

THE RIGHTS OF INDONESIAN WORKERS: BETWEEN NORMS AND REALITY IN THE PERSPECTIVE OF ISLAMIC FAMILY LAW

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ABSTRACT

This research examines the gap between legal norms and the reality of protecting the rights of Indonesian Migrant Workers (TKI) and their impact on families in the perspective of Islamic family law. Although Indonesia has comprehensive regulations such as Law No. 18/2017 on the Protection of Indonesian Migrant Workers, its implementation is still far from expectations. Structural problems cause violations of migrant workers' rights that have an impact on family disintegration, neglect of maintenance obligations, and marital conflict. This research uses a juridical-normative method with statutory, conceptual, and shar'i approaches. Data were collected through a literature study of primary and secondary legal materials, then analyzed descriptively-qualitatively and comparatively. The results show that there is a significant gap between legal guarantees and actual protection of migrant workers, which results in the neglect of family rights as regulated in Islamic law. The perspective of Islamic family law offers solutions through the principles of justice (al-'is), benefit (maslahah), and protection (hifzh). The research recommends the integration of Islamic law values in migrant worker protection policies, strengthening the role of the family as a protection unit, and harmonizing positive law with sharia principles to realize family-based holistic protection.

ABSTRAK

Penelitian ini mengkaji kesenjangan antara norma hukum dan realitas perlindungan hak-hak Pekerja Migran Indonesia (TKI) serta dampaknya terhadap keluarga dalam perspektif hukum keluarga Islam. Meskipun Indonesia memiliki peraturan yang komprehensif seperti UU No. 18/2017 tentang Perlindungan Pekerja Migran Indonesia, implementasinya masih jauh dari harapan. Masalah struktural menyebabkan pelanggaran hak-hak pekerja migran yang berdampak pada disintegrasi keluarga, pengabaian kewajiban nafkah, dan konflik perkawinan. Penelitian ini menggunakan metode yuridis-normatif dengan pendekatan hukum perundang-undangan, konseptual, dan syariah. Data dikumpulkan melalui studi literatur bahan hukum primer dan sekunder, kemudian dianalisis secara deskriptif-kualitatif dan komparatif. Hasil penelitian menunjukkan bahwa terdapat kesenjangan yang signifikan antara jaminan hukum dan perlindungan aktual pekerja migran, yang mengakibatkan pengabaian hak-hak keluarga sebagaimana diatur dalam hukum Islam. Perspektif hukum keluarga Islam menawarkan solusi melalui prinsip keadilan (al-'is), manfaat (maslahah), dan perlindungan (hifzh). Penelitian ini merekomendasikan pengintegrasian nilai-nilai hukum Islam dalam kebijakan perlindungan pekerja migran, penguatan peran keluarga sebagai unit perlindungan, dan penyelarasan hukum positif dengan prinsip-prinsip syariah untuk mewujudkan perlindungan holistik berbasis keluarga.

PENDAHULUAN

Indonesian Migrant Workers (TKI) or officially referred to as Indonesian Migrant Workers (PMI) are valuable assets for national development. Based on data from the Indonesian Migrant Workers Protection Agency (BP2MI), the number of PMI placements has fluctuated significantly from year to year, with foreign exchange contributions reaching trillions of rupiah each year. (Ahsanul Minan, 2025) But behind this large economic contribution, there are serious problems related to the protection of the basic rights of PMI that are often neglected, both in the destination country and in the context of the family left behind in the country.

Indonesia already has a comprehensive legal foundation to protect migrant workers, especially through Law No. 18/2017 on the Protection of Indonesian Migrant Workers which replaces Law No. 39/2004. This regulation mandates comprehensive protection for migrant workers, starting from the pre-placement stage (before work), placement (during work), to post-placement (after work). However, in its implementation, there is still a significant gap between legal norms and reality on the

ground. Cases of PMI rights violations such as unpaid wages, physical and psychological violence, human trafficking, and sexual exploitation are still a concerning phenomenon. (Nadya Zerlinda Febrianti, 2023)

This gap between norms and reality not only affects PMI individually, but also has serious consequences for the structure and function of the family. Case statistics in various Religious Courts show that economic factors, including those related to labor migration, are among the highest causes of divorce in Indonesia. (Gofur, 2025) Labor migration often results in family disintegration, neglect of alimony obligations, childcare problems (*hadhanah*), marital conflict, and divorce. This phenomenon indicates a deeper structural problem, where the positive legal protection system has not been able to fully safeguard the welfare of PMI families.

In the perspective of Islamic family law, the family has a central position as a fundamental institution that must be protected. Concepts such as the obligation of maintenance (*nafaqah*), the rights and obligations of husband and wife, and child protection are an integral part of *maqāṣid al-syarī'ah* (the purpose of Islamic law) which is oriented towards benefit (*maslahah*). (Ilham Tohari, 2020) The principles of Islamic law emphasize the protection of five basic things (*al-ḍarūriyyāt al-khams*), namely religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), reason (*ḥifẓ al-'aql*), offspring (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). (Harahap, 2025) In the context of PMI, the protection of offspring and family life is very relevant.

