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Analysis of Child Labor Rights Fulfillment Based on Maqashid Syariah

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Abstract: *Child Labor is a serious problem that has attracted national and international public attention. The purpose of writing this article is to analyze in depth the review of the fulfillment of child Labor rights based on maqashid sharia. This article's research method uses a type of normative legal research using secondary data obtained through literature study. The collected data was then analyzed descriptively qualitatively using a conceptual approach, namely the concept of maqashid sharia. The results and findings in this article are that Islam places the fulfillment of children's rights as an important thing to realize. The general aim of Allah SWT in sending down the Shari'a is to bring about benefits. The basic concept of benefit is realizing benefits and preventing harm. The practice of child Labor is prohibited, because it conflicts with the five main principles of maqashid sharia, namely the protection of religion, soul, mind, property and descendant, which are primary needs (dharuriyyah) that must be fulfilled in humans. The priority of a child's age is to fulfill the rights of religion, soul, reason and heredity rather than fulfilling the need for wealth.*

Keywords: *child labor, children's rights, maqashid sharia.*

Abstrak: Pekerja anak menjadi masalah serius yang menyita perhatian publik nasional maupun internasional. Tujuan penulisan artikel ini adalah untuk menganalisis secara mendalam mengenai tinjauan pemenuhan hak pekerja anak berbasis *maqashid syariah*. Metode penelitian artikel ini menggunakan jenis penelitian hukum normatif dengan memakai data sekunder yang diperoleh melalui studi pustaka. Data yang terkumpul kemudian dianalisis secara deskriptif kualitatif dengan pendekatan konsep, yaitu konsep *maqashid syariah*. Hasil dan temuan dalam artikel ini bahwa Islam menempatkan pemenuhan hak anak menjadi suatu hal yang penting untuk diwujudkan. Tujuan umum Allah Swt menurunkan syariat adalah untuk mewujudkan kemaslahatan. Konsep dasar

kemaslahatan yaitu merealisasikan yang manfaat dan mencegah yang merugikan. Praktik pekerja anak dilarang, karena bertentangan dengan lima prinsip pokok *maqashid syariah*, yaitu perlindungan agama, jiwa, akal, harta, dan keturunan yang merupakan kebutuhan primer (*dharuriyyah*) yang harus dipenuhi pada diri manusia. Usia anak lebih diutamakan memenuhi hak agama, jiwa, akal, dan keturunan dibandingkan memenuhi kebutuhan harta.

Kata Kunci : pekerja anak, hak anak, *maqashid syariah*.

INTRODUCTION

Nowadays, children's issues are a global concern. It is because child protection is an important and integral part of the human resource development process. As a mandate and gift from Allah Swt, children are expected to be the future successors of the nation. Children are guided to become a generation of quality and high competitiveness by developing their potential and talents. In order to fulfil these expectations, children are ensured of their rights. Children's basic needs must be guaranteed to develop according to human dignity. Therefore, every child strives to be given maximum services so that the fundamental rights of children are well protected and fulfilled.

Further, the fulfilment of children's rights in Indonesia is regulated in Law Number 23 of 2002 on Child Protection, later amended into Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection (Child Protection Law). The Child Protection Law has a solid foundation for fulfilling children's rights. This is contained in the general principles of children's rights as embraced by the Child Protection Law.

It is known that children are vulnerable human beings, so every child must be given optimal protection in order to realize a quality golden generation. However, the facts show that not all children obtain their rights optimally—especially children from the middle to lower economic class.¹ The fulfilment of children's rights is currently considered not optimal because there are still treatments that are contrary to the concept of protection. The enforcement of children's rights as human beings and children is still a cause for concern², It can be witnessed how rampant violations of children's rights, such as sexual assault, exploitation, and discrimination against children.³ Even children are exploited economically to become child laborers, sexual exploitation by turning children into prostitutes, and child trafficking.⁴

The child labor referred to in this article is a child who performs heavy work that is harmful to the child. This type of child Labor has captured the public's attention. It is due to

