

**PROTECTION OF CHILDREN'S RIGHT OF INDONESIAN MIGRANT
WORKERS ACCORDING TO EAST JAVA PROVINCIAL REGULATION
NO. 2 OF 2022 FROM THE PERSPECTIVE OF *SIYASAH DUSTURIYAH***

THESIS

BY:

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CONSTITUTIONAL LAW DEPARTMENT (SIYASAH)

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

PROTECTION OF CHILDREN'S RIGHT OF INDONESIAN MIGRANT WORKERS ACCORDING TO EAST JAVA PROVINCIAL REGULATION NO. 2 OF 2022 FROM THE PERSPECTIVE OF *SIYASAH DUSTURIYAH*

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 6 May 2025

Writer



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MOTTO

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ

وَلْيَقُولُوا قَوْلًا سَدِيدًا

“Fear those who would otherwise leave behind them, the weak descendants (who) they fear about. So, fear Allah and speak the truth (in terms of protecting the rights of his descendants).” (Q.S An-Nisa’4:9)

كَفَى بِالْمَرْءِ إِثْمًا أَنْ يُضَيِّعَ مَنْ يَنْقُوتُ

“It is enough for a person to be called a sinner if he wastes the person who is responsible for him”

(H.R Abu Daoud dan al-Nasa’i)

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This thesis was prepared as one of the requirements to obtain a Bachelor of Law degree (LLB) in the Constitutional Law Study Program (Siyasah), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang.

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as well as the stories and laughter that we have shared during this education. Your presence has given color and enthusiasm to the Author's academic journey.

The author realizes that this thesis is still far from perfect. Therefore, the author humbly accepts all constructive criticism and suggestions for the improvement of this work. Hopefully this thesis can provide benefits for the development of science, especially in the field of constitutional law from an Islamic perspective.

Malang, 23 May 2025



Nur Dini Rahmatika Safana
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TRANSLITERATION GUIDANCE

A. General Understanding

Transliteration guidelines are rules or procedures used to transfer letters and sounds from one research system, in this case Arabic letters, to another research system, namely Latin letters while maintaining the accuracy of pronunciation and its original meaning. These guidelines are designed to make it easier for people who use Latin texts to read, research, and understand Arabic texts without changing the context or content of the text.

The Arabic-Latin transliteration guidelines also include rules related to vowels, consonants, diphthongs, shaddah, adjectives, and the use of capital letters. The transliteration guidelines that are generally often used in PTKIN (State Islamic Religious Universities) officially refer to the Joint Decree of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia Number: 158 of 1987 and Number 0543b/U/1987.

These guidelines aim not only to simplify the reading of Arabic texts, but also to ensure uniformity and clarity of information delivery in scientific works and academic communication.

B. Consonant

The list of Arabic letters and their transliteration into Latin can be seen in the following table:

Arabic Letters	Name	Latin Letters	Name
ا	Alif	Not denoted	Not denoted
ب	Ba	B	bi:
ت	Ta	T	ti:
ث	Ṣa	Ṣ	es (with the above point)
ج	Jim	J	djei
ح	Ḥa	Ḥ	eitj (with the point below)
خ	Kha	Kh	kei and eitj
د	Dal	D	di:
ذ	Zal	Ẓ	zed (with the above point)
ر	Ra	R	a:
ز	Zai	Z	zi:
س	Sin	S	es
ش	Syin	Sy	es and wai
ص	Ṣad	Ṣ	es (with the point below)
ض	Ḍad	Ḍ	di: (with the point below)
ط	Ṭa	Ṭ	ti: (with the point below)
ظ	Ẓa	Ẓ	zet (with the point below)
ع	‘Ain	...’...	Inverted comma (above)
غ	Gain	G	dji:

ف	Fa	F	ef
ق	Qof	Q	kju:
ك	Kaf	K	kei
ل	Lam	L	el
م	Mim	M	em
ن	Nun	N	en
و	Wawu	W	wa
ه	Ha	H	eitj
ء	Hamzah	...'	Apostrophe
ي	Ya	Y	wai

C. Vocal

Vowels in Arabic are the same as in Indonesian, which consist of single vowels (monophtongs) and double vowels (diphthongs). Arabic Singular Vowels denoted by signs or harakat, the transliteration is as follows:

Arabic Letters	Name	Latin Letters	Name
أ	Fathah	A	A
إ	Kasrah	I	I
و	Dhammah	U	U

As for double vowels in Arabic which are denoted by the combination of harakat and letters, the transliteration is in the form of a combination of letters, as follows:

Sign	Name	Latin Letters	Name
أَي	Fathah and ya	Ai	A and I

أَوْ	Fathah and wawu	Au	A and U
------	--------------------	----	---------

Example :

قَوْلُ : Qawlu

بَيْعُ : Bay'un

D. Maddah

In the Arabic-Latin transliteration system, it is also known as *maddah* or long vowels which in Arabic writing are denoted by harakat and letters. The transliteration for *maddah* is as follows:

Harakat and Letters	Name	Harakat and Signs	Name
أَ/إِ	Fathah and alif/ya	Ā	A with the above line
إِ/يِ	Kasrah and ya	Ī	I with the above line
وِ/وِ	Dhammah and wawu	Ū	U with the line above

Examples :

جَاهِلِيَّة : jāhiliyyah

كَرِيم : karīm

عُلُوم : 'ulūm

E. Ta' Marbutah

Ta' Marbutah in the Arabic-Latin transliteration system has different research rules according to its position and condition in a word. The transliteration for *ta' marbutah* is divided into two: *first*, if *the ta' marbutah* is in a dead position or gets harakat breadfruit, then the transliteration is /h/; *Second*, if *ta' marbutah* followed by a word that uses the verb al- and the second reading are separate, then *the ta' marbutah* is transliterated with /h/. Examples can be seen as follows:

رَوْضَةُ الْأَطْفَالِ : rauḍah al-aṭfāl

طَلْحَة : Ṭalḥah

F. Syaddah

Syaddah or *tasydid* in Arabic is denoted by a sign *tasydid* (ّ), in this transliteration system it is symbolized by the repetition of letters (double consonants) which are marked *with syaddah*. In transliteration, the *sign of shaddah* is symbolized by a letter, which is the same letter as the letter that is marked with the *shaddah*. Example:

رَبَّنَا : rabbanā

الْبِر : al-birr

نَزَّل : nazzala

As for the word ending in *ya'* the ratio marked with *syaddah*, the transliteration is by doubling the letter /y/, as in the word:

مِصْرِيَّة : miṣriyyah عَرَبِيَّة : 'arabiyyah

Especially for *the ya' nisbah*, it should not be replaced with "î", but still written with "iy" in order to describe *the ya' nisbah* at the end. The same goes for the sounds of diphthong, wawu, and ya' after the fathah is written with "aw" and "ay".

G. Adjective

Verbs in the Arabic writing system are denoted by letters ال (alif lam ma'arifah) which in this transliteration guideline is transliterated in two forms, namely al- both when followed by the letters *shamsiyah* and the letters *qamariyah*. The verb is written separately from the word that follows it and is connected by a horizontal line (-). However, in the transliteration, the word *sandang* is distinguished between the adjective followed by the letter *shamsiyah* and the adjective followed by the letter *qamariyah*. The verb followed by the letter *shamsiyah* is transliterated according to the sound, i.e. the letter /l/ is replaced with the same letter as the letter that directly follows the verb, such as:

الشَّمْسُ : al-Syamsu السَّيِّدَة : al-Sayyidat

Meanwhile, the adjectives followed by *the letter qamariyah* are transliterated according to the rules outlined in front and according to the sound, such as:

القَلَم : al-Qalamu

الْجَلال : al-Jalālu

البَدِيع : al-Badī'u

It should be noted that whether followed by the letters *shamsiyah* or *qamariyah*, the word *sandang* is written separately from the word that follows it and is connected with a conjunction (-).

H. Hamzah

Hamzah in Arabic is transliterated with several different terms based on its position in the word. *Hamzah* located at the beginning of the word follows the vowel without being marked with any mark; if it is located at the beginning of the word, it is denoted by *alif*. In its transliteration, *the hamzah* located in the middle and at the end of the word is transliterated with an apostrophe (...!...). However, if *hamzah* is located at the beginning of the word, it is not symbolized, because in Arabic writing it is in the form of *alif*. Example:

أَمَرْتُ : umirtu

النَّوْء : al-nau'u

تَأْكُلُونَ : ta'kulūna

It should be noted that *hamzah* is located at the beginning of the word that follows the verb *al-*, so it is still transliterated with an apostrophe, such as:

الأكل : al-'aklu

The exception to this rule is when *hamzah wasal*, namely *hamzah* which is located at the beginning of a word that is lost in the process of reading, then in its transliteration it is not symbolized.

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ABSTRACT

Nur Dini Rahmatika Safana. NIM 210203110070, 2025, “**Protection of the Children’s Right of Indonesian Migrant Workers According to East Java Provincial Regulation No. 2 of 2022 from the Perspective of *Siyasah Dusturiyah***”, Constitutional Law (*Siyasah*), Sharia Faculty, State Islamic University of Maulana Malik Ibrahim, Malang.

Supervisor Lecturer: Dr. H. M. Aunul Hakim, M. H.

Keywords: Children’s Right Protection, Human Right, Indonesian Migrant Workers, *Siyasah Dusturiyah*.

The phenomenon of increasing labor migration abroad has an indirect impact on the children of abandoned migrant workers. Children as a vulnerable group often do not receive adequate protection, especially in the aspects of parenting, education, and protection from violence and exploitation. East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers has regulated protection for migrant workers and their families, but has not explicitly formulated norms specifically aimed at protecting the children of migrant workers. This condition raises the issue of legal uncertainty regarding the fulfillment of children's rights as a result of the migration of their parents.

This research is a normative legal research with a qualitative-descriptive approach. The data sources were obtained from primary and secondary legal materials that were analyzed juridisically-normatively and reviewed through the perspective of the principles of *siyasah dusturiyah*, especially the principles of human independence, the glory of human dignity, justice, and equality. The results of the study show that the Regional Regulation has not provided specific, inclusive, and comprehensive protection for the children of migrant workers, thus creating a gap in effective legal protection. The analysis based on the principle of *siyasah dusturiyah* emphasizes that the state is obliged to maintain dignity and justice for all citizens, including the children of migrant workers. Therefore, it is necessary to prepare more operational and children rights-based norms in regional policies so that the protection provided is not only formal but also guarantees the fulfillment of children's rights as a whole.

ABSTRAK

Nur Dini Rahmatika Safana, NIM 210203110070, 2025, “**Perlindungan Hak Anak Pekerja Migran Indonesia Menurut Perda Provinsi Jawa Timur No. 2 Tahun 2022 Perspektif *Siyasah Dusturiyah***”, Hukum Tata Negara (*Siyasah*), Fakultas Syari’ah, Universitas Islam Negeri Maulana Malik Ibrahim Malang.

Pembimbing: Dr. H. M. Aunul Hakim, M. H.

Kata Kunci: Hak Asasi Manusia, Perlindungan Hak Anak, Pekerja Migran Indonesia, *Siyasah Dusturiyah*.

Fenomena meningkatnya migrasi tenaga kerja ke luar negeri membawa dampak tidak langsung terhadap anak-anak pekerja migran yang ditinggalkan. Anak sebagai kelompok rentan sering kali tidak mendapatkan perlindungan yang memadai, terutama dalam aspek pengasuhan, pendidikan, dan perlindungan dari kekerasan maupun eksploitasi. Peraturan Daerah Provinsi Jawa Timur Nomor 2 Tahun 2022 tentang Pelaksanaan Pelindungan Pekerja Migran Indonesia telah mengatur perlindungan bagi pekerja migran dan keluarganya, namun belum secara eksplisit merumuskan norma yang secara khusus ditujukan untuk melindungi anak-anak pekerja migran. kondisi ini menimbulkan isu ketidakpastian hukum terhadap pemenuhan hak-hak anak sebagai akibat dari migrasi orang tua.

Penelitian ini merupakan penelitian hukum normatif dengan pendekatan kualitatif-deskriptif. Sumber data diperoleh dari bahan hukum primer dan sekunder yang dianalisis secara yuridis-normatif dan ditinjau melalui perspektif prinsip-prinsip *siyasah dusturiyah*, khususnya prinsip kemerdekaan manusia, kemuliaan derajat manusia, keadilan, dan persamaan. Hasil penelitian menunjukkan bahwa Perda tersebut belum memberikan perlindungan yang spesifik, inklusif, dan komprehensif terhadap anak pekerja migran, sehingga menimbulkan celah dalam perlindungan hukum yang efektif. Analisis berdasarkan prinsip *siyasah dusturiyah* menegaskan bahwa negara berkewajiban menjaga martabat dan keadilan bagi seluruh warga, termasuk anak-anak pekerja migran. Oleh karena itu, diperlukan penyusunan norma yang lebih operasional dan berbasis hak anak dalam kebijakan daerah agar perlindungan yang diberikan tidak hanya bersifat formal tetapi juga menjamin terpenuhinya hak-hak anak secara menyeluruh.

الخلاصة

نور ديني رحمتك سفنا. 210203110070 المعهد الوطني للتنمية الزراعية لعام 2025، "حماية أطفال العمال المهاجرين الإندونيسيين لائحة مقاطعة جاوة الشرقية رقم 2 لعام 2022 من منظور سياسة دستورية"، القانون الدستوري، كلية الشريعة والدراسات الإسلامية، جامعة مولانا مالك إبراهيم الإسلامية الحكومية، مالانغ.
المحاضر المشرف: د. ح. م. أون الحكيم، م. ح.

الكلمات المفتاحية: حماية الأطفال، حقوق الإنسان، العمال المهاجرون الإندونيسيون، سياسة الدستورية.

ظاهرة زيادة هجرة العمالة إلى الخارج لها تأثير غير مباشر على أطفال العمال المهاجرين المهجورين. غالبا ما لا يحصل الأطفال كثفة ضعيفة على الحماية الكافية، لا سيما في جوانب الأبوة والأمومة والتعليم والحماية من العنف والاستغلال. نظمت لائحة مقاطعة جاوة الشرقية رقم 2 لعام 2022 بشأن تنفيذ حماية العمال المهاجرين الإندونيسيين حماية العمال المهاجرين وأسرههم، لكنها لم تصغ صراحة معايير تهدف تحديدا إلى حماية أطفال العمال المهاجرين. ويثير هذا الشرط مسألة عدم اليقين القانوني فيما يتعلق بإعمال حقوق الأطفال نتيجة لهجرة الوالدين.

هذا البحث هو بحث قانوني معياري بمنهج نوعي وصفي تم الحصول على مصادر البيانات من المواد القانونية الأولية والثانوية التي تم تحليلها قانونيا معياريا واستعرضها من منظور مبادئ الرسالة/الدستورية، وخاصة مبادئ استقلال الإنسان ومجد الكرامة الإنسانية والعدالة والمساواة. تظهر نتائج الدراسة أن اللائحة الإقليمية لم توفر حماية محددة وشاملة وشاملة لأطفال العمال المهاجرين، مما خلق فجوة في الحماية القانونية الفعالة. ويؤكد التحليل المستند إلى مبدأ الوكالة أن الدولة ملزمة بالحفاظ على الكرامة والعدالة لجميع المواطنين، بمن فيهم أبناء العمال المهاجرين. ولذلك، من الضروري وضع معايير أكثر تنفيذية وقائمة على الحقوق للأطفال في السياسات الإقليمية بحيث لا تكون الحماية المقدمة شبه رسمية فحسب، بل تكفل أيضا إعمال حقوق الطفل ككل.

