



PATERNITY LEAVE IN MOTHER AND CHILD WELFARE BILL BASED ON HIFZ AL-NASL PERSPECTIVE AND GOVERNMENT ETHICS POLITICS

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Abstract: The notion of giving 40-day-paternity leave has been on the waiting list for discussion and ratification. On the one hand, the mother and child welfare bill can guarantee the fulfillment of some of mothers' and children' rights if they are accompanied by the fathers during the delivery. However, on the other hand, the status of the husbands who also work for government or private companies requires them to complete the workload, and 40 days of leave is considered as a long time for workers to leave. This study aims at examining the implementation of the concept of hifz al-nasl on the ethical politics of government concerning the birth of the mother and child welfare bill. The question formulated in this paper is how is the implementation of the concept of hifz al-nasl towards the government's ethical politics with the birth of the mother and child welfare bill which will provide 40 day-leave for husbands when their wives give birth? This research is library by which the data sources were obtained from documents, books, journals, and news on social media. The data were analyzed by using qualitative approach. The conclusion of this study showed that the philosophical basis of the 40-day-paternity leave policy is a crystallization of the concept of protecting wives and prospective babies and in accordance with the objectives of Islamic law in providing protection for offspring (hifz al-nasl). Besides, this government's ethical politics is also an implementation of the rule of *taşarruful imām `alā ra'iyat manūṭun bil maşlahah* law (policies taken by the government must be ensured to gain benefit for the people).

Keywords: paternity leave, hifz al-nasl, government's ethical politics

A. Introduction

Paternity leave has been initiated by the House of Representatives and ratified as a bill (Indonesian: RUU), and will be further discussed and enacted as a law. The interesting point about the bill is the provision of leave for husbands for 40 days to prepare for the birth of their child and to accompany and take care of their wives after delivery process. The bill which is known as the mother and child welfare bill (Indonesian: RUU KIA) is an ethical step by the government to provide comfort for a family in welcoming the birth of their baby. From hifz al-nasl (protecting offspring) point of view, the mother and child welfare bill is alleged to be able to implement one of



the objectives of Islamic law (maqashid sharia) relating to the protection of offspring, but on the other hand, the provision of 40 day-paternity leave for husbands who work in government and private agencies will clash with their job responsibilities.

Furthermore, research on the right to leave for workers had been carried out, even by some previous researchers it can be grouped into two categories. First, research related to the right to leave for female workers during childbirth, as written by Firdaus et al (2018), Shabrina Restu D., (2016) and Khamid Istakhari (2017) whose research focus was more directed to the right to leave for female workers when giving birth and during menstruation. Second, research related to paternity leave written by Dewi Ariyani (2017), Ida Bagus Yoga Raditya dan Priyanto (2015). This second study generally illustrates the importance of paternity leave for husbands when their wives give birth because a wife needs assistance from her husband in dealing with the birth of child. Based on the previous research categories, it can be understood that the right to leave, both for the wife and husband, needs to be given.

This paper aims at examining the government's ethical politics in providing services to its people, especially regarding the idea of paternity leave for husbands when their wives give birth in the mother and child welfare bill, and linking this to one of the objectives of Islamic law, protection of offspring (hifz al-nasl). The birth of this draft and then being determined as a bill is something interesting to study. There are two reasons that can be put forward; first, a husband who works in a certain agency or even the government is required to fulfill and carry out his job responsibilities. Meanwhile, on the other hand, through this bill, it can be strongly suspected that when a husband uses his leave rights as stipulated in the bill, there will be clashes and conflicts in his work. Second, when the good intentions and partiality of this bill are not supported, then the rights of the wife and children are neglected (Chs, 2022). Based on that, the question formulated in this paper is how is the implementation of the concept of hifz al-nasl towards the government's ethical politics with the birth of the mother and child welfare bill which will provide 40 day-leave for husbands when their wives give birth?

B. Research Method

This research is normative legal research with the main data source obtained from legislation or draft laws. The secondary sources were taken from books, journal articles, and news in the media. As legal research which obtained data source from library research, the data collection process was done by reading themes related to research issues, then grouping them according to the sub-subjects in the writing. The next step was to analyze the data using a qualitative approach, starting from describing the data, comparing it with other data, and drawing conclusions. Content analysis was prioritized in data analysis because the main data of this research were from the mother and child welfare draft document which had just been ratified as a bill. From the analysis carried out, this study was conducted to get a complete picture of the relationship between the government's ethical politics and the concept of hifz al-nasl in Islamic law.