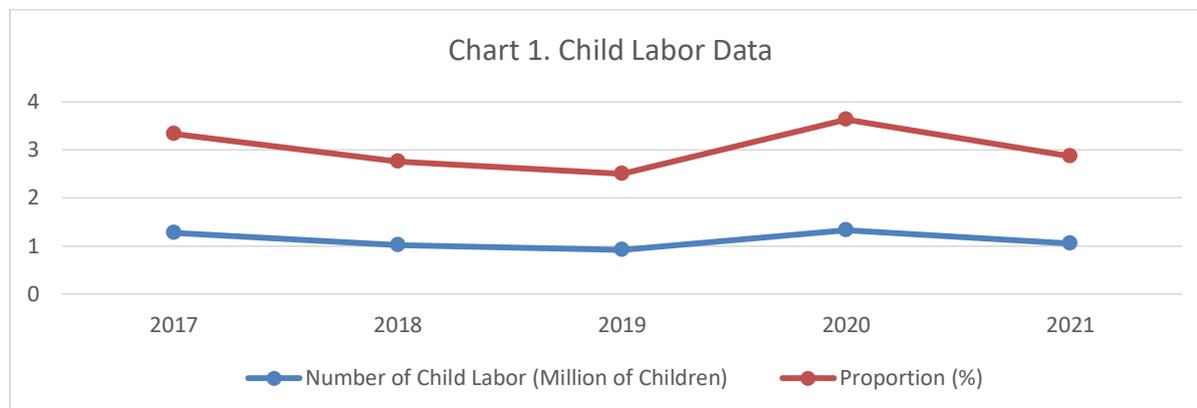
¹ Wafda Vivid Izziyana, "Perlindungan Hukum Bagi Pekerja Anak Di Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 3, no. 2 (2019): 103–15, <https://doi.org/10.24269/lis.v3i2.2078>.

² Titik Haryati, *Perlindungan Anak Dari Kejahatan Dan Kekerasan Seksual* (Jakarta Pusat: Komisi Perlindungan Anak Indonesia, 2016).

³ Rina Rahma Ornella Angelia, "Perlindungan Hukum Terhadap Hak Pekerja Anak Di Indonesia," *UNES Journal of Swara Justisia* 5, no. 4 (2022): 382–93, <https://doi.org/10.31933/ujsj.v5i4.237>.

⁴ Maharany Fitri, "Peran Unicef Dalam Penanganan Eksploitasi Seksual Komersial Anak Di Dunia," 2016, 2016.

the negative impacts of child labor on individuals, families, communities and countries. Until now, child labor is still a problem in developing countries. Indonesia is one of the countries with an alarming number of child Laborers. Data on child labor can be seen in the Chart 1⁵.



The conceptual framework of child labor, as depicted in Chart 1, is based on age and working hours according to Law Number 13 of 2003 on Manpower (Manpower Law). From 2017 to 2021, the rate of child labor was highest in 2020, but in 2021, it decreased, although it was still higher than the conditions in 2018 and 2019. For the last three years, 2019-2021, the proportion of male child Laborers has been higher than that of female child laborers.⁶

Economic pressure due to poverty is the main reason for the emergence of child Labor⁷, although there are other factors, such as social, cultural, and educational factors. Even policies are suspected of contributing to child labor, especially policies that still allow children to work and weak supervision and enforcement of regulations in the field of child Labor.⁸ It encourages the community to engage in child Labor due to economic needs and poverty. There is a phenomenon of children being deliberately "employed" by adults to help cover the family's economic problems.⁹ The argument that sometimes arises in the community over child labor is to provide experience and skills for the child's future. This activity is an early introduction before facing the adult world (work). The concern arises if the work done by children differs from the provisions of Labor law or international agreements. Even worse, if it turns out that children's work hinders the fulfilment of children's rights.

According to Islamic jurisprudence, the ideals of every *Shariah* revealed by Allah Swt are conceptualized through maqashid sharia. It is an original framework from the classical

⁵ UNICEF, Badan Pusat Statistik, and Bappenas, "Pekerja Anak Di Indonesia 2022: Sebelum Dan Semasa Pandemi Covid-19" (Jakarta, 2022).

⁶ UNICEF, Statistik, and Bappenas.

⁷ Meirina Nurlani, "Perlindungan Hukum Bagi Pekerja Anak: Tinjauan Perspektif Keadilan Dan Kesejahteraan Anak," *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (2021): 107–32, <https://doi.org/10.19184/jkph.v1i1.23397>.

⁸ Asmorowati, *Perlindungan Hukum Terhadap Pekerja Anak*.

⁹ Julhadi Julhadi and Ade Hadaris, "Memperkerjakan Anak Menurut Undang Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Dan Menurut Hukum Islam (Studi Kasus Di Kota Padang)," *Mau'izhah* 10, no. 2 (2020): 215–82, <https://doi.org/10.55936/mauizhah.v10i2.42>.

Islamic tradition that can be used as a reference in analyzing modern developments.¹⁰ In simple terms, *maqashid sharia* is the primary intention or purpose of Allah Swt to send down sharia (law), which consists of five principles, namely protecting religion, soul, mind, property and descendant. These five principles, in the context of fulfilling children's fundamental rights, can be conceptualized as the fulfilment and protection of children's religion and spirituality (*hifzh al-din*), protection of children's souls and lives (*hifzh al-nafs*), protection of children's intelligent and knowledge (*hifzh al-'aql*), protection of the economy and property (*hifzh al-maal*), and protection of family and descendant (*hifzh al-nasl*).¹¹

This study has two objectives: to find out and analyze the *maqashid sharia* review of the fulfilment of the rights of children who work at an early age. This study is expected to provide comprehensive answers and concrete solutions to the problem of fulfilling children's rights, especially for working children. This study also offers a methodology and approach to the study of the problem of child Labor with the *maqashid sharia* framework. Islamic law scholars consider *maqashid sharia* relevant and compatible as a new paradigm to analyze both classical and contemporary problems such as child Labor. It is in line with the concept of Islamic law, which states that educating and caring for children is obligatory. The quality of children's resources becomes poor if there is no guarantee of fulfilling their rights.