CHAPTER I

INTRODUCTION

A. Research Background

The protection of human rights is one of the main mandates in the framework of national and international law, including in this case the rights of the child. In the context of Indonesian Migrant Workers, especially children who are part of migrant workers' families, the protection of their rights is very important considering that they are a vulnerable group and at risk of violence, neglect, and loss of access to education and health. Based on Article 28C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, everyone has the right to grow and develop optimally, as well as the right to protection from violence and discrimination,¹ including children who live apart from their parents due to migration.

The problem began when there was a high demand for labor in the formal and informal sectors by developed countries that had a positive impact in the form of mutual benefits for developing countries such as Indonesia.² This condition makes Indonesia one of the countries with the largest number of migrant worker shipments in Southeast Asia, occupying

¹ Constitution of the Republic of Indonesia 1945

² "BP2MI: Developed Countries Lyrics of Indonesian Labor by Economic News," accessed November 25, 2024, <https://id.investing.com/news/economy/bp2mi-negaranegara-maju-lirik-tenaga-kerja-indonesia-1957656>.

the second position after the Philippines.³ One of the positive impacts felt is the contribution to reducing the unemployment rate in the country as well as increasing the country's foreign exchange through remittances of migrant workers.⁴

The state is obliged to make a real contribution in an effort to respect, protect, and fulfill the rights they have as Indonesian Migrant Workers.⁵ This is in line with the statement of the Head of the Migrant Indonesia Workers Protection Agency (BP2MI), Benny Rhamdani, who emphasized the importance of protection for Indonesian Migrant Workers considering that they have made a significant contribution to the national economy through remittances that reached Rp159.6 trillion in 2019.⁶

The protection of the children of Indonesian migrant workers is an increasingly urgent issue along with the increase in the number of migrant workers from Indonesia, especially from the province of East Java. East Java Province is one of the regions that send the most Indonesian migrant

³ "BPS Records Indonesia as the Second Largest Sending Country for Migrant Workers in Southeast Asia," VOI - It's Time to Revolutionize News, accessed January 2, 2025, <https://voi.id/ekonomi/340916/bps-catat-indonesia-jadi-negara-pengirim-pekerja-migran-terbesar-kedua-di-asia-tenggara>.

⁴ Ade Irawan Taufik, "THE ROLE OF ASEAN AND ASEAN MEMBER STATES IN THE PROTECTION OF MIGRANT WORKERS," *Rechts Vinding Journal: National Legal Development Media* 3, no. 2 (August 31, 2014): 256, <https://doi.org/10.33331/rechtsvinding.v3i2.43>.

⁵ Ayuk Hardani and Rahayu Rahayu, "LEGAL POLITICS OF PROTECTION OF NON-DEROGABLE RIGHTS OF INDONESIAN MIGRANT WORKERS NOT BERDOKUMEN.pdf," *Legal Reflections: Journal of Law* 3, no. 2 (July 31, 2019): 115, <https://doi.org/10.24246/jrh.2019.v3.i2.p115-128>.

⁶ "Head of BP2MI: Migrant Workers Must Be Free from All Forms of Crime and Exploitation," BP2MI, accessed November 25, 2024, <https://bp2mi.go.id/berita-detail/kepala-bp2mi-pekerja-migran-harus-merdeka-dari-segala-bentuk-kejahatan-dan-eksploitasi>.

workers with data showing that in 2023, there are around 64,035 registered migrant workers from East Java province.⁷ The large number reflects the high interest of the people of East Java in looking for work abroad, especially in countries such as Malaysia, Saudi Arabia, and Taiwan. This phenomenon not only has implications for the lives of migrant workers themselves, but also has a significant impact on the families they leave behind, especially on their children. One of the impacts that need to be considered is the psychosocial aspect due to the lack of adequate parenting patterns while their parents work abroad.⁸

Furthermore, through data compiled by the Indonesian National Agency for the Placement and Protection of Workers (BNP2TKI), around 70% of Indonesian migrant workers are women. Data BNP2TKI East Java Province from January to October 2023 shows that in April there were 13,742 female workers who became migrant workers, while the male workforce amounted to 10,273. In May, the number of female migrant workers increased to 16,772, while the number of male migrant workers decreased to 9,424. In September, the total female workforce reached 16,574, while the male workforce numbered 7,865. Overall, the number of

⁷ "BP2MI | INDONESIAN MIGRANT WORKER PROTECTION AGENCY," BP2MI, accessed January 3, 2025, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-november-2023>.

⁸ Basrowi Basrowi, "The Impact of Female Migrant Workers on Family Socioeconomic Status, Education Level, and Child Health," *Kafa'ah: Journal of Gender Studies* 9, no. 1 (July 30, 2019): 69.

Indonesian Migrant Workers spread abroad reached a total of 24,412 people.⁹

70% of the women from the data are still in the productive age category where the age range is closely related to the active reproductive period so that it is likely that some of them have the status of parents who have children.¹⁰ Status as women with limited levels of education makes female migrant workers vulnerable to violations of their human rights, both during the migration process and after they start working. The migration process they undergo often leaves them dependent on brokers, departure service providers, and other parties who can increase their risk of experiencing crimes such as extortion and sexual violence.

This level of vulnerability is increasingly increased for migrant workers who do not have official documents or depart non-procedurally, as they tend to have limited access to information regarding the fulfillment of their rights and the legal protection mechanisms they are supposed to receive.¹¹ This condition directly contributes to the increasing number of children abandoned by their mothers at an early age without adequate

⁹ "BP2MI | INDONESIA MIGRANT WORKER PROTECTION AGENCY."

¹⁰ Annisa Rahmadhani, Yani Achdiani, and Lia Shafira Arlianty, "Bridging the Gender Gap in TKW Families: Towards True Harmony," *Global: Multidisciplinary Scientific Journal* 1, no. 2 (May 22, 2024): 4–5, <https://doi.org/10.37985/4sda1w29>.

¹¹ Novia Anisawati, "Protection and Enforcement of Human Rights for Indonesian Workers," *Social Construction: Journal of Social Science Research* 2, no. 4 (2022): 131–32, <https://doi.org/10.56393/konstruksisosal.v1i10.1333>.

parenting guarantees. As a result, most of them are at high risk of violating the fulfillment of basic rights as children.¹²

A child actually has an important role in the life of the nation and the state so that as a generation of the nation he should get basic rights and affection from his parents. As stipulated in Law Number 35 of 2014 concerning Child Protection, Article 14 paragraph (1) emphasizes that every child has the right to be cared for by his own parents.¹³ Separation between the child and the parent can only be done if there are legally valid reasons and solely in the best interest of the child and must be the last step taken. Parents in this case are actually the most important role in the sustainability of children's rights as mentioned in Law Number 35 of 2014 concerning Child Protection Article 26 paragraph 1 concerning the obligations and responsibilities of parents towards their children.¹⁴ The fulfillment and protection of children's rights should ideally be a top priority in social and legal policies in Indonesia. However, the reality on the ground shows that various problems related to the children of migrant workers are still unresolved. Cases of child neglect by foster parents, lack of emotional attention and affection, high dropout rates, and early marriage of migrant workers' children are still rampant.¹⁵ This condition reflects a real gap

¹² Maria Ulfah Anshor, *Breaking the Chain of Global Care Injustice in the Care of Indonesian Women Workers (TJIP)*, first edition, January 2017 (Yayasan Pustaka Obor Indonesia, t.t.), 23.

¹³ Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Statute Book of the Republic of Indonesia of 2014 Number 297.

¹⁴ Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Statute Book of the Republic of Indonesia of 2014 Number 297.

¹⁵ "Children of Migrant Workers Still Neglected - Kompas.id," accessed November 25, 2024, <https://www.kompas.id/baca/dikbud/2021/03/08/anak-pekerja-migran-masih-terabaikan>.

between the expected ideal norms and the implementation of the protection of children's rights at the practical level.

The problems faced by the children of migrant workers in East Java have not received much attention from the local government until now. In this discussion, both the central and regional governments are more focused on female migrant workers who are more dominant in number and work in the informal sector.¹⁶ They are often referred to as "foreign exchange heroes" due to their significant remittance contributions as well as the greater attention to cases of violence and rights violations they experience. However, attention to the social impact of the existence of migrant workers, especially on families and children who are left behind, is still very minimal.

Referring to Law Number 35 of 2014 concerning Child Protection, it is emphasized that the responsibility for protecting children is not only imposed on the government, parents, and the community, but also becomes an obligation for guardians and social institutions.¹⁷ This provision aims to ensure a better future of the nation by providing the widest possible opportunity for children to grow and develop optimally both from physical, mental, and social aspects. Therefore, there is a need for a government policy that is in favor of children in the form of comprehensive protection

¹⁶ Riana Puspa Dewi Santoso and Singgih Manggalou, "Implementation of Government Policy for Indonesian Migrant Workers (PMI) in East Java Province in 2021," *VISA: Journal of Vision and Ideas* 4, no. 2 (April 1, 2024): 662, <https://doi.org/10.47467/visa.v4i2.1676>.

¹⁷ Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Statute Book of the Republic of Indonesia of 2014 Number 297.

to ensure the fulfillment of children's rights without discrimination from their social environment.

The protection of migrant workers' children is one of the legal politics of the establishment of the Regional Regulation on the Protection of Indonesian Migrant Workers, which was initially motivated by the rampant cases of migrant workers' children that have not been handled optimally due to the lack of regional policies that regulate migrant workers' children. In addition, the case of children of Indonesian Migrant Workers is often characterized by inadequate parenting, lack of recognition from the family and the state, negative stigma against them, and limited knowledge related to the care of migrant workers. Then, there is a permissive parenting pattern, a high risk of exploitation and violence against migrant children, some of which are neglected by parents, causing a loss of opportunities to learn and achieve.

Policies related to legal protection for Indonesian Migrant Workers in East Java have been regulated in East Java Provincial Regulation Number 2 of 2022 which was promulgated on April 11, 2022. In addition to containing a discussion on the protection of migrant workers, this Regional Regulation also covers aspects of protection for migrant workers' families. As stated in Article 1 number 10 of East Java Provincial Regional Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers, it is stated that "*The family of Indonesian Migrant Workers is a husband, wife, child or parent including a*

relationship due to a decision and/or court determination, both those who are in Indonesia and who live with Indonesian Migrant Workers abroad".¹⁸

Some aspects of protection that have been regulated include four aspects of protection, including; legal, social, economic, and social security protection.

In this case, the author would like to highlight the norms of child rights protection in the norms of migrant worker families. In principle, the human rights of children and adults have an equal status as inherent rights from birth and are guaranteed by the constitution and international human rights instruments. However, there are fundamental differences in the treatment, focus, and legal protections afforded to children because they are a legally incompetent group and are naturally in a vulnerable position.¹⁹

Furthermore, children should receive special affirmative treatment to ensure the fulfillment of their basic rights. This special treatment is also reflected in the existence of special international legal instruments such as the Convention on the Rights of the Child (CRC) which affirms the importance of the principle of the *best interest of the children*.²⁰ In contrast to adults who have full capacity to make legal decisions, children need assistance and protection to ensure that their rights are not only normatively

¹⁸ East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers East Java Provincial Regional Gazette of 2022 Number 2 Series D.

¹⁹ R. Wiyono, *The juvenile criminal justice system in Indonesia*, First edition (Rawamangun, Jakarta: Sinar Grafika, 2016), 28.

²⁰ "Convention on the Rights of the Child: Children's version | UNICEF Indonesia," accessed January 7, 2025, <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>.

recognized, but also guaranteed to be implemented concretely by the state, family, and society.²¹

One of the fundamental rights in human rights is the right to legal protection (*legally protected*).²² In the context of this case, the absence of regulations regarding the norm that explicitly mentions "Children of Indonesian Migrant Workers" in the Regional Regulation of East Java Province Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers is a serious concern because it can cause legal uncertainty in protecting the rights of children of migrant workers. The absence of these norms has the potential to create a significant legal vacuum. The absence of explicit norms can weaken the responsibility of local governments and related institutions in ensuring the fulfillment of the rights of migrant workers' children.

This legal uncertainty and the vacuum of norms can exacerbate the vulnerability of migrant children who are at risk of facing various challenges such as the loss of proper parenting, psychosocial developmental disorders and discrimination in public services. The large number of documented cases of migrant workers' children in the field, regulations that provide specific and comprehensive protection are very important. The author finds an inconsistency between the concept of ideal (*das sollen*) and reality (*das*

²¹ R. Wiyono, *The juvenile criminal justice system in Indonesia*, First edition (Rawamangun, Jakarta: Sinar Grafika, 2016), 30.

²² "OHCHR | Universal Declaration of Human Rights - Indonesian," OHCHR, accessed January 3, 2025, <https://www.ohchr.org/en/human-rights/universal-declaration/translations/indonesian>.

sein) in the context of this study. Although there should be inclusive and comprehensive protection for the children of Indonesian Migrant Workers, the reality is that such protection is not fully met. Therefore, it is necessary to conduct further and in-depth studies on articles that do not cover specific aspects of protection of the rights of migrant workers' children to ensure that the basic rights of migrant workers remain legally protected and their implementation can be carried out effectively at the local level.

Furthermore, the author also uses the theory of the purpose of law by Gustav Radbruch in this research study, which emphasizes that the ideal law must integrate three fundamental values so that the discussion of the aspects of protecting the rights of migrant workers' children in the regulations of the East Java Provincial Regulation Number 2 of 2022 becomes clear, consistent, and fair. The goal is that existing regulations must not only provide legal certainty through explicit norms, but must also reflect substantive justice and be able to provide real benefits for vulnerable groups.

In addition, this study also applies the principles of *Siyasah Dusturiyah* as a normative analysis framework in examining the substance and direction of the policy for the protection of children of Indonesian Migrant Workers. The discussion includes the following; 1) The principle of human freedom; 2) The principle of the glory of the human degree; 3)

The principle of justice; 4) The principle of equality.²³ These principles are the basis for assessing the extent to which these regional policies have reflected the values of justice and benefit from the perspective of Islamic law.

Based on the background that has been presented, the author is interested in conducting an in-depth analysis of how East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers provides legal guarantees and the fulfillment of basic rights for the children of Indonesian Migrant Workers. These aspects of protection will also be studied comprehensively through the perspective of *siyasaḥ dusturiyah*, so that the author raises the research with the title: **“PROTECTION OF CHILDREN’S RIGHT OF INDONESIAN MIGRANT WORKERS ACCORDING TO EAST JAVA PROVINCIAL REGULATION NO. 2 OF 2022 FROM THE PERSPECTIVE OF *SIYASAH DUSTURIYAH*”**

B. Statement of Problem

1. How are the aspects of protection for the fulfillment of the rights of Indonesian Migrant Workers in the East Java Provincial Regulation Number 2 Tahun 2022 concerning the Implementation of the Protection

²³ Abdul Wahab Khallaf, *Politics of Islamic Law*/Author Abdul Wahhab Khallaf; translator, Zainudin Adnan., 2nd ed. (Yogyakarta: Tiara Wacana, 2005), 112.

of Indonesian Migrant Workers?

2. How are aspects of protection for the fulfillment of the rights of Indonesian Migrant Workers in the East Java Provincial Regulation Number 2 Tahun 2022 by the *Siyasah Dusturiyah* perspective?

C. Research Objective

The purpose of making this research based on the formulation of the problem is as follows:

1. To analyze and to describe aspects of the protection of the rights of children of Indonesian Migrant Workers in the East Java Provincial Regulation Number 2 of 2022.
2. To analyze and to describe aspects of the protection of the rights of children of Indonesian Migrant Workers in the Regional Regulation is reviewed from the principles of *Fiqh Siyasah Dusturiyah*.

D. Research Benefit

The benefits and uses that can be taken from the implementation of this research are as follows:

1. Theoretical Benefits

This research is expected to be able to make a significant contribution to the development of science in the field of Constitutional Law which is also enriched by the study of Islamic law through the review of *Fiqh Siyasah Dusturiyah* which focuses on the protection of children of

Indonesian Migrant Workers in the Regional Regulation.

