

## **Islamic Thought and Human Rights View on Rights of Child: A Case of Child Domestic Workers In Indonesia**

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### **A. Introduction**

Multidimensional crisis in Indonesia results some problems in many sectors. The most obvious one is economics. Many people become poorer than before due to the impacts of economics crisis. This phenomenon stimulates other problems, for example the Increase of Child Workers.

A Child worker is a problematic condition in Indonesia. In terms of age they should enjoy the “children time” when they can play and enjoy the socialization among their friends. On the other hand the economics condition force them to make a living. The jobs of Child Workers are varying from keeping fisher in Jermal<sup>1</sup> to the domestic workers. But in this essay, the writer will focus more on Child Domestic Workers.

The child domestic workers’ presence since long time ago had been placed as unidentified hidden public work. The works types are obvious but sometimes it is difficult to differentiate between employers’ family and the servant. In addition, the recruitment process done generally in an abusive work for instance without any control, safety guarantee, uncertain jobs, physical and mental violence threat.<sup>2</sup>

ILO survey results in 2003 predict that in Indonesia there are 688.000 child domestic workers. The number exceeds the estimation of the Bureau of Center Statistic (BPS) that calculate only 152.000 workers.

Unfortunately this huge number of child is not followed by good condition of them. In this regard, the moving text that appears on the website of “Nelly Asih” foundation, a supplier of both male and female domestic workers, containing the following statement: “Domestic workers must not be treated like chewing gum”.

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<sup>1</sup> Jermal is a place in seashore for fishing fishes. It is much find in the South Sumatra

<sup>2</sup> KOMPAK Jakarta (the Education Committee for the Indonesian Creative Child Labour Foundation) Child Labour News, Vol 8 No. 03 September-November 2002, Jakarta, page 4

Chewing gum? Something that is chewed, played with, blown out into bubbles—in fact, something that you can do just about anything you like with. After its usefulness is finished, it is then thrown away. It's cheap and easy to find.<sup>3</sup>

Therefore the children need protection from us. Protection of children define as all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human being, and so that they may be protected against violence and discrimination.<sup>4</sup>

The background to the enactment of the Law No. 23 Year 2002 on Child Protection was that Indonesia ratified the Convention on the Rights of the Child in 1990 after its adoption by the UN General Assembly to address the rights and special needs of children.<sup>5</sup>

This effort is going on, however we need more struggle to protect the rights of children and to ensure that they will not face any discrimination; exploitations of an economic or sexual nature; neglect; harsh treatment, violence and abuse; injustice, and other forms of miss treatment.

## **B. Islam Thought View**

Islam pays a lot attention for right of child. In normal condition, the parents have responsibility to protect their children and fulfill the needs. However the governments also has responsibility to protect them.

In the 6<sup>th</sup> intentional seminar on Miracle of al-Qur'an and al-Sunnah on Science and Technology states some conclusion as follows:<sup>6</sup>

Article 7,

Regarding “child rights due from the parents” Article 7 of the Cairo Declaration stipulates:

(a). As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral

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<sup>3</sup> Center for Study and Child Protection in collaboration with UNICEF Jakarta, Kalingga, Vol. May-June 2004.

<sup>4</sup> Ministry of Women's Empowerment Republic of Indonesia and Department of Social Affairs Republic of Indonesia, Republic of Indonesia Law Number 23 Year 2002 on Child Protection, Page 2

<sup>5</sup> Ibid, page 5

<sup>6</sup> Muslim Intellectual Society of Indonesia (ICMI), Muslim World League Makkah in corporation with Inter-Islamic University cooperation Indonesian Council for Da'wah Islamiyah (DDII) and State institute of Islamic studies Syarif Hidayatullah Jakarta, in IPTN Bandung, Indonesia from 29 August through 1 September 1994

care. Both of the fetus and the mother must be protected and accorded special care. (al-Baqarah: 233)

(b). Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c). Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with their tenets of the shari'ah. (al-Nisa 36)

As the writer states above that in normal condition the parents have responsibility to protect their children, however the governments also has the same responsibility as stated in adz-Dazriyat: 19

Islam also guarantees the rights quality between male and female. Both male and female gets wages according to their jobs (an-Nisa: 32; al-Ahqaaf: 19) and prohibit the discrimination between male and female workers.