METHOD

The preparation of this study uses normative legal analysis because the data used is secondary data obtained through literature studies. Secondary data in this study consists of two legal materials such as primary legal materials in the form of Laws such as Law Number 23 of 2002 on Child Protection, which was later amended to Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection, Law Number 13 of 2003 on Employment (Employment Law) or Law Number 39 of 1999 on Human Rights, as well as secondary legal materials in the form of journal articles or books. All data collected is analyzed descriptively and qualitatively using a conceptual approach, namely the concept of *maqashid sharia*.

DISCUSSION

A. Islam and Fulfillment of Children's Rights

Islam is very concerned about the fulfilment of one's rights since childhood. Even Islam's attention to the fulfilment of children's rights is carried out since the phase before birth. Islam regulates that a mother must keep her fetus from miscarrying. It is because the child

¹⁰ Lies Markoes et al., *Maqashid Al-Islam: Konsep Perlindungan Manusia Dalam Perspektif Islam*, I (Jakarta Selatan: Yayasan Rumah Kita Bersama, 2018).

¹¹ Indar Wahyuni, "Meningkatnya Pekerja Anak (Studi Konsep Masalah)," *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 4, no. 1 (2017): 45–61, <https://doi.org/10.21580/wa.v4i1.1478>.

has been considered to have rights since fetal age. Thus, things that can harm the fetus and mother must be avoided. Islam teaches that children must be well cared for and avoid endangering children in the present and future. It is because, according to the Islamic view, children are a mandate from Allah Swt, which must be taken care of as best as possible.¹²

In order to protect children's rights, Islam has established rules that emphasize the importance of children obtaining protection and guarantees in the fulfilment of children's rights, such as the right to education and good teaching, science, and morals, as well as protection from exploitation and discrimination that harms children. It has led to various legal systems, including Islamic legal systems, which pay attention to children's rights. According to Islam, child protection rights include protecting children from harm to their physical, mental, spiritual and social well-being.

Furthermore, the Child Protection Law strongly legitimises the fulfilment of children's rights in Indonesia. It is stated in the Child Protection Law that children must be protected from the practice of being economically exploited. However, law enforcement of this regulation is not optimal because the number of child Laborers is still considered high.¹³ According to Articles 68 and 69 of the Labor Law, employers are prohibited from employing children except for light work as long as it does not interfere with the child's physical, mental, and social development and health. Employers who employ children for other than light work must have written permission from parents or guardians, a work agreement between the employer and parents or guardians, a maximum working time of three hours a day, does not interfere with school time; work is not carried out at night, occupational safety and health guarantees, transparent working relationships, and wages following applicable legal provisions. This provision is in line with Article 1 number 2 of the Child Protection Law; child protection includes all activities that guarantee and protect children and their rights to live, grow, develop, and participate optimally, following the dignity of humanity and receiving protection against violent discrimination. It turns out that the ideal situation like these provisions is difficult to enforce in the community because these articles only touch children in the corporate sector. While, child Laborers are still active outside companies or business entities, such as in agriculture or plantations.

Children's rights are part of human rights that must be guaranteed and fulfilled by all parties.¹⁴ The concept of children's rights is applied to protect children from harmful practices, avoiding emergencies, legal arbitrariness, the worst forms of child Labor, neglect, and discrimination. According to the Convention on the Rights of the Child/*Konvensi Hak Anak (KHA)*, children are right holders, while governments are duty bearers who must fulfil children's rights. The *KHA* offers a new paradigm that provides an understanding of the

¹² Universitas Al-Azhar dan UNICEF, *Hak Dan Perlindungan Anak Dalam Islam: Pandangan Islam Tentang Perlindungan Anak Dari Kekerasan Dan Tindakan-Tindakan Berbahaya*, Pertama (Jakarta: UNICEF Indonesia, 2022).

¹³ Faridah and Afyani, "Isu Pekerja Anak Dan Hubungan Dengan Hak Asasi Manusia."