C. Discussion

Hifz al-Nasl as the Purpose of Islamic Law

Discussions in Islamic law originating from the Sharia of Allah SWT are often questioned for its purpose, both in terms of understanding and implementation.

Moreover, when talking about Islamic law, a mukallaf (a person who is subject to law) is bound to fulfill the pillars and conditions in it. Scholars have tried to conclude that at least the purpose of Islamic law includes the concept of maqāṣid sharia, then when the components discussed in the concept are assessed, five aspects of life that are protected by these Islamic laws appear. These aspects are referred to as *hifz ad-dīn* (protecting religion), *hifz al-nafs* (protecting life), *hifz al-nasl* (protecting offspring), *hifz al-ʿaql* (protecting reason), and *hifz al-māl* (protecting property) (Hamdi, 2017; Zuhdi, 2015). All aspects that are protected through the fulfillment of Islamic law are very relevant and needed by humans in carrying out their activities, so that only when these basic aspects are present and felt, human life can go on peacefully. This method is taught through efforts to understand the sharia of Allah SWT.

Having offspring is one of the purposes of marriage in addition to other purposes. That is why the relationship between a man and a woman is regulated in the form of marriage. This is so that they can have children and grandchildren who will continue their lineage. With the institution of marriage, Allah SWT recognizes the lineage, as well as the community. However, when the institution of marriage is ignored, Allah SWT will not recognize the lineage, including society. As a result, vertically (Allah SWT) and horizontally (social community) there is no honor possessed with regard to the resulting offspring. When the descent is clear, there will be subsequent laws related to it, such as inheritance, kinship, and so on. Therefore, the maintenance of offspring is one of the main things that must be maintained by humans.

Having offspring, in terms of its needs can be divided into three (Busyro, 2019): First, preserving offspring at the rank of *al-dharūriyah*, such as the law of marriage and the prohibition of adultery. Marriage is a legitimate way to get offspring, otherwise the children of adultery are not recognized as legitimate offspring. Therefore, ignoring the rules regarding obtaining offspring will damage the existence of offspring, both in this world and in the hereafter. The importance of clear lineage not only results in benefits in this world, but also for the afterlife.

Second, having offspring at the rank of *al-hājiyah*, such as the necessity of witnesses in marriage, mentioning the dowry when doing the marriage contract and giving the right of divorce to the husband. If this is not done, it will make it difficult to recognize the marriage that affects the offspring, it will be difficult for the husband because he has to pay the *mahr mitsl*, and the difficulty of ending the marriage when the marriage is no longer tenable. In Indonesia, the regulation on marriage registration can be categorized under this need. According to ibn Taimiyah (d.728), in this case it is also forbidden to marry an adulteress before she repents, it is forbidden to impose talaq except in an emergency situation, either a religious emergency or a world emergency. So is the prohibition of wasting children's education (Al-Badawiy, 2000). These prohibitions are also aimed at avoiding the difficulties that a person may experience in relation to the maintenance of offspring.

Third, maintaining offspring at the rank of *al-tahsīniyah*, such as the *khitbah*, it is permissible to see the woman to be proposed to, and hold a *walimah* (reception) in marriage. In the form of prohibitions, for example, the prohibition of marriage with the closest relatives. This is done to complete the wedding program and to make the marriage better. If not done, it will not have a negative impact on the existence of marriage and offspring. One form of preservation of offspring in this tahsiniyah form is,

among others, the existence of a draft law that gives the husband the right to leave if his wife gives birth.

The urgency and importance of religion which contains sharia and rules is a human need because as creatures that interact with each other (social beings) humans need an inner touch, so that they are able to limit aberrations in their lives (Bakry, Ilham, Musyahid, Mundzir, & Ramli, 2022). Further elaboration of sharia and marriage laws in Islamic teachings is also intended for protection (hifz). In particular, the burden of Islamic law in matters of marriage is that there is a measurable and proportional responsibility. So that every role in a family has deep legal values of responsibility and social norms (Setyawan, Edwina, & Soeharto, 2021). The Prophet ordered to find a good partner, and marriage on this basis will produce qualified human beings. A good measure here includes the candidate's religion, lineage, and honor, because a marriage based on this principle will give birth to children who are pure in all respects, the ones who can take good qualities and noble behavior, this is also part of caring for children by Islamic law which even starts when they are still in the womb, and long before that (Fahimah, 2019). In an Islamic family order or as mentioned in the verse of the Quran which states that a family that gets the pleasures of *sakinah*, *mawaddah*, and *rahmah* is a family that understands marriage law (*fiqh munakahat*). The idealism of the concept and order desired by Islamic law is often reduced and faded due to various reasons (Ismail, 2016).

