

The Ideal Legal Protection of the Child Labor Rights in Indonesia: The Dimensions of *Maqāṣid al-Shari‘ah* and the Welfare State

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Abstract: The legal protection of child labor rights in Indonesia, which is regulated in the Indonesian legislation, was not yet ideal. There are many working children (aged 13 to 15 years) in Indonesia whose rights to a prosperous life have not been fulfilled, both in the *maqāṣid al-shari‘ah* dimension and in the welfare state dimension. Thus, this research was about the ideal legal protection for the rights of child workers in Indonesia, and the aim was to know and look for the concept of ideal legal protection for the rights of child workers of 13-15 years of age in Indonesia which was in accordance with *maqāṣid al-shari‘ah* and the welfare state. This normative research discussed the constitution and laws related to child labor rights by examining the main legal materials, theories, concepts and legal bases related to this research. The results of this research explained that the legal protection of child labor rights in Indonesia was not yet ideal due to lack of clarity in the labor law itself. Meanwhile, the findings in this research; legal protection for the rights of child workers aged 13 to 15 years in Indonesia was not yet ideal because it was not yet in accordance with the dimensions of *maqāṣid al-shari‘ah* and the welfare state, and because child labor in Indonesia was still considered unlawful, therefore many children in Indonesia became neglected and poor.

Keywords: Legal protection; Child labor rights; *Maqāṣid al-shari‘ah*; Welfare state.

Introduction

Philosophically, national development has been carried out within the framework of the development of the Indonesian people in general and the development of Indonesian society in particular, in order to create a prosperous and just society, both materially and spiritually, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Of course, this was a big challenge. For Indonesia, as a country that has population demographic benefit, it faces a challenge that almost all employment sectors are dominated by millennials, in fact, there are many children who already works either to meet their family's economic needs or for other reasons. Even internationally many conventions regulated the protection of children's rights and have been ratified by many countries, including Indonesia, violations of human rights against children are still widespread in the world. One problem that must receive special attention is the issue of child labor, in particular, the legal protection of the rights of child workers between the ages of 13 and 15, as stipulated in Article 69 of Law of the Republic of Indonesia No. 13 of 2003 on Employment. The number of child workers in Indonesia is based on statistical data in 2023 as explained in table 1 below:

Table 1. Number of Child Laborers in Indonesia

Gender + Number	Percentage of children aged 10-17 years who work (Percent)		
	2021	2022	2023
Male	2,67	2,58	2,57

Female	2,6	2,3	2,21
Male + Female	2,63	2,44	2,39

Source: Central Statistics Agency, Percentage of children aged 10-17 years who work, based on gender (Percent), 2021-2023, at <https://www.bps.go.id>, accessed 3 May 2024.

The term child labor has a connotation of exploiting underage children for their labor. The issue of child labor is not just a matter of children carrying out work for wages, but it is closely related to exploitation, dangerous work, delayed access to education, and hampering physical, psychological, and children social life (Tahamata, 2018). Even companies that employ children are subject to sanctions because there are still many people who only understand the Article 68, but do not yet understand the exemption clause as regulated in Article 69.

Though children are actually not allowed to be employed, either in the formal or informal sectors, this is different from the condition of children who are considered problematic from an economic perspective. Children are forced to work just to meet their basic needs. In this condition, the government must be responsible for providing welfare as mandated by the Constitution, Article 34 of the 1945 Constitution of the Republic of Indonesia. Thus, this law does not strictly prohibit companies from employing children as regulated in Article 69 which explains that companies might employ children aged 13 to 15 years in light work. Hence, child labor is still common in Indonesia. Based on the results of analysis, the percentage of children aged 10-17 years who participated in the workforce were divided based on province, regional type, and gender. Based on regional type, the percentage of children aged 10-17 years who took part in the workforce in rural areas was higher (11.26 percent) compared to urban areas (6.99 percent). Meanwhile, the provinces with the highest percentage of children entering the workforce in urban and rural areas were respectively in West Sulawesi Province (14.80 percent) and North Sumatra Province (20.33 percent). Based on gender at the national level, both in urban and rural areas, boys had a higher percentage than girls. The highest percentage of boys who participated in the workforce for urban and rural areas were West Sulawesi Province (16.67 percent) and Southeast Sulawesi (25.35 percent). Meanwhile, the highest percentage of girls in urban and rural areas were in North Kalimantan Province (14.50 percent) and Bali Province (23.53 percent) (Riany et al., 2022, pp. 242-243).

Some people perceive that the presence of child labor creates dangerous conditions because it hinders the economic growth of adults and is associated with an increase in the number of unemployed among adults. Furthermore, the presence of child labor in dangerous conditions is a violation of children's rights, and hinders the education, health, and protection of the children themselves. This kind of work not only endanger the child laborers themselves, but also reduces their potential in the future: there is a connection between hazardous work and lower levels of children's educational completion and also the potential jobs that children can get in the future, which are usually not decent jobs. In Indonesia, youth who previously worked as child workers are twice as likely to become unpaid family workers as other youth (BAPPENAS & UNICEF, 2017).