¹⁴ Ornella Angelia, "Perlindungan Hukum Terhadap Hak Pekerja Anak Di Indonesia."

position of children. If before the child was an object and passive because their activities depended on adults, then *KHA* offers children as active subjects because they have independent views concerning themselves and others. There are at least 9 (nine) principles that are used as a guide in ensuring and protecting the fulfilment of children's rights, namely 1) the right to life, growth, and development; 2) non-discrimination; 3) the best interests of the child; 4) respect for the child's opinion; 5) knowing their parents; 6) obtaining education and teaching; and 7) name, identity, and citizenship status; 8) worship according to religious beliefs and beliefs; and 9) obtaining health services.

The government and stakeholders are the most interested and responsible parties for optimally ensuring children's rights. Children's rights as human rights are guaranteed by law from the womb until death; the fulfilment of the rights of every child must be a shared responsibility¹⁵. It is also reinforced by Law Number 39 of 1999 on Human Rights (Human Rights Law) if children have the right to protection from parents, family, community and government. Juridically, the state is responsible for ensuring and providing protection to prevent economic exploitation of children's rights¹⁶. Article 52 of the Human Rights Law states that children's rights are human rights. As a human right for the sake of children, the law must recognize and protect children's rights. Article 58 of the Human Rights Law states that as long as children are in the care of parents, guardians, or other parties responsible for their care, every child is entitled to legal protection from all forms of sexual assault, neglect, physical or mental violence, and ill-treatment.

Islam regulates the fulfillment of children's rights. According to Islam, children's rights include the right to life, the right to *Nasab*, the right to a good name, the right to breastfeeding, the right to nurture, and the right to care. In addition, Islam regulates children's rights to maintenance, education, teaching, and fair treatment. Some of the rights of children as regulated by Islam are a form of guarantee and protection of children, which means that fulfilling children's rights is a must, and leaving things that cause children's rights not to be fulfilled.¹⁷

Based on the above description of the general principles of children, it will be found that the framework built by international conventions or positive law is consistent with Islamic principles. While various international conventions state how important it is for children to get their rights optimally, Islam has even emphasized first about children and children's rights in the Qur'an and hadith. In other words, Islam has prepared a set of rules that are expected to protect and protect the fulfillment of children's rights.

The fulfillment of children's rights is an implementation of the concept of human

¹⁵ Darmini, "Perlindungan Hukum Terhadap Eksploitasi Pekerja Anak Dibawah Umur," *Qawwam: Journal for Gender Mainstreaming* 14, no. 2 (2020): 54–76, <https://doi.org/10.20414/qawwam.v14i2.2809>.

¹⁶ Ornella Angelia, "Perlindungan Hukum Terhadap Hak Pekerja Anak Di Indonesia."

¹⁷ Hani Sholihah, "Perlindungan Anak Dalam Perspektif Hukum Islam," *Al-Afkar* 1, no. 1 (2018): 38–56, <https://doi.org/10.5281/zenodo.1161556>.

rights. According to Islam, as a gift from Allah, the fulfillment of children's rights must be realized and guaranteed. Islam prohibits giving heavy workloads and endangering a person. As stated in Surah *Al-Baqarah* verse 279, do no harm and do no harm.¹⁸ Therefore, giving heavy work that endangers children is a form of social injustice that Islam opposes. Handing over heavy work that is not the child's responsibility falls under the category of burdening and endangering the child. According to Islam, burdening children to do harmful work is prohibited. Islam firmly opposes the practice of exploiting children with heavy and dangerous work that can actually deprive children of their rights. The reason is that this can have a negative impact and endanger the child. Islam, as stated by the Prophet Muhammad, forbids anything that can harm oneself or others. It is permissible for children to participate in work if it is done voluntarily following the age and ability stages of the child as long as it does not conflict with the right to play, enjoy childhood, or get an education. It is even recommended in certain aspects because it can improve children's skills and insights as long as it does not make it difficult and dangerous for children.¹⁹ It can be done as long as it makes it easy for children to get their rights. Involving children in light work can improve their abilities and skills, which Sharia can justify because it can positively affect the child's personality.

Children have the right to determine matters concerning themselves. The main thing to understand is that all activities must be directed toward the child's best interests. It means that when deciding on issues relating to children, children's opinions must be heard and considered. The paradigm used in looking at the reality of child labor is not simply a matter of violating children's rights but what the role and rights of children in society are. The role of children in society has different characteristics. Differences in social, cultural, political, economic, and background conditions affect the status and position of child Laborers, which must be analyzed comprehensively. One paradigm or framework that can be used to solve the problem of child Labor is *maqashid syariah*.

