
Uqud al-Khidmah and the Protection of Domestic Workers: A Comparative Study between Fiqh and Indonesian Positive Law

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Abstract: The issue of legal protection for domestic workers (PRT) in Indonesia remains a pressing concern, as this group has yet to receive comprehensive recognition in national legislation. This study aims to analyze the concept of *uqud al-khidmah* in Islamic jurisprudence (fiqh) and compare it with Indonesian positive law regarding the legal protection of domestic workers. A normative qualitative approach is employed, examining classical and contemporary Islamic legal sources alongside relevant Indonesian legal instruments, including Ministerial Regulation No. 2 of 2015 on the Protection of Domestic Workers. In Islamic law, *ijarah* or *uqud al-khidmah* contracts emphasize principles such as justice, mutual consent (*an taradin*), the avoidance of ambiguity (*gharar*), and respect for human dignity, all of which reflect a holistic framework for worker protection. In contrast, Indonesia's positive law has yet to provide full protection, due to the absence of a specific law governing domestic work. The findings reveal that fiqh offers significant normative contributions to formulating just and humane regulations for domestic workers. Therefore, integrating Islamic legal values into national policymaking may serve as a constructive alternative to address the existing legal vacuum and enhance the protection of this vulnerable labor sector.

Keywords: *Uqud al-khidmah, domestik worker, Fiqh, legal*

INTRODUCTION

In developing countries like Indonesia, limited job opportunities and poverty remain serious issues. One way people try to survive and overcome poverty is by working as domestic workers. This type of work provides at least two benefits: *first*, it helps reduce the government's burden in addressing

unemployment; and *second*, it allows individuals to earn an income to support themselves and their families.(Syamsidah & Muhiddin, 2022)

Employment as a domestic worker is not a recent phenomenon. This profession has been around since the era of kingdoms, although it has been referred to by various names throughout history. Terms such as slaves, servants, *ngenger*, *emban*, *rewang*, *bedinde*, *batur*, *babu*, and housemaids have all been used to describe domestic workers at different times.(Sofiani, 2020). These terms have continued to evolve and diversify over time. Some of the more recent terms used to refer to domestic workers include "household workers," "household assistants," and others.

Data from the Central Statistics Agency (BPS) in 1990 indicated that there were approximately 861,337 domestic workers, a number that continued to rise. In 1999, based on the results of the Labor Force Survey, the number of domestic workers reached 1,341,712. In 2004, the number of domestic workers increased to 2.4 million.(Syamsidah & Muhiddin, 2022). According to a survey conducted by the International Labor Organization (ILO), the number of domestic workers in Indonesia reached 4 million in 2015. Another report released by Jala PRT stated that by 2022, the number of domestic workers in Indonesia will increase to 5 million, with the majority being women.(Pranoto, 2022) .

Based on the data presented, it is evident that over the last 3.2 decades, the number of domestic workers has increased significantly by approximately 150.15%. However, this sharp rise has not been matched by proper recognition of their profession or adequate legal protection. As a result, domestic workers frequently face various forms of injustice. As noted by Pranoto, domestic work is commonly associated with women, reflecting a patriarchal mindset that categorizes women as natural domestic laborers. Such work is often viewed as menial, unskilled, and lacking value sometimes not even regarded as legitimate employment. In truth, domestic labor is demanding and physically exhausting.

In addition to being physically and mentally demanding, domestic work also exposes workers to high risks of violence, discrimination, and even exploitation akin to slavery. According to data from the Civil Coalition Coordinator, there were 2,637 reported cases of violence against domestic workers between 2017 and 2022. These incidents involved various forms of abuse, including delayed or unpaid wages, physical assault, psychological harm, and sexual violence.(CNN Indonesia, 2023). According to labor expert Tadjudin Nur Efendi from Gadjah Mada University, as cited by the BBC, the way domestic workers are treated reflects characteristics of modern slavery. This is evident in the absence of formal employment contracts, undefined working hours, and the prevalence of abuse, violence, and exploitation by employers.(BBC News Indonesia, 2020).

In Indonesia, the majority of domestic workers work 6 or 7 days a week with a salary of around 1-2 million per month.(Idx Channel, 2022) Despite the

considerable amount of labor involved in domestic work and the absence of formal educational requirements, the compensation for such work remains significantly below the regional minimum wage established by government regulations. This disparity underscores the persistent undervaluation of domestic labor, even though the demand for such services remains high. Individuals who engage in domestic work often do so to support their families in the face of economic pressures, recognizing the importance of meeting fundamental needs such as food, clothing, and education. While fully aware of the potential risks and hazards associated with the profession, domestic workers persist in their choice of employment as a means of survival. In this regard, domestic work makes a significant contribution to the economic development of the household, an effort that merits acknowledgment and appreciation from both the family unit, society, and the state.