Child labor aged 13 to 15 years is a national problem that requires the immediate and continuous action because it is mandated in the constitution. The government's and stakeholders' efforts in tackling child labor has contributed to the achievement of the global roadmap. It is the responsibility of the government, employers' organizations, trade unions, non-governmental organizations, and the private sector, both at the central and regional levels, to work in an integrated and sustainable manner. Thus, the dream of Indonesia free of child labor can be realized. Then, there is a need for legal protection for child workers aged 13 to 15 years in Indonesia, so that child workers can live, grow, develop, and participate optimally in accordance with dignity and humanity, as well as protection from violence and discrimination at their place of work/company. The Indonesian government has demonstrated a strong commitment, both through global agreements and national planning, to protect Indonesian children from violence, abuse, neglect, and exploitation. Indonesia's national policy regarding children's rights aims at strengthening the child protection system, and the government has devoted considerable resources to legal

reform and policy formulation which are in line with the *maqāṣid al-shari‘ah* concept of a welfare state as mandated in Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on the data obtained concerning child labor in Indonesia, there had been several previous studies, as researched by Yunita Ajeng Fadila, and Khayatudin, who discussed the protection of child labor in Indonesia from the perspective of the Child Rights Convention. In this research, it was confirmed that the implementation of child protection was based on Pancasila, and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child (Fadila & Khayatudin, 2022). Nadila Oktavianti and Nahdhah discussed legal protection for child labor in Indonesia, in this research, it confirmed that legal protection for the rights of child workers/laborers in Indonesia was not fully in accordance with applicable laws and regulations. While children were in the care of their parents, guardians, or any other party responsible for them, they had the right to receive protection from abuse, one of which was protection from exploitation, both economic and sexual. Hence, parents who employed children in the world with the aim of exploiting them economically were subject to criminal penalties in accordance with Article 88 of the Law of the Republic of Indonesia Number 35 of 2014 on Child Protection (Oktavianti & Nahdhah, 2021).

This research aimed at finding the concept of ideal legal protection for the rights of child workers in the dimensions of *maqāṣid al-shari‘ah* and the welfare state. Thus, it was urgent for this research to be carried out in depth research, so that it provided ideal legal protection for the rights of child workers (which guaranteed protection of children's security and welfare rights) and provided the input in revising Law of the Republic of Indonesia Number 13 of 2003 concerning Employment. Moreover, this research was very different from previous research as explained above.

Literature Review

Legal protection is an effort that must be made by the government and related parties because it is everyone's right to receive legal protection fairly without discrimination as mandated in the constitution and applicable laws and regulations. Thus, the ideal legal protection is definitely based on morals that treats everyone equally (Marco, 2021, p. 480). Thus, the ideal legal protection is of course based on all efforts to fulfil rights and provide assistance to a sense of security and prosperity to all levels of Indonesian society (Farkhani et al., 2023; Hartini et al., 2012). The government has a very important role in providing legal protection, both preventive and repressive, in the form of Indonesian laws and regulations that are in accordance with the values of Pancasila and the constitution (Hidayati et al., 2022, p. 253; Ruhtiani et al., 2024).

Child workers are workers aged between 13 and 15 years as regulated in labor law. The existence of child labor is certainly due to economic conditions that force children to work to fulfil their daily needs. Even this is a fundamental problem because the constitution mandates that the poor and neglected children are taken care of by the state government, it becomes a fundamental problem in interpreting the constitution which leads to the impossibility of prohibiting child labor (Palguna & Atmaja, 2023, p. 191). In this way, legal protection for the rights of child workers is carried out both by providing guidance and increasing recognition of human rights, physical and technical as well as social and economic protection through applicable norms (Sutedi, 2009, p. 222).

Maqāṣid al-shari‘ah is a theory that provides benefits for humanity in stages or hierarchies as follow: basic/primary needs (*al-darūriyyāt*), supporting/secondary needs (*al-hājiyyāt*), and needs other than basic and supporting/tertiary needs (*al-tahsīniyyāt*) (Purnomo et al., 2023, p. 1403; Wanto et al., 2021). *Maqāṣid al-shari‘ah* towards child labor certainly brings benefits to the child workers by fulfilling their basic/primary needs, supporting/secondary needs, and tertiary needs which promotes happiness in their lives (Asman & Muchsin, 2021, p. 79). The essence of this benefit certainly provides protection for the five primary needs (*al-darūriyyāt al-khams*) which are related to preserving religion (*hifz al-dīn*), protecting the soul (*hifz al-nafs*), preserving the mind (*hifz al-'aql*), preserving heirs (*hifz al-nashl*), and taking care of property (*hifz al-māl*) (Al Munawar, 2021, p. 210; Syamsuar et al., 2024).

Welfare state is a state concept that guarantees the basic rights and obligations of its citizens and people in the country's constitution, as a consequence of welfare state law that is in accordance with moral, humanitarian, and freedom values (Lewis, 2023, p. 180; Saputra & Emovwodo, 2022) which must be done by countries in the world, including Indonesia. In the welfare state concept, the government is responsible for the welfare of child workers with the aim of creating social stability in society. Social welfare provided by the government is basically the fulfilment of the material rights of citizens (Riwanto & Suryaningsih, 2022, p. 44). For example, the welfare rights of citizens are fully provided by the government, especially education, health services, old age insurance, and work accidents (Kiswanto, 2015, p. 95).