2. Practical Benefits

Practically, this research can potentially be a reference in the formulation of strategic thinking related to children's rights. Furthermore, this research can be a guide for various parties including local governments, policy makers, and legal practitioners to ensure that the policy for the protection of the children of Indonesian Migrant Workers reflects the values of justice and welfare.

E. Conceptual Definition

1. Indonesian Migrant Worker

The term Indonesian Migrant Worker refers to Indonesian citizens who migrate abroad with the aim of working. In accordance with the provisions of the Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Indonesian Migrant Workers are defined as any Indonesian citizen who is, will, or has worked abroad by receiving wages.²⁴

The goals of the work sector aimed at by Indonesian Migrant Workers are of course diverse. Starting from the construction, hospitality, agriculture, to domestic sectors. Migrant workers often leave

²⁴ Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers Statute Book of the Republic of Indonesia Number 242 of 2017

their families and hometowns or communities in search of better employment opportunities and to improve their economic well-being.

2. Children of Indonesian Migrant Workers

Children of Indonesian Migrant Workers are children who are less than 18 years old whose parents have a job as Indonesian Migrant Workers. These children often face a range of challenges including lack of access to formal education, adequate health, and protection from exploitation and violence. Separation from parents can also negatively impact their emotional and psychological development leading to feelings of loss and uncertainty.²⁵

In this context, the children of migrant workers are a vulnerable group that requires special attention from the government and the community. They often face negative stigma and experience difficulties in parenting which then impacts their psychological and social development. Therefore, it is crucial to provide assurance that their rights are protected and recognized, as well as provide adequate support to help them overcome the challenges they face in the future.

3. Protection of Children's Rights

Satjipto Rahardjo explained the term legal protection as an effort to provide protection to those whose human rights are violated so that

²⁵ Muhammad Kamalin, "Failed Families in the Digitalization Era Reviewed in the Perspective of Islamic Law," *Journal of Legal Sustainability* 1, no. 1 (June 27, 2024): 15, <https://doi.org/10.69693/jols.v1i1.32>.

they can enjoy the rights regulated by law.²⁶ Based on this perspective, the concept of child protection is categorized as an effort or effort made to provide protection for children's rights so that they can carry out their rights and obligations for better child growth. In this case, legal protection for the children of Indonesian Migrant Workers (PMI) is an effort to protect them so that they can get their rights as children.

4. *Siyasah Dusturiyah*

The concept of *Siyasah Dusturiyah* broadly discusses various aspects of state legislation, including the concept of the constitution, legislation, and democratic institutions.²⁷ Furthermore, in the study of *fiqh siyasah dusturiyah*, the concept of the state of law from an Islamic perspective and the mutual relationship between the government and society, including rights that must be protected, are also discussed.²⁸

The scope of *Siyasah Dusturiyah* or constitutional politics in the context of Islamic law includes the regulation and management of public affairs based on sharia principles based on justice, welfare, and the benefit of the ummah. *Siyasah Dusturiyah* serves to establish legal

²⁶ Satjipto Rahardjo, *Legal Science*, vol. 8 (Bandung: PT Citra Aditya Bakti, 2014), 74.

²⁷ Ali Akhbar Abaib Mas Rabbani Lubis, *LEGAL SCIENCE IN THE SIYASAH DUSTURIYAH KNOT Reflections on the Theory and Practice of Constitutional Law in Indonesia* (Semesta Aksara, 2019), 11–12.

²⁸ Muhammad Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine* (Indonesia: Kencana, 2016), 178.

norms and rules that govern individuals, society, and the state and affirms the government's responsibility to protect the rights of citizens.²⁹

F. Research Method

According to Soerjono Soekanto, research is an analytical effort that is carried out methodologically, systematically, and consistently to strengthen and develop science.³⁰ A planned and structured approach to research is important to produce valid and useful knowledge.

Legal research is a scientific activity that applies certain methods and systematics to analyze legal phenomena in depth.³¹ The goal is to understand legal phenomena, both in terms of norms and social behavior and find solutions to problems that arise from existing legal facts.³²

1. Research Type

The type of research used in this study is normative legal research that examines the norms that have been set. According to Soerjono Soekanto, normative legal research is also known as literature research, where the author uses secondary literature or data.³³ The selection of this type of research is in accordance with the focus of the discussion that

²⁹ A. Djazuli, *Fiqh siyasah: implementation of the benefit of the ummah in sharia signs* / A. Djazuli, Ed. rev., Cet. 3 (Kencana, 2003), 50.

³⁰ Soerjono Soekanto, *Introduction to Legal Research*, Cet. 3, vol. VIII (Jakarta: University of Indonesia, 2014), 22.

³¹ Soekanto, VIII:23.

³² Dr. Jonaedi Efendi M.H S. H. I. and Prof. Dr. Johnny Ibrahim M.Hum S. H. , S. E. , M. M., *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018), 16.

³³ Soerjono Soekanto, *Normative Legal Research: a brief review*, Cet. 4 (Rajawali Press, 2003), 17.

relies on legal sources from laws and regulations, legal theories and expert opinions.

Analysis of the application of the rule of law often shows inconsistencies between theory and positive legal practice. This inconsistency between what should happen (*das sollen*) and reality (*das sein*) raises normative questions about legal problems. This can result in ineffective application of the law and cause conflict, injustice, and legal uncertainty in society that are contrary to the purpose of the law,³⁴

This research can be categorized as normative legal research because it includes the object of study in the form of analysis and description of forms of protection for the children of Indonesian Migrant Workers regulated in the East Java Provincial Regulation Number 2 of 2022, as well as the identification of the fulfillment of the basic rights of children of Indonesian Migrant Workers in East Java in the context of the regional regulations from the perspective *of the principles of siyasah dusturiyah*.

2. Research Approach

The legal research approach method is used to understand and analyze legal phenomena in a broader context. Its main objective is to explore, explain, and evaluate various aspects of the law, including the

³⁴ M.H and M.Hum, *Legal Research Methods* of Dr. Jonaedi Efendi M.H S. H. I. and Prof. Dr. Johnny Ibrahim M.Hum S. H., S. E. , M. M., *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018), 125.

norms, regulations, and practices that apply in society. There are at least 5 types of approaches in normative legal research as per Peter Mahmud Marzuki, including the following:

- a. Statute approach
- b. Case approach
- c. Historical approach
- d. Comparative approach
- e. Conceptual approach³⁵

The approach method used in this study is to use a combination of a statutory approach, a *historical approach*, and a *conceptual approach*.

- 1) The statutory *approach* is a legal research method that focuses on the analysis and analysis of laws and regulations relevant to the legal issues being researched. One of the important aspects of this approach is the search for *ratio legis* , which is the reason behind the creation of regulations or policies that help the author assess whether the existing legal norms are in accordance with the issue at hand. In this study, a study will be carried out through several laws and regulations, namely The Constitution of the Republic of Indonesia in 1945, Law Number 39 of 1999 concerning Human Rights, Law Number 35 of 2014 concerning the Second Amendment to Law 23 of 2002 concerning Child Protection, Law Number 18 of 2017

³⁵ Mahmud Marzuki, *Legal Research: Revised Edition* (Prenada Media, 2017), 69.

concerning the Protection of Indonesian Migrant Workers, Law Number 6 of 2012 concerning the Ratification of the International *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (International Convention on the Rights of All Migrant Workers and Members of Their Families). East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers is also one of the legal studies in this study. This approach method is used to study the conformity between a regulation and the regulation on it.

- 2) Furthermore, this study will also use the *conceptual approach* method because of its ability to provide an in-depth analysis of complex legal issues related to the protection of migrant workers' children.³⁶ This approach allows the author to combine various legal concepts and values contained in existing regulations in order to understand the context and implications of those regulations in real life. Through this approach, the author can explore relevant legal views and doctrines, as well as formulate strong arguments regarding the effectiveness and relevance of local regulations in protecting the children of migrant workers.³⁷ Moreover, the conceptual approach

³⁶ Zulfi Diane Zaini, "Implementation of Normative Juridical Approaches and Sociological Normative Approaches in Legal Research," *Legal Institutions* 6, no. 2 (July 31, 2011): 130.

³⁷ Suhaimi Suhaimi, "Legal Problems and Approaches in Normative Legal Research," *Journal of Yustitia* 19, no. 2 (2018): 208, <http://36.88.105.228/index.php/yustitia/article/view/477>.

also helps in identifying gaps between legal norms and practice in the field, as well as providing more appropriate recommendations for future policy improvements.

- 3) Last, the approach method used in this study is the historical approach. This approach method was chosen to provide a broader and in-depth context regarding the development of the child protection policy of Indonesian Migrant Workers. This approach makes it possible to trace the history and evolution of regulations related to child protection, as well as to understand the social, economic, and political factors that influence those policies over time.³⁸ The author can identify the patterns that emerge and how previous policies contributed to the formation of East Java Provincial Regional Regulation Number 2 of 2022. In addition, the historical approach also helps in evaluating the effectiveness of policies that have been implemented previously and provides insight into the challenges faced in their implementation, so that the use of historical approach methods not only enriches the analysis, but also provides a solid basis for recommending Improvement measures in the protection of migrant workers' children in the future.

³⁸ Johnny Ibrahim, *Theory and Methodology of Normative Law Research* (Malang: Bayumedia, 2006), 318.

3. Legal Material

Nazir in his book entitled "Research Methods", defines literature study as the process of searching and analyzing existing literature, as well as reviewing various sources of information to gain a deeper understanding of the topic being researched.³⁹ The main focus in this study is directed at the analysis of legal materials that include various legal sources such as laws and regulations, legal doctrines, and other related literature.⁴⁰ The literature study used in this study to help the authors obtain data consists of three sources of legal material:

- a. Primary legal materials that are binding and authoritative legal sources, such as the 1945 Constitution of the Republic of Indonesia, laws and regulations, government regulations, legal documents, court decisions, law-making minutes and judges' decisions. The following are the primary legal materials used in this study:

- 1) Constitution of the Republic of Indonesia of 1945 Article 28C paragraph (1),
- 2) Law No. 35 of 2014 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection,

³⁹ Moh. Nazir, *Research Methods*, vol. V (Bogor: Ghalia Indonesia, 2009), 93.

⁴⁰ Phillips Dillah Suratman, *Legal Research Methods*, VIII (Bandung: Alfabeta, 2013), 106, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=910844>.

- 3) Law No. 10 of 2012 concerning the Ratification of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,
 - 4) Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers,
 - 5) Law No. 6 of 2012 concerning the International Ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
 - 6) Government Regulation Number 59 of 2021 concerning the Implementation of the Protection of Indonesian Migrant Workers,
 - 7) East Java Province Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers.
- b. Secondary legal materials that act as explanations or interpretations of primary legal materials.⁴¹ Examples of this material include scientific papers, research results, and other official documents that provide additional context to existing

⁴¹ Petrus Soerjowinoto et al., "Legal Work Research Method," *Semarang: Faculty of Law, Soegijapranata University*, 2014, 54.

regulations.⁴² Secondary legal materials in this study include the following:

- 1) Books and scientific articles related to the protection of the families of Indonesian Migrant Workers, especially the protection of migrant workers' children.
 - 2) Books and scientific articles on *Fiqh Siyasah Dusturiyah*.
 - 3) Seminar papers and conference proceedings at both national and international levels that discuss migration and child protection issues.
 - 4) Reports or studies from authority institutions related to research topics such as the Ministry of Protection of Indonesian Migrant Workers (KP2MI).
- c. Tertiary legal materials that provide additional information on primary and secondary legal materials, such as encyclopedias, legal dictionaries, and various other media sources.⁴³

4. Legal Material Collecting Method

The collection of legal materials in this study will involve several systematic steps aimed at obtaining relevant and accurate data. First, the author will conduct library *research* by collecting various legal

⁴² Soerjowinoto dkk., 40.

⁴³ Ibrahim, *Normative Law Research Theory and Methodology*, 392.

sources such as laws and regulations, court decisions, and other official documents related to the research topic.⁴⁴

In addition, authors can also refer to academic literature including books, journals, and articles that discuss legal theory and normative analysis. Then, the author will record and organize all the legal materials that have been collected to facilitate the analysis and preparation of arguments in the research so that it is expected to get the results of a comprehensive analysis of the legal issues being studied.

5. Legal Analysis

In this study, the qualitative juridical analysis method is carried out where the interpretation of legal materials is carried out using *the snowball* technique to obtain and process relevant legal materials. The process begins with the identification of specific legal problems as the main basis of the analysis. Furthermore, legal materials are collected gradually through referrals from the original source to other relevant sources.

The legal materials studied include primary, secondary, and tertiary legal materials, which are then collected and classified and systematized based on their relevance to the research issue. The analysis is carried out by examining the content of legal materials in depth to

⁴⁴ Soekanto, *Introduction to Legal Research*, VIII:22.

explore relevant legal norms, principles, and concepts using deductive and inductive approaches.

G. Previous Research

As a scientific paper, this research is inseparable from the possibility of previous studies that discuss similar topics or issues. Previous research is an important reference to assess the truth and originality of this research by comparing the results of existing research. However, the research has significant differences mainly in the focus of the study, the approach, and the methodology used. In order to maintain originality and academic value, the author lists several previous studies relevant to the topic of child protection of Indonesian Migrant Workers as a basis for comparison and reinforcement of the analysis.

*First, research by Angga Putra Mahardika (2020), Faculty of Law, State University of Semarang, entitled *Legal Protection of Illegal Indonesian Migrant Workers Abroad Victims of Trafficking in Persons*.⁴⁵*

The research conducted by Angga focuses on legal protections for legal migrant workers, including men, women, and children who are vulnerable to becoming victims of human trafficking. Angga discussed the role of the government in providing protection through various regulations, such as Law Number 18 of 2017 and Law Number 21 of 2007, as well as the steps

⁴⁵ 8111413263 Angga Putra Mahardika, "LEGAL PROTECTION OF ILLEGAL INDONESIAN MIGRANT WORKERS ABROAD VICTIMS OF HUMAN TRAFFICKING" (other, Semarang State University, 2020), <https://lib.unnes.ac.id/41809/>.

to repatriate victims carried out by BP3TKI Central Java. Although the regulation already exists, its implementation still faces various obstacles, including problems with international cooperation and support from the country of settlement. In contrast to Angga's research, this research focuses more on the protection of children of migrant workers in East Java. The approach used in this study is normative and qualitative with an analysis of laws and regulations and the principles of *fiqh siyasah dusturiyah*. The novelty of this study is special attention to the protection of migrant workers' children, the analysis of East Java Regional Regulation Number 2 of 2022, and the application of Islamic law approaches to assess the suitability of existing regulations.

Second, research by Indrianto Prasetyo (2022), Faculty of Law, Sultan Agung Islamic University, entitled *Legal Review of the Protection of Indonesian Migrant Workers from Indramayu Regency Based on Law Number 18 of 2017*.⁴⁶ Indrianto uses a qualitative sociological juridical approach to examine law as a social institution that functions in society. The research by Indrianto focuses on the implementation of legal protection for Indonesian Migrant Workers from Indramayu Regency based on Law Number 18 of 2017, as well as the government's role in dealing with the issue of migrant worker protection. The results of the study show that *first*,

⁴⁶ INDRIANTO PRASETIO, "LEGAL REVIEW OF THE PROTECTION OF INDONESIAN MIGRANT WORKERS FROM INDRAMAYU REGENCY BASED ON LAW NUMBER 18 OF 2017" (undergraduate, Sultan Agung Islamic University, 2022), <http://repository.unissula.ac.id/25758/>.

the government provides legal protection to guarantee the rights of migrant workers while working abroad. *Second*, the implementation of the rules aims to ensure the fulfillment of the rights and interests of migrant workers and their families. *Third*, the role of the local government of Indramayu Regency is limited to protection before the departure and after the return of migrant workers. In contrast to Indrianto's research, this research will focus on the protection of migrant workers' children in East Java, especially in the context of the implementation of East Java Regional Regulation Number 2 of 2022 and the analysis of its conformity with the principles of Islamic Law. This approach provides a new theoretical dimension that is not the focus of Indrianto's research.