B. Fulfillment of Child Labor Rights Based on *Maqashid Syariah*

There are two important terms that must be explained first in this section, namely working children and child Laborers. Working children do light work, still respect children's rights, work part-time, and are justified by law, while child Laborers do heavy work, are dangerous, cause exploitation of children, do not care about children's rights, and are not justified by law.²⁰ Children work to help their parents and practice skills and responsibilities. Such practices are intended to promote social development for children before they enter the world of work. Meanwhile, child Labor is seen as a form of exploitation of children that

¹⁸ Al-Imam Jalaluddin Muhammad bin Ahmad bin Muhammad Al-Mahalli and Al-Imam Jalaluddin Abdirrahim bin Abu Bakar As-Suyuthi, *Tafsir Jalalain* (Surabaya: eLBA, 2012).

¹⁹ Ahmad, *Musnad Al-Imam Ahmad Ibn Hanbal*, ed. Dkk Al-Arna'ut (Beirut: Mu'assasat Ar-Risalah li At-Tiba'ah wa An-Nasyr wa At-Tauzi, n.d.).

²⁰ Darmini, "Perlindungan Hukum Terhadap Eksploitasi Pekerja Anak Dibawah Umur."

causes children's rights to be unfulfilled. International organizations explain the phenomenon of child Labor as physical work that affects the physical and psychological and disrupts children's education.²¹

Izziyana²² further detailed the indicators of working children with child Labor. The indicators of working children are: 1) helping parents with light work; 2) there is an element of education; 3) still in school; 4) done during leisure time; 5) short working period; 6) safety and health are maintained. Child Labor indicators: 1) the child works every day; 2) the child is exploited; 3) the working period is long; 4) the child does not go to school; 5) the child's safety and health are jeopardized. Departing from the indicators of child Labor and child work, the focus of the study here is the issue of child Labor. It is because it involves children's human rights that must be fulfilled as mandated by the constitution and laws and regulations.

Furthermore, every child has a human right to have their interests protected by law. The concept of children's rights was born from human awareness that children are vulnerable, dependent on adults, and have special needs. Children are considered passive objects. That is why adults determine all children's actions and activities. Therefore, giving disproportionate workloads to children is part of the practice of child exploitation. The purpose of child exploitation here is to place children under the pressure of work that can violate children's fundamental rights..

Every child has a human right to have their interests protected by law. The concept of children's rights was born from human awareness that children are vulnerable, dependent on adults, and have special needs.²³ Children are considered passive objects. That is why adults determine all children's actions and activities.²⁴ Therefore, giving disproportionate workloads to children is part of the practice of child exploitation. The purpose of child exploitation here is to place children under the pressure of work that can violate children's fundamental rights.

Allowing children to do heavy and dangerous work contradicts Islamic values and *maqashid sharia*. Work is highly encouraged in Islam. Islam honors the right to work.²⁵ The nature of work is a manifestation of good deeds. It is explained in *Surah Al-Nahl* verse 97 that Islam, through the Quran, promises rewards for believing men and women who do good deeds.²⁶ Islam also encourages and honors work and considers it the basis of one's ownership of something. That is why Islam commands everyone to work and strive to acquire wealth correctly. On the contrary, Islam closes the space for businesses that are carried out

²¹ UNICEF, *Hak Dan Perlindungan Anak Dalam Islam: Pandangan Islam Tentang Perlindungan Anak Dari Kekerasan Dan Tindakan-Tindakan Berbahaya*.

²² Izziyana, "Perlindungan Hukum Bagi Pekerja Anak Di Indonesia."

²³ Nurlani, "Perlindungan Hukum Bagi Pekerja Anak: Tinjauan Perspektif Keadilan Dan Kesejahteraan Anak."

²⁴ Wahyuni, "Meningkatnya Pekerja Anak (Studi Konsep Masalahah)."

²⁵ Lies Marcoes et al., *Maqashid Al-Islam: Konsep Perlindungan Manusia Dalam Perspektif Islam*, I (Jakarta Selatan: Yayasan Rumah Kita Bersama, 2018).

²⁶ Al-Mahalli and As-Suyuthi, *Tafsir Jalalain*.

by illegal means, such as stealing, cheating, usury, and etc.

Concerning employment, the presence of Islam aims to abolish slavery, which was still rampant in pre-Islamic Arabia. At that time, humanity and human rights were considered very low. However, the new style of slavery in the contemporary era has now entered the area of employment if the work system imposed is not fair. Islam has provided Labor principles: human freedom, human dignity, justice, anti-discrimination, and decent worker wages.²⁷

According to the view of maqashid sharia, working for sustenance is mandatory to meet human life's needs.²⁸ *Maqashid syariah* as a classical heritage has narrowed its discussion to the concept of *al-kulliyat al-khamsa* (five principles) used as a framework for understanding and deciding Islamic law. The five principles are the protection of religion (*hifzh al-din*), protection of the soul (*hifzh al-nafs*), protection of the intellect (*hifzh al-'aql*), protection of property (*hifzh al-maal*), and protection of descendants (*hifzh al-nasl*). Meanwhile, Rumah Kitab proposes that ten maqashid principles can be used as guidelines for Islamic law, namely the protection of religion (*hifzh al-din*), protection of the soul (*hifzh al-nafs*), protection of intellect (*hifzh al-'aql*), protection of property (*hifzh al-maal*), protection of descendants (*hifzh al-nasl*), protection of environmental sustainability (*hifzh al-bi'ah*), equality (*al-musawah*), justice (*al-adalah*), freedom (*al-hurriyyah*), and social rights (*al-huquq al-ijtima'iyah*).²⁹