From the perspective of Islamic fiqh, this reality raises a number of ethical and legal concerns. In the concept of *'uqud al-khidmah* (service or labor contract), the relationship between employer and worker is bound by the principles of **justice** (*'adl*), **clarity** (*'idhan wa bayān*), **mutual consent** (*tarādīn*), and **respect for human dignity** (*karāmah al-insān*). Inadequate wages and excessive workloads without rest days directly violate the principle of justice in fiqh, wherein a fair balance between labor and compensation (*ajrun ma'ruf*) is a prerequisite for the validity of a labor contract. Furthermore, in Islam, any form of work carried out to earn a living and fulfill basic life necessities including domestic labor is regarded as an act of worship (*'amal ṣālih*) and carries the potential for divine blessing (*barakah*).

In this context, the persistence of domestic workers to continue working, despite vulnerable conditions and low wages, demonstrates a tangible contribution to the economic development of their families. From the perspective of *fiqh*, such work must not be viewed as inferior and should be treated with dignity and fairness, not only by individuals (employers) but also by society and the state. Fiqh also emphasizes that the state (*al-hākim*) holds the responsibility to ensure protection for vulnerable groups, including domestic workers, in accordance with the principles of *ḥifẓ al-nafs* (protection of life) and *ḥifẓ al-māl* (protection of property), two of the five *maqāṣid al-syarī'ah* (objectives of Islamic law). Therefore, unjust treatment and the neglect of domestic workers' rights constitute a violation of these foundational aims of *sharī'ah*.

Considering the inherent vulnerabilities associated with domestic work, it is imperative to conduct a comprehensive analysis of the legal frameworks that can ensure both legal certainty and protection for domestic workers in Indonesia. In light of this, the author seeks to explore the issue of legal protection for domestic workers through the lens of both Islamic jurisprudence (Fiqh) and Indonesia's positive law. This inquiry is crucial for promoting human dignity and addressing the persistence of modern forms of slavery, thereby

contributing to a more just and equitable legal and social system.

METHOD

This qualitative research aims to obtain comprehensive and in-depth data regarding legal certainty for domestic workers, both in positive law and Islamic law. Because this research will examine legal materials from legislation and sources of Islamic law (the Qur'an and Sunnah), it is no exaggeration for the author to state that this research is also a juridical-normative study, also known as doctrinal legal research.(Efendi & Ibrahim, 2020) In this study, the researcher attempts to examine the content and concepts and legal principles of legal regulations related to this research. In this study, the legal materials obtained are processed by categorizing them as the initial step in selectively classifying legal materials. Furthermore, all legal materials are grouped based on the criteria and themes of this research. Data analysis is conducted using descriptive-analytical studies aimed at assessing legal concepts, legal norms, and legal systems. This descriptive-analytical technique is carried out by explaining, examining, systematizing, interpreting, and evaluating the law. (Efendi & Ibrahim, 2020)

RESULT AND DISCUSSION

Terms and Social Realities of Domestic Workers in Indonesia

Domestic workers are those who generally work to manage a household, including caring for a family. This type of work falls into the care work category.(Komnas Perempuan, 2021). Several factors that drive individuals to become domestic workers include economic hardship, limited access to education, and development policies that are often unequal or discriminatory.(Syamsidah & Muhiddin, 2022) This factor is supported by the results of Briliyan's research which revealed that working as a domestic worker is the main source of income for poor families.(Wati, 2014)

The profession of domestic worker is not something new; it has existed for generations under different terms. In various historical and cultural contexts, domestic helpers have been referred to as *budak*, *abdi*, *ngenger*, *emban*, *rewang*, *bedinde*, *batur*, or *babu*. (Sofiani, 2020) In this study, the term of *domestic worker* is understood as a euphemistic replacement for earlier, often pejorative designations. Over time, this terminology has evolved, with the emergence of the term *domestic worker* representing a form of discursive resistance advanced by social and labor advocacy groups seeking to promote the rights and recognition of individuals in this profession. In contemporary usage, the term has further shifted, and *domestic assistant* is now frequently employed to reflect a more respectful and professional connotation..(Sofiani, 2020)

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rise. In 1999, based on the results of the Labor Force Survey, the number of domestic workers reached 1,341,712. In 2004, the number of domestic workers increased to 2.4 million.(Syamsidah & Muhiddin, 2022) Eleven years later, according to a survey by the International Labor Organization (ILO), the number of domestic workers in Indonesia reached 4 million in 2015. Another report released by Jala PRT stated that by 2022, the number of domestic workers in Indonesia is expected to increase to 5 million, with the majority being women..(Pranoto, 2022).

