

The Child Maintenance Rights of Orphans from the Perspective of Islamic Law and Positive Law

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ABSTRACT

Fulfilling a child's right to maintenance constitutes both a legal and moral obligation of parents, as stipulated in Indonesian law and Islamic legal principles. Nevertheless, empirical realities reveal persistent neglect of children by biological fathers, particularly in terms of financial and emotional support. This study examines a case from Kebonagung Village, Tegalrejo District, Magelang Regency, in which a child was deprived of maintenance and legal recognition for more than two decades despite the absence of a legally dissolved marriage. This condition exposes a significant gap between normative legal provisions and their practical enforcement, underscoring structural weaknesses in the protection of children's rights within the domestic sphere. As a consequence, such children occupy a vulnerable legal position and may be classified as "passive orphans," referring to children whose parents are legally alive but fail to fulfill their maintenance obligations. This article argues for the urgency of strengthening legal protection mechanisms and enhancing the role of the state in ensuring the effective realization of children's non-negotiable rights.

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Introduction

The birth of a child automatically gives rise to juridical consequences, namely the emergence of parental obligations to fulfill the rights of the child. Children possess material rights, such as clothing, food, and shelter, as well as immaterial rights, including affection, freedom of worship, and social interaction. One of the child's fundamental rights is the right to maintenance (alimony), which must be fulfilled by parents as part of their legal and moral responsibility. The fulfillment of child maintenance plays a strategic role in shaping a superior

and competitive generation capable of fulfilling its role as khalifah on earth. Child maintenance encompasses the fulfillment of basic needs, including clothing, food, housing, healthcare services, and education. (Syarifuddin, 2000).

In Islam, the roles of husband and wife in raising children are assigned proportionally and complementarily. The husband bears the responsibility of providing maintenance for both the child and the wife in a proper and equitable manner (*ma'rūf*), in accordance with his financial capacity. The wife, on the other hand, is obliged to obey her husband, safeguard and manage family property, preserve personal dignity, and maintain household confidentiality, (Slamet, 1999). whether in the presence of her husband or while he is working outside the home. This division of roles is consistent with national legal regulations as stipulated in Article 80 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which affirms that a husband is obligated to protect his wife and provide all household necessities according to his ability. Furthermore, Articles 31 and 34 of Law No. 1 of 1974 on Marriage emphasize that husbands and wives hold equal legal standing within the household, while assuming different but complementary roles and responsibilities. (Misbachul, 2019)

In practice, however, cases are frequently found in which parents neglect their biological children, even to the extent of denying the child's status as part of their lineage for various personal or social reasons. Such situations are often exacerbated when parents and children do not reside under the same roof, resulting in the breakdown of emotional, economic, and legal responsibilities related to the fulfillment of the child's rights. This condition inevitably reduces the frequency of interaction between parents and children, which in turn directly affects parental obligations in childcare. When a child lives separately from their parents, parental care and responsibility often cease, leading to the failure to fulfill parental maintenance obligations toward the child.

Nevertheless, law enforcement against fathers who neglect their children remains relatively weak in practice. Many cases are not legally pursued or even reported due to factors such as economic inequality, lack of legal awareness, or social pressure. Mothers and children often become structurally disadvantaged parties who fail to receive adequate legal protection. This condition places children in an extremely vulnerable position regarding violations of their rights, particularly concerning the fulfillment of basic needs, and may potentially classify them as "passive orphans" children whose basic physical, mental, and social needs are not properly met as defined in Article 1 paragraph (1) of Law No. 4 of 1979 on Child Welfare.

Results and Discussion

The Right to Child Maintenance for Passive Orphans in Kebonagung, Magelang

In social reality, passive orphans are children who biologically still have a father but do not receive financial support, care, or affection from him. Based on field research conducted in Kebonagung Village, Tegalrejo District, Magelang Regency—through direct interviews and participant observation—this study reveals multiple complex dimensions of the problem. Using a qualitative approach and in-depth interviews with various informants, including passive orphans, single mothers, social workers, and community leaders, several key findings can be identified as follows:

a. Father Absence and the Concept of Passive Orphans

One of the principal findings of this field study is the emergence of the phenomenon of passive orphans, referring to children who biologically have a father but do not experience his presence, affection, or parental responsibility in their daily lives. This absence is not caused by death, as commonly understood in the definition of an “orphan,” but rather by the father’s neglect of his parental role and obligations. In this context, the term passive orphan is used to describe children who legally still have a father but functionally do not receive paternal care, either economically or emotionally. This phenomenon reflects a relational crisis within the family that often remains invisible yet has profound implications for children’s psychosocial development.

b. Psychosocial Impact on Children

The absence of a father’s role has significant psychosocial consequences for children. Based on the testimony of respondent M, he experienced identity confusion, feelings of rejection, and emotional instability from an early age. He grew up without a male role model and frequently felt envy toward peers who maintained emotional bonds with their fathers, such as being able to share stories or receive simple gestures of affection. These findings confirm that a father’s presence is not merely as a material provider but also as a source of emotional security, affection, and moral guidance in a child’s development.