Auda said that *maqashid syariah* with five basic principles of protection, has become a definite and unambiguous legal basis, part of the main religion, legal rules, and religious principles.³⁰ This contemporary scholar makes the five basic principles of *maqashid syariah* a solid concept in protecting fundamental human rights. It also serves as a basis for further developing the five principles so that they are well realized and perfect in every human being. The five principles are also used to analyze contemporary and actual problems that previous scholars have yet to discuss.

Then, before discussing the relationship between children's rights and *maqashid sharia*, it is necessary to quote the opinion of *Imam Besar* of Al-Azhar, Ahmed Al-Tayyeb. He said that,³¹

"Childhood has become one of the most important maqashids in Islamic legal legislation, as it lies at the heart of the first maqashid of Islamic law, which is the preservation of descendant (*hifzh al-nasl*). The strict legislation of fiqh law has

²⁷ Edy Junaedi and Anton Hindardjo, "Orientasi Bekerja Menurut Perspektif Islam," *Jurnal Asy-Syukriyyah* 16, no. 1 (2016).

²⁸ Muhammad Jagat Dermawan, Sudana, and Helmi Al-Djufri, "Maqashid Bekerja Menurut Islam," *Jurnal Ekonomi, Keuangan, Perbankan Dan Akuntansi Syariah (EKSPEKTASy)* 1, no. 1 (2012).

²⁹ Markoes et al., *Maqashid Al-Islam: Konsep Perlindungan Manusia Dalam Perspektif Islam*.

³⁰ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, I (Bandung: PT. Mizan Pustaka, 2015).

³¹ UNICEF, *Hak Dan Perlindungan Anak Dalam Islam: Pandangan Islam Tentang Perlindungan Anak Dari Kekerasan Dan Tindakan-Tindakan Berbahaya*.

included the element of childhood from the phase when he is still in his mother's womb until he reaches adulthood through several stages such as pregnancy, childbirth, breastfeeding, weaning, parenting, disciplining and education, companionship, and friendship, until the phase of independence."

The fulfillment of *maqashid sharia*-based child Labor rights refers to the principles of Islamic law that include human values, justice, and welfare. In the context of child Labor rights, fulfilling this right must consider the principles of *maqashid sharia* as a guide by considering the protection of religion, soul, mind, descendant, and property. Therefore, to fulfill the rights of child Labor based on *maqashid sharia*, it must be done by prohibiting the employment of children in dangerous job.

Fulfilling children's fundamental rights is one of the main objectives of *maqashid sharia*. Based on the five *maqashid* safeguards, the maintenance of descendant is a *maqashid* that includes fulfilling children's rights that must be given to children. The discussion of children's rights using the *maqashid sharia* paradigm departs from the needs of children according to their developmental phase. Children's rights must also be seen in terms of social relationships not limited to parents as guardians but also to the social group where the child is born, grows, and develops. Parents are responsible for fulfilling children's rights due to the legal bond between parents and children.³² Therefore, positive aspects of fulfilling child Labor rights must be fulfilled, while some negative things that prevent children from fulfilling their rights must be avoided.

The general purpose of Allah Swt is to reveal *sharia (maqashid sharia)* and realize its benefits. The basic concept of benefit is to realize what is beneficial and prevent what is harmful. The practice of child Labor can hinder children from obtaining their rights, have negative impacts, and cause harm to children, families, and society, so it must be prevented. Thus, fulfilling child Labor rights is closely related to efforts to maintain the five main principles formulated in *maqashid sharia*, which must be upheld to realize the good. Therefore, protecting and ensuring the fulfillment of children's rights, especially for child Laborers, is obligatory.³³

Understanding *maqashid sharia* includes examining the commands and prohibitions regarding children in the Quran and hadist. Surah At-Tahrim verse 6 explains the command to protect the family from hellfire, and Surah An-Nisa verse 9 discusses the prohibition of leaving a weak generation.³⁴ To realize a quality generation, it needs to be protected and cared for so that it is not trapped in heavy work and endangers children.

The paradigm that must be put forward in reading and analyzing child Labor practices is protection. Child workers must be prioritized to get guarantees and protection of

³² M. Khoirur Rofiq, *Hak Anak Dalam Hukum Keluarga Islam Indonesia*, 1st ed. (Semarang: CV. Rafi Sarana Perkasa, 2021).