Method

This research is a normative legal research which is based on the problems or themes raised in the research topic (Suryani, 2023, p. 4), or what is often referred to as theoretical legal research (Irwansyah, 2021, p. 94) by examining the main legal materials, theories, concepts, legal basis and legislation. This research is regarding the ideal legal protection of child labor rights in Indonesia from the perspective of *maqāṣid al-shari‘ah* and the welfare state (Amirudin & Asikin, 2008, p. 19). Library method was used as data collection technique. Data sources in research consisted of primary data and secondary data. The data analysis technique was carried out in the following stages: data reduction, data presentation, and conclusions (Asmara et al., 2023, p. 248). A philosophical approach was used to analyze the data by which the research focused on a rational, critical view, and ends with a conclusion (Suryani et al., 2023).

Results and Discussion

The Legal Protection of Child Labor Rights in the *Maqāṣid al-Shari‘ah* Dimension

According to the ILO/IPEC, child labor is a child who works in all types of work that is physically, mentally, intellectually, and morally dangerous or disturbing. The concept of child labor is based on ILO Convention Number 138 concerning the minimum age for being allowed to work which described the most comprehensive international definition of the minimum age for being allowed to work, referring indirectly to "economic activities". The ILO Convention sets a minimum age below which children may not work. According to ILO Convention No. 138, the minimum age for countries with underdeveloped economies and educational facilities is 5-11 years. These children who participated in economic activities should be eliminated. Children aged 12-14 years who work are considered child laborers, unless they performed light tasks. Meanwhile, those aged up to 18 years are not permitted to work in jobs that are considered dangerous (Prajnaparamita, 2018). Meanwhile, in Law of the Republic of Indonesia Number 13 of 2003 concerning employment, the minimum age limit for child workers is 13-15 years.

In essence, children are not allowed to work because their time should be spent on studying, playing, and having fun. They should be in a peaceful atmosphere, get opportunities and facilities to achieve their goals in accordance with their physical, psychological, intellectual, and social development (Prajnaparamita, 2018). However, the current phenomenon of child labor has been spread across rural areas, mostly doing work in agriculture, plantations, fisheries, mining, and economic activities within the family environment. Meanwhile, in urban areas they are found in companies, households (as domestic servants or home industry workers or family industries) or on the streets as newspaper sellers, shoe shiners, or scavengers (Charda, 2014). Children who have been actively involved in economic activities in order to carry out their role as workers, is not a new phenomenon in Indonesia. Although on the one hand, it is mutually acknowledged that there are various efforts from various parties which intended to provide guaranteed "protection" for child workers who are actually "forced" to work, it is not denied that these efforts have not been able to show maximum results. In reality, there are still many cases of child labor which lead to various forms of child exploitation (Kusumawati, 2019).

Thus, legal protection is needed to fulfil child labor rights and enforce the law which creates prosperity and stability, especially in the economic and legal fields (Akmal & Hutabarat, 2023). Thus, legal

protection for the rights of child labor is all efforts made consciously by every individual, government and private institution aim at guaranteeing, controlling and fulfilling welfare based on basic human rights (Fitriani et al., 2023). Protection of the rights to child labor and a decent living is in principle an important aspect in the framework of the complete development of Indonesian people and the development of Indonesian society as a whole to create a prosperous and equitable society, both materially and spiritually, and based on Pancasila and the Constitution of the Republic of Indonesia (Sitompul, 2021, pp. 181-182). Thus, the regulations guarantee legal protection for child labor in the constitution and labor law that child workers must be protected from all forms of neglect, violence, and abuse. Philosophically, children are not allowed to work before a certain age (before the age of 13-15 years), they are not involved in work that is detrimental to their health or education, and affect the development of their body, soul, and morals. But there are still many children's rights are ignored, such as the large number of children working with small salaries or consideration for their personal development, safety, health, and future prospects (Oktavianti & Nahdhah, 2021).

Child labor is less protected, both by formal laws and the conditions in which children work. That is precisely where the problems faced by child workers lie. Concentrating efforts on introducing protective measures allow children to grow and develop normally. Legal protection for child labor is also manifested in the form of restrictions on the types or forms of work that children are prohibited from doing. This is seen in Presidential Decree no. 59 of 2002 concerning prohibited forms of work for children, and also The Decree Of The Minister Of Manpower and Transmigration Number Kep-235/MEN/2003 concerning types of work that endanger the health, safety or morals of children, which in principle prohibits children from work in certain types of work (Endrawati, 2012).

Decree of the Minister of Home Affairs and Regional Autonomy Number 5 of 2001 concerning the prevention of child labor Article 1 stated that child labor is children who do all types of work that endanger health and hinder the learning process, and development. The next paragraph stated that the Prevention of Child Labor (PPA) is an activity carried out to eliminate, reduce, and protect child workers aged 15 years and under to avoid the bad effects of heavy and dangerous work. Although not all work for children has a bad impact, efforts should be made to ensure that this work do not result in serious risks to children's physical, mental, and social development. In fact, work for children also look for tools or media for children to develop creativity, exploration and foster a passion for work, foster independence, and discipline through direct practical processes in the field, and trained emotional empathy for parents through work activities. However, poor parents make children work harder than jobs appropriate to their age. The Indonesian government continued to make efforts to reduce the number of child laborers in Indonesia. The government continues to strive to improve the quality of education as one of the programs to eradicate child labor. As a form of attention, the Indonesian government has established Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and the Convention on the Rights of the Child which was made by the United Nations (UN) with the aim of protecting children's rights around the world. The Convention on the Rights of the Child came into force internationally on September 2nd 1990. The adjustment of Law of the Republic of Indonesia Number 13 concerning Employment with the Convention on the Rights of the Child is supported by Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection which states: "The implementation of child protection based on Pancasila and based on the 1945 Constitution of the Republic of Indonesia and the basic principles of the Convention on the Rights of the Child". The General Principle of International Law contained in the Convention on the Rights of the Child (Fadila & Khayatudin, 2022).