Third, research by Matias Oktaviano Indra Putra (2019), Faculty of Law and Communication, Soegijapranata Catholic University, entitled *Legal Protection of the Fulfillment of Child Custody of Migrant Workers Abandoned by Their Parents Reviewed from Article 14 of Law Number 35 of 2002 concerning Child Protection (Case Study of Tempurandu Village, Sapuan Village, Wonosobo District, Wonosobo Regency)*.⁴⁷ This study focuses on legal protection for the fulfillment of the custody of migrant workers' children abandoned by their parents in terms of legislation. Matias used a qualitative approach with descriptive analysis to evaluate the village

⁴⁷ Matias Oktaviano Indra Putra, "LEGAL PROTECTION FOR THE FULFILLMENT OF CHILD CUSTODY OF MIGRANT WORKERS ABANDONED BY THEIR PARENTS REVIEWED FROM ARTICLE 14 OF LAW NUMBER 35 OF 2014 CONCERNING AMENDMENTS TO LAW NUMBER 23 OF 2002 CONCERNING CHILD PROTECTION (CASE STUDY OF TEMPURANDUWUR VILLAGE, SAPURAN DISTRICT, WONOSOBO DISTRICT)" (other, UNIKA SOEGIJAPRANATA SEMARANG, 2019), <https://repository.unika.ac.id/20506/>.

government's efforts in overcoming obstacles to the implementation of legal protection. The results of her research show that migrant workers' children often lack good parenting from surrogate parents. These obstacles are influenced by internal factors such as low education and external factors such as lack of supervision by the community and village government. The difference between this research and the author's research lies in its focus, context, and approach. Matias' research focuses on the custody of the children of migrant workers with a case study in Tempurandu Village, using a descriptive qualitative analysis based on the law. Meanwhile, the penuls research focuses on the protection of migrant workers' children in East Java through an interdisciplinary analysis that combines positive laws with the principles of *fiqh siyasah dusturiyah* which provides a new theoretical dimension that is not present in Matias' research.

Fourth, research by Rizsa Tri Anggrainy (2022) Faculty of Social and Political Sciences, University of Lampung, entitled *Substitute Parenting in the Fulfillment of Children's Basic Rights of Indonesian Migrant Workers*.⁴⁸ Rizsa in her research uses a qualitative approach combined with a descriptive research method whose discussion focuses on the parenting style applied by surrogate parents in fulfilling the basic rights of children of Indonesian Migrant Workers in local villages. In contrast to this study,

⁴⁸ 1846011007 Rizsa Tri Anggrainy, "PARENTING STYLE OF SURROGATE PARENTS IN THE FULFILLMENT OF BASIC RIGHTS OF CHILDREN OF INDONESIAN MIGRANT WORKERS (Case Study of Children of Migrant Workers in Pekon Ambarawa, Ambarawa District, Pringsewu Regency)," Thesis (UNIVERSITY OF LAMPUNG: FACULTY OF SOCIAL AND POLITICAL SCIENCES, 27 July 2022), <http://digilib.unila.ac.id/65478/>.

which focuses more on analyzing the aspects of child protection of Indonesian Migrant Workers in East Java Provincial Regulation Number 2 of 2022 with a study that combines positive laws and Islamic principles.

Fifth, research by Muhammad Sulton (2023), Faculty of Sharia and Law, entitled *Fulfillment of the Rights of Children of Indonesian Migrant Workers in the Perspective of Law Number 35 of 2014 concerning Child Protection and Islamic Law (Case Study in Ponggok District, Blitar Regency)*.⁴⁹ Focusing on the analysis of the fulfillment of the rights of migrant workers in Ponggok District from the perspective of the law. This study uses a *field research* method with a descriptive qualitative approach to explore the successes and challenges in protecting the rights of migrant workers based on positive and Islamic law. In contrast to Muhammad's research which focuses on the implementation of Islamic laws and laws at the local level, the author's research focuses on the evaluation of East Java Provincial Regulation Number 2 of 2022 in the context of child protection of migrant workers. The novelty of this study lies in an in-depth analysis of local regulations that have not been the main focus in previous research.

⁴⁹ 12103173068 MUHAMMAD SULTON, "THE FULFILLMENT OF THE RIGHTS OF CHILDREN OF INDONESIAN MIGRANT WORKERS IN THE PERSPECTIVE OF LAW NUMBER 35 OF 2014 CONCERNING CHILD PROTECTION AND ISLAMIC LAW (Case Study in Ponggok District, Blitar Regency)," Thesis (UIN SATU Tulungagung, June 14, 2023), <https://doi.org/10/DAFTAR%20PUSTAKA.pdf>.

Table 1

Previous Research Comparative

No.	Researcher Name / Year / Institution / Title	Research Methods and Focuses	Research Results	Difference	Elements of Novelty
1.	Angga Putra Mahardika. 2020. Faculty of Law, Semarang State University. <i>Legal Protection of Illegal Indonesian Migrant Workers Abroad Victims of Human Trafficking.</i>	This thesis research uses a qualitative approach with a juridical-empirical method. Research focus: Analyze and explore the forms of legal protection provided to Indonesian Migrant Workers who work illegally abroad and become victims of human trafficking.	Legal protection for Indonesian Migrant Workers who are victims of human trafficking has been regulated in the Law where the protection covers legal, social, and economic aspects with the main emphasis on the process of repatriating victims by BP3TKI Central Java. BP3TKI also collaborates with various parties in law enforcement efforts against criminals. Although there are regulations that regulate it, its	Angga's research (2020) discusses legal protection for Indonesian Migrant Workers who work illegally abroad and become victims of human trafficking. Meanwhile, this study more specifically highlights the protection of the children of migrant workers in East Java. The approach used is normative and qualitative with an analysis of laws and regulations and the principles of <i>fiqh siyasah dusturiyah</i> .	<i>First</i> , this research focuses on the protection of migrant workers' children who received little attention before. <i>Second</i> , the analysis of East Java Provincial Regulation Number 2 of 2022 provides the latest perspective in the legal context of local governments. <i>Third</i> , the <i>Fiqh Siyasah Dusturiyah approach</i> adds a theoretical dimension in analyzing the conformity of regulations with Islamic legal principles.

			implementation still requires support from the country of placement and international cooperation so that it can run optimally.		
2.	<p>Indrianto Prasetyo. 2022. Faculty of Law, Sultan Agung Islamic University.</p> <p><i>Legal Review of the Protection of Indonesian Migrant Workers from Indramayu Regency Based on Law Number 18 of 2017.</i></p>	<p>This study uses a qualitative approach with a juridical-sociological methodology.</p> <p>The main focus is to analyze and evaluate legal protection for migrant workers from Indramayu Regency based on the Law on the Protection of Indonesian Migrant Workers.</p>	<p>The results of this study can be concluded that: <i>First</i>, the Indonesian government provides legal protection to migrant workers to ensure their rights in all work abroad activities. <i>Second</i>, The implementation of the rules is carried out to provide protection to Indonesian migrant workers and their families so that all their rights and interests are fulfilled. <i>Third</i>, the local government of Indramayu Regency only has the authority to provide protection to Indonesian migrant workers before and after work.</p>	<p>The research by Indrianto focuses on legal protection for Indonesian migrant workers from Indramayu Regency based on Law Number 18 of 2017. Meanwhile, this research focuses on understanding child protection in the context of Regional Regulations and its conformity with Islamic legal principles which provides a different theoretical dimension compared to Indrianto's research.</p>	<p>A special focus on the protection of child migrant workers was often overlooked in previous studies that dealt more heavily with adult migrant workers.</p>

3.	Matias Oktaviano Indra Putra. 2019. Faculty of Law and Communication, Soegijapranata Catholic University Semarang. <i>Legal protection for the fulfillment of child custody of migrant workers abandoned by their parents is reviewed from Article 14 of Law Number 35 of 2002 concerning Child Protection (Case Study of Tempurandu Village, Sapuran District, Wonosobo District, Wonosobo Regency).</i>	This study uses a qualitative approach with descriptive analysis. The focus is on legal protection for the fulfillment of custody of the children of migrant workers abandoned by their parents in Kerajan Hamlet and Pulo Hamlet, Tempuranduwur Village.	The results of the study showed that the children of migrant workers abandoned by their parents experienced a lack of good parenting from surrogate parents due to the lack of knowledge of surrogate parents about proper parenting. As well as the existence of internal and external factors that hinder it, for example low education and lack of supervision from the community and the village government.	The focus, context, and approach used are different. Matias focuses on legal protection against the fulfillment of the custody of migrant workers' children abandoned by their parents. With a case study in Tempurandu Village, Wonosobo, and using a descriptive qualitative approach to analyze with Article 14 of Law Number 35 of 2002 concerning Child Protection.	An interdisciplinary approach that combines positive legal analysis with the principles of <i>Fiqh Siyasa Dusturiyah</i> .
4.	Rizsa Tri Anggrainy. 2022. Faculty of Social and Political Sciences, University of Lampung. <i>Surrogate Parenting in the Fulfillment of the Basic Rights of Children of Indonesian</i>	The method proposed in this study is a qualitative method with 10 informants selected using <i>purposive</i> . Research focus: Describe and analyze the parenting style provided by surrogate parents in	The results of the study show that surrogate parents apply two types of parenting, namely democratic and permissive, and strive to fulfill the basic rights of children such as education, health,	Risza's research discusses the parenting style of surrogate parents in fulfilling the basic rights of children abandoned by their biological parents as migrant workers. Meanwhile, the author's	The focus on the protection of migrant workers' children makes an important contribution to understanding the challenges faced by these vulnerable groups in the legal context of local government.

	<i>Migrant Workers.</i>	fulfilling the basic rights of children abandoned by their biological parents who become Indonesian migrant workers.	protection, and well-being.	research focuses more on the analysis of legal protection for children of migrant workers in East Java based on the Provincial Regulation on Implementation of Migrant Worker Protection.	
5.	Muhammad Sulton. 2023. Faculty of Sharia and Law, Sayyid Ali Rahmatullah State Islamic University Tulungagung. <i>The Fulfillment of the Rights of Children of Indonesian Migrant Workers in the Perspective of Law Number 35 of 2014 concerning Child Protection and Islamic Law (Case Study in Ponggok District, Blitar Regency).</i>	Muhammad uses a field research method with a descriptive qualitative approach. The focus of her research is to analyze the fulfillment of children's rights of Indonesian Migrant Workers in Ponggok District, Blitar Regency based on Law Number 35 of 2014 concerning Child Protection and Islamic law perspectives.	His research shows that the fulfillment of the rights of migrant workers' children has several different aspects. In terms of material rights, fulfillment is quite good with periodic remittances for daily, educational, emotional and communication needs. Overall, this study highlights the successes and challenges in fulfilling the rights of migrant workers children from a legal and Islamic perspective.	Research by Muhammad Sulton (2023) focuses on the implementation of Islamic laws and laws at the local level. Meanwhile, the author's research focuses on the evaluation of Provincial Regulation Number 2 of 2022 and its application in the context of Islamic law.	Analysis of East Java Regional Regulation Number 2 of 2022 on the protection of Indonesian migrant workers which is relevant to the increasing number of migrant workers in Indonesia, especially in East Java. This study evaluates the suitability of the principles of <i>Fiqh Siyasah Dusturiyah</i> with the implementation of the Regional Regulation. So that it makes a new contribution to the study of law and child protection as well as the integration of

					Islamic values in public policy.
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H. Structure of Discussion

In order for the preparation in research to be more directed, structured, and mutually continuous between one chapter and another, the author can describe the arrangement in the research systematics. This research will consist of four main interrelated chapters as follows:

CHAPTER I INTRODUCTION, which consists of background, problem limitations, problem formulation, research objectives, research benefits, conceptual definitions, preliminary research, literature review, and research methods which contain important points containing; types of research, research approaches, legal materials, techniques for collecting legal materials and methods of analyzing legal materials.

CHAPTER II LITERATURE REVIEW, builds a theoretical and conceptual foundation regarding the protection of children of Indonesian Migrant Workers within the framework of East Java Provincial Regional Regulation Number 2 of 2022. This chapter begins with a discussion of the concept of child protection as part of human rights, including definitions, basic principles of child protection, and its relationship to relevant international and national legal instruments. In addition, Human Rights (HAM) theory is used as the main analytical framework by explaining the development of human rights concepts, the underlying principles, and its implementation in protecting the rights of migrant workers' children. The

perspective of Islamic law through the theory of *Siyasah Dusturiyah* is also the focus of this chapter by highlighting the principles of Islamic law related to child protection and its integration in public policy.

CHAPTER III RESULTS AND DISCUSSION, contains analysis and discussion of the results of research research with a focus on discussion that will answer the formulation of problems about the protection of children of Indonesian Migrant Workers which is analyzed using the study of the protection of children's rights as a human right, a study of the substance of the theory of legal objectives, and the legal politics of the protection of the children of Indonesian Migrant Workers in the Regional Regulation of East Java Province Number 2 of 2022, and review through the perspective of *Fiqh Siyasah Dusturiyah*.

CHAPTER IV CONCLUSION which includes conclusions and suggestions. The conclusion in this chapter is the final result of the research taken from the discussion of problem formulation. Meanwhile, suggestions can be used to share recommendations based on research results.

CHAPTER II

LITERATURE REVIEW

A. Overview of the Protection of Children's Rights

1. Definition of Children

The definition of child refers to the definition outlined in Law Number 39 of 1999 concerning Human Rights in Article 5 which states that a child is any human being under the age of 18 (eighteen) years old and unmarried, including children who are still in the womb if it is in their interests.⁵⁰ As for Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, it is stated that a child is someone who is not yet 18 years old, including a child who is still in the womb.⁵¹

Children are entrusted by God who have value and honor as a whole human being. Both children who have been born and those who are still in the womb have the right to receive protection and the fulfillment of their rights without having to be asked. This is in line with the mandate of the 1989 Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree Number 36 of 1990.⁵² The state, society, family, and parents are responsible for

⁵⁰ Law No. 39 of 1999 concerning Human Rights Statute Book of the Republic of Indonesia No. 165 of 1999.

⁵¹ Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Statute Book of the Republic of Indonesia of 2014 Number 297.

⁵² Rr Putri A. Priamsari, "SEEKING A LAW THAT IS FAIR TO CHILDREN THROUGH DIVERSION," *LAW REFORM* 14, no. 2 (September 28, 2018): 221.

protecting and fulfilling children's human rights according to their respective duties and obligations. The protection of children is influenced by various aspects including the social conditions that surround them. Therefore, the Child Protection Law guarantees the right of every child to live, grow, and develop to the fullest, as well as to be free from all forms of discrimination and violence in order to realize welfare in accordance with human dignity.

Children are the next generation who are in the early stages of life development. Children need attention, affection, and support from their family and the surrounding environment in their growth process. The stages of a child's life are characterized by the various phases of physical, emotional, and social growth that shape their future personality.⁵³ In general, children are considered as individuals who are not yet fully independent and need protection and guidance to meet their basic needs, such as education, health, and security.