Given their substantial numbers, domestic workers are now commonly present in a wide range of households, particularly within the upper-middle-class demographic. Their presence is no longer confined to urban centers but has also extended to rural communities, reflecting an increasing societal demand for domestic labor. In both settings, the responsibilities of domestic workers typically include household chores such as cleaning, laundry, cooking, and child care. The majority of these workers originate from rural areas and generally possess limited formal education. A 2005 study conducted by the Women's Echoes Group (RGP) revealed that most domestic workers had only completed elementary or junior secondary education. Similarly, data from the Central Statistics Agency's National Labor Force Survey (Sakernas) indicates that 63.53% of domestic workers in Indonesia have an educational attainment of junior high school or below, while only 15% have completed senior high school. These findings suggest that individuals who enter domestic work often do so as a result of limited access to educational opportunities, whether due to structural barriers, socioeconomic constraints, or systemic exclusion.(Ainun, 2023)

Although domestic work represents one of the oldest, most prevalent, and essential forms of employment for millions of individuals, it remains significantly undervalued, frequently overlooked, and inadequately regulated. Data from the Domestic Workers Advocacy Network (Jala PRT) reported over 2,600 cases of violence against domestic workers between 2017 and 2022. One notable case involved Rohimah, a domestic worker from Garut, who suffered abuse by her employer while working in West Bandung. In addition to the mistreatment, she was also denied the wages that had been initially agreed upon.(Gani, 2023) An even more severe case was reported involving SK, a domestic worker from Pemalang, Central Java, who endured extreme abuse at the hands of her employer. She was subjected to inhumane treatment, including being forced to consume dog feces, handcuffed, scalded with boiling water, and deprived of adequate sleeping accommodations.(Dis, 2022)

In addition to experiencing various forms of abuse, domestic workers often lack clearly defined working hours. According to a report by the Ministry of Manpower (Kemenaker), live-in domestic workers frequently face exploitation by being required to work more than 40 hours per week. Beyond excessive working hours, they also encounter challenges related to leave entitlements.

Unlike formal sector employees who are entitled to weekends and public holidays off, domestic workers rarely enjoy such privileges. Their time off is typically limited to major holidays, if granted at all. Even when unwell, many feel compelled to continue working due to the absence of sick leave provisions. Furthermore, there is little awareness among domestic workers regarding entitlements such as menstrual leave, maternity leave, or paternity leave. In most cases, pregnancy and childbirth mark the end of their full-time employment, forcing many to resign from their positions altogether.

Besides abuse, domestic workers also lack clear working hours. A report from the Ministry of Manpower (Kemenaker) noted that domestic workers who stay overnight at their employers' homes and workplaces are often mistreated, having to work more than 40 hours per week. Beyond the issue of working hours, domestic workers also face other challenges, including leave. Domestic workers have a relatively limited leave allowance. While office workers can take time off every weekend and public holidays, domestic workers do not. The only holidays they may receive are holidays. Even when sick, they often force themselves to continue working. They also don't know about menstrual leave, maternity leave, or paternity leave. They likely only know that once they become pregnant and give birth, they no longer have much time to work full-time. Ultimately, some have to quit their jobs.

The various instances of violence and challenges outlined above illustrate the precarious nature of domestic work, which is often carried out under conditions that lack formal legal standards and oversight from relevant authorities. The absence of a clear legal framework recognizing domestic workers as formal laborers, combined with inadequate regulation and protective mechanisms, has led to numerous issues. These include extremely low wages, delayed or unpaid salaries, insufficient access to basic facilities and safety measures, neglect of occupational health and safety, and exposure to physical and psychological abuse, as well as other forms of human rights violations. (Ainun, 2023) The conditions experienced by domestic workers today could be called modern slavery.

The concept of 'Uqud al-Khidmah in Islamic Fiqh

The Quran does not specifically mention "domestic helpers." However, Allah calls all people to work and fulfill their livelihoods in various good and lawful ways. Therefore, work is an obligation in Islam. (Fakhrudin, 2023) This is based on (QS. Al-Baqarah [02]: 198), (QS. At-Taubah [09]: 105), (QS. Yunus [10]: 67), (QS. Hud [11]: 61), (QS. al-Isra' [17]: 84), (QS. al-Kahfi [18]: 110), (QS. An-Naml [27]: 86), (QS. al-Qashash [28]: 73 and 77), (QS. Saba [34]: 11 and 13), (QS. Yaasiin [36]: 10), (QS. Az-Zumar [39]: 39), (QS. al-Jumu'ah [62]: 10), and (QS. al-Mulk [67]: 15).