The Compilation of Islamic Law (KHI) as applied law in the Indonesian Religious Courts regulates in detail the rights and obligations in the family. Article 80 KHI emphasizes that the husband is obliged to protect his wife and provide all the necessities of household life in accordance with his ability. Article 156 KHI also regulates the obligation of child maintenance which is the responsibility of the father. However, when a husband or wife works as a migrant worker abroad, the fulfillment of these obligations faces complex challenges, both in terms of material and non-material (such as inner support and care).

Many previous studies have examined aspects of PMI legal protection from the perspective of labor law and human rights. (Dhanny Safitri, 2023) However, studies that specifically integrate the perspective of Islamic family law with the issue of PMI protection are still limited. In fact, a holistic approach that considers the family dimension is very important to formulate a more comprehensive and benefit-based PMI protection policy. The urgency of this research is increasingly prominent in the midst of the establishment of the Ministry of Protection of Indonesian Migrant Workers, which indicates the government's seriousness in providing maximum protection to migrant workers. (Ahsanul Minan, 2025) However, such protection will be more effective if it does not only focus on administrative and procedural aspects, but also pays attention to the family dimension as the smallest social unit that is directly affected by the phenomenon of labor migration.

Studies on the protection of PMI have been conducted by many previous researchers with various perspectives. Some important studies that are relevant to this research include:

A study of the legal aspects of PMI protection from the perspective of labor law and human rights. Analyzes the legal protection of migrant workers who experience violence abroad, highlighting the weaknesses of the supervision and law enforcement system. (Nadya Zerlinda Febrianti, 2023) This study provides an overview of the empirical conditions of migrant workers, but has not touched on the aspect of the impact on families. Study on the effectiveness of the implementation of Law No. 18/2017. Analyzes the establishment of the Ministry of Protection of Indonesian Migrant Workers and the future of PMI protection, using an *institutional normative order* perspective. (Ahsanul Minan, 2025) This study provides an important institutional perspective, but has not integrated the family dimension in its analysis. A study of Islamic family law in the contemporary context. Examines *ijtihad* based on *maqāṣid syarī'ah* as a conceptual footing in the renewal of Indonesian Islamic family law. (Ilham Tohari, 2020) This research provides a strong methodological framework for understanding the dynamics of Islamic family law, but has not specifically linked it to the issue of PMI. Studies on maintenance in Islamic family law. Several studies examine the obligation of maintenance in the modern context, including when wives work for a living. These studies provide a basic understanding of the concept of *nafkah*, but have not specialized in the context of migrant workers who work abroad. A study that specifically discusses the fulfillment of non-material maintenance for PMI families. Analyzing the review of Islamic law and positive law related to the fulfillment of non-material maintenance for husbands who become migrant workers. This study has begun to address the relationship between PMI and Islamic family law, but its focus is still limited to the aspect of non-material maintenance.

Although there have been many studies on the protection of migrant workers and Islamic family law, there is no study that comprehensively integrates these two aspects. This *research* fills the *research gap* by analyzing how the principles of Islamic family law can be used as a foundation to formulate a more holistic and family-based PMI protection policy. The novelty of this research lies in three things: (1) the integration of the perspective of Islamic family law with the issue of PMI protection in a comprehensive *manner*; (2) analysis of the impact of labor migration on the fulfillment of family rights and obligations based on *maqasid shari'ah* and (3) formulation of the concept of family-based PMI protection that harmonizes positive law and Islamic law.

RESEARCH METHODS

This research is a normative-empirical or juridical-sociological legal research. Normative legal research is research conducted by examining library materials or secondary data which includes research on legal principles, legal systematics, the level of vertical and horizontal synchronization, legal comparisons, and legal history. (Soerjono Soekanto, 2015). Meanwhile, the empirical aspect of this research is used to explore

factual data regarding the reality of PMI protection in the field. This normative-empirical legal research was chosen because the problems studied require analysis not only of the applicable legal norms, but also of the application and effectiveness of these norms in social reality. As stated by Mukti Fajar and Yulianto Achmad, normative-empirical legal research is legal research on the enactment or implementation of normative legal provisions *in action* on every specific legal event that occurs in society. (Mukti Fajar ND, 2015)

This research uses a *multiple approach* consisting of: The statutory approach is carried out by examining all laws and regulations related to the legal issues being addressed. In this research, the statutory approach is used to analyze: Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Law Number 13 of 2003 concerning Manpower, Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI) through Presidential Instruction Number 1 of 1991, implementing regulations and other related regulations. The conceptual approach departs from the views and doctrines developed in legal science. (Marzuki, 2016) This approach is used to understand fundamental concepts such as: The concept of rights and obligations in labor law, The concept of legal protection, The concept of family in Islamic law, The concept of maintenance, *hadhanah*, and obligations of husband and wife in Islamic family law, The concept of *maqāṣid al-syarī'ah* and *maslahah*. The case approach is carried out by examining cases related to the issue at hand that have become court decisions that have permanent legal force. In this research, the case approach is used to analyze Religious Court decisions related to family disputes involving PMI, specifically related to divorce, maintenance, and child custody. The shar'i approach is used to analyze the problem from the perspective of Islamic law by referring to the sources of Islamic law (*al-maṣādir al-aṣliyyah*) and the rules of *ushul fiqh*. This approach includes: Analysis based on the Qur'an and Hadith, Analysis based on *ijmā'* (consensus of scholars) and *qiyās* (legal analogy), Analysis based on *maqāṣid al-syarī'ah* (the purpose of Islamic law), Use of *istinbāṭ* (extracting law) methods such as *maṣlaḥah mursalah*, *istiḥsān*, and *sadd al-ẓarī'ah*. (Dinda Awliya Septiane, 2025).