Why putting this Islamic view argument in this essay? Because the majority of Indonesians are Muslims, therefore, most of people who involve in this problem are Muslim. Houpeyly, this will become contribution for solving the problems related.

### **C. Human Rights View about Child Domestic Workers**

#### Article 5

No one shall be subjected to torture or to cruel, inhuman or regarding treatment of punishment

#### Article 23

1. Every one has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2. Everyone without any discrimination, has the right to equal pay for equal work.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### Article 25

1. Everyone has the right to a standard of living adequate for health and well-being of him self and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection.

Ben White and Indrasari Tjandraningsih in *Child Workers in Indonesia* append to save children's position.<sup>7</sup>

Save the Children's position on children and work is based on the United Nations Convention on the Rights of the Child (CRC) and our experience, and that of our partner organizations, in a wide variety of cultures and contexts worldwide. The following articles are particular relevance to children and work issues:

Article 3, which states that all action taken involving or affecting children must be in their best interest

Article 12, which states that children must be consulted on all actions likely to affect them

Article 32, which recognizes children's right to be protected from economic exploitation and from performing any work which is likely to interfere with their education or harm their health or development

Article 27, which recognizes the right of children to an adequate standard of living.

Save the Children recognizes that children engage in a variety of forms of work, and that the condition and nature of their work vary from occupations where children are able to develop responsibility and skills, and combine work with schooling, to conditions of extreme hazard and exploitation. The extent to which work is harmful or beneficial to children depends on a number of factors, including the type of work; the hours they work; their age; their access to education; whether or not they are separated from their families for long periods and the degree to which they are exposed to specific hazards.

Save the Children believes that:

The eradication of hazardous and exploitative forms of work, which jeopardize children's development as a priority for action.

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<sup>7</sup> Ben White and Indrasari Tjandraningsih. *Child Workers in Indonesia*. Bandung: AKATIGA, 1998, page 81-85.

Work which is not damaging to children's health or development, and allows children to develop skills, self-confidence and respect in their families and communities can be beneficial to their development. In such case, where earning income enables children to eat better or pay school-related expenses, work can be a positive experience for children. It is therefore essential to distinguish carefully between different kinds of work.

To tackle the problems of exploitative and hazardous child labour in a sustainable manner, it is essential to address the root cause of poverty and social inequality as well as to improve the immediate situations of working children.

The views of working children and their families must form an essential part of all action on child labour issues. They know their immediate situations best, and it is their right to participate in planning initiatives that affect their lives.

In addition, ILO Convention 182 on the worst forms of Child Labour lists the types of work in which children must not be employed under any circumstances. These include all types of slavery and forced labour, child prostitution, forcible drafting into armed forces, and involvement in activities that violate the law. This Convention also allows each state to specify other forms of labour that are highly hazardous to children having regard to local circumstances. In doing so, the state may be assisted by labour unions, employers' associations and other relevant groups. Children should also be consulted as part of this process. The states that ratified ILO Convention 182 committed themselves to drawing up comprehensive plans for the expeditious elimination of the worst forms of Child Labour, while simultaneously taking action to alleviate poverty and facilitate access to education.<sup>8</sup>

#### **D. Indonesia Law about Child Domestic Workers**

To guarantee the rights of child that protected by the international convention, Indonesian government tries to erase the Child Domestic Worker. Actually Indonesian government has a clear regulation about Child Domestic Workers extracts from Law No 25 (1997) Chapter VII and Accompanying Explanatory Notes 51 as follows:

Child Employment in Indonesia's New Labour Law

Chapter VII: Protection, Remuneration, and Welfare

Part one: Protection

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<sup>8</sup> Kalingga, Op. Cit., page 10

Clause 95

The employment of children by any employer is forbidden

Not included under 'employment of children', as defined in paragraph (1) above are:

Work undertaken solely by members of the same family;

Work for the home and its surrounding yard, in as much as this undertaken communally by family members according to local practice;

Work undertaken by pupils of public technical and vocational schools and under government supervision;

Work undertaken in government and private residential institution, social institution and foundations, and Children's remand Homes.

Clause 96

The prohibition as defined in Clause 95 does not hold for children who for certain reasons are compelled to work.

Employers of children who for certain reasons are compelled to work as defined under (1) Above are obliged to provide protection.