An analysis of the aforementioned Qur'anic verses reveals that the language employed by Allah to urge human beings to engage in work is predominantly

expressed in the form of *fi'il amr* (imperative verbs), signifying that work is a religious obligation in Islam. These verses also suggest that Islam disapproves of idleness, viewing laziness as a morally negative trait that must be avoided. The directive to work is presented not only as a means to secure one's livelihood but also as a pathway to enhance human dignity and well-being. In Islamic teachings, earning a livelihood is considered a natural aspect of human existence and an integral part of one's devotion to Allah SWT. The Qur'an characterizes work as a sincere endeavor whether material or immaterial, physical or intellectual carried out in accordance with Islamic principles, with the ultimate goal of attaining divine approval.

Consistent with the Islamic concept of work as a means to fulfill life's necessities and enhance one's well-being, domestic workers also engage in their profession with the intention of earning a livelihood, meeting basic needs, and striving for a better quality of life. Within the framework of Islamic teachings, domestic work should not be regarded as inferior or worthy of contempt, nor should domestic workers be subjected to unjust or degrading treatment. This perspective is reinforced by the Qur'anic verse which emphasizes the equality of all human beings before God (QS. Al-Hujurat [49]:13), and by the Prophet Muhammad's hadith stating, "No one among you consumes food better than that earned through the labor of his own hands" (HR. Baihaqi). These teachings affirm the dignity and value of honest labor, regardless of the nature of the work.

Broadly speaking, Islam establishes a legal foundation for the employment of domestic workers through contractual agreements based on four core principles: freedom, dignity, justice, and transparency. These principles are reflected in various Qur'anic verses and Hadiths, which serve as the basis for regulating employer-employee relationships within an Islamic framework.

- a) In the context of the employment relationship between domestic workers and their employers, Islamic teachings emphasize the principles of equality and justice, positioning both parties as interdependent. This mutual need underscores the balanced nature of their relationship, where neither is inherently superior to the other. (Sofiani et al., 2006) This principle is grounded in the Qur'anic verse from Surah An-Nisa (4:29), which states: *"O you who believe, do not consume one another's wealth unjustly, except through lawful trade conducted by mutual consent..."* This verse highlights the importance of fairness and mutual agreement in economic transactions, including the employer-employee relationship
- b) Concerning the issue of fair compensation, Allah SWT affirms in Surah Ash-Shu'ara (26:183): *"And do not deprive people of their rightful dues..."* (I. N. N. Hidayati, 2017) This verse underscores

the obligation to uphold justice in financial matters, including the proper payment of wages, and prohibits any form of exploitation or denial of workers' rights. (Yasirwan et al., 2023)

- c) Regarding clear and transparent work contracts, Ibn Mas'ud said: The Prophet SAW said: "If one of you contracts (the labor of) someone who is an ajir, he should be informed of his wages."
- d) The prohibition against abusing domestic workers can be traced through the hadith qudsi narrated by Abu Hurairah RA: The Prophet SAW said: "There are three people, who will be My enemies on the Day of Resurrection: ... the person who employs a worker, the worker fulfills his duties, but he does not give him (the appropriate) wages." (HR. Bukhari 2114 and Ibn Majah 2442).
- e) Prohibition of physical violence, Aisyah said: "The Messenger of Allah sallallaahu 'alaihi wa sallam never hit with his hands at all, not women, nor slaves." (HR. Muslim 2328, Abu Daud 4786).
- f) In addressing the issue of discrimination against domestic workers, the Prophet Muhammad (peace be upon him) emphasized the importance of respectful and dignified treatment. He instructed, "Do not refer to a person as 'my slave,' but rather say 'my young man' or 'my young woman.'" Furthermore, he stated, "Your servants are your brothers. Allah has placed them under your care" (HR. al-Bukhari). By referring to servants as brothers, the Prophet affirmed their equal status and human dignity, thereby promoting a relationship based on mutual respect and moral responsibility.
- g) Regarding hastening the payment of wages to domestic workers, Rasulullah SAW said, "Give wages to workers before their sweat dries." (HR. Ibn Majah and authenticated by al-Albani). (Zuhaily, 2011) Furthermore, the Prophet sallallaahu 'alaihi wasallam said: "The attitude of rich people to slow down debt payments is injustice."
- h) Regarding the self-development of domestic workers, Umar Bin Khattab saw the importance of providing domestic workers with skills and education so that they could improve their standard of living, become more independent, and ultimately no longer depend on their employers. "Whoever has a jariah (maid)," he said, "should teach her and be kind to her. Those who do so will receive two rewards. First, the reward of having taught her a lesson. And second, the reward of making her independent."
- i) Prohibiting exploitation of domestic workers, the Prophet SAW said: "Do not burden them (slaves), and if you give them tasks, help them." (HR. Bukhari). Even if it had to be done, he ordered the employer to help him. From Amr bin Huwairits, the Prophet sallallaahu 'alaihi wa sallam said: "The relief you give to your slaves, it becomes a reward in the scale of

your deeds." (HR. Ibn Hibban in his authentic and sanad was declared authentic by Syaib al-Arnauth).

