoy it.

Children with Special Needs are often defined as individuals who are said to have different characteristics from other normal children, in particular usually Children

with Special Needs (ABK) are indicated by differences in physical, emotional characteristics that are less or more, from normal children, their generation is outside the normal standard. happens in society. (Suwitri, 2020: 5)

Persons with disabilities have equal opportunities in all aspects of life and livelihoods are carried out through the provision of accessibility. All human beings have the right to have the opportunity to enjoy the provision of public facilities, but for persons with disabilities often receive less attention.(Joni, 2014: 70)

Parents who have children with special needs must be proud of their children. The feeling of shame in having children is eliminated, because this can create a major obstacle to meeting the needs and protection of their children, especially in the Covid-19 pandemic situation. Children should be given love and attention in providing an understanding of the situation they face, especially regarding the prevention of Covid-19, as well as accompanying them during the learning process.

In this regard, the PPPA Ministry in collaboration with the SAPDA Institute (Advocacy Center for Women with Disabilities and Children) and other partners have completed and launched the Protocol for the Protection of Children with Disabilities in the Covid-19 Pandemic Situation.

Children with special needs are often considered low so this can make them more sensitive. Even worse, there is discrimination that leads to the exclusion of groups of children with special needs. Whereas Article 28 I paragraph (2) of the 1945 Constitution states that everyone is free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment.(El Muhtaj, 2008: 273)

Children do not yet have the ability to develop by themselves to carry out their rights and obligations as citizens who are responsible and beneficial to fellow human beings. Every child has the dignity and worth that is upheld and who is still in the womb gets his rights without the child requesting in accordance with the provisions of the Convention on the Rights of the Child which states the general principles of child protection, namely the principle of non-discrimination, the principle of the best

interest of the child, the principle of the rights to life, survival and development (the right to life, survival, and development), and the principle of respecting the views of children.

Legal protection for children is closely related to justice which is related to justice for children and its implementation is the rights of children, especially for children where every child has the same rights and position. The position of children who are the next generation of the nation who will continue their ideals, who as future leaders need to get the same and widest opportunity to grow and develop both physically and spiritually.

The protocol for the protection of children with disabilities in the Covid-19 pandemic situation takes into account the diversity of children with disabilities because they require different approaches. For example, the method of delivering information related to Covid-19 is different between children with visual impairments and children with hearing disabilities.

There are 2 Institutions for Children with Special Needs in Harjosari I Village, Medan Amplas District, both physically and mentally. Talking about access to protection for children with disabilities, the Principal of the ABC Extraordinary School at the Medan Islamic Education Park. Mrs. Nurasiah said that during the pandemic, her party had compiled learning materials that were fun and did not burden the children and parents, but were still meaningful and useful for the children and their families.

In this study, researchers want to look at the legal protection of children with special needs, especially when we are currently in the Covid-19 Pandemic period. based on the perspective of Islamic Law.

### **Research Method**

Location The research was conducted at the Social Service of Medan City, located on Jl. Pinang Baris, Lalang, Medan Sunggal District, Medan City, North Sumatra. The object of this research is the provision of legal protection for children with special needs during the Covid-19 pandemic.

The subjects in this study consist of the research area or area and the people who will be involved as informants, while the subject of the research area is the Medan City Social Service. The informants in this study were the Heads of Children with Disabilities the city of Medan, the head of the SLB institution, the PPPA section for children with special needs, parents of children with special needs and children with special needs.

Type This research is a qualitative research, in research qualitative researchers as well as acting as research instruments, the ongoing process of data collection, researchers are really expected to be able to interact with the object (society) that is the target of research. In collecting qualitative data, the target studied is the social setting. (Salim and Syahrums, 2012: 113)

**Research Subject Data**

No	Institution	Identity	Amount	Total
1	Medan City Social Service	Head of Social Rehabilitation	1 person	4 people
		Head of Social Rehabilitation for Persons with Disabilities	1 person	
		Respondent	2 persons	
2	PPPA	Head of the Division of Child Protection with Disabilities	1 person	4 people
		PPPA staff	1 person	
		Respondent	2 persons	
3	SLB	Head of SLB	4 people	8 people
		SLB Teacher Council	3 people	
		Respondent	1 person	
4	Parents of children with special needs	Mother	5 people	15 People
		Father	5 people	
		Child	5 people	
5		Public	5 Orang	10
<b>TOTAL</b>				<b>35 People</b>