As expressed by Soerojo Wigjodipoero and quoted by Tholib Setiadi, in customary law it is stated that in addition to being considered as the successor of the generation by their parents, children are also seen as a place where all parental expectations must be channeled in the

⁵³ Herlinda Ragil Feby Carmela and Suryaningsi Suryaningsi, "Law Enforcement in Education and Child Protection in Indonesia," *Nomos : Journal of Legal Research* 1, no. 2 (28 March 2021): 59, <https://doi.org/10.56393/nomos.v1i2.570>.

future. In addition, children are also considered protectors for the elderly when they are physically unable to earn a living.⁵⁴

2. Children's Rights in National and International Legal Perspectives

Children are part of the young generation who will later become the nation's successors as well as human resource assets to support national development. To realize a quality generation and be able to maintain the unity of the nation in accordance with the basis of Pancasila and the 1945 Constitution, continuous coaching is needed. This coaching includes physical, mental, and social protection of children to ensure their growth, development, and protection from threats that can endanger the future of the nation.⁵⁵

Efforts to guarantee children's rights to live, grow, develop themselves, and participate reasonably in accordance with human dignity and dignity are at the core of child protection. In addition, child protection also includes efforts to protect children from various forms of violence, non-discrimination, exploitation, and neglect.⁵⁶ From the perspective of international law, children's rights are recognized through the *Convention on the Rights of the Child* adopted by the United Nations in 1989.

⁵⁴ Tolib Setiady, *Principles of Indonesian Penitentiary Law* (Bandung: Alfabeta, 2010), 20.

⁵⁵ Lukman Hakim and Nalom Kurniawan, "Building a Paradigm of Indonesian Human Rights Law Based on Human Obligations," *Journal of the Constitution* 18, no. 4 (2021): 153, <https://doi.org/10.31078/jk1847>.

⁵⁶ "Convention on the Rights of the Child: Children's version | UNICEF Indonesia," accessed January 7, 2025, <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>.

The Convention affirms four main principles, namely non-discrimination, the best interests of the child, the right to live and develop, and respect for the views of the child. Indonesia, as a country that has ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, has an obligation to integrate these international standards into national policies and legal systems to ensure the protection and fulfillment of children's rights as a whole.⁵⁷

3. Purpose and Principles of Legal Protection of Children's Rights

Various actions, both direct and indirect, that aim to protect children from physical or psychological threats are included in the definition of protection.⁵⁸ This series of activities as a whole serves to ensure the safety and welfare of children. Wiyono explained again that protection is a form of service that must be carried out by law enforcement officials or security forces to provide a sense of security both physically and mentally.⁵⁹

The official definition of child protection can be found in Indonesian legal regulations, precisely in Article 1 Number 2 of Law Number 35 of 2014 concerning Child Protection. According to these provisions, child protection is defined as all efforts and activities aimed

⁵⁷ Yunita Ajeng Fadila and Khayatudin, "Juridical Review of the Protection of Child Labor in Indonesia in the Perspective of the Convention on the Rights of the Child," *Yustitiabelen* 8, no. 2 (August 29, 2022): 146, <https://doi.org/10.36563/yustitiabelen.v8i2.563>.

⁵⁸ R. Wiyono, *Juvenile criminal justice system in Indonesia*, First edition (Rawamangun, Jakarta: Sinar Grafika, 2016), 27.

⁵⁹ R. Wiyono, *Human Rights Court in Indonesia* (Kencana, 2006), 98.

at ensuring the security of children and their rights, enabling them to live, grow, develop themselves, and participate in a maximum manner in harmony with their dignity and dignity as human beings, as well as efforts to protect them from acts of violence and discriminatory practices.⁶⁰

A number of fundamental principles in child protection can be formulated based on the study of related laws. These principles cover several crucial aspects. *First*, there is the aspect of non-discrimination that requires equal treatment of every child regardless of their social status, economic condition, or cultural background. *Second*, aspects that prioritize the principle of the best interests of children that make the welfare and needs of children the main consideration in every decision-making. *Third*, the aspect that emphasizes the right of children to participate in expressing opinions and being involved in various processes that impact their lives. *Finally*, the aspect that focuses on protection against acts of violence by ensuring that children are free from all forms of abuse and exploitation practices.

Child protection efforts include all actions aimed at creating an environment conducive to optimizing children's development in physical, mental, and social aspects. This is realized by providing adequate opportunities for children to exercise their rights while

⁶⁰ Law Number 35 of 2014 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Statute Book of the Republic of Indonesia of 2014 Number 297.

fulfilling their obligations. This effort is also a reflection of the realization of justice in the social order. All of these efforts have legal implications that have been regulated in both written and unwritten provisions.

The purpose of child protection is to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity. This protection includes efforts to protect children from violence, discrimination, and adverse treatment. In the context of Indonesian law, this is regulated in the Child Protection Law which affirms that every child has the right to be protected from all forms of violence and exploitation, and has the right to participate in society according to his or her age and ability.

The law acts as a guarantee so that child protection can be carried out properly, so as to provide a sense of security and certainty for children in their lives. Therefore, child protection is not only a personal or family responsibility, but also a collective obligation that must be upheld by all members of society.⁶¹

⁶¹ Carmela and Suryaningsi, "Law Enforcement in Education and Child Protection in Indonesia," 61.

B. An Overview of Legal Purpose Theory

Satjipto Rahardjo stated that there are several legal principles that are the main values in a legal regulation, so to understand a legal regulation, you must know the essence of the legal principle first.⁶² These legal principles serve as a philosophical and normative foundation that guides the making, application, and enforcement of laws. Through this legal principle, a more precise and in-depth interpretation of the law can be carried out and assess the consistency and fairness contained in a law and regulation.

Gustav Radbruch in his work entitled "*einführung in die rechtswissenschaften*" wrote that in law, there are 3 basic values. Among others; 1) justice (*gerechtigkeit*), 2) legal certainty (*rechtssicherheit*), and 3) utility (*zweckmassigkeit*).⁶³

1. Justice

The principle of justice can be understood as a philosophical foundation in the formation of law where this principle requires the law to be able to translate human nature as a social creature with the fulfillment of the aspect of justice.⁶⁴ Gustav Radbruch in his work "*Rechtsphilosophie*"

⁶² Rahardjo, *Legal Science*, 8:45.

⁶³ Hardjo, 8:45.

⁶⁴ Nuraid Fitrihabib, Rafikah Rafikah, and Ardian Kurniawan, "Legal Certainty, Usefulness and Justice in Criminalization of Crimes of Marriage Origin: An Analysis of Decision No. 387/Pid.B/2021/PN.Jmb," *Al-Jinayah: Journal of Islamic Criminal Law* 7, no. 2 (December 10, 2021): 505, <https://doi.org/10.15642/aj.2021.7.2.484-509>.

developed the concept of justice as one of the fundamental goals of law that has special and complex characteristics.⁶⁵

Justice in Radbruch's view is defined as equal treatment of the same things and different treatment of different things according to their proportions, referring to the classical principle of *suum cuique* (giving to each what he is entitled to). This concept of justice is not just a subjective feeling or moral intuition, but has an objective structure that can be formulated in concrete legal principles and has standards that can be measured and applied universally.⁶⁶

The dimensions of the principle of justice in Radbruch's theory include three main aspects that are interrelated but have different focuses, including the following:⁶⁷

- a) Distributive justice (*justitia distributiva*) that regulates the equitable distribution of rights, obligations, burdens, and resources in society according to the proportions and capacities of each individual.
- b) Commutative justice (*justitia commutativa*) that regulates the reciprocal relationship between individuals in transactions and exchanges, ensuring equality of rights and obligations in exchange.

⁶⁵ Gustav Radbruch, *Rechtsphilosophie* (C.F. Müller Juristischer Verlag, 1987), 76.

⁶⁶ Arthur Kaufmann dan Gustav Radbruch, *Gustav Radbruch: Rechtsdenker, Philosoph, Sozialdemokrat*, Orig.-Auszg, Serie Piper Porträt 5247 (München Zürich: Piper, 1987), 22.

⁶⁷ Robert Alexy, *The Argument From Injustice: A Reply to Legal Positivism* (Oxford; Oxford University Press UK, 2002), 45.

- c) Legal justice (*justitia legalis*) relates to the consistent, impartial, and proportionate application of the law to all legal subjects without discrimination.

These three dimensions have a formal character that can be formulated in a normative structure, as well as have material content related to the substance and content of legal decisions.

2. Legal Certainty

The theory of legal certainty is an important concept in the legal system that emphasizes the existence of laws that are clear, consistent, and reliable. Legal certainty can also be interpreted as regulations that are made and issued with definite provisions, so that they can regulate people's behavior without causing doubt or multiple interpretations.

Grammatically certainty comes from definite words that have a definite meaning, must and certainly. The Great Dictionary of the Indonesian Language also provides an understanding of certainty, namely definite (conditional), definite (fixed), provisions, and stipulations. Meanwhile, the definition of law is the legal device of a government system that is able to guarantee the rights and obligations of each individual.⁶⁸

⁶⁸ Ministry of Education and Culture; Department, *Kamus Besar Indonesian* (Balai Pustaka, 1997), 735.

Gustav Radbruch's concept of the "Standard Priority Doctrine" which puts forward three basic legal ideas indicates that the value of justice is the main thing over the other three aspects, but it does not mean that the other aspects are immediately ignored. For Gustav, the existence of positivized or written law is always associated with the talk of legal certainty. Legal certainty itself refers to the application of laws that are clear and consistent and cannot be influenced by subjective circumstances.⁶⁹

Lawrence M. Friedman also revealed that there are at least several supporting elements to realize legal certainty, including: the substance of the law, the legal apparatus, and the legal culture.⁷⁰ The legal structure includes law enforcement officials, while the substance of the law consists of legislative apparatus. Legal culture refers to the laws embraced by society. The legal structure shows the pattern of legal implementation according to formal provisions. This includes how courts, rulemakers, and legal processes operate. On the other hand, the substance of law is related to the rules, norms, and actual behavior of individuals in the legal system, and includes legislation that is binding and serves as a guideline for law enforcement officials.

⁶⁹ Siti Halilah and Mhd Fakhurrahman Arif, "PRINCIPLES OF LEGAL CERTAINTY ACCORDING TO EXPERTS," *Siyasah : Journal of Constitutional Law* 4, no. II (December 22, 2021): 61–62, <https://ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/334>.

⁷⁰ Suyatno Suyatno Suyatno, "WEAKNESSES OF LEGAL SYSTEM THEORY ACCORDING TO LAWRENCE M. FRIEDMAN IN INDONESIAN LAW," *IUS FACTI : Periodic Journal of the Faculty of Law, Karno University* 2, no. 1 June (July 5, 2023): 202, <https://doi.org/10.61802/if.v2i1>.

Sudikno Mertokusumo argued that legal certainty is an essential component in law enforcement that functions to protect citizens from arbitrary actions. Legal certainty allows individuals to obtain predictable outcomes in certain legal situations, thus creating a stable and reliable environment for all members of society.

Complementing the perspective above, Maria S.W. Sumardjono offers a comprehensive understanding of legal certainty that includes two important dimensions. *First*, in the normative dimension, legal certainty requires the availability of a set of laws and regulations that are operationally designed to support the effective implementation of the law. *Second*, the empirical dimension emphasizes that the existence of these regulations must be implemented with consistency and consequences by law enforcers. The success of the law does not only depend on the quality of regulations, but also on the commitment and capabilities of the human resources in charge of carrying them out.⁷¹

Regulations are created and set definitively with the aim of providing a clear and logical arrangement. This clarity prevents the emergence of ambiguity or divergent interpretations, while the logical aspect ensures the formation of a system of norms that is harmonious with other norms without creating contradictions or conflicts.

⁷¹ Bagir Manan and Kuntana Magnar, *Some Problems of Indonesian Constitutional Law* (Alumni, 1997), 12.

Uncertainty in rules can give rise to various forms of norm conflicts, such as contestation, reduction, or distortion of norms.

The essence of legal certainty is achieved when the implementation of laws and regulations is consistent with the principles and legal norms that are set. According to Bisdan Sigalingging's view, there is a need for harmony between the certainty of legal substance and the assertiveness that is temporary is not sufficient to realize true legal certainty.⁷²

The theory of legal certainty emphasizes that the law must be clear, consistent, and enforceable without adding ambiguity, thus providing protection for individual rights and ensuring order in society. In the context of East Java Provincial Regulation Number 2 of 2022, this theory plays a role in ensuring that regulations regarding the protection of Indonesian migrant workers, including their children, have a clear legal basis and can be implemented effectively.

C. Overview of *Fiqh Siyasah Dusturiyah*

1. Definition of *Fiqh Siyasah Dusturiyah*

Linguistically, *fiqh* means deep understanding. Meanwhile, on the other hand, *Siyasah* can be interpreted as an effort to manage, regulate, make decisions, and control various affairs, especially those of

⁷² Manan and Magnar, 42.

a political nature. Etymologically, *siyasah* functions as a guideline in the regulation of policies or affairs related to politics and government.⁷³

Ahmad Fathi Bashar defines *siyasah* terminologically as the regulation of all affairs related to the benefit of human beings while still paying attention to and adjusting the rules of *sharia*'. Ibn Qoyyum himself explained that *siyasah* is an effort that aims to provide benefits and prevent evil or damage, especially in matters that have not been specifically regulated in the time of the Prophet.⁷⁴

Furthermore, Abdul Wahab Khallaf also gave his views on the meaning of *sharia*. According to him, *siyasah* is a legislative process that aims to create and maintain benefits and security.⁷⁵ From this view, *siyasah* has flexibility in resolving problems that are not explicitly regulated in the Qur'an, but are still based on the principles of *shari'a*. This concept shows that *siyasah* has an important role in creating adaptive and relevant policies to achieve justice and mutual benefit.

Dusturiyah is one of the branches of knowledge in *fiqh siyasah* that discusses laws and regulations. The term *dusturiyah* can be interpreted as a constitution or principle that regulates the relationship between the ruler and his community.⁷⁶ Based on the various arguments that have been put forward, *fiqh siyasah dusturiyah* can be concluded

⁷³ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 22.

⁷⁴ Djazuli, *Fiqh siyasah*, 28.

⁷⁵ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 116.

⁷⁶ Iqbal, 117.

as an in-depth knowledge of legislation, government management, authority of the ruler, and the mutual relationship between the ruler and the community that has been regulated in the legal framework. This knowledge aims to create balance and justice in governance in accordance with *shari'a principles*.

2. Scope of *Fiqh Siyasah Dusturiyah*

Siyasah dusturiyah specifically focuses on issues related to legislation, as explained earlier. These branches are divided and classified into several parts each of which have specific characteristics and functions as follows:⁷⁷

1) *Al-Sulthah al-Tasyri'iyah*

Al-Sulthah al-Tasyri'iyah is one of the branches of power in the Islamic constitutional system that has a legislative function or the formation of laws. This institution plays an important role in formulating and establishing the laws to be enforced in Islamic society, while still being guided by the Qur'an and Sunnah as the main source of law. Practically, *al-sulthah al-tasyri'iyah* is not only making laws, but also interpreting *the shari'ah* to respond to various contemporary problems that are not explicitly stipulated in the

⁷⁷ Djazuli, *Fiqh siyasah*, 48.

sources of Islamic law.

The function of *al-sulthah al-tasyri'iyyah* in the history of Islam was initially carried out by the companions, especially the *khulafa'ur rashidin* who carried out *ijtihad* to solve various problems of the ummah that had no stipulation during the time of the Prophet صلى الله عليه وسلم. Along with the development of the times and the complexity of the problems of the ummah, this institution then developed into a more structured institution. It consists of scholars and experts in various relevant fields. They are tasked with conducting in-depth studies on various issues and formulating laws that are in accordance with *sharia principles* and the benefit of the ummah.

In the context of the modern state, *al-sulthah al-tasyri'iyyah* can be analogized to a legislative or parliamentary institution, but with special characteristics that emphasize the *shari'a* aspect. This institution not only considers the practical and political aspects of the formation of law, but also ensures that any legal product produced does not contradict the principles of *shari'a*. Its members are required to have a deep understanding of Islamic sciences, especially *ushul fiqih* and *qawaidh fiqhiyyah*, as well as understand the social context of contemporary society.