The Qur'anic verses offer a general foundation, and upon deeper examination, Islamic jurisprudence (*fiqh*) addresses the role of domestic workers through the framework of '*Uqud al-Khidmah* (service contracts). The term of '*Uqud al-Khidmah* (عقود الخدمة) refers to a type of employment contract or service agreement between an employer (*mu'jir*) and a worker (*ajir*), which is carried out voluntarily and involves a specified compensation (*ujrah* or wage). In Islamic jurisprudence (*fiqh*), this contract falls under the category of '*ijarah* contracts which is, transactions involving the leasing or hiring of services. Hanafiyah says that *ijarah* is a contract for benefits accompanied by compensation. (Zuhaily, 2011)

While *ijarah* is commonly understood as a rental agreement for tangible goods, Islamic jurisprudence (*fiqh wa adillatuhu*) also recognizes *ijarah* as applicable to the leasing of services or labor. This service-based *ijarah* is further categorized into two types: specific (*khāṣ*) and general (*ʿāmm*). Specific work refers to tasks performed exclusively for one employer throughout the contract period, whereas general work involves providing services to multiple clients. (Zuhaily, 2011)

In *Fiqh*, a *khidmah* or known as *Ijarah* contract comprises several essential elements: *First*, the contracting parties (*ājir*, or worker, and *mu'jir*, or employer), *Second*, the exchange of consent through *ijab* and *qabul* (offer and acceptance, either verbally or through action), *Third*, a clearly defined and lawful service as the object of the contract, and *Fourth*, mutually agreed upon, just compensation (*ujrah*). (Zuhaily, 2011)

In implementing an *ijarah* contract, four key conditions also must be fulfilled: essential (existential), validity, legal, and customary conditions. The essential conditions pertain to the contracting parties, who must be mentally sound and have reached legal maturity (*rāshid*). Validity conditions relate to the ownership or legal authority over the object or service being leased. Legal conditions include mutual consent between both parties, clarity regarding the benefits derived from the service, a specified duration and location of employment, and clear identification of the work to be performed. Lastly, customary conditions are considered binding, meaning that neither party may terminate the contract arbitrarily without a justified reason. This is in line with the Quranic principle stated in Surah Al-Ma'idah [5]:1, which emphasizes the obligation to fulfill contracts.

In reference to the aforementioned requirements, Islamic teachings emphasize that all employment contracts must be established with clarity and, ideally, in written form, as indicated in the Qur'anic verse Surah At-Taubah [9]: 282. This is intended to prevent potential disputes and misunderstandings between the contracting parties. An *ijarah* contract that

involves *gharar* (uncertainty or ambiguity) is considered legally invalid in Islamic jurisprudence. Therefore, all aspects of the contractual agreement must be explicitly outlined including the identities of the contracting parties, the nature and scope of the work, the time frame for its completion, the amount and structure of compensation, and any additional conditions mutually agreed upon.

From the above discussion, it can be inferred that employment agreements for domestic helpers fall under the category of *ijarah* contracts. Within the framework of *‘Uqud al-Khidmah*, such contracts are intended to safeguard the rights of both workers and employers. This is achieved through adherence to key principles, including: (1) Justice (*‘adl*), which requires that wages be fair and proportionate to the workload; (2) Mutual Consent (*tarāḍīn*), ensuring that no party is coerced into the agreement; (3) Clarity meaning all aspects of the work such as the nature of the job, duration, and remuneration must be clearly defined; and (4) Respect for Human Dignity which emphasizes treating domestic workers with full respect as human beings.