³³ Burhanuddin, "Pemenuhan Hak-Hak Dasar Anak Dalam Perspektif Islam," *Adliya* 8, no. 2 (2014).

³⁴ Al-Mahalli and As-Suyuthi, *Tafsir Jalalain*.

the right to life and growth (*hifzh al-nafs*), to be in a peaceful and happy family (*hifzh al-nasl*), to prioritize the protection of the intellect by taking education and teaching (*hifzh al-'aql*), to be able to practice religious teachings and beliefs (*hifzh al-din*), and to get protection in obtaining economic rights (*hifzh al-maal*). These five principles must be considered to realize the benefits and avoid damage to children.

The *maqashid sharia* framework in an effort to fulfill the rights of child Laborers is that minors are prohibited from being employed by their parents. In other words, the law of employing a child while the parents have the ability to provide for him or her is haram.³⁵ This prohibition relates to heavy work that endangers children. This prohibition is intended to prioritize the interests of children in fulfilling their rights without being disturbed by work that is not their obligation. Such a framework is based on the *maqashid* framework that prioritizes the fundamental rights of children so that they can grow and develop optimally and prevent anything that can damage them.

The fulfillment of child Labor rights must lead to the realization of the five main principles, which must be maintained and realized in life. Children are not encouraged to work because it is not their primary responsibility. Earning a living is the main responsibility of parents. The existence of child Labor can cause not optimal in carrying out the teachings of religion and belief..³⁶ Regardless, child Labor practices must get the protection of religion and belief (*hifzh al-din*). This protection is developed from exclusive religious protection to inclusive protection for all religions. This protection is implemented in the form of providing facilities and guarantees that children can carry out the teachings of their religion and beliefs. Child Laborers are ensured to get optimal spiritual strengthening.

There should be no neglect of child Labor that is harmful and physically or psychologically so that it can be life-threatening for the child. Children must be protected from forced Labor, slavery, or sexual exploitation. It does not follow the *maqashid* of Sharia, which is to protect the soul. If forced child Labor occurs, then the protection of the soul (*hifzh al-nafs*) must still be given and developed into the framework of the child's right to life as a human being. Child Laborers must be guaranteed physical and spiritual survival and physical, mental, spiritual, moral, and social human development. This protection includes maintaining a person's health, welfare, dignity, and humanity. It even protects someone, specifically in an emergency, such as child Labor. In fulfilling children's rights, this principle can be understood as the fundamental rights of children that child workers must still obtain. Anything that threatens a child's life must be avoided. Therefore, efforts must be made to ensure that child Laborers get their fundamental rights.

Children should also be given access to and support for adequate childhood

³⁵ Kodir and Natsir, *Fikih Hak Anak: Menimbang Pandangan Alquran, Hadis, Dan Konvensi Internasional Untuk Perbaikan Hak-Hak Anak*.

³⁶ Indar Wahyuni, "Permasalahan Pekerja Anak: Perspektif Maqashid Syari'ah," *Mahkamah* 9, no. 1 (2015): 84–97.

education to preserve and develop their minds. The existence of child Labor can have implications for the deprivation of children's learning opportunities and time to read and write. The non-fulfillment of children's fundamental right to education hurts the fate of children in the future. Everyone must be ensured the protection of reason and civilization (*hifzh al-'aql*). Therefore, child Laborers must ensure the protection of the human mind by maximizing their potential through education. This protection is developed by striving for the best education and teaching to develop reason and thought through various creative activities..

Protecting property and economy (*hifzh al-maal*) is interpreted as ensuring that children's current and future needs are appropriately met. This principle of protection ensures the importance of adequate financial support (*al-nafaqah*) for children, whether from parents, family or the state, so that the principles of protection of religion, soul, mind and descendant can be fulfilled. Interpreting the concept of safeguarding property and the economy for child Laborers is at least faced with two choices: prioritizing maintaining economic rights (*hifzh al-maal*) or maintaining educational rights (*hifzh al-'aql*). If analyzed using a priority scale, the child's age is more prioritized to fulfil the right to education and teaching first than to meet economic needs. It can be understood if nafkah is the children's right of both parents. Nafkah is not the child's obligation but the parents' obligation. In other words, children are not obliged to work for a living. However, if a child does work because of economic demands, it must be ensured that the work done by the child is not dangerous and does not hurt the child.³⁷

Protection of descendants and family (*hifzh al-nasl*) which was originally only ordered to marry, but now the protection of descendant is understood as the centre of family development (*bina' al-usrah*). This principle protects and facilitates the growth and development of children in the family environment. They are making the family a centre for the development of wholeness, harmony, and family honour. Everything that damages the integrity of the household must be prevented.³⁸ Child Labor reduces children's time because it is used for work. Children have fewer opportunities to receive education and teaching, which results in less optimal utilization of the child's mind to develop their potential. As a result, instead of giving birth to a quality generation, a weak generation is born.