The protection of children's constitutional rights is organized into four main principles which are detailed as followed: first, the principle of non-discrimination (universality of Human Rights). It is contained in Article 2 of the United Nations Convention on the Rights of the Child which states that participating countries that agree to the convention are obliged to ratify the contents of the articles of the convention on the rights of the child for all children in their country in all aspects of jurisdiction without

any form of discrimination. Second, the principle of the right to Life (indivisibility of human rights). This principle guarantees the survival of a child and must protect his life from all kinds of dangerous disturbances or obstacles, whether originating from the home environment or from outside the home. Third, the principle of the best interests of the child. This principle guarantees that all kinds of children's rights, including the right to education, the right to life, and other rights should be fulfilled properly. Fourth, the principle of respect for the views of the child. This principle is the implementation of children's participation rights, that children are free to express opinions, free to express themselves according to their own wishes in accordance with child's age and maturity (Novita, 2022).

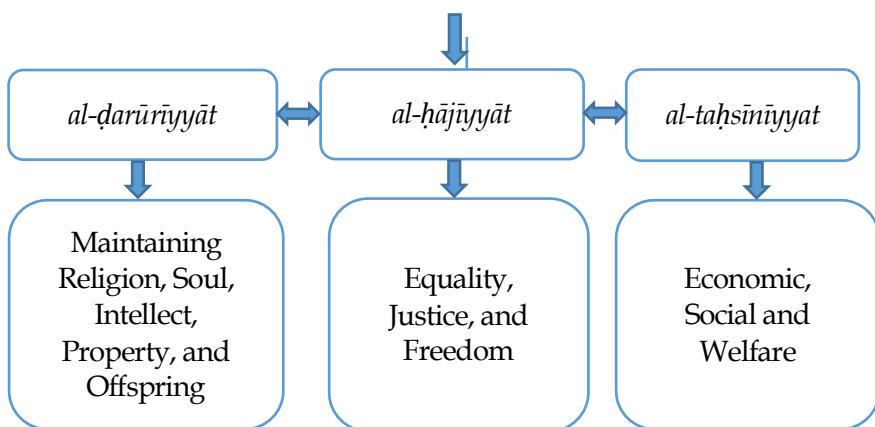
The Convention on the Rights of the Child which had been ratified by the Indonesian government in Presidential Decree No. 36 of 1990 states that children have rights, including: the right to live a decent life, to develop, to be protected, to participate, to refuse child labor, and to obtain education. This Presidential Decree then became one of the foundations of Law of the Republic of Indonesia Number 23 of 2002 as revised by Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, which regulates children's rights, the right to non-discrimination, the best interests of the child, survival, development, and respect for children's opinions which influenced their lives (Rahayu, 2019).

Legal protection of child labor rights in the view of Islamic law, *ushul fiqh* scholars agreed that the concept of *maqāṣid al-shari‘ah* is the main requirement in carrying out *ijtihad* to answer various life problems regarding children's rights in meeting their economic needs. *Maqāṣid al-shari‘ah* is very necessary in formulating macroeconomic policies (monetary, fiscal; public finance) for the benefit of children's rights and protection, it is also for creating sharia banking and financial products as well as other microeconomic theories for the benefit of Muslims. Therefore, *maqāṣid al-shari‘ah* is the basis for *ijtihad* in order to determine the law, it is not an exaggeration to say that the consideration of *maqāṣid al-shari‘ah* is urgent for problems that are not well organized (Umar & Ma'ani, 2017).

Legal protection of child workers' rights in the *maqāṣid al-shari‘ah* perspective must be in accordance with the value content that is the aim of legal enactment sourced from the Quran and Hadith, as an instrument that guarantees the benefit of child workers (Wimra et al., 2023, p. 188). The objectives of legal protection of child labor rights to be achieved are: first; protection of religion (*hifz al-dīn*) in the *maqāṣid al-shari‘ah* concept is the first order because this is the most important need of *al-darūriyyāt*. Second; life protection (*hifz al-nafs*); *illat* (reasons) is required by the *qisāṣ* law, including maintaining one's glory and freedom. Third; protection of reason (*hifz al-'aql*) is the most important priority after protection of religion and life. Because it is a forum for accommodating religious beliefs. Without reason, religious believers are not able to accept the burden of religious interpretations in the form of obligations and prohibitions. Fourth; protection of *nasab hifz al-nasl* which aim at protecting against the extinction of generations or descendants, then to protect against mixing or unclear *nasab* lines (*ikhtilat an-nasab*). Fifth; property protection (*hifz al-māl*) with the aim of ensuring that property ownership is carried out safely (Harahap, 2022). Then, the needs of child workers must be placed in accordance with the needs in the *maqāṣid al-shari‘ah* perspective. Hierarchically, *al-darūriyyāt* is the level of essential and core human needs, if it is not fulfilled, their human existence is lost. As formulated by al-Gazali and reinforced by as-Syatibi, there are 5 (five) basic needs: guarding religion, guarding soul, guarding mind, guarding offspring, and guarding property. *Al-hājīyyāt* is a need that supported the existence of *al-darūriyyāt* which is important, even if it is at a lower level, such as: equality, justice, and independence. Meanwhile, *al-tahsīniyyāt* is a need other than primary and secondary, which needs to be realized and maintained for the perfection of human life, such as: how to dress, socialize, etc. (Janah & Ghofur, 2018). To provide legal protection for child labor rights in accordance with the *maqāṣid al-shari‘ah* concept, labor laws must touch the social and economic aspects of children in accordance with the Quran and Hadith which fulfill every level: the *al-darūriyyāt* level, the *al-hājīyyāt* level, and the *al-tahsīniyyāt* level (Nawawi et al., 2023, p. 227). It is illustrated in chart 1, *maqāṣid al-shari‘ah* is in the chart below:

Chart 1. *Maqāṣid al-shari‘ah* Chart

Maqāṣid al-Shari‘ah



Source: Processed from various sources.

Based on the chart above, the ideal concept of legal protection of child labor rights in Indonesia must be in line with the concept of *maqāṣid al-shari‘ah* which aim at providing benefits for child workers to bring benefits. Hence the legal protection of child labor in Indonesia must fulfil the four conditions as found that Al-Syathibi, *maqāṣid al-shari‘ah* must bring human benefit in this world and in the afterlife. Then, Wahbah al-Zuhaili explained that a protection of the constitutional rights of child workers in accordance with the concept of *maqāṣid al-shari‘ah* must fulfil the following four conditions:

1. Legal protection of child labor rights must be permanent, meaning that the meanings intended must be definite or strongly suspected to be close to certainty.
2. Legal protection of child labor rights must be clear and certain.
3. Legal protection of child labor rights must be measurable, must have clear measurements or limits that are beyond doubt.
4. Legal protection of child labor rights is general, applied to all child workers and are not differ due to differences in time and place (Paryadi, 2016).

Then, legal protection for children's employment rights is in accordance with *maqāṣid al-shari‘ah* which must fulfil primary needs (*al-darūriyyāt al-khams*) related to the protection of religion (*hifz al-dīn*), soul (*hifz al-nafs*), mind (*hifz al-'aql*), descendants (*hifz al-nasl*), and wealth (*hifz al-māl*). Thus, ideal legal protection for children's rights must certainly be in accordance with children's rights:

1. Children have the right to welfare, care, and guidance based on love both within their families and in special care to grow and develop naturally;
2. Children have the right to services to develop their abilities and social life, in accordance with the nation's culture and personality, to become good and useful citizens;
3. Children have the right to care and protection, both while in the womb and after birth;
4. Children have the right to protection from the environment which can harm or hinder their normal growth and development (Indriati et al., 2018, p. 482).

Based on the explanation above, the legal protection of child labor rights in Indonesia is not yet ideal with the concept of *maqāṣid al-shari‘ah* because the legal protection of child labor rights in Indonesia, both in the 1945 Constitution of the Republic of Indonesia, do not clearly and in detail regulate child labor, it only regulates and protects workers' rights in general as regulated in Article 27 paragraph (2) that every citizen has the right to get decent work. Likewise, Law of the Republic of Indonesia Number 13 of 2003 concerning Employment do not yet regulate clear and firm legal protection of the rights of child workers. Meanwhile, the preamble explains that protection of workers is intended to guarantee the basic rights of workers/laborers and ensure equality of opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while still paying attention to developments in the business world. Of course, this legal development must be based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as regulated in Article 2 of Law of the Republic of Indonesia

Number 13 of 2003 concerning Employment. Then in Article 4 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment, it is explained that employment development aims at:

- a. Empowering and utilizing the workforce optimally and humanely;
- b. Realizing equal employment opportunities and providing labor in accordance with national and regional development needs;
- c. Providing protection to workers in realizing prosperity;
- d. Improving the welfare of workers and their families; And
- e. Providing comprehensive legal protection for labor, and child labor that is beneficial (justice, benefit, welfare and security). (Author's addition)

The Legal Protection of Child Labor Rights in the Welfare State Dimension

Legal protection for child labor in Indonesia is carried out by efforts to eliminate child labor in accordance with the Road Map to Child Labor Free in Indonesia. The protection of child labor is increasingly urgent to be resolved immediately because currently Indonesia is facing "two blades", first, the demographic benefit (success in preparing children to become a workforce with high productivity in the future which can boost the country's economy), and second, the Vision of a Golden Indonesia 2045.

The legal protection of child labor rights in the welfare state dimension or is also known as wellbeing, a good life is related to comfort, happiness, health, prosperity, security, order, and self-confidence in living life. The government carries out the primary responsibility for providing the social and economic security of its population, usually through unemployment insurance, old-age pensions, and other social security measures. In the welfare state concept the state seek to modify the game of market forces in at least three directions, first; by guaranteeing individuals and families a minimum income regardless of the market value of their work or property, secondly; by narrowing the level of discomfort by enabling individuals and families to meet certain social contingencies that cause individual and family crises, third; by ensuring that all citizens without distinction of status or class are offered the best available standards in relation to a specific agreed range of social services (Setiyono, 2018, pp. 32–33).