The protection of children who are compelled to work as defined under (1) above shall include:

Not employing the child for more than 4 hours per day;

Not employing the child between the hours of 6.00 pm and 6.00 am;

Paying wages according to the regulations currently in force for the hours worked;

Not employing children in underground mines, other underground sites, quarries and underground tunnels or under water;

Not employing children in places or occupations liable to endanger their morals, safety or health;

Not employing children in factories in enclosed spaces where machinery is used;

Not employing children in the construction of roads, bridges, water courses or building;

Not employing children in the loading, unloading or moving of goods in harbors, docks, railway stations, good yards, storage places or warehouses.

Further regulations on other hazardous occupations and on procedures for employing children who for certain reasons are compelled to work as defined under paragraph (2) above shall be announced by the Minister.

Explanatory notes on the new Labour Law:

Clause 95 (1): By ‘employment of children’ is meant causing a child to work in a relationship bound by working hours and payment of a wage.

Clause 96

In practice there are children who for certain reasons are compelled to work because of economic reasons in order to increase the income of their family or themselves, because of parental neglect or an insufficiently harmonious family environment which results in neglect of the child.

The meaning of ‘protection of children who for certain reasons are compelled to work’ is protection intended to prevent any damage to the child’s physical, mental, or social development and to ensure the safety of the child.

A. The restriction on working hours is intended to child with the opportunity for growth and development, education and social life.

C. This provision is intended to ensure that the wages paid conform to the prevailing minimum age rate, adapted to the hours worked.

Where the explanatory notes are not given for other clauses, they are taken as self-explanatory.

In addition to protect the right of children, the Ministry of Women’s Empowerment Republic of Indonesia and Department of Social Affairs Republic of Indonesia produce Republic of Indonesia Law Number 23 Year 2002 on Child Protection to protect the child from any discrimination; exploitations of an economic or sexual nature; neglect; harsh treatment, violence and abuse; injustice, and other forms of miss treatment.<sup>9</sup>

**Characteristic of Child Domestic Workers**

This able will describe some characteristics of child domestic workers in Indonesia. The Data was taken from Kalingga.<sup>10</sup>

	Recruitment pattern	Wages	Treatment	Work	Description
01	Through employment bureau foundation	Negotiated	<ul style="list-style-type: none"> <li>● Child and employer do not know each other/no family relationship</li> <li>● Family</li> </ul>	<ul style="list-style-type: none"> <li>● As ordered by employer</li> <li>● Work divided up if more than one</li> </ul>	<ul style="list-style-type: none"> <li>● Normally lives in employer’s home</li> <li>● Normally goes home once a year</li> </ul>

<sup>9</sup> Republic Indonesian Law Number 23 Year 2002 on Child Protection, Op., Cit., page 17

<sup>10</sup> Sulaiman Zuhdi Malik in Kalingga Vol May-June 2004, page 3

			<p>far away</p> <ul style="list-style-type: none"> <li>● Susceptible to abuse due to family ties</li> </ul>	<p>domestic</p> <ul style="list-style-type: none"> <li>● Sometimes no difference in treatment between children and adults</li> <li>● No day off work</li> </ul>	<p>(Lebaran/New Year)</p> <ul style="list-style-type: none"> <li>● Sometimes child's parents visit, but more often do not</li> </ul>
02	Through intermediary (acquaintance, friend, family member, other domestic worker, ect)	Cash Paid in kind (sent to school, lessons )	<ul style="list-style-type: none"> <li>● Child and employer do not know each other/no family relationship</li> <li>● Family far away</li> <li>● Employer behaves well due to relationship with intermediary</li> <li>● If intermediary is another domestic worker,</li> </ul>	<ul style="list-style-type: none"> <li>● Idem</li> <li>● If child normally goes home every day, she will usually get a weekly day off</li> </ul>	<ul style="list-style-type: none"> <li>● Live with employer</li> <li>● Goes home once per year</li> <li>● Sometimes child's parents visit, but more often do not</li> <li>● Some children return home everyday (if nearby)</li> </ul>

Some notes:

1. The characteristic states above are not universal (not all employer regard their child domestic workers as being akin to slaves or “chewing gum”).
2. Usually, an employer’s treatment of a child domestic worker is influenced by the social environment (urban/sub-urban area), housing complex, or normal residential area. In general cases of repeated or fatal abuse occur in housing complexes where each family lives in isolation.