Domestic Workers in the Perspective of Positive Law in Indonesia

As for the positive legal regulations, as far as the author's research is concerned, in accordance with the focus of this research, several regulations in Indonesian positive law relating to domestic workers are:

- a) The Constitution of the Republic of Indonesia (UUD 1945), Protection of domestic workers in the UUD 1945 can be seen from Article 27 paragraph (2) which states that every citizen has the right to work and a decent living for humanity..(Undang-Undang Dasar, 1945) Based on this article, the state is responsible for guaranteeing job security for every citizen, including work as a domestic worker.
- b) Criminal Code (KUHP), Similar to the 1945 Constitution, the provisions in the KUHP that directly relate to domestic workers are written in the form of prohibitions that are still general in nature, including: prohibition of rape and sexual assault, prohibition of trafficking in women and children, prohibition of slave trade, prohibition of kidnapping, prohibition of using violence or threats of violence, prohibition of murder, prohibition of harassment, and prohibition of falsification of documents. If reviewed more deeply, the prohibitions as mentioned only cover extreme cases and do not cover all cases..(Organisasi Perburuhan Internasional, 2006)
- c) Law No. 13 of 2003 concerning Manpower, In this Law, domestic workers can be categorized as workers/laborers. This can be seen in Article 1 paragraph (2) and (3). Based on this article, there are three

indicators that a person can be said to be a worker, namely: First, he is able to do the work; Second, his work can be in the form of producing goods/services; and Third, the results are used to meet needs. In paragraph 3, there are two indicators that a person can be said to be a worker/laborer, namely: First, he works; and Second, he receives wages or compensation. Referring to the indicators in both Article 1 paragraph (2) and paragraph (3), domestic workers are included in the category of workers and have legal status as workers/laborers because domestic workers are people who are able to work and produce services such as cooking, washing, caring for children and all other domestic work in order to earn wages to meet their needs. Therefore, domestic workers should be an integral part of the employment system in Indonesia and must receive legal certainty and legal protection.

- d) Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Specifically, the PKDRT Law prohibits all acts of violence that result in suffering to a person, whether physical, sexual, psychological or neglect in the family. Article 1 (c) states that the scope of the household includes one of the people who work to help the household and live in the household. Furthermore, Article 2 also emphasizes that people who work as referred to in letter (c) are considered family members for the period of time they are in the household.
- e) Law Number 23 of 2002 concerning Child Protection (UUPA), Legal protection for domestic workers can be reviewed through the UUPA because domestic workers in Indonesia include exploited children, children who are bought and sold, and children who are kidnapped. Child domestic workers are one of the homework that has not been completed in Indonesia. Based on data published by the International Labor Organization (ILO) as quoted by Nola, it can be seen that domestic workers who are still classified as children reach 688,000 people or around 25% of the total domestic workers.(Nola, 2012). Even though the law stipulates that the age limit for children is 18 years.(Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, 2002) Article 59 of the UUPA states that executive government bodies and other government bodies are responsible for providing special protection for children as defined in the UUPA when experiencing certain circumstances such as economic and social exploitation, being bought and sold and kidnapped.
- f) Law Number 20 of 2002 concerning the National Education System stipulates that everyone aged 7 to 15 years old must attend school. This regulation should be interpreted as a prohibition on employing children of that age as domestic workers. However, what is not regulated in the National Education Law is the legal sanctions for those who employ children who still have the right to compulsory education, so that

children's access to education is not exploited by work, especially domestic workers.(Organisasi Perburuhan Internasional, 2006)

- g) Law Number 39 of 1999 concerning Human Rights (HAM Law) defines domestic workers as human beings, and human rights cannot be separated. Therefore, in addition to the 1945 Constitution, the Domestic Violence Law, the Basic Agrarian Law, and the National Education Law, regulations that generally guarantee domestic workers' rights are contained in the Human Rights Law.
- h) Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. In substance, the issuance of the Minister of Manpower Regulation can be considered a legal breakthrough to protect the rights and obligations of domestic workers in Indonesia, as the content of the regulation aligns with international labor provisions, such as ILO conventions..(N. Hidayati, 2014) According to the Minister of Manpower Regulation, a domestic worker is defined as a person who works for an individual in a household to perform household chores in exchange for wages or compensation. To become a domestic worker, a person must have identity documents, be at least 18 years old, and have permission from their husband or wife if they are married.(Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 2 Tahun 2015 Tentang Perlindungan Pekerja Rumah Tangga, 2015) Ministerial Regulation No. 2 of 2015 also stipulates the obligation to create an employment contract between employers and domestic workers. However, Article 5 still specifies the option of writing or verbally establishing this obligation. However, verbal contracts are often the source of disputes between employers and domestic workers. The Ministerial Regulation should mandate a written contract agreed to by both parties, both the employer and the domestic worker. This is to avoid potential problems such as late wages, mistreatment, rest breaks, leave entitlements, and so on. (Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 2 Tahun 2015 Tentang Perlindungan Pekerja Rumah Tangga, 2015) Textually, the Manpower Regulation can serve as a legal umbrella for domestic workers. However, upon closer examination, the Ministerial Regulation does not specifically address wage standards for domestic workers, working hours, leave rights, communication and association rights, or written contracts for domestic workers. The Ministerial Regulation also does not regulate criminal sanctions for victims of violence against domestic workers..(Nila Winarni, 2018) In addition, Minister of Manpower Regulation Number 2 of 2015 still tends to regulate domestic worker issues within the realm of Domestic Worker Placement Institutions (LPPRT) rather than specifically regulating the working relationship between domestic workers and their employers.