RESULT AND DISCUSSION

Conceptual Framework of Indonesian Labor Rights

Labor rights are fundamental rights guaranteed by the constitution and laws and regulations in Indonesia. The 1945 Constitution of the Republic of Indonesia in Article 27 paragraph (2) affirms that "Every citizen has the right to a job and a livelihood worthy of humanity." This constitutional provision is the philosophical basis for labor regulation in Indonesia, including the protection of Indonesian Migrant Workers (PMI). In the context of labor law, Law No. 13/2003 on Manpower defines a worker as "every person who is capable of performing work in order to produce goods and/or services both to meet their own needs and those of the community." Indonesian Migrant Workers, based on Article 1 point 2 of Law No. 18/2017, are "every Indonesian citizen who will, is, or has done work

for wages outside the territory of the Republic of Indonesia." The basic rights of workers guaranteed in the Indonesian legal system include: (Husain, 201 C.E.) (1) Right to a Living Wage. Every worker is entitled to an income that meets a decent living for humanity as stipulated in Article 88 of Law No. 13 Year 2003. For migrant workers, this right is guaranteed through a work agreement that must be made prior to placement. (2) Right to Occupational Safety and Health (K3). Article 86 of Law No. 13/2003 confirms that every worker/laborer has the right to obtain protection for occupational safety and health, morals and decency, and treatment in accordance with human dignity. (3) Right to Social Security. Article 99 of Law No. 13/2003 stipulates that every worker and their family has the right to obtain labor social security. Specifically for migrant workers, Article 29 of Law No. 18 of 2017 regulates social security which includes protection while working abroad. (4) Right to Organize and Assemble. Workers have the right to form and become members of labor unions in accordance with Article 104 of Law No. 13/2003.

Specifically for migrant workers, Law No. 18/2017 provides more comprehensive protection than the previous regulation (Law No. 39/2004). The paradigm shift from placement and protection to the main focus on *protection* shows the state's commitment to prioritize the rights of PMI. (Widiyahseno, 2018) Article 6 of Law No. 18/2017 emphasizes that every prospective PMI and/or PMI has the right to: (1) Get a job abroad and choose a job according to their competence, (2) Obtain access to self-capacity building through education and job training, (3) Obtain correct information about the labor market, placement procedures, and working conditions abroad, (4) Obtain professional and humane services and treatment without discrimination before work, during work, and after work, (5) Practice worship in accordance with their religion and beliefs, (6) Obtaining wages in accordance with the prevailing wage standards in the country of placement and/or the agreement between the two countries and/or the Work Agreement, (7) Obtaining protection and legal assistance for actions that can degrade dignity in accordance with the provisions of laws and regulations in Indonesia and in the country of placement, (8) Obtaining guarantees of safety and security protection for the return of PMI to the area of origin and (9) Obtaining valid documents in accordance with the provisions of laws and regulations.

Protection of migrant workers is carried out in three stages, namely: (1) Protection Before Work (Article 18 of Law No. 18/2017), which includes: Provision of information and education, Registration and verification, Provision of labor market information, Certification of work competence, Processing of entry permits, Health and psychological examinations, Education and job training, Opening of deposit accounts, Issuance of documents and Coaching. (2) Protection During Employment (Article 19 of Law No. 18/2017), which includes: Monitoring and placement Complaint services, Mediation of problem solving, Provision of legal aid, Facilitation of return, Facilitation of repatriation, Facilitation of document replacement and Provision of protection, assistance, and advocacy. (3) Protection after employment (Article 24-27 of Law No. 18/2017), which includes: Facilitation of return verification, Facilitation of re-placement to the destination

country, Service and settlement of complaints, Empowerment, Repatriation, Facilitation of document replacement, Provision of protection, Assistance and Advocacy. However, the implementation of legal protection for migrant workers still faces various structural and systemic obstacles that will be discussed further in the next sub-section.

The Reality of Indonesian Labor Rights Protection

Data from the Indonesian Migrant Workers Protection Agency (BP2MI) shows that the number of PMI working abroad continues to fluctuate. In the January-August 2021 period, there were 994 PMI placements from Subang Regency alone, ranking 13th out of the most PMI-sending regencies/cities in Indonesia. Nationally, millions of Indonesian citizens work as migrant workers in various countries, with the largest concentration in Malaysia, Saudi Arabia, Singapore, Hong Kong, Taiwan, and other Middle Eastern countries. The majority of migrant workers work in the informal sector, mainly as domestic workers, which puts them in a vulnerable position to exploitation and rights violations. (Henny Natasya Rosalina, 2020) This informal sector does not have adequate legal protection in many destination countries, so migrant workers often work in inhumane conditions.