3. The age threshold for children (under 18) is frequently little understood, or is sometimes actually a factor in deciding to employ a domestic worker – young or old, inexperienced or experienced.
4. Among certain social groups (for example, the Batak), kinship (from the same clan) is frequently a determinant factor in how an employer treats a child domestic worker
5. The recruitment pattern highlighted in point 5 in the above table normally comes into play when a potential employer returns to his home village, or receives a visit in the city from family members.

Other characteristics:

The majority of Child Domestic Workers are girls. Based on the widely held, traditional view of society that the work of women is lighter than that of men, domestic workers are normally poorly paid. In the case of Child Domestic Workers, the lack of appreciation for the work they do is exacerbated by their relatively young ages, and the fact that they may not possess as many skills as adult domestic workers. The results of this can be seen in the wages they receive—only between Rp. 125,000 and Rp. 150,000 per month (ILO-IPEC: 2003). Given the current situation, many women who have children decide to keep working, and hand over the responsibility for keeping their households in good order to domestic workers.<sup>11</sup>

Child Domestic Workers generally work alone in family homes, and live together with the employer's family. The conditions in which they work and live vary greatly, depending on the employer and the relationship of employment. A domestic worker is expected to be able to do everything that is required of her, and to always be quick to respond to the needs of the family. The frequently disguised nature of her employment results in the relationship between the employer and the domestic worker being unclear, and complicates the possibility of applying legal rules to ensure the protection of domestic workers. As a result, the current position of domestic workers in general, and Child Domestic Workers in particular, is highly vulnerable to exploitation, with little in the way of protection being available to those who fall victim to such exploitation.<sup>12</sup>

### **E. Problems faced by Child Labour**

Many child domestic workers may find a good circumstance. The child finds kind employer, gives a standards wages and support the education of the worker. However most

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<sup>11</sup> Kalingga, Op. Cit., page 11-12

<sup>12</sup> Ibid., page 11

of them are vulnerable to fall in violence. Here are some forms of violence most frequently experienced by Child Domestic Workers.<sup>13</sup>

**Physical violence :**

- ◆ Pinched
- ◆ Slapped
- ◆ Kicked
- ◆ Scalded
- ◆ Whipped
- ◆ Electrocuted
- ◆ Slapped with the hand/an object
- ◆ Hair pulled
- ◆ Deprived of food
- ◆ Given moldy/inedible food
- ◆ Locked in the bathroom/stereoroom
- ◆ Working from 04.30-23.00
- ◆ Not getting enough rest
- ◆ Carrying heavy loads
- ◆ Forced to do a particular job in large volumes
- ◆ Not enough rest between one job and the next

**Psychological violence :**

- ◆ Scolded
- ◆ Shouted at
- ◆ Insulted
- ◆ Ridiculed repeatedly based on physical appearance
- ◆ Not allowed to mix with other people
- ◆ Not allowed out of the house
- ◆ Access to parents greatly restricted
- ◆ Not allowed to go back to home village
- ◆ Required to work quickly
- ◆ Told to do different things at the same time
- ◆ Different orders given in respect of the same job
- ◆ Wages not paid, or not as agreed

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<sup>13</sup> 81Ibid., page 13

- ◆ No wages
- ◆ Different food to that of employer

**Sexual violence :**

- ◆ Buttocks fondled from behind
- ◆ Forcibly kissed
- ◆ Touching of the breasts
- ◆ Invited to have sex or watch pornographic videos
- ◆ Raped after being unwittingly given drug, or raped with threats
- ◆ Forced to watch the employer having sex
- ◆ Ridiculed using sexual language or in respect of certain part of the anatomy
- ◆ Forced to perform oral sex on or masturbate employer

**Physical and psychological violence :**

- ◆ Late responding to or complying with summons/order
- ◆ Late completing a particular job
- ◆ Work fails to satisfy employer
- ◆ Violates rules/orders of employer
- ◆ Breaks a particular object or thing
- ◆ Acts “impolitely” to employer, for example fails to curtesy when meeting employer, etc”)
- ◆ Child serves as a substitute for the anger the employer feels towards another person, etc.