A Comparative Study of Domestic Worker Norms in Islamic Jurisprudence (Fiqh) and National Legislation

Islam lays down a foundational framework for the legal protection of domestic workers in a general sense. The religion encourages all individuals to engage in labor and seek sustenance, as reflected in various Qur'anic verses such as Surah An-Naba (78:10), Al-Baqarah (2:233), and At-Taubah (9:105). While these texts do not explicitly address domestic work, Islamic teachings offer principles, ethical conduct, and relational norms that should govern the interaction between domestic workers and their employers—emphasizing mutual need and human dignity. This ethical foundation is reinforced in verses like Al-Isra (17:7), Al-Hujurat (49:10–13), An-Nisa (4:86), and Al-Baqarah (2:213), which collectively highlight the values of equality, mutual respect, and shared humanity. Islam upholds the notion that all humans are inherently equal before God, with piety as the only distinguishing factor. These teachings underscore Islam's comprehensive guidance for fostering just and humane relationships within society, including the realm of domestic labor.

The foundational principles derived from the aforementioned Qur'anic verses are operationalized within Islamic jurisprudence through the concept of *'uqud al-khidmah* as part of the *ijarah* contract framework. *Ijarah*, understood as a contract for the rental or exchange of benefits, encompasses the employment of domestic workers, as their role involves providing valuable services. These services facilitate and ease the daily responsibilities of employers, thereby aligning with the essence of *ijarah*, which is the lawful compensation for beneficial labor. (Zuhaily, 2011)

This *ijarah* contract guarantees that a person can work fairly because it contains various principles such as:

1. The principle of *tarāḍin* emphasizes mutual agreement between the involved parties. In this context, neither the employee nor the employer should impose their will on the other. Instead, the employment relationship must be built upon mutual understanding and voluntary consent.
2. The principle of avoiding *gharar* (ambiguity) builds upon the idea of mutual consent. It requires both parties to clearly define their identities, the purpose and scope of the work, duration of employment, wages, and the workplace location to prevent uncertainty or potential disputes.
3. The principle of legal accountability or contractual binding highlights the importance of documenting agreements in writing. This serves to guarantee that each party upholds their contractual responsibilities, and that termination of employment must be based on legitimate Islamic grounds, not on arbitrary decisions.

4. The principle of human dignity affirms that all individuals are equal before God, with the only distinction being their level of piety. Consequently, no person is permitted to act unjustly or view others as inferior, particularly based solely on their occupation.
5. The principle of justice and accountability integrates all the preceding principles. Its central aim is to uphold fairness and ensure that every party involved is responsible for fulfilling their duties in a just and ethical manner.

The legal foundations outlined in various Qur'anic verses should function as a guiding framework for policymakers or *ulil amri* in formulating just and equitable policies for all members of society. This ensures the prevention of any legal vacuum that could potentially disadvantage citizens. Within Islamic legal theory, this principle is encapsulated in *Tasharruf al-imām 'ala al-ra'iyyah manūṭun bi al-maṣlaḥah*, which asserts that the decisions and policies of a leader must be directed toward the common good. This concept is rooted in Qur'an Surah An-Nisa (4): 58, which commands leaders to govern with justice. (Idrus, 2021)

Within the framework of Indonesia's positive law, legal implementation must align with the objectives of the state. Therefore, the formulation of laws must be grounded in several fundamental considerations, including: (Mochtar, 2022):

- 1) The national aspiration envisions the creation of a society characterized by justice and prosperity.
- 2) Legal development must be directed toward realizing the nation's fundamental objectives.
- 3) The law must be founded upon the principles and values embedded in Pancasila, the ideological basis of the state.
- 4) It must serve to safeguard the rights and interests of all components of the nation.

Indonesian law includes provisions regarding the right to work. This is stated in the 1945 Constitution, specifically Article 27 paragraph (2), which states, "Every citizen has the right to work and a decent life for humanity." Based on this regulation, the right of every citizen to work is one of the human rights that must be protected, implemented, and complied with as the government's responsibility.

As mentioned above, becoming a domestic worker is not the main choice, usually those who choose to work as domestic workers are motivated by various factors such as poverty, low levels of education and biased policies, so in this case the government must be present through a comprehensive policy

on the protection of domestic workers to guarantee justice for every human being amidst the many cases of discrimination, harassment, violence, and delays in salary payments to domestic workers.