Ethical Politics in Government Policy

In a state, the role of government is always awaited and demanded by the people, the government in Indonesia has democratic principles with the meaning that the ruling government is born based on the flow and procedures that are commonly known as the concept of "from the people, by the people, and for the people." However, such a concept at the implementation level is certainly not that easy. In fact, it is not uncommon for certain elites who have gained power within a government system to adopt policies that do not reflect the needs of the people. The most objective measure of the government's alignment is by assessing and reviewing the policies it has issued. History records that the government system, starting from the colonial era until today, has entered the modern era, but still has ethical problems in its policies (Arif & Al-Amin, 2021).

In addition to humanity, ethical politics is also related to profitable economic aspects. At the end of the 19th century, new employees were brought in by the Dutch Colonial Government to Indonesia which at the same time started the colonial ethical political style. This ethical political idea was inspired by Max Havelaar's novel which caused some colonial government officials to have urge to implement it in the colonies. The influence was quite good, as evidenced by the changes for the better in the life of Indonesian nation (Galih, 2017). Policies that were too harsh towards the Indonesian people had previously started to get protests from the Dutch people and hoped that the colonial government's political policies would be better to guarantee a prosperous life for the Indonesian people (Susilo & Isbandiyah, 2018).

During the colonial era experienced by Indonesia, the governments at that time such as the Dutch East Indies and other countries that colonized Indonesia including Japan also provided and implemented their policies. Even though later Indonesian figures who fought for independence such as Soekarno and Hatta succeeded in achieving Indonesia's independence, the issue of government ethics still became a discourse among the

people. Based on the existing data through historical tracing, specifically what happened in the city of Palembang, there had been at least several changes in the form of government, such as the form of a sovereign during the Sriwijaya period, the form of the Palembang Sultanate which was later controlled by the Dutch, and the form of government under the system of the Republic of Indonesia. In addition to the changes in the form of government, geographical facts explain that the location of Palembang City does have a strategic location in trade routes. Another political policy that was also implemented by the Dutch colonial system in Indonesia towards Palembang was ethical politics, which at that time was called the politics of reciprocation through forms of irrigation, education, and transmigration facilities to prosper the Dutch East Indies people (Fahrozi & Prasetyo, 2021).

Article 28 D Paragraph (2) of the 1945 Constitution has mandated the government to provide protection for workers, as written that everyone has the right to get a job and compensation and fairness in their work (Sudirman, 2019). From the provisions and legal norms through the regulations above, it can be concluded that every individual in the Republic of Indonesia has the same rights and the right to justice in working. Thus, to ensure the realization of the implementation of these rights, through Law Number 13 of 2003 concerning employment, the government has established a working relationship system which is basically a two-way relationship between workers and employers after an employment agreement. Based on Article 51 Paragraph (1) Law Number 13 of 2003 concerning employment, work agreements can be made orally or on paper (Amboro & Fendy, 2016). An employment agreement can also be interpreted as the beginning of an employment relationship made based on a statement of ability.

It is strongly suspected that the workers also have the status of a father and mother, in addition to their parental responsibilities, also have responsibilities in their work institutions, for example a husband who has the responsibility to meet basic needs for his family (Ahmad, 2022). Research conducted by Seruni (Wulan et al., 2018) on migrant workers and their impact on 3 villages in Banyumas reports that married women predominate as migrant workers with an age range of 15-64 years, and they have worked abroad for more than 10 years. Almost all these workers showed similar problems, such as their children who were raised by a single parent only, and if both husband and wife become migrant workers, the child care was entrusted to their relatives. Thus, the results of this study identified quality problems in children who were abandoned because their parents worked overseas.

Based on the facts and statements above, the author analyzed and examined that in the mother and child welfare bill, which was passed on June 9th 2022 by The House of Representatives of the Republic of Indonesia as the initiative proposal bill, has ethical politics that reflect basic needs for workers who are already married (Adytia, 2022). Previously, in Article 24 Paragraph (1) of the Family Resilience Bill, the functions and roles of each husband and wife has also been included. The article states several things: (1) Every husband and wife who are legally married have a noble obligation to uphold the household and foster family harmonization, so that the implementation of family resilience is realized, (2) Every husband and wife are obliged to respect, love, be loyal, take care of each other, honor, and provide physical and spiritual assistance to one another. (3) Every husband and wife have equal status and rights in domestic life and social life together in society in accordance with religious norms, social ethics, and statutory regulations (Riesa, 2020). Ethical politics is a political approach based on its

policies on ethical values and the fulfillment of citizens' rights. On this occasion, Article 6 paragraph 2 of the mother and child welfare bill has accommodated the government's support for the husband's rights when his wife gives birth.