Thus, it was necessary to change the legal protection paradigm, by using a comprehensive legal protection paradigm which accommodate the concept of *maqāṣid al-shari'ah* and the welfare state concept which requires the state to guarantee the basic rights and obligations of citizens to live in prosperity as mandated in the constitution resulted from the welfare state law adopted by Indonesia. This is done by including the human rights and obligations of citizens in the constitution, which have consequences for the state to recognize, respect and appreciate the rights of its citizens and people, including the fulfilment of these human rights in real life, such as the right to live in prosperity. This obligation is mandated in Article 28I of the Constitution of the Republic of Indonesia of 1945, which stipulates that the protection, promotion, enforcement, and fulfilment of human rights is the responsibility of the state, especially the government. One of the human rights that must be recognized, fulfilled, and guaranteed by the state, is human rights in the field of employment, the right to work and obtain employment. This is regulated in the provisions of Article 27 paragraph (2) of the Constitution of the Republic of Indonesia in 1945, which determines that every citizen has the right to work and a living that is worthy of humanity, in addition to being regulated in the provisions of Article 28D paragraph (2) of the Constitution of the Republic of Indonesia of 1945, which determines that every person has the right to work and receive fair and appropriate rewards and recognition in the employment relationship. Based on the provisions of Article 27 paragraph (2) and the provisions of Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is concluded that the state, through the government, must fulfil the needs of the community regarding their right to work and obtain employment, because this right is guaranteed by the constitution (Indrayati, 2017).

The comprehensive legal protection for the rights of child workers and the rights to fair welfare and prosperity for child workers is the goal of the Indonesian state which is to be realized by synergizing political democracy with economic democracy and social policy institutions that focused on people, justice, and prosperity. With this comprehensive legal protection, there are economic justice and social security for

child labor in Indonesia without discrimination. To implement comprehensive legal protection, the concept of a welfare state must guarantee the welfare of its people as explained by Jimly Asshiddiqie, who explains that the concept of a welfare state for the Indonesian state is contained in the 1945 Constitution of the Republic of Indonesia, in the fourth paragraph. The concept of the welfare state is then used as the basis for the position and function of government (*bestuurfunction*) in modern countries. In the welfare state concept, the state is required to expand its responsibilities to social problems faced by society, especially regarding the issue of protecting the constitutional rights of child workers in Indonesia (Putra, 2021). In a welfare state, the government is responsible for ensuring a minimum standard of living welfare for every citizen. Meanwhile, the Indonesian state, as mandated in the 1945 Constitution of the Republic of Indonesia, if it is to be designed as a welfare state, according to Pierson, it must contain at least three sub classifications as follows: (1) Social welfare, which refers to revenue collective welfare; (2) Economic welfare, which refers to guaranteed security through the market or formal economy; and (3) State welfare, which refers to guarantee social welfare services through state agents.

The comprehensive legal protection for the rights of child workers in Indonesia which guarantee welfare has previously been regulated in the constitution. As explained by Oman Sukmana, the strong assumption that the Unitary State of the Republic of Indonesia designs as a Welfare State is traced from the preamble to the 1945 Constitution of the Republic of Indonesia that "The government protects the entire nation and all bloodshed, promotes general welfare and the intelligent life of the nation." Apart from that, several articles in the 1945 Constitution of the Republic of Indonesia also reflects the basic values of the Welfare State, such as: Article 27 (2) "Every citizen has the right to work and a living worthy of humanity"; Article 28A "Everyone has the right to live and the right to defend his life and existence; Likewise in Articles 28B, 28C, 28H, 31, 33, and Article 34 of the 1945 Constitution of the Republic of Indonesia (Sukmana, 2016).

The ideal legal protection for child labor in Indonesia is that there must be a special institution such as the Indonesian Child Labor Protection Institute (LPPAI), which is given the task and authority to provide comprehensive legal protection for child labor in Indonesia (legal protection that meets the levels of *al-ḍarūriyyāt*, *al-hājiyyāt*, *al-taḥsīniyyāt*, and welfare state), which is carried out by institutions by providing comprehensive legal protection against child labor as regulated in the considerations of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment which explains that national development is carried out in the framework of the complete development of Indonesian people in general and community in particular. It is to create a prosperous and equitable society, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Conclusion

Legal protection of the rights of child workers in Indonesia is not yet in accordance with *maqāṣid al-shārī’ah* and the welfare state because there are still many child workers in Indonesia who are not yet prosperous. Therefore, a change in the legal protection paradigm must be made by using a comprehensive legal protection paradigm (legal protection that meets the *al-ḍarūriyyāt* level, *al-hājiyyāt*, *al-taḥsīniyyāt*, and welfare state) carried out by a special institution such as the Indonesian Child Labor Protection Institute (LPPAI) by amending Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia and revising Article 4 and Article 68 Law of the Republic of Indonesia Number 13 of 2003 concerning Employment by including LPPAI.

Conflict of Interest

There are no conflicts of interest to declare.

References

Akmal, K., & Hutabarat, S. M. D. (2023). Perlindungan Hukum Bagi Konsumen Perusahaan Perencanaan Keuangan. *Literasi Hukum*, 7(1), 69–82.

<https://doi.org/10.31002/lh.v7i1.7514>

Al Munawar, F. A. (2021). 'Abd al-Majid al-Najjar's Perspective on Maqāṣid al-Shari'ah. *Juris: Jurnal Ilmiah Syariah*, 20(2), 209–223. <https://doi.org/10.31958/juris.v20i2.4281>

Amirudin, & Asikin, Z. (2008). *Pengantar Metode Penelitian Hukum*. PT Raja Grafindo Persada.