Many countries' laws prohibit child Labor³⁹. The philosophy of banning child Labor is related to children's rights.⁴⁰ Employing child Labor violates children's human rights because it can adversely affect children's physical, emotional, and social development. Working as a

³⁷ Kodir and Natsir, *Fikih Hak Anak: Menimbang Pandangan Alquran, Hadis, Dan Konvensi Internasional Untuk Perbaikan Hak-Hak Anak*.

³⁸ Markoes et al., *Maqashid Al-Islam: Konsep Perlindungan Manusia Dalam Perspektif Islam*.

³⁹ UNICEF, *Hak Dan Perlindungan Anak Dalam Islam: Pandangan Islam Tentang Perlindungan Anak Dari Kekerasan Dan Tindakan-Tindakan Berbahaya*.

⁴⁰ Muhammad Fachri Said, "Perlindungan Hukum Terhadap Anak Dalam Perspektif Hak Asasi Manusia," *JCH (Jurnal Cendekia Hukum)* 4, no. 1 (2018): 141, <https://doi.org/10.33760/jch.v4i1.97>.

child Laborer can also adversely affect a child's physical health because the work performed can cause illness and accidents. Likewise, child Laborers who are placed in an environment that creates exploitative, dangerous, degrading, and isolating practices can interfere with children's emotional development. Generally, children who work find it difficult to develop their potential and talents following the human dignity of children. Although child labor has the purpose of meeting economic needs, it is feared that children will not have the opportunity to carry out essential activities that are part of their growth period, such as playing, interacting with each other, or not receiving adequate education and teaching rights as provisions for the child's future. Child Laborers cannot enjoy the world of children properly because children have to work, which is the work of adults. Thus, society is faced with two conditions, seeing the rampant cases of child Labor. On the one hand, children must work because of their economic demands and those of their families. However, on the other hand, children are hampered from getting the right to develop their minds and protect their souls. Children should prioritize fulfilling their material needs by working or protecting their minds by attending school.

Employing children is permissible in the case of providing education and habituation of a child's life. The orientation of teaching to train the child's mentality and character should be the basis rather than economic or non-economic considerations of the results of the child's work. It is permissible as long as it does not prevent children from obtaining their fundamental rights. This provision is in line with the fiqh rules regarding children's ability to work and that the work given is not burdensome or something forbidden in Islam. Suppose the family is in a state of poverty. At the same time, the immature child has the ability and skills to work, and this poverty condition makes it permissible for parents to employ their immature children on condition that the interests of the child are still prioritized. Indeed, poverty has involved the main principle in *al-kulliyat al-khamsa*: protecting the soul or fulfilling the right to life.⁴¹ Although poverty is often used as an excuse for child Labor because it can deprive children of their rights, child Labor can give birth to weak generations in the future. Of course, this is contrary to the concept of *maqashid sharia*, namely protecting religion, soul, mind, property, and descendant, which are the primary needs of *dharuriyyah*.

Based on the description above, children's problems are recognized. Children must be protected from various negative impacts that harm them. The existence of children must be upheld as an effort to realize the values of humanity and justice. According to *maqashid sharia*, to realize the benefits in this world and the hereafter, all things that cause harm must be avoided, while those that can bring maslahat must be realized. The problem of child Labor brings more harm to children than maslahat. Thus, the practice of child Labor must be prohibited because it does not provide significant protection for the fulfilment of children's fundamental rights.

⁴¹ Kodir and Natsir, *Fikih Hak Anak: Menimbang Pandangan Alquran, Hadis, Dan Konvensi Internasional Untuk Perbaikan Hak-Hak Anak*.

CONCLUSION

Islam has applied preventive and prudential principles in the fulfilment of children's rights as a form of Islamic concern for child protection. Islam places the fulfilment of children's rights as an essential thing to be realized. It is because children are the next generation of ideals in the future and have special characteristics and traits, so they need protection from exploitative treatment from anyone. That is why Islam stipulates several important things to fulfil children's rights from the time in the womb until death. In the view of Islam, children must be protected and safeguarded. According to *the maqashid sharia* view, the practice of child Labor is prohibited because it is considered unable to protect religion, soul, mind, property, and descendant which are primary needs (dharuriyyah). It is challenging to realize the benefit of someone who is a child Laborer because there are more negative impacts. Although child Labor can help the family economy, it should still be avoided because it brings more harm than good. The child's age is more important in fulfilling the right to education and teaching than in fulfilling economic needs because the child is not obligated to fulfil economic needs (*nafkah*). The fulfilment of wealth and economic needs is not the child's obligation but the parents' obligation.

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