Some of the problems that migrant workers often face include: (Nadya Zerlinda Febrianti, 2023) (1) Unpaid or reduced wages without clear reasons, (2) Withholding of documents (passports, visas, etc.) by employers or agents, (3) Physical and psychological abuse, including torture, (5) Excessive working hours without proper compensation, (6) Human trafficking (human trafficking) by employers or agents, (3) Physical and psychological abuse, including torture, (4) Sexual exploitation and harassment, (5) Excessive working hours without proper compensation, (6) Human *trafficking* (7) Modern slavery and forced labor, (8) Limited access to communication with family, (9) Lack of holidays and adequate rest periods, (10) Discrimination based on race, religion, or nationality Data on complaints received by BP2MI in August 2025 shows a low percentage of complaint resolution, indicating a weak protection system. (Ahsanul Minan, 2025) Many problematic migrant worker cases are not fully resolved due to various obstacles, including differences in legal systems between countries, jurisdictional limitations, and the complexity of cross-border cases.

Although Law No. 18/2017 has mandated comprehensive protection of migrant workers, its implementation in the field is far from ideal. There is a significant *gap* between legal norms (*law in books*) and the reality of their implementation (*law in action*). (Dhanny Safitri, 2023) At the pre-placement stage, prospective migrant workers should receive complete and accurate information, adequate training, and valid documents. However, in practice: (H, 2019) Many prospective migrant workers do not get complete information about working conditions, rights and obligations, and the risks they will face, Job training provided is often not up to standard or even ignored, Health and psychological examinations are carried out pro forma without clear standards, There are still many prospective migrant workers who are recruited illegally through non-

procedural channels, There is a practice of levying excessive fees (*high cost economy*) which burdens prospective migrant workers.

While working abroad, PMI should receive protection from Indonesian representatives in the destination country. However, in reality:(Situmorang, 2021) The capacity of labor attachés and Indonesian representatives abroad is still limited, PMI's access to report problems to Indonesian representatives is often hampered, Limited jurisdiction of Indonesian law in destination countries makes law enforcement difficult, Language and cultural barriers are significant obstacles, Many PMI work in remote locations making it difficult to reach. Upon returning to Indonesia, migrant workers should receive empowerment and socio-economic reintegration. However, in reality: (Ananda Elzya M, Daswati, 2025) Empowerment programs for former migrant workers have not run optimally, Many migrant workers return without skills or business capital, There is no guarantee that migrant workers will find decent work in Indonesia, Many migrant workers end up returning to work abroad because there is no economic alternative in the country.

Some factors that cause the gap between norms and reality include:(Situmorang, 2021) Weak Inter-Agency Coordination: Although Law No. 18/2017 has regulated the division of tasks and authorities, coordination between the central government, regions, BP2MI, P3MI, and Indonesian representatives abroad is still not optimal. Limited Resources: Both in terms of human resources and budget, PMI's protective institutions still face limitations in carrying out their functions. International Legal Complexity: Differences in legal systems between countries and the limitations of bilateral agreements make it difficult to enforce laws for migrant workers in trouble. High Rate of Illegal Migration: There are still many migrant workers who depart through illegal (*non-procedural*) channels so that they are not recorded and do not receive protection. Weak Enforcement of Sanctions: Sanctions against PMI rights violators, both in Indonesia and in destination countries, are rarely consistently enforced.

The disparity in the protection of migrant workers' rights not only affects individual migrant workers, but also has serious consequences for the families left behind in their homeland. Some of the impacts include:(Kafa Nabil Birry, Shofiyun Nahidloh, 2024) Family Disintegration. Long-term labor migration often leads to family disintegration. When a husband or wife works as a migrant worker for many years, the emotional connection between husband and wife and between parent and child becomes tenuous. Limited communication, time zone differences, and the high cost of communication become obstacles in maintaining family unity. Neglect of Maintenance Obligations. There is a phenomenon where husbands who work as migrant workers fail to send regular maintenance to their families in Indonesia, or vice versa, wives who work as migrant workers neglect their role in the household. This is contrary to the obligation of maintenance in Islamic law.(Gofur, 2025) Non-Material Maintenance Issues. An aspect that is often overlooked is the failure to fulfill non-material maintenance (mental maintenance). Husbands who work as migrant workers cannot fulfill their wives'

psychological and biological needs, and vice versa. This can lead to infidelity and divorce. (Kafa Nabil Birry, Shofiyun Nahidloh, 2024) Childcare Issues (*Ḥaḍānah*). Children whose parents are left behind to work as migrant workers often experience problems in care. Although they may be economically well off, they are deprived of direct affection and guidance from their parents, which can have an impact on their psychological development and character. (Wahfudin Nur Arif, 2025) High Divorce Rates. Case statistics in various Religious Courts show that economic factors, including those related to labor migration, are one of the highest causes of divorce. In 2023, there were 108,488 divorce cases caused by economic factors, making it the second highest cause after disputes. (Gofur, 2025) Household disharmony caused by long periods of bed separation, unfulfilled maintenance, and communication problems are triggers for divorce in PMI families.