**Sexual Violence (modus) :**

- ◆ Employer demands massage
- ◆ Ordered to sleep in employer’s bedroom
- ◆ Sometimes sleeps in employer’s room
- ◆ While child is working
- ◆ While house is empty
- ◆ Invited out on various pretexts
- ◆ Drugged
- ◆ Invited to watch pornographic videos
- ◆ Seduced, coaxed, or enticed
- ◆ Threatened with violence

These problems and violence is effects of the complexity to find the facts. The workplace, which is in a house of employer make the condition not easy due to the difficulty to see the violence obviously. In addition the bad low enforcement in Indonesia also contributes to the problems. The police officer seem pay just little attention to the child domestic workers related crimes.

### **Roots of Child labour**

Some people may easily argue that the main cause of Child Workers is poverty, this opinion is true. In addition, Child Workers in Asia<sup>14</sup> reports that there are five main categories of poverty in different parts of South Asian as a root of Child Labour, namely: Economic poverty; Geographical poverty; Social poverty; Cultural Poverty; Political poverty. These kinds of poverty are the roots of child workers.

Lack of education also becomes main factor for increasing the child domestic workers. Based on the data collected in Surabaya, most of them cannot pass elementary school or just finished the sixth elementary school. This why some family may think that the children can be paid in low standards. The lack of education also makes the children face difficulty when they fall in to violence and discrimination. They do not know how to protect their rights; even they may do not know what are their rights.

The other root is cultural value. In Indonesia there is a tradition called *ngenger* means to join live with the richer family. And also there is kind like “obligation” that the richer brother will take and save his younger brother. This cultural aspect is also contributes to the increase of Child Domestic Workers. The other cultural factor is, many family tolerance if their children go to work, even some family support them since they will help the economic condition of the family.

In addition the other factor of child labour is no good alternative, some child want to go work but since they can not find the good alternative, they prefer to accept work whatever is that.<sup>15</sup>

### **Solutions**

From the description above, it is clear that Child Domestic Workers needs special protection regarding their rights. The only solution is to eliminate and erase the Child Domestic Workers in this world

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<sup>14</sup> Child Workers in Asia. Vol 16 No. 2 May-August 2000

<sup>15</sup> Agustina Hendriawati et, all, Summary of Situation Analysis of Children Who Need Special Protection, PKPM Atma Jaya, Depsos, UNICEF, Jakarta: 1998 page 6-10

The erasing of child domestic workers is a must, however we need to solve the problems gradually, since there are many problems related to this kind of problem. For example, poverty. If we terminated the Child Domestic Workers in one time radically without any support to the economic condition of the family, it is also not a wise way. The most important is how to protect the right of the Child domestic workers and ensure that they face no discrimination and violence in any forms of it. And there are many alternatives of solution for it:

First of all, providing good and special educations for them. This is undeniable that the Child Domestic Workers phenomenon is strongly linked to the lack of education. They choose to be domestic workers due to they cannot afford to go to school.

Therefore the first solution is providing free basic education. This free education is provided for poor families who cannot pay for schools. This kind of school also may have special characteristics, for example, the time is started in the evening or night so the children who work in the morning still can have education. Tini is a picture of child labour. Tini finished 5-year elementary school but she still want to continue her education. She says: "*I work from morning until evening, when time for school?*"<sup>16</sup>

The second solution is making a clear regulation to protect the rights of child domestic workers. The child domestic workers must be regulated in law because they need standardization since some times it is difficult to define the child domestic labour who works with their family for example, how they can have equal rights include wages like the other child workers.<sup>17</sup>

## **F. Conclusion**

It is clear that a Child Domestic worker is a problematic phenomenon in Indonesia. This phenomenon is not only related to poverty that is big problem in Indonesia. This phenomenon is related to education and many other factors.

The child domestic workers are vulnerable to be exploited and face discrimination. So we need more effort to solve these problems.

Actually the Islamic thought, Human Rights and Indonesian Constitutions are clear regulations to show what are the rights of children. The regulation also did not support the discrimination among child domestic workers, however we still see the child domestic workers related problems.

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<sup>16</sup> Child Labour News no. 5 August-October 1999, Jakarta, p.6

<sup>17</sup> KOMPAK Jakarta (the Education Committee for the Indonesian Creative Child Labour foundation) Child Labour News, Vol 8 No. 03 September-November 2002 Jakarta, page 23

One thing to notice here is that the problem of Child Domestic Workers is not only the government's problem, this is our collective responsibility. So everybody supposed to help according to his or her ability.

All elements of community must pay attention to these problems since the children are the next generation of the nation. What the nations will be is also determined by the condition of the children and the young in present.

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