Asman, & Muchsin, T. (2021). Maqasid al-Shari'ah in Islamic Law Renewal: The Impact of New Normal Rules on Islamic Law Practices during the Covid-19 Pandemic. *Mazahib*, 20(1), 77–102. <https://doi.org/10.21093/mj.v20i1.2957>

Asmara, M., Kurniawan, R., Jafar, W. A., Sugeng, A., & Sakirman, S. (2023). Trendy Veil: Law, Function, and Its Stigma on Muslim Society. *JURIS (Jurnal Ilmiah Syariah)*, 22(2), 245. <https://doi.org/10.31958/juris.v22i2.8609>

BAPPENAS, & UNICEF. (2017). *Laporan Baseline SDG tentang Anak-Anak di Indonesia*. BAPPENAS dan UNICEF.

Charda, U. (2014). Tanggung Jawab Negara Indonesia Dalam Perlindungan. *Jurnal Wawasan Hukum*, 30(1), 1–25.

Endrawati, N. (2012). Perlindungan Hukum Terhadap Pekerja Anak di Sektor Formal. *Jurnal Dinamika Hukum*, 12(2), 270–283. <https://doi.org/10.20884/1.jdh.2012.12.2.47>

Fadila, Y. A., & Khayatudin. (2022). Tinjauan Yuridis Pelindungan Pekerja Anak Di Indonesia Dalam Perspektif Konvensi Hak Anak. *Yustitiabelen*, 8(2), 143–166. <https://doi.org/10.36563/yustitiabelen.v8i2.563>

Farkhani, F., Badwan, B., Berutu, A. G., Zulkarnain, Z., & Irfanudin, F. (2023). Legal Protection of Minority Rights: Study on the Implementation of Qanun Number 6 of 2014 Concerning the Jinayat Law in Langsa City, Aceh Special Region Province. *Al-Manahij: Jurnal Kajian Hukum Islam*, 17(2), 215–232. <https://doi.org/10.24090/mnh.v17i2.7897>

Fitriani, R., Krisna, L. A., Natsir, M., & Zulfiani. (2023). Legal Protection for Wife and Child as Consequence of Head of Family's Criminal Imprisonment Enforcement. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6(1), 77–88. <https://doi.org/10.24090/volksgeist.v6i1.8232>

Harahap, R. H. (2022). Maqashid Ash-Sharia Principles In Child Protection. *EL-THAWALIB*, 3(4), 691–701. <https://doi.org/10.24952/el-thawalib.v3i4.5945>

Hartini, S., Sudrajat, T., & Bintoro, R. (2012). Model Perlindungan Hukum Terhadap Kebijakan Pelayanan Kesehatan Masyarakat Miskin Di Kabupaten Banyumas. *Jurnal Dinamika Hukum*, 12(3), 523–534. <https://doi.org/10.20884/1.jdh.2012.12.3.124>

Hidayati, T., Umar, M., & Azhari, F. (2022). Political Reorientation of Indonesian Sharia Economic Law: Legal Politics of Trade Law on Sharia Multilevel Marketing. *Mazahib*, 21(2), 245–290. <https://doi.org/10.21093/mj.v21i2.4971>

Indrayati, R. (2017). Quo Vadis Pekerja Anak Pada Perkebunan Tembakau di Kabupaten Jember. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 3(2), 128–136. <https://doi.org/10.22373/petita.v2i1.57>

Indriati, N. Y., Wahyuningsih, K. K., S, S., & S, S. (2018). PERLINDUNGAN DAN PEMENUHAN HAK ANAK (Studi Tentang Orangtua Sebagai Buruh Migran Di Kabupaten Banyumas). *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 29(3), 474. <https://doi.org/10.22146/jmh.24315>

Irwansyah. (2021). *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana

Media.

Janah, N., & Ghofur, A. (2018). Maqashid As-Ayari‘ah sebagai Dasar Pengembangan Ekonomi Islam. *International Journal Ihya’ ‘Ulum Al-Din*, 20(2), 167-192. <https://doi.org/10.21580/ihya.20.2.4045>

Kiswanto, E. (2015). Negara Kesejahteraan (Welfare State): Mengembalikan Peran Negara Dalam Pembangunan Kesejahteraan Sosial di Indonesia. *JKAP (Jurnal Kebijakan Dan Administrasi Publik)*, 9(2), 91-108. <https://doi.org/10.22146/jkap.8320>

Kusumawati, M. P. (2019). Tinjauan Yuridis Perlindungan Hukum Pekerja Anak (Ditinjau dari Sudut Pandang Hukum Ketenagakerjaan dan HAM). *Raheema*, 4(2), 129-136.