An Islamic Family Law Perspective on Migrant Workers' Rights

In the perspective of Islamic family law, husbands who work as migrant workers still have a full obligation to provide for their wives and children. This obligation is absolute and does not fall just because the husband is away from the family. However, the conditions of migrant workers who are vulnerable to rights violations (such as unpaid wages, withholding of documents, etc.) often cause husbands to be unable to fulfill their maintenance obligations. In these circumstances, Islamic law provides several solutions: (1) if the husband's inability to pay maintenance is due to conditions beyond his control (*'ajz* or manifest incapacity), then the wife should not immediately demand divorce. The wife should be patient and give the husband the opportunity to improve his condition, as Allah's word in Surah Ath-Thalaq verse 7 which teaches the principle of maintenance according to ability. (2) If the husband deliberately does not provide maintenance even though he is able to, or leaves the wife without providing maintenance at all, then the wife has the right to file a lawsuit for maintenance with the Religious Court. Even if the husband still does not provide maintenance, the wife can file for divorce because the husband does not provide maintenance as stipulated in Article 116 letter b of the Compilation of Islamic Law. (3) In the modern context, the court can issue an order to the husband to pay maintenance (*dwangsom*) with the threat of sanctions if it is not implemented. The Indonesian Supreme Court in several of its decisions has established this mechanism to force husbands to fulfill their maintenance obligations.

Islamic law basically allows wives to work, including working abroad as migrant workers, with several conditions: (Syarifuddin, 2016) Husband's permission: The majority of scholars require wives to get their husband's permission if they want to work, let alone work abroad. This is also regulated in Article 15 letter b of Law No. 18/2017, which requires married female migrant worker candidates to attach a certificate of husband's permission. Not Neglecting Primary Obligations: Working wives must not neglect their obligations as wives and mothers, especially in terms of childcare. Halal and Harmless Work: The work must be halal and not endanger the wife's safety, honor, and religion. Maintain Honor: Wives must maintain the honor of themselves and their

families, including covering the aurat and avoiding khalwat (being alone) with men who are not mahrams.

In the context of migrant workers, these conditions are often difficult to fulfill. Many female migrant workers who work as domestic workers live in the same house with male employers without a mahram, work very long hours with no time to worship solemnly, and face the risk of sexual harassment. This condition contradicts the principles of Islamic law in protecting women's honor and safety (*hifz al-'ir* and *hifz al-nafs*). Protection of Children's Rights in Migrant Worker Families. Children in migrant worker families have rights that must be protected under Islamic law: (Muhammad Fajar Sidiq Widodo, 2023) The Right to Livelihood: Although the father works abroad, the obligation to provide for the children does not fall. Article 156 letter d KHI emphasizes that all costs of *hadhanah* (care) and child maintenance are the responsibility of the father according to his ability. Right to Good Care: Children have the right to receive good care from both parents. If one or both parents work as migrant workers, there must be arrangements that ensure the child still receives proper care, either by extended family or other trusted parties. Right to Education: Children have the right to an appropriate education. Parents who work as migrant workers must ensure that they send enough money to pay for their children's education. Right to Love: This is the most difficult aspect to fulfill in a migrant worker family. Children need the love and physical presence of their parents, which cannot be replaced with material things. Imam Al-Ghazali in *Ihya Ulumuddin* emphasizes that educating children is a huge mandate. Parents who neglect their children's education and upbringing are considered to be sinning greatly. (Al-Ghazali, 2015) Therefore, the decision to become a migrant worker must consider the impact on children's rights.

Justice is a fundamental value in Islam that must be upheld in all aspects of life, including in the protection of PMI. The Qur'an in Surah An-Nisa verse 58 commands: "*Verily, Allah enjoins you to deliver the trust to those who are entitled to it, and (enjoins you) when you judge among men to judge justly.*" In the context of PMI, the principle of justice demands that: (Suhaili, 2025) PMI must receive a fair wage according to the work performed, PMI must be treated humanely without discrimination, PMI's rights as workers and as family members must be protected, the State must be fair in providing protection to all PMI without discrimination, the principle of *maslahah* teaches that every policy and action must bring benefits (*jalb al-manafi'*) and reject damage (*dar' al-mafāsīd*). (Asrul Hamid, 2019) In the context of migrant workers: The decision to work abroad must consider the *maslahah* and *mafsadah* that may arise, If the *mafsadah* (damage) is greater than the *maslahah* (benefit), then the decision must be reconsidered, The welfare of the family as a whole should be the main consideration Imam Izzuddin bin Abdul Salam in *Qawā'id al-Aḥkām* developed a comprehensive theory of *maslahah*, which emphasizes that in conditions where there is a clash between *maslahah* and *mafsadah*, the priority should be to reject *mafsadah* (*dar' al-mafāsīd muqaddam 'alā jalb al-masalih*).