Hifz al-Nasl's Study in the Government's Ethical Policy on Paternity Leave

In general, most people state that the father is only obliged and plays a role in earning a living to support the family, while the responsibility and role of the mother is to educate children and take care of household chores. This understanding has been an orientation for a long time; hence it is not uncommon for certain conflicts to be generated by this concept. In the Quran chapter Al-Tahrim verse 6, it is stated that Allah gives a message to every believer to protect himself and his family from the torments of hell (Taubah, 2015). Textually, the verse can lead to various understandings. However, the implied meaning of this verse also conveys a message that when every person become a mother, father, or child in the structure of a family, he/she has a role to play in ensuring that life activities are always oriented towards fulfilling the demands and carrying out the commands of Allah SWT.

Besides the orders stated through the Sharia and Allah laws to do something, on the other hand there are also orders to abandon and reject something especially the forbidden or prohibited ones by Allah's law (Alwana, 2020). Scholars of Quranic *tafseer* stated that self-care means that every believer stays away from what is forbidden by Allah, then actually what is desired through Islamic law is goodness. In connection with the meaning of the verse about self-care and family above, there is the opinion of Imam Ibn Qayyim who said that Allah will question parents' responsibility, especially in the hereafter (Muslim, 2021).

In the stages of family life, a household will encounter a very important period, including the process of giving birth. Therefore, to anticipate the possibilities that will occur during this period of childbirth, rights and responsibilities need to be regulated and protected for smoothness and maximum effort. Although naturally the one who bears the heavy burden and responsibility in the process of giving birth is attached to a mother, but the role and responsibility of a father cannot be put aside. The term motherhood which thus far only focuses on discussing and studying the relationship between a mother and her child must be reviewed. Considering the meaning of the verse about responsibility in a family in the Quran chapter Al-Tahrim verse 6 above, everyone certainly has responsibilities proportionally.

Considering the roles and responsibilities in the process of giving birth, a father must be supported by a certain set of rules so that his responsibilities can be carried out properly. The basic issue that is still being studied thus far is regarding the paternity leave for a father to accompany his wife in the process of giving birth. Judging from the above, father needs to know the challenges so that they can realize the concept of "work-family balance" in household life, thereby minimizing the occurrence of conflict in the household. The concept of paternity leave is a part of parental leave program. The importance of the father's role in the process of balancing work and family does require effort and concern from various parties. So that the effort to study paternity leave is a policy solution for male workers who will become fathers (Ariyani, 2017).

The People's Representative Council (Indonesian: DPR RI) has passed the bill on Mother and Child Welfare (Indonesian: RUU KIA) in June 2022. The content and substance of this bill is a derivative and a form of protection for the issue of the welfare

of mothers and children. The urgency of this bill is even more interesting when it is included in article 6 concerning the paternity leave. After going through a long process regarding efforts to legislate this bill on Mother and Child Welfare, on June 9th 2022, the adjustment of this bill was agreed so that specifically in Article 6 Paragraph 2 Point a, it is clearly explained that the right of a husband in childbirth is by giving paternity leave for a maximum of 40 days, while for a husband whose wife has a miscarriage, he is given the right to leave for 7 days. Then explicitly in Article 8 of the Mother and Child Welfare bill, it is stated that the above rights must be accommodated for every worker who is under the employment law and regulations (Sandi, 2022).

Furthermore, there had been some debate when the Mother and Child Welfare Bill was being reviewed. The authors found that the paternity leave as the right for the father was still incomplete. A simple analysis is put forward that in Article 5 of the bill, it regulates the protection and certainty of the fulfillment of the maternity rights, while the paternity leave is not accompanied by an article which protects a husband when using the rights. Article 5 Paragraph 3 of the bill explains that if an employer does not fulfill the rights of a working mother during her delivery, then the mother is given assistance and assurance so that her rights are obtained. Therefore, it is still a concern if the right of paternity leave is used by an employer to terminate and or gain legitimacy that the father concerned is not professional at work. Because this bill was passed and published to the public. The government had previously established an omnibus law that its content also regulates the rights and responsibilities of workers.

The government's ethical politics and the clash of understandings that were previously regulated through the omnibus law (Sani, Yuslem, & Matsum, 2021) regarding the status of workers, are very weak, especially regarding contractual working terms. Meanwhile, the Mother and Child Welfare Bill, which instead provides concessions to male workers who are already married and whose wife is giving birth, is considered a contradiction. Nonetheless, in the study of *hifz al-nasl* the material contained in this bill is worth fighting for. Moreover, when the wife's delivery is carried out by caesarean section, the wife takes longer to recover after the surgery than when giving birth normally. Previously, the rights of fathers who were also private workers could be equated with civil servant fathers because in the pre-natal period, the preparations made as a husband included various things to help the wife prepare mentally and physically, welfare checks, take a rest, preparation for the place of delivery, proper nutrition, equipment for babies and mothers after giving birth, and other preparations (Raditya & Priyanto, 2015).