2) *Al-Sulthah al-Tanfidziyyah*

Al-sulthah al-tanfidziyyah is an executive institution in the Islamic constitutional system that is responsible for implementing and enforcing the laws that have been established. In practice, this institution is led by a *caliph* or head of state who is in charge of running the government in accordance with *Islamic shari'a* and the provisions that have been set by the legislative institution (*as-sulthah al-tasyri'iyyah*). The main role of *al-sulthah al-tanfidziyyah* includes various aspects of government such as managing state administration, regulating public policy, leading the armed forces, establishing diplomatic relations with other countries, and ensuring the welfare of the people through the fair and efficient management of state resources while adhering to the principles of *shari'ah* and the benefit of the ummah as a guideline in every decision-making.

3) *Al-Sulthah al-Qadhaiyyah*

This institution is a judicial power in the Islamic constitutional system that acts as a judicial institution to uphold justice and resolve various disputes or disputes that occur in society. This institution is run by *qadhis* (judges) who have competence in the field of Islamic law and are required to have integrity and independence in deciding cases based on the Qur'an, Sunnah, and other sources of Islamic law. To carry out its functions, *al-sulthah al-qadhaiyyah* not only handles

criminal and civil cases, but also plays a role in supervising the implementation of the government so that it remains in accordance with *Islamic law*, including supervising the actions of rulers and state officials, so as to ensure the creation of justice and benefits for all people.⁷⁸

4) *Al-Sulthah al-Idariyyah*

This institution is the branch of power in the Islamic system of government related to the administration and management of government affairs that is responsible for regulating and managing various administrative aspects of the state including bureaucratic organization, public financial management, implementation of public services, and coordination between government agencies.

3. Source of *Fiqh Siyasah Dusturiyah*

- 1) The Qur'an, as the basis of the law and the main guide for humans in thinking and forming rules or laws. As the word of Allah, the Qur'an contains divine kalam that leads people to salvation. The truth is unquestionable. Many Islamic thinkers use the Qur'an as the primary source in formulating laws. This is because the Qur'an is directly guarded by Allah and has not undergone changes, even

⁷⁸ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 157–58.

though it has been tested by time.⁷⁹ In Q.S An-Nisa' verse 59, Allah *Subhanahu wa Ta'ala* said:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ

تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ

الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا⁸⁰

It means: "O you who believe, obey Allah and obey the Messenger (Prophet Muhammad) and the ululamri (rulers) among you. If you have a difference of opinion about something, return it to Allah (the Qur'an) and the Messenger (his sunnah) if you believe in Allah and the Last Day. That is better (for you) and better as a result (in this world and in the Hereafter). (Q.S An-Nisa' 4:59).⁸⁰

- 2) The Sunnah & Hadith of the Prophet Muhammad PBUH, is the second law after the Qur'an. The meaning includes all the behaviors, speeches, and activities of the Prophet Muhammad ﷺ which is consciously accepted and understood by the community. The

⁷⁹ Khalid Ibrahim Jindan, *Islamic Political Theory: A Critical Study of Ibn Taymiyah* (Risalah Gusti, 1995), 61.

⁸⁰ Lajnah Pentashihan Mushaf Al-Qur'an, *Al-Qur'an and Its Translation: Revised Edition 2019* (Lajnah Pentashihan Mushaf Al-Qur'an, 2019).

Sunnah has been passed down from generation to generation through various generations, some have seen or heard firsthand all the actions of the Prophet and then narrated it to the next generation and continue to this day.⁸¹

- 3) *Ijma'* is the agreement of scholars in determining or making a law. *Ijma'* occupies the third position in the source of Islamic law after the Qur'an and Hadith. *Ijma'* aims to achieve benefits by means of deliberation involving *the mufti, fiqh* experts, scholars and the government. If in the process of deliberation there is a disagreement or rejection in a decision, then *ijma'* is declared null and void.
- 4) *Qiyas*, is a source of law-making that utilizes logic or reasoning methods to find solutions to a legal problem. This method is used when facing problems that do not have clear legal rules, both to determine positive and negative legality. The main basis of *qiyas* is the Qur'an and Hadith which are the main sources of Islamic law. *Qiyas* works by looking for similarities between the case faced with the basic postulate, so that legal conclusions can be drawn based on analogies.⁸²
- 5) '*Adat* or *customs* that do not contradict the Qur'an and Hadith are social practices that are carried out by the community for generations. These customs can be divided into two categories: *first*,

⁸¹ Jindan,, *Islamic Political Theory*, 53.

⁸² Jindan,, 56.

unwritten customs often referred to as conventions, i.e. social practices that have become an integral part of people's lives even though they are not formally codified. *Second*, the custom is then transformed into written law through the process of legislation, provided that the custom has been recognized by the public as a binding norm and does not contradict higher sources of law, especially the Qur'an and Hadith. The transformation from custom to written law must go through a legitimate mechanism and gain legitimacy from the competent authorities.⁸³

4. Principles in *Fiqh Siyasah Dusturiyah*.

Fiqh siyasah dusturiyah is used as a foundation and reference in Islamic thought when formulating laws based on *sharia*. The purpose of using the aspect of *fiqh siyasah dusturiyah* in the determination of law is to meet human needs as it should be. The application of this concept is not limited to government management, but includes the concept of the state of law more broadly.⁸⁴

Mohammed Salim Al-'Awa, a contemporary Islamic scholar, jurist, and political thinker from Egypt, revealed that there are at least five basic principles of *siyasah dusturiyah* among them⁸⁵:

⁸³ Djazuli, *Fiqh siyasah*, 53.

⁸⁴ Iqbal, *Fiqh Siyasah Contextualization of Islamic Political Doctrine*, 177.

⁸⁵ Muhammad Salim 'Awwa, Ahmad Naji Imam, dan Anwar Beg, *On the Political System of the Islamic State*, 2nd ed (Indianapolis: American Trust, 1978), 181.

- a) Syura (Deliberation)
- b) Justice
- c) Freedom
- d) Equality
- e) Leadership Accountability and Obedience of the Ummah

Furthermore, Abdul Wahab Khallaf emphasized that the fulfillment of individual rights is a fundamental aspect in forming laws and regulations. Khallaf explained that the fulfillment of individual rights is based on two things that need to be considered.⁸⁶ *First, the principle of individual freedom.* Abdul Wahab Khallaf mentioned several main things that need to be considered, including:⁸⁷

- a) Freedom of the soul
- b) Freedom of residence
- c) Freedom of ownership
- d) Freedom of belief
- e) Freedom of thought
- f) Freedom of learning

Second, the principle of individual equality. Islam never discriminates between individuals. Both the ruler and the community are considered to have the same position in the eyes of the law and the

⁸⁶ Djazuli, *Fiqh siyasah*, 117.

⁸⁷ Wahab Khallaf, *The Politics of Islamic Law/Author Abdul Wahhab Khallaf; translator, Zainudin Adnan.*, 33–34.

law. In exercising his power, the ruler is obliged to pay attention to the interests and economic conditions of his people. Abdul Wahab Khallaf argues that equal rights and the fulfillment of individual rights are common ideals. This is because the idea of Islam aims to ensure a fair arrangement in order to achieve prosperity (*maslahah*) for all.⁸⁸

The aspect of benefits carried out by Abdul Wahab Khallaf aims to achieve profits and avoid *mudharat*. In a sense, *maslahah* tries to eliminate things that can make it difficult for individuals. Furthermore, *maslahah* not only considers individual conditions, but also pays attention to environmental limitations. The application of a law that is considered useful may cause difficulties or *harms* in the future. Similarly, the application of laws that are considered beneficial in one environment can be detrimental to another.⁸⁹

⁸⁸ Wahab Khallaf, 35.

⁸⁹ 'Abdul Wahab Khallaf, *The Knowledge of Ushul Fiqh / Abdul Wahab Khallaf; Translator, Moh. Zuhri and Ahmad Qarib* (Dina Utama, 1994), 139.

CHAPTER III

DICUSSION OF RESEARCH FINDINGS

A. Aspects of Protection of the Fulfillment of the Rights of Children of Migrant Workers in East Java Provincial Regulation Number 2 of 2022

The protection of migrant workers' children is a crucial issue that requires special attention from the government. Given their vulnerability to various forms of neglect and lack of access to basic rights.⁹⁰ Prior to the enactment of East Java Provincial Regulation Number 2 of 2022, the protection of migrant workers' children still did not have a comprehensive legal umbrella at the regional level, even though there was Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers which generally regulates the protection of migrant workers' families.

According to the hierarchy of laws and regulations, Regional Regulations are legal instruments that function as organic regulations to implement the provisions that have been regulated in the Law at the regional level.⁹¹ Regional Regulations have a strategic position in providing more specific and contextual protection according to their respective characteristics and needs. Through this Regional Regulation, local governments can regulate in more detail the mechanisms, procedures, and

⁹⁰ Sonya Hellen Sinombor, "Children of Migrant Workers Vulnerable to Various Problems," *kompas.id*, October 21, 2020, <https://www.kompas.id/baca/dikbud/2020/10/21/anak-pekerja-migran-rentan-berbagai-masalah/>.

⁹¹ Ofis Rikardo, Silvi Aulia Purwadini, and Sekar Fuad Maharany, "The Role of Regional Regulations in the Hierarchy of Laws and Regulations in Indonesia," *Sasana 10 Law Journal*, no. 1 (June 8, 2024): 169, <https://doi.org/10.31599/sasana.v10i1.2110>.

protection programs that are tailored to socio-economic conditions and institutional capacity in their regions.

1. Development of Regulations on the Protection of Rights to Migrant Workers' Families

Prior to the arrival of Regional Regulation Number 2 of 2022, the protection of migrant workers and their families in East Java was also regulated in East Java Provincial Regulation Number 4 of 2016 concerning Placement and Protection Services for Indonesian Workers Abroad.⁹² However, after reviewing East Java Regional Regulation Number 4 of 2016 concerning Placement and Protection Services for Indonesian Workers Abroad, the author found that the regional regulation focuses more on the aspects of placement, training, and protection services for migrant workers in general. This Regional Regulation does not have a special article that specifically regulates the protection of migrant workers' families.

The focus of the arrangement is more emphasized on the aspects of the placement services and protection of migrant workers themselves, while the protection of abandoned children has not been comprehensively regulated. This includes important aspects such as ensuring the continuity of education, monitoring psychosocial welfare, and mechanisms to prevent neglect and exploitation of children of migrant workers.

⁹² "East Java DPRD Ratifies Raperda on Indonesian Migrant Workers as Regional Regulation - Communication and Information Service of East Java Province," accessed February 25, 2025, <https://kominfo.jatimprov.go.id/berita/dprd-jatim-sahkan-raperda-pekerja-migran-indonesia-jadi-perda>.

These limitations are then one of the main considerations in the formulation of East Java Provincial Regulation Number 2 of 2022 which specifically pays greater attention to the aspect of child protection of migrant workers. This new regional regulation is here to fill this gap and is a response to the need for more comprehensive and adaptive regulations to the dynamics of the problems faced by children of migrant workers in the contemporary era.

The history of regulations on the protection of migrant workers and their families in Indonesia began with the enactment of Law Number 13 of 2003 concerning Manpower which regulates in general regarding the placement of workers abroad.⁹³ This regulation was then supplemented by Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad which specifically regulates the mechanism for the placement and protection of migrant workers, although there are still some weaknesses in its implementation, especially related to the aspect of protecting migrant workers' families.

A significant development occurred when Indonesia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families through Law Number 6 of 2012.⁹⁴

This ratification became an important foundation for strengthening the

⁹³ Hartono Widodo and R. Jossi Belgradoputra, "Protection of Indonesian Migrant Workers," *Binamulia Hukum* 8, no. 1 (2019): 108, <https://doi.org/10.37893/jbh.v8i1.343>.

⁹⁴ Zati Rizqi Muhammad, "Indonesia's Accountability as a Ratifying State for the Protection of the Rights of All Migrant Workers and Members of Their Families," *Jurist-Diction* 7, no. 1 (January 31, 2024): 170, <https://doi.org/10.20473/jd.v7i1.55051>.

protection of migrant workers and their families in Indonesia, which was then followed by the birth of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. This law brings a new paradigm in the protection of migrant workers by paying greater attention to the aspect of family protection and adopting international standards in the protection of migrant workers.⁹⁵

At the East Java Province level, regulations for the protection of migrant workers were initially regulated through East Java Provincial Regulation Number 4 of 2016 concerning Placement and Protection Services for Indonesian Workers Abroad. This Regional Regulation was then updated with East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers which provides more comprehensive arrangements, especially related to the protection of migrant workers' families and children. This new Regional Regulation is the implementation and harmonization of Law Number 18 of 2017 at the regional level which is adjusted to the specific characteristics and needs of East Java Province as one of the largest pockets of migrant workers in Indonesia.

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers affirms the role of the state not only in the process of

⁹⁵ Ahmad Erizal, Agusmidah Agusmidah, and Suria Ningsih, "PROTECTION OF INDONESIAN MIGRANT WORKER FAMILIES (PMI) AFTER THE ENACTMENT OF LAW NUMBER 18 OF 2017 CONCERNING THE PROTECTION OF INDONESIAN MIGRANT WORKERS," *Law Journal* 1, no. 1 (July 14, 2020): 12, <https://doi.org/10.46576/lj.v1i1.784>.

departure and repatriation, but also protection during the period of working abroad. Article 1 number 7 states that protection is not only given to Indonesian Migrant Workers, but also includes their family members who are also abroad:⁹⁶

"Protection While Working is the entire activity to provide protection while Indonesian Migrant Workers and their family members are abroad"

Although it does not explicitly discuss protection for families left behind in the country, this article signals that the scope of protection could be broader. This is where the East Java Provincial Regulation Number 2 of 2022 tries to provide a greater role in filling the protection gap for the children of migrant workers living in the area of origin. So that there is policy continuity between the central and regional governments in an effort to form a more comprehensive protection ecosystem, although there is still a lot of strengthening in terms of substance and implementation.

In the context of East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of Migrant Worker Protection, the protection of migrant workers is an issue that needs to be considered, which this regulation aims to provide better protection for migrant workers and their families, including their children who are often neglected in the migration process. This protection includes aspects of health, education and social welfare that are critical to ensuring that children of migrant workers

⁹⁶ Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers Statute Book of the Republic of Indonesia Number 242 of 2017.

are not only protected from exploitation, but also get decent access to basic services.⁹⁷

In this context, children of migrant workers often face the challenge of losing access to education and health services. Research shows that children of migrant workers often do not get an adequate education that can impact their future.⁹⁸ Therefore, this Regional Regulation seeks to integrate education and health services for the children of migrant workers, so that they can grow and develop well even if their parents work abroad.⁹⁹

Furthermore, this regulation also emphasizes the importance of collaboration between local governments and related agencies in providing protection to the children of migrant workers, as well as monitoring the condition of abandoned children.¹⁰⁰ With cross-sectoral cooperation, it is hoped that the protection provided can be more effective and comprehensive, so that the children of migrant workers are not only protected from the risk of exploitation, but also get equal opportunities in education and health.

⁹⁷ Hardi Alunaza, Mentari Mentari, and Ratu Zahirah Lutfie, "PROTECTION OF INDONESIAN MIGRANT WORKERS DURING THE COVID-19 PANDEMIC FROM A POLITICAL AND HUMAN RIGHTS PERSPECTIVE," *Journal of Civic Education*, June 1, 2022, 72, <https://doi.org/10.31571/pkn.v6i1.3375>.

⁹⁸ Riana Puspa Dewi Santoso and Singgih Manggalou, "Implementation of Government Policy for Indonesian Migrant Workers (PMI) in East Java Province in 2021," *VISA: Journal of Vision and Ideas* 4, no. 2 (April 1, 2024): 663, <https://doi.org/10.47467/visa.v4i2.1676>.