This approach uses a Sociological approach. The Sociological Approach is an approach in understanding Islam from the framework of social science, or relating to aspects of human social relations between one another, or between one group and another. (Salim and Syahrums, 2012: 120)

This research requires the type of data, namely Primary Data, which is data obtained directly from the results of interviews in the field. This type of data is obtained from data sources who are research respondents, namely:

1. Head of the Disability Division of the Medan City Social Service and the Staff
2. Head of Protection for children with disabilities PPPA
3. SLB Institutions and Parents/Guardians of Children with Special Needs

In addition to primary data, secondary data is also needed because secondary data is data obtained indirectly or data obtained through literature study, which consists of:

1. Official archive documents found at the research site (Medan City Social Service)
2. Literature, laws and regulations namely Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 8 of 2016 concerning Protection of the Rights of Children with Disabilities, Regulation of the Minister of Women Empowerment and Child Protection Number 4 of 2017 concerning Special Protection for Children with Disabilities and research results in the form of article reports in print media, as well as books and journals and mass media that are directly related to research.

This research collects the data by interview. The interview is a question and answer process that is structured to be asked orally between the information seeker or commonly referred to as the interviewer while the other party functions as a provider of information commonly referred to as the informant or respondent.

In addition to interviews, library research is used with the aim of obtaining data through library materials, namely reading and studying the laws and regulations,

namely the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, theories and writings that exist in literature books, lecture notes, newspapers.

Data Analysis According to (Miles and Huberman, 1984: 133) there are three methods in qualitative data analysis, namely data reduction. Meanwhile, data reduction requires researchers to use data obtained by researchers in the field through interviews, observation and documentation to be reduced by summarizing, selecting and focusing data on things that are in accordance with the research objectives. At this stage, the researcher reduced the data by categorizing and even making abstractions from field notes, interviews and documentation. (Emzir, 2011: 129)

Furthermore, the authors perform the presentation of the data after the data has been reduced or summarized. data obtained from observations, interviews and documentation. The third step of the analysis activity is drawing and verifying conclusions. From the beginning of data collection, researchers began to decide what the “meaning” of legal protection for children with special needs was, noting regularities, patterns, explanations, possible configurations, causal lines, and proportions. (Emzir, 2011: 129)

Data Validity Technique In qualitative research, the data validity factor is also very important because a research result is meaningless if it is not recognized or trusted. . (Salim and Syahrudin, 2012: 165)

## **Result and Discussion**

Child Protection Law no. 35 of 2014, defines a child as a person who is not yet 18 years old, including children in the womb. In the preamble to the Act, it is stated that children are a mandate and gift from God Almighty in which the dignity and worth as a whole human being is inherent. Furthermore, it is said that children are buds, potentials and the younger generation to succeed the ideals of the nation's struggle, have a strategic role and have special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future.



Therefore, children need to get the widest possible opportunity to grow and develop optimally both physically, mentally and socially and with noble character. For this reason, it is necessary to make efforts to protect children's welfare by provide guarantees for their rights and treatment without discrimination.

The Social Service of Medan City of North Sumatra Province is the implementing element of the Regional Government led by a Head of Service who is under and directly responsible to the Mayor of Medan through the Regional Secretary of the City of Medan with the main task of carrying out Government affairs in the Social Sector.

After the issuance of the Medan City Regional Regulation Number 15 of 2016 concerning the Establishment of Regional Apparatus and the Medan Mayor's Regulation Number 1 of 2017 concerning the Organizational Structure of the Medan City Regional Apparatus, it was formed in 2017.

Based on the results of interviews with related informants, it was found that several factors that influence the obstacles to the implementation of Law No. 8 of 2016 concerning Persons with Disabilities in the protection and fulfillment of the rights of persons with disabilities in Medan City are as follows:

1. Legal Substance Factor

Legally, the provisions governing the protection and fulfillment of the rights of persons with disabilities, especially at the regional level, are still very minimal, in this case still referring to Law No. 8 of 2016 concerning Persons with Disabilities. The Medan City Government should have regulations that protect the rights of persons with disabilities which can be a legal basis.

2. Structural Factor

Structure is a pattern that shows how the law is carried out according to its formal provisions, so the legal structure shows how government officials and their facilities and infrastructure support the realization of the protection and fulfillment of the rights of persons with disabilities in Medan City.