c. The Struggles of Single Mothers and Gender Role Inequality

The experience of MY, the single mother of respondent M, clearly illustrates the heavy burden borne by women abandoned by their spouses without legal clarity or responsibility. Shortly after the marriage contract, her husband left and never returned. From that point onward, she endured pregnancy, childbirth, and childrearing independently, without financial or emotional support. Although the marriage remained

legally valid due to the absence of formal divorce, in practice MY assumed the role of a single parent from the outset of the marriage.

c. Weak State Intervention and Legal Protection

From the perspective of law and child protection, the case of MY and her child exposes the limited role of the state in addressing child neglect by legally recognized parents. Despite the absence of divorce, the father failed to provide maintenance or care, yet no legal intervention existed to compel compliance or impose sanctions. The state appears absent in guaranteeing children's rights to care, protection, and affection from both parents. Social workers in Kebonagung identify this situation as a form of structural injustice, emphasizing that the state and social institutions should play an active role not only in regulating divorce but also in enforcing accountability against parents who neglect their children economically and emotionally, even within an intact marriage.

d. Social and Religious Roles in Supporting Passive Orphans

Community leaders and religious figures in Kebonagung stress the importance of social environments in protecting and supporting passive orphans. Rather than stigmatizing children, society should function as a support system that provides safety, affection, and recognition regardless of family structure or legal status. From a religious perspective, every child retains equal rights to love and protection, even when raised without a father figure.

Analysis of Islamic Law and Positive Law on Child Maintenance Rights

Under Islamic law, providing maintenance for children constitutes a clear *sharʿī* obligation imposed upon fathers. This duty is not merely moral but carries legal consequences and sanctions if neglected. The case of respondent M in Kebonagung—who was deprived of care, protection, and maintenance from infancy—demonstrates a clear violation of this obligation. This case is therefore relevant for analysis through the framework of Islamic law to illustrate how maintenance responsibilities should be enforced. *Sharīʿa* plays a crucial role in this context (Muhamad Ali, 2025). From the perspective of Sunni legal schools, the majority of jurists offer normative guidance relevant to this case:

The Hanafi school holds that a father's obligation to provide maintenance cannot be annulled, even if the father is impoverished. Judges are authorized to compel compliance, including selling the father's assets or imprisoning him if he refuses. Applied to respondent M's case, this doctrine would require legal enforcement regardless of the continuing marital bond

The Shāfiʿī school considers child maintenance not to constitute a debt unless determined by a judicial ruling. If no legal action is taken at the time of neglect, unpaid maintenance is deemed

forfeited. This highlights how weak judicial intervention in Kebonagung contributed to the permanent loss of respondent M's rights (Misbachul, 2019). The Hanbali school asserts that unpaid maintenance lapses unless there is concrete proof of the child's need and inability to support themselves. Consequently, community and social institutions become essential when formal legal mechanisms fail. The Maliki school maintains that unpaid maintenance does not become a debt, particularly if the father is poor, while firmly rejecting the notion that the mother bears financial responsibility. This reinforces the argument that the full burden borne by MY constitutes gender-based injustice inconsistent with Islamic legal principles. Collectively, these schools affirm that maintenance remains a paternal obligation until the child achieves financial independence. In respondent M's case, the absence of enforcement mechanisms whether familial, communal, or institutional demonstrates a serious failure to uphold these principles.

Positive Law Analysis of Child Maintenance Rights in Kebonagung, Magelang

The case of passive orphans in Kebonagung reveals a significant gap between the normative framework of positive law and its practical implementation. Indonesian law clearly guarantees children's rights to care and protection, yet, as experienced by respondent M, enforcement remains ineffective.

Article 34(1) of the 1945 Constitution stipulates that "the poor and abandoned children shall be cared for by the state" (Purba, 2018), providing the constitutional basis for state intervention. Law No. 35 of 2014 on Child Protection further obligates the state and regional governments to safeguard children's rights without discrimination, including children who functionally lose parental care (Purba, 2018).

Nevertheless, in practice, a father's absence does not automatically trigger legal intervention. Although Article 80(1) of the Compilation of Islamic Law (KHI) assigns full maintenance responsibility to fathers, no effective mechanism exists to enforce this obligation when fathers disappear without formal divorce (Directorate, 2017). As a result, children remain legally recognized as having parents but are deprived of the protection and care that should follow. The fact that MY bore the entire caregiving and economic burden underscores the limited coercive power of positive law in cases of family neglect without divorce. Article 149(d) of the KHI obligates fathers to provide child maintenance until the age of 21, even after divorce. The absence of state intervention in respondent M's case exposes systemic gaps in child protection (Mayang, 2025).

Despite comprehensive regulations, weak law enforcement, low public awareness, and poor institutional coordination leave many passive orphans outside state protection systems. No formal institutions in Kebonagung conducted systematic data collection or assistance for such children, despite their social and economic vulnerability. From Hans Kelsen's perspective, positive law functions as a binding normative system. However, in the case of passive orphans, legal validity alone proves insufficient without effective protective and coercive enforcement. Law must not only exist but must actively function within society.

Both Islamic law and national law mandate collective responsibility for abandoned children. However, this study demonstrates that such responsibility has not been adequately fulfilled in Kebonagung. The case of respondent M thus illustrates a profound imbalance between legal norms and their implementation, underscoring the need for stronger enforcement, greater public awareness, and more inclusive protection mechanisms for children living as passive orphans (Mawardi, 2025).

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