⁹⁹ Dani Amran Hakim and Muhammad Havez, "THE LEGAL POLITICS OF THE PROTECTION OF INDONESIAN MIGRANT WORKERS IN THE PERSPECTIVE OF FIQH SIYASAH DUSTURIYAH," *TANJUNGPURA LAW JOURNAL* 4, no. 2 (August 15, 2020): 102, <https://doi.org/10.26418/tlj.v4i2.41913>.

¹⁰⁰ Santoso and Manggalou, "Implementation of Government Policies for Indonesian Migrant Workers (PMI) in East Java Province in 2021," April 1, 2024, 666.

East Java Provincial Regulation Number 2 of 2022 is also in line with a broader national policy regarding the protection of migrant workers. This policy includes protecting the rights of migrant workers and their families, as well as ensuring that they have access to the necessary services.¹⁰¹ Thus, this regulation not only serves as a legal instrument, but also as a strategic step to improve social and economic welfare for migrant workers and their children in East Java Province.

2. Analysis of the Substance of the Aspects of Child Protection of Indonesian Migrant Workers' Rights in East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers

Through the juridical context of East Java Provincial Regional Regulation Number 2 of 2022, especially its normative manifestations in Article 39 as follows:

- (1) The Provincial Government provides legal protection for Indonesian Migrant Workers and their Families before and after work.*
- (2) Legal protection as intended in paragraph (1) can be provided by the Provincial Government in the form of legal assistance.*
- (3) Legal protection as referred to in paragraph (1) is carried out to ensure the fulfillment of rights for Indonesian Migrant Workers and their Families.*
- (4) Legal protection as referred to in paragraphs (2) and (3) shall be carried out in accordance with the provisions of laws and regulations and/or the laws of the destination country, as well as international laws and customs.*

¹⁰¹ Nugroho Bangun Witono, "INDONESIAN MIGRANT WORKER PROTECTION POLICIES IN THE COVID-19 PANDEMIC," *Indonesian Journal of Peace and Security Studies (IJPSS)* 3, no. 1 (June 30, 2021): 42, <https://doi.org/10.29303/ijpss.v3i1.57>.

It has been stipulated that the provincial government has an obligation to implement comprehensive legal protection for migrant workers and their family members both in the pre-placement and post-placement phases. This protective dimension is actualized through legal aid instruments that must be based on three aspects; a) conformity with national laws and regulations, b) harmonization with the legal system in the destination country, and c) adherence to the principles of customary international law that have been structured.

However, legal analysis of this rule shows several problems that can have negative impacts. *First*, there is uncertainty about how to provide legal aid specifically for the children of migrant workers. This ambiguity creates a problem known as "*regulatory ambiguity*" that leads to legal uncertainty. Another problem is the lack of clarity about who is protected, whether children abandoned in Indonesia also get legal aid in difficult situations such as custody disputes, exploitation, or violence.

Furthermore, there is a normative vacuum with regard to institutions that have competence and authority in the administration of legal aid for the children of migrant workers. *This vacuum juris* indicates the urgency of a more precise and comprehensive regulatory reformulation to ensure the effectiveness of legal protection for vulnerable entities.

Through empirical research by Ngatma'in in his scientific publication on violence in the care of migrant workers, it reveals a

significant disparity between normative formulation and factual implementation. The study identified data showing that 82% of migrant workers' children had experienced violence in their care.¹⁰² In addition, the study also identified structural and cultural barriers that hinder the access of migrant workers' children to legal aid mechanisms, especially in cases related to domestic violence (KDRT) or deprivation of inheritance rights. These findings underscore the importance of strengthening specific regulations governing legal protection for migrant workers' children.

Furthermore, the book *"Fulfilling the Rights of Children of Indonesian Migrant Workers in the Perspective of Human Rights"* highlights that the problems experienced by migrant workers' children have not received adequate attention from the government and child observer organizations. The lack of government programs for the fulfillment and protection of the rights of migrant workers' children is characterized by limited access to education, health, and social security, so the state needs to be more serious in fulfilling the basic rights of migrant workers' children, including their recognition as individuals before the law.¹⁰³

In addition, there are quite complex juridical issues related to the legal status of children of migrant workers who do not have complete

¹⁰² Ngatma'in Ngatma'in, "Violence in Parenting for Children of Migrant Workers," *J-SES : Journal of Science, Education and Studies* 3, no. 1 (28 May 2024): 63, <https://doi.org/10.30651/jses.v3i1.22623>.

¹⁰³ Hijrah Lahaling and Kindom Makkulawuzar, *The fulfillment of the rights of children of Indonesian migrant workers in the perspective of human rights*, First Edition (Ngaglik, Sleman, Yogyakarta: Deepublish, 2021), 33.

population documents. This case, for example, occurs in children who were born abroad while their parents worked abroad, but returned to Indonesia without a birth certificate legally recognized by the state. This ambiguous status has the potential to hinder their access to public services when viewed through the lens of population administration, including social security programs that generally require the possession of a legal identity as the basis for beneficiaries.

Through research by Cicilia which discusses the fulfillment of children's rights for Indonesian workers in oil palm plantations in Tawau, it shows that children of Indonesian Migrant Workers (PMI) experience multiple layers of vulnerability, especially when they are born and live in the country where their parents work. One of the most obvious is the emergence of *stateless* children which results in their limited access to basic government services and services.¹⁰⁴ This makes it difficult for them to gain access to health services, education, social assistance programs, and other protections from the state.

Not to mention when faced with the main challenges in fulfilling children's rights abroad, including low awareness of parents in fulfilling children's rights, such as the inability to officially report themselves due to illegal status and limited educational and health facilities available in their

¹⁰⁴ Cicilia Sholina, "FULFILLMENT OF THE HUMAN RIGHTS OF CHILDREN OF INDONESIAN WORKERS IN OIL PALM PLANTATIONS IN THE TAWAU REGION, SABAH, MALAYSIA," *Journal of Human Development* 3, no. 1 (28 February 2022): 4, <https://doi.org/10.7454/jpm.v3i1.1029>.

environment. In addition, Malaysia's position that it has not ratified the International Convention on the Protection of the Rights of Migrant Workers and Their Families has exacerbated the situation by making it difficult for migrant workers to fight for the rights of their children.¹⁰⁵

As for the normative construction in Article 42 concerning Social Protection related to the aspect of protection for the children of migrant workers, it can be highlighted in Point e as follows:

- (1) The Provincial Government provides social protection for Indonesian Migrant Workers through:*
- a. Improving the quality of education and job training through standardization of work competencies;*
 - b. Increasing the role of accreditation bodies and certification bodies;*
 - c. Providing educators and job training or instructors who are competent in their fields;*
 - d. Implementation of Social Security;*
 - e. Protection policies for women and children; and*
 - f. Provision of Indonesian Migrant Worker Protection Center in the destination country of placement.*

The provincial government has an obligation to provide protection to women and children in the context of the protection of migrant workers. However, a substantive analysis of these provisions reveals a significant regulatory deficiency.

First, there are no clear details on forms of social protection for the children of migrant workers. This ambiguity creates a legal gap because

¹⁰⁵ admin, "Press Release 'Reflection on the Weak Protection of Indonesian Migrant Workers (BMI) in Malaysia,'" *Solidaritas Perempuan* (blog), accessed 5 March 2025, <https://www.solidaritasperempuan.org/siaran-pers-refleksi-atas-lemahnya-perlindungan-buruh-migran-indonesia-bmi-di-malaysia/>.

there is no certainty whether such protection includes social services, psychosocial assistance, or rehabilitation for abandoned and neglected children. This ambiguity can lead to suboptimal and uneven implementation in the provision of social services for the children of migrant workers.

Second, there is no regulation on the coordination mechanism between the provincial government and social services or other child protection institutions. The absence of this coordination mechanism has the potential to cause overlapping programs or even service vacancies in several regions, so that social protection for the children of migrant workers cannot be implemented effectively and comprehensively.

The absence of migrant workers' parents in care has a significant impact on the emotions and social behavior of abandoned children. These children often experience psychosocial problems, such as emotional disorders, behavior, maladaptation, and difficulties in coping with problems both in the family and school environment. Through a study entitled "*The Problems of Migrant Worker Children in Tulungagung in the Perspective of Guidance and Counseling*" it is shown that migrant worker children tend to be more passive and experience high levels of stress that can hinder their physical, intellectual and social development.¹⁰⁶ In addition, negligent and indulgent parenting from caregivers (*grand-parenting*) also contributes to

¹⁰⁶ Wikan Galuh Widyarto and Machsun Rifauddin, "The Problems of Migrant Worker Children in Tulungagung in the Perspective of Guidance and Counseling," *Journal of Guidance and Counseling Studies* 5, no. 3 (September 16, 2020): 96, <https://doi.org/10.17977/um001v5i32020p091>.

the lack of social competence and self-control of children.¹⁰⁷ Children of migrant workers generally do not experience serious health illnesses. However, they face problems related to nutritional fulfillment and mental health that can affect their growth and development, such as the risk of stunting and wasting.¹⁰⁸

The next article provides a normative construction regarding the aspect of protection of the economy as stated in Article 43, namely:

- (1) The Provincial Government provides economic protection for Indonesian Migrant Workers in accordance with its authority through:*
- a. Remittance management by involving banking institutions or non-bank financial institutions in the country and the destination country of placement;*
 - b. Financial education so that Indonesian Migrant Workers and their Families can manage their remittance results;*
 - c. Entrepreneurship education; and*
 - d. Provision of education and training centers for Indonesian Migrant Worker Families in regional apparatus that organizes government affairs in the fields of education, trade and industry, cooperatives, small and medium enterprises, and labor.*

East Java Regional Regulation No. 2 of 2022 Article 43 has regulated two important aspects in economic protection for migrant workers and their families. *First*, there are provisions regarding financial education for migrant workers and their families. *Second*, the provision of education and training centers for migrant worker families. However, the provision

¹⁰⁷ Widyarto and Rifauddin, 97.

¹⁰⁸ Widyarto and Rifauddin, 98.

has some significant weaknesses that create regulatory ambiguity and a void of norms.

One of the main weaknesses of this article is the absence of specific regulations on economic assistance for the children of migrant workers who are left in vulnerable conditions. For example, there are no specific provisions for children abandoned by parents who fail abroad or pass away. This creates a serious protection gap for children who are in difficult economic situations due to the failure or loss of their parents abroad.

Another weakness lies in the orientation of financial education programs which tend to be too general. The program generally only focuses on migrant workers and their families in general with no specific specifications for the children of migrant workers. In fact, children have different economic needs and challenges, especially when it comes to financial management and future planning.

Migrant workers play a crucial role in the Indonesian economy, but their existence also has a significant impact on families left behind, especially children. These children often have difficulty meeting basic needs such as education and health when their parents go to earn a living abroad as migrant workers. For example, in the case of the decrease in remittances during the pandemic which caused many families to struggle to meet their daily needs, which had a direct impact on children's access to proper

education and adequate health services.¹⁰⁹ Therefore, targeted economic assistance is essential to improve the welfare of migrant workers' children, so that it is with this adequate support that children can obtain a better education and access to health services that will *support* them to grow and develop well even in difficult situations.¹¹⁰

Another case was also revealed by Andhega Wijaya in his scientific research on the children of Indonesian Migrant Workers (PMI) which indicated that they are often in vulnerable situations, especially related to access to education and economic welfare. In this context, it is certainly very important to set up an economic safety net that can support them. Some of the proposed recommendations include the provision of educational scholarships to ensure migrant children can access a decent education even if they are abroad and often in illegal conditions.¹¹¹ In addition, subsidies for the cost of living are also needed to help migrant worker families to meet the basic needs of their children, so that they are not forced to stop their education.

Article 44

- (1) Indonesian Migrant Workers and Their Families are entitled to Social Security.*
- (2) Social Security as intended in paragraph (1) includes:*
 - a. Health insurance; and*

¹⁰⁹ Ajeng Tiara Bangsa Rahmawati, "ANALYSIS OF GOVERNMENT POLICIES TOWARDS INDONESIAN MIGRANT WORKERS DURING THE COVID-19 PANDEMIC (Case Study of PMI Departures During the Pandemic)," *Journal of International Relations Diponegoro* 9, no. 1 (February 7, 2023): 372.f

¹¹⁰ Rahmawati, 371.

¹¹¹ Andhega Wijaya, Muhammad Turhan Yani, and Oce Wiriawan, "IMPROVING FINANCIAL LITERACY AND SKILL COMPETENCIES FOR INDONESIAN MIGRANT WORKERS (PMI) IN MALAYSIA," *PROFICIO* 6, no. 1 (2025): 235, <https://doi.org/10.36728/jpf.v6i1.4156>.

b. Employment security.

- (3) In the event that Indonesian Migrant Workers and their Families do not receive Social Security, the Provincial Government shall facilitate the fulfillment of Social Security as intended in paragraph (2).*
- (4) Social security as referred to in paragraph (2) is administered by BPJS Kesehatan and BPJS Ketenagakerjaan in accordance with the provisions of laws and regulations.*

Article 45

- (1) The Provincial Government can help pay contributions for BPJS Kesehatan participants for Indonesian Migrant Worker Families who are unable to afford it in accordance with the provisions of laws and regulations.*
- (2) The implementation of the provision of assistance in the payment of BPJS Kesehatan participant contributions for Indonesian Migrant Worker Families as intended in paragraph (1) is carried out in accordance with the provisions of laws and regulations.*

Furthermore, Articles 44 to 45 regulating social security in the policy of protecting migrant workers affirm that local governments have an obligation to facilitate access to social security for migrant workers and their families through BPJS Kesehatan and BPJS Ketenagakerjaan. As part of this responsibility, the government also plays a role in providing subsidies or assistance in paying BPJS contributions for migrant worker families who are in the weak economic category. However, again this provision still leaves a number of legal uncertainties that have the potential to create gaps in policy implementation.

One of the fundamental problems that has not been clearly accommodated is the social security status for the children of migrant workers left behind in Indonesia. There is no normative certainty whether they automatically gain access to social security services without having to

be associated with their parents' BPJS membership status. This regulatory vacuum can have implications for greater socio-economic vulnerability for the children of migrant workers, especially if they come from families with low welfare levels.

Furthermore, when looking at the Regulation of the Minister of Manpower Number 4 of 2023 concerning Social Security for Indonesian Migrant Workers from articles 25 to 62, it mentions several social security benefits that Indonesian Migrant Workers can get through BPJS Ketenagakerjaan in the form of work accident insurance, death insurance, and old age insurance. Of the three guarantees, only two of them also provide guarantees to the children of migrant workers, namely; Death and Old Age Insurance.¹¹²

- a) Death Insurance is provided if their parents die during the coverage period, children are entitled to death compensation, funeral expenses, and education or training scholarships.¹¹³
- b) Meanwhile, the old-age guarantee will allow children to receive benefits if their parents reach retirement age or experience permanent total disability.

This simply identifies that their access to social security services is not automatic and depends on their parents' BPJS membership status. This

¹¹² Madiono Madiono, Ratnaningsih Ratnaningsih, and Naimah Naimah, "Legal Protection of Social Security for Indonesian Migrant Workers and Their Families," *IUS : Scientific Journal of the Faculty of Law* 11, no. 2 (December 11, 2023): 205, <https://doi.org/10.51747/ius.v11i2.1764>.

¹¹³ Madiono, Ratnaningsih, and Naimah, 208.

dependence creates exclusivity in access to social security where the children of migrant workers whose parents are not registered in the BPJS system can be excluded from the social protection to which they should be entitled.

Furthermore, the dimension of health protection for children of migrant workers who experience mental disorders due to separation from their parents has also not received explicit attention in existing regulations. In fact, the psychosocial impact due to the absence of parental roles in children's lives can contribute to impaired mental development and their emotional well-being in the long run. Therefore, a more comprehensive refinement of regulations is needed to ensure that social protection for migrant workers' families is not only limited to economic and physical aspects, but also includes protection of their mental health and social welfare.