Islam does not burden people with something that is beyond their ability. Allah SWT says in Surah Al-Baqarah verse 286: "*Allah does not burden anyone but according to his*

ability." This principle provides relief for PMI who face difficulties in fulfilling their obligations due to circumstances beyond their control. For example, if a migrant worker's husband is unable to pay maintenance because his employer does not pay his wages, then he is not sinning as long as he has tried his best. (Al-Syatibi, 2016) As explained earlier, maqashid sharia aims to protect five basic things. In the context of migrant workers and their families, this principle of protection is particularly relevant: *Hifz al-din* (protecting religion): Migrant workers must be given the opportunity to worship, *Hifz al-nafs* (safeguarding the soul): PMI must be protected from violence and exploitation, *Hifz al-'aql* (safeguarding the mind): PMI must receive adequate education and training, *Hifz al-nasl* (preserving offspring): Migrant workers' families must be protected from disintegration, *Hifz al-mal* (safeguarding property): The economic rights of migrant workers and their families must be guaranteed.

The Indonesian Ulema Council (MUI) has issued several fatwas related to migrant workers, although there is no comprehensive fatwa on the legal status of being a migrant worker and its impact on the family. However, from the general principles of MUI fatwas, it can be concluded that: Working abroad is basically permissible as long as the work is halal and does not violate the provisions of Sharia, female migrant workers must get permission from their husbands and maintain their honor, migrant workers must continue to carry out their religious obligations, the decision to become a migrant worker must consider the impact on the family.

Some contemporary scholars provide a progressive view of the PMI phenomenon. The importance of considering the socio-economic context in determining the law. According to him, if economic conditions force a person to work abroad in order to provide for the family, then it is permissible while maintaining the provisions of Sharia. (Al-Qaradhawi, 1996) The importance of the state providing maximum protection to migrant workers, because they are foreign exchange heroes who contribute to the country's economy. In cases where there is a conflict between various obligations, priorities must be set. In determining priorities, one must consider: Which is more important between obligations towards Allah and obligations towards humans, which is more urgent between spiritual needs and material needs. Which has a greater impact: short-term or long-term benefits. In the context of PMI, if the decision to work abroad will bring greater mafsadah to the family (such as family disintegration, child neglect, etc.), then the long-term benefit of the family must be prioritized over short-term economic needs.

Integration of Islamic Family Law in the Protection of Migrant Workers

Based on the analysis of PMI protection gaps and the perspective of Islamic family law, a new paradigm is needed in the PMI protection system that not only focuses on administrative and procedural aspects, but also integrates the family dimension as a fundamental unit of protection. Islam places the family as a fundamental institution that must be protected. Therefore, PMI protection policies must place the family as the subject of protection, not just the PMI as an individual. (Isnain La Harisi, 2024) The family-based

protection model includes several aspects: (1) Family Impact Assessment. Before a person decides to become a migrant worker, there should be a comprehensive assessment of the impact on the family. (Burhandin Burhanudin, 2024) (2) Assistance to migrant worker families. Local governments, in collaboration with civil society organizations and religious organizations, need to provide assistance to families left behind by migrant workers. (3) Family Rights Fulfillment Guarantee. There should be a mechanism to ensure that the rights of PMI families are fulfilled. (Sarah Sarah, M Adi Saputra, Firdaus Akbar, 2025)

The principle of *takaful ijtima'i* (social solidarity) teaches that communities have a shared responsibility to look after and protect each other. This principle can be applied in the protection of PMI through *community-based monitoring* mechanisms. (Jalili, 2021) Law No. 18/2017 has given villages a role in the protection of PMI (Article 42), which includes: Receiving and providing migration information to the community, Verifying data and recording prospective migrant workers, Facilitating the fulfillment of population administration requirements, Monitoring the presence and condition of migrant workers, Providing protection to the families of migrant workers.

The Productive Migrant Village (*Desmigratif*) concept that has been developed in several regions, such as East Nusa Tenggara (NTT), can be a model of community-based supervision. In this model, the entire migration process (from pre-placement to post-placement) is conducted and monitored by the village, involving religious leaders, community leaders, and extended families.

Psychosocial aspects are often overlooked in the existing PMI protection system. In fact, the psychological impact on the families left behind is very significant. Some programs that can be developed include: (Ananda Elzya M, Daswati, 2025) Family Counseling Program: Providing free counseling services for PMI families facing problems, both face-to-face and online. Marriage Strengthening Program: Workshop and training to maintain the integrity of marriage despite long distance separation, based on Islamic values. Parenting Program for PMI Families: Parenting training for families where one or both parents work as migrant workers. Family Financial Literacy Program: Training on family financial management so that the remittances received can be utilized productively.