It does not take too long period of time to prepare for the above-mentioned needs, but if certain conditions occur such as contracting an illness, then this requires the wife to take a good rest to maintain the safety of the mother and baby, while technical matters related to job demands in the concept of employment can be further considered as the rights granted and guarantees for a mother who is also a worker. On the other hand, after giving birth, more things are needed to care for the baby and restore the condition of the mother after giving birth (Dirgantara, 2022).

This is exemplified by Mark Zuckerberg who is the founder of Facebook. As a policy maker, Zuckerberg initiated the provision of paternity leave in 2016 at his company for himself when his wife gave birth. He took two months off, and after that he gave leave rights to female employees who gave birth for four months. Even though his employees do not come to work, he still gives them their full salary. As for their husbands, he gives

them the right to leave for 2 weeks. According to research results released by the ILO, men who are responsible for the family are closely related to the development of children (Ariyani, 2017). On the other hand, paternity leave also has a positive impact on gender equality, by being involved in childcare which is accompanied by freedom from work demands, it can provide space for fathers to develop parenting skills and make them more active in co-parenting activities.

The following is data that can be presented regarding the application of the concept of paternity leave (Ariyani, 2017):

No	Country	Paternity Leave	Salary/Wage
1.	Bangladesh	10 days off a year.	Fully paid
2.	Cambodia	10 days off for family needs	Fully paid
3.	The Philippines	7 days off for workers who are legally married.	Fully paid
4.	Singapore	1 week off.	Fully paid

Note: The pattern used by countries that have implemented paternity leave.

No	Country	Paternity Leave	Salary/Wage
1.	Azerbaijan	14 days of leave for male employees when their wives are on maternity leave.	Not paid
2.	Bosnia Herzegovina	7 days off.	Fully paid
3.	Kazakhstan	5 days off	Not paid
4.	Croatia	7 days off.	Fully paid
5.	Serbia	Provide 7 days leave for family needs.	Fully paid

Note: Variation of innovations by countries with paternity leave.

All countries that are members of the OECD (Organization for Economic Cooperation and Development), such as Denmark, Finland, Iceland, Norway, and Sweden except the US, offer family leave policies, which is a combination of maternity leave, paternity leave and parental leave. This policy varies from country to country regarding the level of reimbursement of wages paid while on leave. However, there is a leave that is declared as an innovative leave called the “father’s quota.” This quota leave is specifically for fathers who cannot be replaced by mothers (Lupikawaty, 2020). The concept is to share responsibilities with mothers, and fathers need more time to care for the children. This policy is to improve gender equality and is expected to have a positive impact on children’s development. One of the rules of *fiqh* states that policies taken by rulers or leaders must have an orientation to fully bring benefit to the people they lead (Padmo, 2017). Hence, a study of the urgency of the bill on maternal and child welfare really needs to be continued with the legislative process, so that later through this bill the government ensures ethical politics and its alignments to guarantee the right to life for mothers who gives birth through granting the right of assistance to husbands or fathers to accompany the wife. When this bill is passed as a law, it is certain that the government has implemented one of the goals of Islamic law to protect offspring (*hifz al-nasl*).

D. Conclusion

Research on mother and child welfare bill regarding 40 days leave for husbands is philosophically a form of crystallization of the concept of efforts to protect the lives of wives and prospective babies, and this notion is very much in line with the objectives of Islamic law in providing protection for offspring (*hifz al-nasl*) at the level of *tahsiniah*. Giving paternity leave can provide wider opportunities for husbands to take care of the birth of their children and accompany their wives who really need their presence in the early stages of labor. Besides that, this government's ethical politics is also an implementation of the legal principles of *taṣarruful imām `alā ra'iyat manūṭun bil maṣlahah* (policies taken by the government must be ensured to produce good for its people). The People's Representative Council's initiative in Article 6 Paragraph 2 of the Mother and Child Welfare Bill is a product of legislation and ethical politics of the government which shows its alignment with the basic needs of the family to ensure the improvement of the quality of Indonesia's generation of Human Resources (HR) for a better future. Thus, this research has indirectly strengthened previous research which also carries the idea of paternity leave to accompany the wife in giving birth, although with a different perspective.

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