From the overall analysis of the substance of the articles in the Regional Regulation related to the protection of the children of Indonesian Migrant Workers, Gustav Radbruch's thoughts on legal certainty are very relevant. Radbruch stated three main criteria that the law must be clear, consistent, and reliable.

A clear law is one that can be easily understood and interpreted by all parties involved. However, when the regulations on the protection of migrant workers, they do not include clear instructions on implementation

procedures. The consequence is that those who are supposed to be protected by this law are actually trapped in confusion, so in this case, the lack of clarity about children's rights and mechanisms for getting help can deprive them of the opportunity to get much-needed protection.

Then, consistent law means that each article in the regulation must support each other and not contradict each other. Uncertainty in regulation and implementation often creates conflicts between central policies and practices on the ground which in turn results in doubts among the public about the effectiveness of the law. If the children of migrant workers are given different protections according to the context in which they live, then it creates an injustice that is far from the noble values of the law.

Furthermore, legal reliability is also very important to create trust in society. When children and their parents feel uncertainty in the legal system, they will be less likely to rely on the law as a tool to get justice. For example, if legal protections for the children of migrant workers are not consistently implemented, then society will lose confidence in the ability of the law to protect them from exploitation or other crimes.

The principle of justice is an important framework to assess the extent to which East Java Provincial Regulation Number 2 of 2022 is able to avoid fair and comprehensive legal protection. Radbruch views justice as one of the main goals of law that is not only subjective, but has an objective

structure that can be formulated in concrete legal norms. The principle of justice according to Radbruch is based on the principle of giving each one what he or she has right, demanding the law to be able to treat the same things equally, and different things differently according to their proportions. This principle in this study shows that migrant children who are in different social conditions and are more vulnerable than other legal subjects, should receive proportionate protection according to their needs.

From the point of view of distributive justice, Regional Regulation Number 2 of 2022 has not explicitly regulated a special form of protection for migrant workers' children, even though the protection of migrant workers' families is mentioned in general. This is enough to show that there is an inequality in the distribution of rights, because children as a vulnerable group do not receive adequate portions of protection. Meanwhile, when viewed from the perspective of commutative justice, the relationship between local governments and the people (in this case, the children of migrant workers) demands a balance of rights and obligations. The government has the right and obligation to protect children as citizens, but if this protection is not concretely realized, there will be inequality in the reciprocal relationship. Furthermore, in terms of legal justice, the applicable legal rules should be applied consistently and without discrimination. However, the lack of explicit mention of the protection of migrant children in the norms of the Regional Regulation has the potential

to create covert discrimination against this group because they are not clearly the subject of protection.

Thus, the three dimensions of justice put forward by Radbruch can be concluded that East Java Provincial Regulation Number 2 of 2022 has not fully reflected these principles of justice, especially in terms of protection for migrant workers' children. Therefore, it is necessary to strengthen regulations both through the revision of the Regional Regulation and the preparation of derivative technical rules so that legal goals in the form of justice as intended by Radbruch can be realized in real terms in the legal protection of the rights of children affected by labor migration.

B. Protection of the Rights of Children of Migrant Workers in East Java Provincial Regulation Number 2 of 2022 *Siyasah Dusturiyah* Perspective

The principles in *Fiqh Siyasah Dusturiyah* such as equality (*al-musawah*), justice (*al-'adalah*), human independence (*hurriyyah al-insan*), and the glory of human dignity (*karamah insaniyah*) are the main foundation in building a legal system that guarantees the rights of the state including protection for Indonesian migrant workers and their families as stipulated in the Regional Regulation of Java Province East Number 2 of 2022. These principles serve not only as normative guidelines, but also as parameters for evaluating the effectiveness of regulations in ensuring the well-being of migrant workers and their families.

The principle of human independence is a fundamental principle that affirms that every individual has the right to freedom and should not be enslaved by an oppressive system. In the context of Islamic governance, Khalid Ibrahim Jindan emphasized that policies must guarantee freedom and basic human rights.¹¹⁴ This includes protections for vulnerable groups such as children of migrant workers. This principle is particularly relevant for the protection of the children of migrant workers who have the right to live free from exploitation.

Furthermore, according to Jindan, he emphasized that the Islamic government is obliged to protect the basic rights of its citizens, especially those who are in a weaker position socially, economically, and politically. Jindan's statement is closely related to the provisions of Article 45 which states that it concretely implements Jindan's idea by providing health access assistance in the form of subsidies for BPJS Kesehatan participant contributions for underprivileged migrant workers, which can be categorized as groups in an economically weak position.

When viewed from the perspective *of siyasah dusturiyah*, this policy is a positive step in preserving the dignity of human dignity because it ensures that migrant workers and their families continue to have access to decent health and welfare services. But then, it is still necessary to look at how the mechanism for classifying families who are considered

¹¹⁴ Khalid Ibrahim; Jindan, *The theory of Islamic government according to Ibn Taymiyyah: by Khalid Ibrahim Jindan; translated by Mufid* (Rineka Cipta, 1994), 43.

underprivileged so that this assistance is really given to those in need. As well as how the government ensures that the BPJS services provided have adequate quality for the health and welfare of migrant workers and their families.

In addition to the principle of independence, the *siyasah dusturiyah* also emphasizes the principle of the glory of human dignity as a fundamental value in Islamic teachings.¹¹⁵ Islam affirms that every human being has dignity that must be maintained, including vulnerable groups such as the children of migrant workers who often face social and economic challenges. This is in line with the *shari'i* postulate as follows:

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ

وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ۝١٦﴾

Meaning : "Verily, We have glorified the descendants of Adam and We have carried them on land and in the sea. We have also bestowed upon them sustenance from the good, and We have made them superior to many creatures whom We have created with perfect advantages." (Q.S Al-Isra' (17): 70)¹¹⁶

¹¹⁵ Zenal Setiawan Zenal Setiawan and Irwansyah, "PRINCIPLES OF FIQH SIYASAH," *JOURNAL OF SMART LAW* 2, no. 1 (2023): 72.

¹¹⁶ The Qur'an,; *the Qur'an and its Translations*.

The concept of *human friendship* or human dignity is the basis that every individual has the right to be respected and protected from birth.¹¹⁷ In the context of the protection of migrant workers' children, this principle requires policies that ensure their welfare and comprehensive protection, both in legal, social, and economic aspects.

Abdul Wahab Khallaf emphasized that the principle of equality requires that every individual be treated equally before the law regardless of social or economic status. This principle is reflected in Article 39 which emphasizes that the provincial government is obliged to provide legal protection for Indonesian migrant workers and their families both before and after work. From the perspective of *siyasaḥ dusturiyah*, this is enough to show the government's efforts to ensure that every migrant worker has the same right to legal protection regardless of their economic and social background.

Furthermore, Article 42 regulates social protection policies for migrant workers, especially for women and children, where this article already reflects the principle of justice. Abdul Wahab Khallaf demanded that the law should not only be normative but also applied fairly without discrimination. This policy shows that local governments are aware of the

¹¹⁷ Mahmud Muhsinin, "Comparative Studies: Human Rights in the Perspective of Islam and the 1945 Constitution," *Al-Hikmah : Journal of Religious Studies* 4, no. 2 (2018): 4, <https://doi.org/10.30651/ah.v4i2.2645>.

existence of vulnerable groups in migrant workers' families that need further protection.

As for Article 43 which regulates financial education and the provision of education and training centers for migrant worker families in order to provide economic independence to migrant workers and their families, so that they are not only dependent on remittances but also have skills that can improve their welfare. Through this article, the principle of human independence (*hurriyah al-insan*) plays an important role where Yusuf Al-Qardhawi explains that individual freedom in Islam must be guaranteed, both in social, economic, and political aspects.

This policy reflects the government's efforts to ensure economic freedom for migrant workers and their families, so that they can manage their finances independently without undue reliance on external assistance. It is therefore important to note that the effectiveness of these policies will depend heavily on the quality of financial education and training provided and the government must ensure that these programs are truly relevant to the needs of migrant workers and their families.

The aspect of legal protection for Indonesian migrant workers and their families has been regulated in Article 39 of the regional regulation. This article states that the provincial government is responsible for providing legal protection for migrant workers and their family members before, during, and after work. The legal protection in question includes

assistance and legal assistance provided in accordance with the provisions of applicable laws, both domestically and in the destination country. However, when viewed from the principle of the glory of human status from the perspective of *siyasah dusturiyah*, this article still has several weaknesses, especially in the scope of protection for the children of migrant workers.

Although Article 39 regulates legal protection, this provision is still general and does not explicitly discuss the protection mechanism for the children of migrant workers who often face legal problems indirectly due to their parents' status as migrant workers. One of the problems that often occurs is the lack of legal recognition of the existence of migrant workers' children who live with guardians or relatives in their hometowns.¹¹⁸ These children often have difficulty accessing administrative services, such as identity registration and population documents, which are their basic rights.¹¹⁹ The ambiguity of this regulation has the potential to cause legal uncertainty for this group, so that the principle of the glory of the human degree has not been fully realized.

In addition, the legal protection aspect in Article 39 also does not specifically regulate the form of legal aid for the children of migrant

¹¹⁸ Evania Fidyawati and Mulia Ardi, "Disharmony of the Indonesian Migrant Worker Family (PMI) Tulungagung in the Perspective of Emile Durkheim's Functional Structural Theory," *Scientific Journal of Wahana Pendidikan* 10, no. 10 (May 31, 2024): 1148, <https://doi.org/10.5281/zenodo.11652513>.

¹¹⁹ Inas Sofia Latif, "Book Review: Legal Aspects of Child Protection and Birth Registration System," *Pelita : Journal of Research and Scientific Papers* 23, no. 2 (2023): 2, <https://doi.org/10.33592/pelita.v23i2.4553>.

workers who experience violence, exploitation, or neglect due to being left to work by their parents. The principle of the dignity of human status requires that the children of migrant workers be seen not only as part of the migrant workers' families, but also as legal subjects with their own protection.

This regulation should further regulate legal assistance procedures for children of migrant workers who experience legal problems, both in cases of guardianship, economic exploitation, and other cases that have an impact on their welfare. Without a clear regulation on the legal protection of migrant workers' children, this regional regulation does not fully reflect the principle of *siyasah dusturiyah* which in this case emphasizes that leaders (governments) have a responsibility to maintain the dignity of their people.

The principle in *siyasah dusturiyah* which is also no less important is the principle of justice where in the concept of protection of human rights, this principle requires that the law must be enforced without discrimination and ensure a balance between rights and obligations in a society. Justice is not only procedural, but also substantive where each individual gets equal treatment according to their individual needs.¹²⁰

¹²⁰ Nurlaila Harun, "JUSTICE IN THE PERSPECTIVE OF ISLAMIC LAW," *I'tisham : Journal of Islamic Law and Economics* 1, no. 2 (January 1, 2022): 162, <https://journal.iain-manado.ac.id/index.php/itisham/article/view/1782>.

Abdul Wahab Khallaf, a leading *expert on siyasah dusturiyah* law emphasized that justice is the main pillar in *siyasah dusturiyah*. He emphasized that the law must be fair regardless of a person's social or economic status.¹²¹ This perspective is in line with the universal principle of justice that guarantees that every individual has equal access to legal protection and the opportunity to meet his or her basic needs, regardless of their socioeconomic background.

Through a justice perspective, this regulatory gap has the potential to create structural injustice. When children of migrant workers in vulnerable situations do not receive adequate economic protection, they do not have the same opportunity to access their basic rights such as quality education, health, and social welfare. In fact, the principle of justice demands special treatment for vulnerable groups to ensure substantive equality, not just formal equality.

Overall, East Java Regional Regulation Number 2 of 2022 has sought to reflect the principles in *siyasah dusturiyah*, especially in the aspects of equality, justice, human independence, and the glory of the human degree as affirmed by Abdul Wahab Khallaf.

The principle of equality is embodied through policies that ensure that every migrant worker and his or her family have the same right to legal, economic, and economic protection regardless of their social or economic

¹²¹ Arisman Arisman and Lukmanul Hakim, "Islamic Political Sociology Thought of Abdul Wahhab Khallaf," *An-Nida'* 45, no. 1 (February 22, 2022): 18, <https://doi.org/10.24014/an-nida.v45i1.16528>.

background. The principle of justice is seen in the government's efforts to provide special protection to more vulnerable groups, such as women and children of migrant workers as well as in the policy of social security facilities for those who cannot afford it.

Meanwhile, the principle of human independence is reflected in financial education and skills training programs that aim to provide economic independence to migrant workers and their families so that they can manage their lives more independently and competitively. In addition, the principle of the dignity of the human being is maintained through regulations that guarantee migrant workers and their families access to proper health and welfare services so that they are still treated with dignity and valued as part of society.

Furthermore, of course, the need for more comprehensive policy arrangements will be needed to ensure that social protection for the children of migrant workers is widely accessible, so as to truly realize the principle of human independence in the context of social protection for this vulnerable group. This is in line with the *commandment of the Shari'ah* in the word of Allah through the Qur'an surah an-Nahl verse 90:

﴿ إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ

وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُم لَعَلَّكُمْ تَذَكَّرُونَ ﴿٩٠﴾

It means: "Indeed, Allah commands us to act justly, to do good, and to give help to relatives. He (also) forbids heinous deeds, iniquity, and enmity. He teaches you a lesson so that you will always remember."¹²² (Q.S An-Nahl (16): 90).

¹²² The Qur'an; *the Qur'an and its Translations*.

CHAPTER IV

CLOSING

A. Conclusion

Based on the analysis that has been described earlier, conclusions can be drawn as follows:

- 1) East Java Provincial Regulation Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers has accommodated aspects of protection for the children of migrant workers as part of the state's responsibility in guaranteeing the basic rights of citizens. however, the legal norms that specifically regulate the protection of migrant workers' children in the Regional Regulation have not been formulated explicitly, inclusively, and comprehensively. This lack of detail creates legal uncertainty, especially in terms of the fulfillment of the rights to education, health, and protection from exploitation and neglect. Although this Regional Regulation is a positive first step, normatively it is still necessary to strengthen more strict legal aspects so that the protection of the children of migrant workers is not only declarative, but also operational within the legal framework of local governments.
- 2) Based on the analysis from the perspective of the principles in *siyasah dusturiyah*, the substance of East Java Provincial Regulation

Number 2 of 2022 concerning the Implementation of the Protection of Indonesian Migrant Workers shows an orientation towards the protection of vulnerable groups, including the children of migrant workers as part of efforts to realize the public welfare. The principles *of siyasad dusturiyah* such as human independence, the dignity of human dignity, justice, and equality demand the guarantee of the protection of basic rights without discrimination, including for children in the context of labor migration. However, the normative content in this Regional Regulation does not fully detail the protection of migrant workers' children explicitly and comprehensively, so that it has the potential to obscure the fulfillment of the principles of justice and equality as mandated by the basic values *of siyasad dusturiyah*.

B. Suggestion

- 1) The Regional Government of East Java Province should strengthen Regional Regulation Number 2 of 2022 by formulating norms that specifically regulate the protection of the rights of children of Migrant Workers as a vulnerable group directly affected by the migration of their parents. Although family protection has been mentioned in the Regional Regulation, there has been no explicit emphasis on children. Therefore, operational articles should be regulated that ensure the sustainability of education, the right to

nurture, psychosocial support, and protection from violence and neglect.

- 2) It is recommended that the *child rights-based approach* be used as the main framework in the formulation and development of regional policies to increase the effectiveness of protection for the children of migrant workers. In line with the principles of *siyasaḥ ḍusturiyah*, local governments should carry out their moral and constitutional responsibilities to ensure equal and equitable legal protection for the children of migrant workers accompanied by a continuous evaluation and monitoring system so that policies remain in line with the principles of justice and benefits in *sharia law*.

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