There are several common points between Indonesian positive law and Islamic law in the context of PMI protection that can be the basis for harmonization: (Ilham Tohari, 2020) (1) Principles of Protection of Human Rights and Dignity. Both Law No. 18/2017 and Islamic law emphasize the importance of protecting human dignity. Article 3 of Law No. 18/2017 states that the protection of PMI is based on "respect for human dignity". This is in line with the Islamic principle of *karamah insaniyyah* (respect for humanity). (2) Principle of Justice. Law No. 18/2017 uses the principle of justice as one of the principles of PMI protection (Article 3 letter f). This principle is in line with the principle of *al-'adālah* in Islam, which requires everyone to be treated fairly. (3) Family Protection. Although not explicit, Law No. 18/2017 recognizes the importance of family

by regulating the right of migrant workers' families to receive information and protection (Article 7). This is in line with Islamic principles that make the family a social unit that must be protected. (4) The Principle of Beneficence. The purpose of PMI protection in Law No. 18/2017 is basically for the benefit of PMI, which is to protect the interests of PMI and their families. This is in line with the principle of *maṣlahah* in maqashid sharia.

To realize effective harmonization, it is necessary to formulate policies that are responsive to sharia values without ignoring the character of Indonesian positive law . Some policy recommendations include:(Ahsanul Minan, 2025) Revision of Implementing Regulations of Law No. 18/2017. Although Law No. 18/2017 has mandated 28 implementing regulations, some of them need to be revised to accommodate the perspective of Islamic family law, among others: Regulation on Requirements to Become a PMI, Regulation on Work Agreement, Regulation on Social Security.

Religious Courts have a strategic role in providing legal protection for PMI families, especially in cases: Determination of Maintenance, Settlement of Family Disputes, Protection of Children's Rights, Consideration of Maqashid Syariah. Develop mediation institutions at the village level that are based on Islamic values to resolve PMI family disputes before they go to litigation. This institution could involve religious leaders, Islamic family counselors, and Islamic family law practitioners.(Awaludin, 2021) Religious Courts have jurisdiction over Muslim family cases, including cases involving migrant workers. Some forms of protection that can be provided by the Religious Court include:(Alamsyah alamsyah, Asrianti Sukirman, Oyo Sunaryo Mukhlas, 2025) Nafkah Lawsuit Wives left behind by their husbands working as migrant workers can file a nafkah lawsuit with the Religious Court if the husband does not provide nafkah. The court can determine: The amount of nafkah that must be given every month, the method of sending nafkah (bank transfer, etc.), sanctions if the husband does not pay (*dwangsom*), confiscation of collateral against the husband's property in Indonesia If the PMI husband cannot be asked for permission for certain matters (such as the marriage of a daughter), the Religious Court can determine a substitute guardian (*wali adhol*). Based on Article 116 letter b of the KHI, the wife can file for divorce if the husband does not provide maintenance for 3 consecutive months. The court must consider the objective condition of the husband (whether he is truly incapable or deliberately not providing maintenance). In divorce cases involving PMI, the Religious Court must clearly determine child custody (*hadhanah*) and child maintenance obligations, including the mechanism for sending maintenance from abroad.(Wahfudin Nur Arif, 2025)

Based on the analysis above, the following are policy recommendations to integrate the perspective of Islamic family law in the protection of PMI:

Legislative Aspects. Amendment of Law No. 18/2017: Include a special article on the protection of migrant workers' families that accommodates the principles of Islamic law, such as nafkah obligations, *hadhanah* rights, and protection from family disintegration. Government Regulation on PMI Family Protection: Issue a special PP that comprehensively regulates: Rights and obligations of migrant workers towards their

families, mechanisms to guarantee the fulfillment of maintenance, empowerment programs for migrant workers' families, the role of religious institutions in fostering migrant workers' families, and local regulations on Productive Migrant Villages: Encourage local governments to issue local regulations that regulate Desmigratif by involving religious leaders and religious institutions in the process of fostering migrant workers and their families.

Implementation Aspects. Strengthening the Capacity of Labor Attachés: Provide training to labor attachés on Islamic family law so that they can provide counseling in accordance with Islamic values to troubled migrant workers. Information System Integration: Building an integrated information system that connects migrant workers, their families in Indonesia, BP2MI, and Indonesian Representatives abroad to monitor the condition of migrant workers and their families in real-time. Islamic Family Law Literacy Program: Organizing an Islamic family law literacy program for prospective migrant workers and their families so that they understand their rights and obligations according to Islamic law. Establishment of PMI Family Counseling Centers: Establish a counseling center in each district/city that specifically deals with migrant workers' family problems using a sharia approach, managed by counselors who understand Islamic law and family psychology. Cooperation with Islamic Organizations: Involve Islamic organizations such as NU, Muhammadiyah, MUI, and Islamic women's organizations in protection and empowerment programs for migrant worker families.