What is closely related to this research is the government, in this case the City Government, especially the Social Service and related agencies that have the authority according to law to provide protection and fulfillment of rights for persons with disabilities. One of the factors causing the non-implementation of Law No. 8 of 2016 concerning Persons with Disabilities in protecting and fulfilling the rights of persons with disabilities in Medan City as it should is in the legal structure sector.

### 3. Legal Culture Factor

Legal culture is closely related to legal awareness. Therefore, the legal awareness of the government, society and persons with disabilities in realizing the protection and fulfillment of the rights of persons with disabilities is a factor that affects the implementation of Law No. 8 of 2016 concerning Persons with Disabilities in protecting and fulfilling the rights of persons with disabilities in Medan City.

The Medan City Government still does not understand the rights and needs of people with disabilities and has not been moved to play a role in fulfilling the needs of the rights of people with disabilities, the thing they complain about is the promotion in the form of socialization which is considered inappropriate which is expected to facilitate the process of socializing parents and the community.

Article 12 of Law Number 8 of 2016 concerning Persons with Disabilities states that "The right to health for persons with disabilities is to obtain equality and opportunity for safe, quality, and affordable health services."Second, "The right to education for persons with disabilities is to obtain quality education in educational units in all types, pathways, and levels of education in an inclusive and special way." As for the third, "The right to be free from discrimination, neglect, torture, and exploitation is to get protection from all forms of physical, psychological, economic, and sexual violence. (Ndaumanu, 2020)

According to Islam, child protection has a fundamental meaning, moreover it can be the basis of values and paradigms that make significant changes to the fate of children. Moreover, a comprehensive approach is carried out with the aim that humans can obtain spiritual education, generation development, community

formation, and cultural development, as well as the application of the principles of glory and civilization.(Burhanuddin 2014)

The right to maintain children's offspring in the view of Islam includes several things. First, in order to maintain the rights and dignity of the child, the biological father may not be replaced by another person's name even though the child has become an adopted child. Second, rights and honors are related to the child's psyche, because if the child is known as a child who has no father or clear lineage, then he will experience big problems in the growth of his personality in the future.

There are five kinds of human rights known as Maqashid al-Shari'ah, namely the maintenance of religious rights, the maintenance of the soul, the maintenance of honor and offspring, the maintenance of reason and the maintenance of property.

a. Right of religious preservation

The maintenance of religious rights for a person in Islam is called *hifz al-din*. The maintenance of the religion of a newborn child in the world is under the responsibility of both parents. (Aziz, 2017) The religion adopted by children must follow the religion of their parents. This applies until the child is able to make a determination to continue following the religion he was born with or choose the religion he has followed since birth or choose the religion that is best for him. (Anshari, 2006: 45)

b. The right to maintain offspring

One form of the right to maintain offspring in Islam can be seen in the concept of maintenance of honor. The honor of a child can be realized by recognizing his identity as a child of his biological parents. Therefore, in Islam the adoption of a child should not cause the child to eliminate the origin of his descendants.

c. Right to health care

Maintenance of children's health is an obligation, both physical and mental health maintenance so that children can grow normally, not overwritten by physical

and mental illness. (Mulyani, 2021)

Fulfillment of adequate and balanced nutrition and vitamins in children can begin while still in the womb and this is a health right given by parents to children. Parents must also avoid violence against children while the child is still in the womb. Violence experienced by the child even though he is in the womb is very dangerous for the development of the child. (Anshori, 2006: 58)

Islamic attention to the health of children is not only done when he is in the womb, but also given after he is born. When a child has been born into the world, the maintenance of the child's health is given to efforts for health growth, prevention and healing. At the growth stage, among the efforts that can be done by parents so that their children grow up healthy, among others, through breastfeeding, circumcision, prevention and healing efforts.