Lewis, C. E. (2023). The European Court of Human Rights and its Search for Common Values. *European Convention on Human Rights Law Review*, 4(2), 179-219. <https://doi.org/10.1163/26663236-bja10063>

Marco, G. A. (2021). Philosophy and Theory of Opera. *Opera*, 10(3), 103-114. <https://doi.org/10.4324/9780203901205-18>

Nawawi, Muntaha Artalim Zaim, Ahmad Azaim Ibrahimy, Yasid, & Abdul Hamid Achak. (2023). Islamic Law at the Grassroot; SIGMA Program at Bhasa Radio Situbondo and Its Controversy. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 18(1), 222-245. <https://doi.org/10.19105/al-lhkam.v18i1.8332>

Novita, M. S. (2022). Penegakan Hukum Terhadap Maraknya Pekerja Anak Dibawah Umur Ditinjau Dari UU No 23 Tahun 2022 Tentang Perlindungan Anak. *Jurnal Hukum Dan Keadilan*, 9(1), 13-23. <https://doi.org/10.36408/mhjcm.v9i1.724>

Oktavianti, N., & Nahdhah, N. (2021). Perlindungan Hukum Terhadap Pekerja Anak (Child Labor) Di Indonesia. *Jurnal Penegakan Hukum Indonesia*, 2(1), 149-169. <https://doi.org/10.51749/jphi.v2i1.29>

Palguna, I. D. G., & Atmaja, B. K. D. (2023). “Originalism” of Interpretation in the United States Constitution. *Sriwijaya Law Review*, 7(2), 190-208. <https://doi.org/10.28946/slrev.Vol7.Iss2.2134.pp190-208>

Paryadi. (2016). Maqashid syariah: Definisi dan Pendapat Ulama. *Jurnal of Islamic Economic Lariba*, 3(2), 75-84.

Prajnaparamita, K. (2018). Perlindungan Tenaga Kerja Anak. *Administrative Law and Governance Journal*, 1(2), 215-230. <https://doi.org/10.14710/alj.v1i2.215-230>

Purnomo, A., Salam, N., Zamzami, M., & Bakar, A. (2023). Dimensions Maqāṣid Al-Shārī’ah and Human Rights in The Constitutional Court’s Decision on Marriage Age Difference in Indonesia. *Samarah*, 7(3), 1397-1421. <https://doi.org/10.22373/sjhk.v7i3.13283>

Putra, M. D. (2021). Negara Kesejahteraan (Welfare State) dalam Perspektif Pancasila. *Likhitaprajna: Jurnal Ilmiah Fakultas Keguruan Ilmu Pendidikan Universitas Wisnuwardhana Malang*, 23(2), 139-151. <https://doi.org/10.37303/likhitaprajna.v23i2.199>

Rahayu, N. Q. (2019). Dilema Hukum Kedudukan Anak Sebagai Outsourcing Menurut Hukum Ketenagakerjaan. *Samudera Keadilan*, 14(23), 131-141.

Riany, Y. E., Dewi, B. M. K., & Raisa, S. E. (2022). *Profil Anak Indonesia*. KemenPPPA.

Riwanto, A., & Suryaningsih, S. (2022). Realizing Welfare State and Social Justice: A Perspective on Islamic Law. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 5(1), 41-51. <https://doi.org/10.24090/volksgeist.v5i1.6430>

Ruhtiani, M., Prihatinah, T. L., Sulistyandari, S., Park, H. K., & Whindari, Y. (2024). Legal Protection of Architectural Works as Copyright: An Epistemological and Islamic Law

Perspective. *El-Mashlahah*, 14(1), 43–70. <https://doi.org/10.23971/el-mashlahah.v14i1.7645>

Saputra, R., & Emowwodo, S. O. (2022). Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law. *Journal of Human Rights, Culture and Legal System*, 2(1), 1–13. <https://doi.org/10.53955/jhcls.v2i1.21>

Setiyono, B. (2018). *Model & Desain Negara Kesejahteraan*. Nuansa Cendekia.

Sitompul, M. M. (2021). *Perkembangan Hukum Ketenagakerjaan dan Perlindungan Hak-Hak Konstitusional Pekerja/Buruh Indonesia*. RajaGrafindo Persada.

Sukmana, O. (2016). Konsep dan Desain Negara Kesejahteraan (Welfare State). *Sospol*, 2(1), 103–122. <https://doi.org/10.22219/sospol.v2i1.4759>

Suryani, I., Muhtar, M. H., Rahman, Y. M., Mega Jaya, B. P., & Khalaf, A. Al. (2023). Integration of Islamic Law in Regional Development in Indonesia. *JURIS (Jurnal Ilmiah Syariah)*, 22(1), 1–12. <https://doi.org/10.31958/juris.v22i1.8770>

Sutedi, A. (2009). *Hukum Perburuhan*. Sinar Grafika.

Syamsuar, S., Chapakia, A. O., Hamsa, A., & Amelia, A. (2024). Integration of Maqashid Syaria in Nurcholish Madjid's Thingking about Principles for Effective Good Governance. *Al-Istinbath: Jurnal Hukum Islam*, 9(1), 45–62. <https://doi.org/10.29240/jhi.v9i1.9701>

Tahamata, L. C. O. (2018). Perlindungan Hukum Terhadap Pekerja Anak, Kajian Ketentuan United Nations Convention On The Right Of The Child. *Sasi*, 24(1), 40. <https://doi.org/10.47268/sasi.v24i1.117>

Umar, M. H., & Ma'ani, B. (2017). Urgency of Rights and Protection of Children in Maqashid al-Syariah Prespective. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 17(2), 201–212.

Wanto, D., Hidayat, R., & Repelita, R. (2021). Maqasid shariah's Change as Theory: From Classical to Cotemporary Maqasid Shariah. *Al-Istinbath : Jurnal Hukum Islam*, 6(2), 427. <https://doi.org/10.29240/jhi.v6i2.3122>

Wimra, Z., Huda, Y., Bunaiya, M., & Hakimi, A. R. (2023). The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study. *Juris: Jurnal Ilmiah Syariah*, 22(1), 185–198. <https://doi.org/10.31958/juris.v22i1.9491>