Monitoring and Evaluation Aspects. Maqashid-based Audit: Conduct periodic audits of the implementation of PMI protection using *maqāṣid al-sharī'ah* indicators, specifically the extent to which existing policies have protected *hifz al-nasl* (offspring), *hifz al-nafs* (soul), and *hifz al-usrah* (family). Evaluation of the Impact on the Family: Conduct periodic evaluations of the impact of labor migration on families, including rates of divorce, child delinquency, and family disintegration. Transparent Reporting: Require BP2MI and the Ministry of PMI Protection to produce public reports that include not only the number of PMI placements, but also indicators of PMI family welfare. Sharia-based Grievance Mechanism: Provide a special grievance mechanism for migrant workers or their families who feel their rights have been violated, with a resolution process that refers to the Islamic principles of justice (*al-'is*) and deliberation (*ash-syura*).

Aspects of Economic Empowerment. Remittance Productivity Program: Develop programs that help PMI families manage remittances productively, for example through sharia-based savings, halal investments, or family-based micro-enterprises. PMI Children Scholarship: Providing a special scholarship program for PMI children, especially those orphaned due to work accidents, with priority on quality religious and general education. Entrepreneurship Training: Providing sharia-based entrepreneurship training to PMI families and former PMI so that they have a halal and sustainable alternative source of income. Access to Sharia Financing: Facilitate the access of PMI families to sharia financial institutions for business capital with *mudharabah*, *musyarakah*, or *qardh hasan* schemes. (Asrul Hamid, 2019) s

CONCLUSION

Indonesia already has a progressive legal framework through Law No. 18/2017 on the Protection of Indonesian Migrant Workers, which mandates comprehensive protection at three stages: before work, during work, and after work. However, there is a significant *gap* between normative guarantees (*law in books*) and factual implementation (*law in action*). This gap is caused by five main factors: (1) weak coordination between institutions protecting migrant workers; (2) limited human resources and budget; (3) the complexity of international law and jurisdictional limitations; (4) high levels of illegal migration through non-procedural channels; and (5) weak enforcement of sanctions against violators of migrant workers' rights. As a result, migrant workers remain vulnerable to various human rights violations, including unpaid wages, physical and psychological abuse, sexual exploitation, human trafficking, and inhumane working conditions. Empirical data shows that the low percentage of resolution of PMI complaints and the large number of unaddressed cases of rights violations reflect the ineffectiveness of the existing protection system. This indicates the need for fundamental reforms in the PMI protection approach that not only focuses on administrative-procedural aspects, but also touches on the substantive-humanist dimension.

The non-ideal working conditions of migrant workers have serious consequences for family structure and function, which contradict the fundamental principles of Islamic family law. This research found five main impacts: (1) Family disintegration due to long-distance separation, which weakens the emotional bond between husband and wife and parent-child. This condition contradicts the purpose of marriage in Islam to create a *sakinah, mawaddah, wa rahmah* family. (2) Neglect of material maintenance obligations (*nafaqah maddiyyah*) when the husband who works as a migrant worker fails to send maintenance regularly due to unpaid wages or other problems. In fact, the husband's obligation of maintenance is absolute and does not fall just because he is away from the family, as confirmed in Article 80 KHI and various shar'i arguments. (3) The non-fulfillment of non-material *nafaqah* (*nafaqah bāṭiniyyah*) in the form of attention, affection, companionship, and fulfillment of biological-psychological needs, which are the rights of the wife that cannot be replaced with material. This aspect is often overlooked but is crucial in maintaining the integrity of the household. (4) neglect of the right to quality childcare (*ḥaḍānah*) and education. Children whose parents are left behind to work as migrant workers experience a lack of affection and direct guidance, which can have a negative impact on their psychological and character development. This is contrary to the principle of *ḥifz al-nasl* (protection of offspring) in maqashid sharia. (5) The high divorce rate in PMI families, with data from showing 108,488 divorce cases due to economic factors in 2023. These divorces indicate a failure to maintain the family institution, which is a fundamental social unit in Islam.

Islamic family law offers a holistic paradigm to address the PMI protection gap through four fundamental principles that can be integrated into the positive legal system: (1) Principle of Justice (*al-'is*). Demands fair treatment of migrant workers in all aspects,

including the right to a decent wage, humane working conditions, and protection from exploitation. Justice also includes the fulfillment of the rights of migrant workers' families left behind in their homeland. This principle is in line with the principle of justice in Law No. 18/2017 and can strengthen its implementation. (2) Principle of Benefit (*maslahah*). Requires every decision related to labor migration to consider the overall benefit of the family, by prioritizing the rejection of damage (*dar' al-mafasid*) over the achievement of benefits (*jalb al-masalih*). In this context, the long-term welfare of the family should be prioritized over short-term economic needs. This principle provides a more comprehensive evaluative framework than economic analysis alone. (3) The principle of no burden (*raf' al-haraj*). Providing relief for PMI who face difficulties beyond their control in fulfilling family obligations, but still requiring maximum effort to fulfill basic obligations. This principle is important to provide substantive justice in the resolution of PMI family disputes. (4) Principle of Protection (*hifz*). Requires the protection of five basic things (*al-daruriyyat al-khams*), with special emphasis on the protection of religion (*hifz al-din*), life (*hifz al-nafs*), offspring (*hifz al-nasl*), and property (*hifz al-mal*). This principle demands that PMI protection policies must be holistic, focusing not only on economic aspects but also spiritual, psychological, and social.

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