The first thing a mother must do to maintain her child's growth naturally is to breastfeed her own child or commonly called ASI (Mother's Milk). Giving breast milk directly to their children is very important for the growth and health of children. This is in accordance with the Firman Allah SWT:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنِيَمَ الرِّضَاعَةَ ۗ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۗ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۗ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۗ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْرِضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۗ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

*Translate: The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be Treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do. (Al-Baqarah/2:33)*

The surah can be clearly understood Islam is really cares about protection of children's health by teaching mothers. The mam give breast milk to their children, which is recommended to complete for two years. So, the importance of breastfeedfor the health of a baby, Islam allows for someone who is not able to give breast milk to his child to breastfeed his child to another woman who is considered capable. In Islam, this practice has happened a lot in society, where a mother breastfeeds her child to another woman who is willing and able to breastfeed her child. Even the Prophet Muhammad was breastfed by a woman named Halimah al-Sa'diyah.

d. Socio-economic rights

Islam pays great attention to the social rights of everyone, especially for the poor, women and even children. Of course, this is accompanied by the implementation of the basics of physical and social. This concept is taught by Islam. Moreover, Islam has pioneered the world in overcoming the problem of poverty in society by providing Bait al-Maal and Zakat. (Atabik, 2015)

Islam provides guarantees for every child born to a Muslim, be it the child of a government official, employee, worker or commoner. Family guarantees, both clothing and food for each child, are on the shoulders of a father.

According to Darmadi, the rights given to children with disabilities are in accordance with Islamic law, because basically the South Tangerang city government uses the Koran as a legal basis in managing the rights of children with disabilities. The rights of persons with disabilities include the right to maintain religion, the right to maintain offspring, the right to maintain health, the right to maintain reason and socio-economic rights.

Based on the description above, it can be concluded that the law used in taking care of children with disabilities in the Medan City area is Islamic law which teaches about the rights of children with special needs which consist of the right to maintain religion, the right to maintain offspring. , the right to health care, the right to maintain reason and socio-economic rights, all of which have been enshrined in

the said Regional Regulation.

Moreover, Islam does not recognize differences in social status and does not recognize differences in treatment of people with disabilities. Islam views its followers to contribute to social life according to their abilities. Commands and suggestions to fight in the cause of Allah in the form of physical warfare, for example, have proven not to be addressed to all Muslims, but to those who have physical perfection. Both perfect from physical disability and perfect from disease.

The Medan City Government has made several efforts to fulfill children's rights through several social assistances, both in nominal form. Based on the results of interviews with data writers obtained from the Social Service of Medan City, children with special needs have received financial assistance of Rp. 3,600,000, - / year. The supporting facilities for these funds are free to use. So far, most of what is known to the Medan City Social Service, the assistance of these funds is used to purchase hearing aids, wheelchairs or other activity equipment according to the needs of children's growth and development.

Distribution of funds that have been sent through Bank Bri to the savings accounts of children with disabilities. This distribution is disbursed every August 15 to August 19 per year.

Regarding the fulfillment of the rights of children with special needs, it has become the responsibility of personold during the pandemic. This starts from pregnancy until the child reaches adulthood. Based on Islamic law, children are still the responsibility of parents until they reach the age of puberty, while according to Law Number 35 of 2014 concerning Child Protection, it is the responsibility of parents as long as the child is under 18 (eighteen) years of age.

Other efforts that can be made in order to protect, respect, promote and fulfill the rights of persons with disabilities include physical therapy, drug administration, nutritional food provision, training for parents or companions on how to take care of children with disabilities. The forms of legal service assistance provided are in the form of defense and obtaining justice before an objective juvenile court. Thus, it can

be understood that every child with a disability has the same rights in all aspects of life and livelihood in accordance with Law no. 8 of 2016.

Being a child with special needs is a challenge for both parents and the child. In this case, the role of the family and community is very important, because this can help children with special needs in their development process at home during the COVID-19 pandemic.

### **Conclusion**

The Medan City Government has made several efforts to fulfill the rights of children with special needs during the COVID-19 pandemic through various social and nominal assistance. According to the Head of the Medan City Social Service, this financial facility assistance was used to purchase various equipment such as hearing aids, wheelchairs and tools for other activities in accordance with the growth and development of children during the Covid-19 pandemic.

According to the Islamic perspective, children's rights are gifts from Allah SWT that must be guaranteed, protected and fulfilled by parents, society, government and the state. For this reason, Islam recognizes five kinds of human rights which are often referred to as maqashid al-Shari'ah, namely the maintenance of religious rights, the maintenance of the soul, the maintenance of honor and offspring, the maintenance of reason and the maintenance of property. Whereas in positive law it is stated that persons with disabilities have the same rights in life and livelihood. This is enshrined in Law no. 8 of 2016 article 5 paragraph (1) regarding persons with disabilities.

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