According to John Rawls' theory, justice is achieved by treating all parties equally and impartially. Therefore, when the government, as a policy maker, identifies a legal vacuum and instances of injustice, such as those affecting domestic workers, it must formulate policies that regard both the wealthy and the poor, the educated and the uneducated, as having equal rights and opportunities. This approach aligns with the principle of equality, ensuring that individuals from lower economic backgrounds can access more dignified employment, and that domestic work is recognized as a legitimate profession with legal status and protection.. (Yuanita, 2022)

To this day, from the perspective of justice both within the framework of *uqud al-khidmah* in Islamic thought and John Rawls' theory of justice, the rights of domestic workers have not been fully realized, and their position remains precarious. Domestic workers continue to face social stigma and are often perceived as occupying low-status roles, leading to their marginalization. In the current regulatory framework, references to domestic workers are still limited, as evidenced by the scarcity of specific mentions across the legal documents examined in this study. The Ministry of Manpower Regulation (Permenaker) No. 2 of 2015 on the Protection of Domestic Workers, for example, presents work contracts merely as optional. Consequently, many employers neglect the obligation to formalize agreements through written contracts. The lack of contractual protection often results in serious issues such as abuse, delayed wages, arbitrary dismissal, and child labor, persistent challenges that continue to affect domestic workers and remain inadequately addressed.

Justice, as articulated in both Islamic jurisprudence and positive law, represents the ultimate objective of legal systems that regulate every dimension of human life and aim to establish a just social order. To achieve this, it is imperative that a law specifically addressing the rights and protections of domestic workers be enacted without delay. This responsibility lies with the government, as mandated by the 1945 Constitution of Indonesia. The proposed Domestic Worker Law must include clear and comprehensive employment agreements that define the rights and responsibilities of both employers and workers. The urgency of implementing such regulations cannot be overstated. In addressing this legal vacuum, the incorporation of a fiqh-based approach may serve as a meaningful and culturally resonant foundation in the formulation of domestic worker legislation.

Comparative Study of Fiqh and Positive Law on Domestic Helpers

Based on the above study, it can be explained that there is an intersection between fiqh and positive law regarding domestic work.

Aspect	Fiqh	National Law
Contract	Using an ijarah bil 'amal contract	Generally unwritten and oral in nature
Worker Status	Recognized as a worker through an ijarah contract and guaranteed rights and obligations	Has not been clearly acknowledged in existing laws
Wages	Must be worthy and expedited based on the hadith of the Prophet	There is no minimum wage standard for domestic workers
Protection of Rights	Referring to the principles of Maqashid as-Syariah	Systematic protection has not yet been established
The role of the state	Obligation to protect vulnerable groups	The state continues to delay the ratification of the Domestic Workers Law, even after more than ten years

CONCLUSION

Fiqh provides a strong ethical and legal framework based on the maqāṣid al-syarī'ah (objectives of sharia), particularly the protection of life (ḥifẓ al-nafs) and property (ḥifẓ al-māl). By adopting a fiqh approach, the employment relationship between employers and domestic workers is positioned as equal and mutually beneficial. Furthermore, practices of exploitation, inadequate wages, or harassment can be categorized as violations of the law. The legal gap regarding domestic worker regulations must be addressed immediately, as the state has a responsibility to regulate and protect every domestic worker.

REFERENCES

- Ainun, F. (2023). *Nasib Pekerja Rumah Tangga Antara Resiko dan Kerja Layak*. Pusdeka Unu Jogja. <https://pusdeka.unu-jogja.ac.id/artikel/nasib-pekerja-rumah-tangga-antara-risiko-dan-kerja-layak/>
- BBC News Indonesia. (2020). *"Tangis" PRT di tengah pandemi Covid-19: Dipecat lewat WhatsApp, tidak dapat pesangon dan bertahan dalam lilitan utang*.
- CNN Indonesia. (2023). *Koalisi Sipil Sebut Setiap Hari 11 PRT Jadi Korban Kekerasan*. <https://www.cnnindonesia.com/nasional/20230212130535-20-912015/koalisi-sipil-sebut-setiap-hari-11-prt-jadi-korban-kekerasan>
- Dis. (2022). *ART Disiksa Majikan di Jaksel, Dipaksa Makan Kotoran Anjing*. CNN

Indonesia.

Efendi, J., & Ibrahim, J. (2020). *Metode Penelitian Hukum Normatif dan Empiris*. Kencana.

Fakhrudin, A. (2023). Sistem Ketenagakerjaan di Indonesia dalam Perspektif Hukum Islam. *Al-Qadiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, 20(1).

Gani, H. (2023). *Cerita Awal Mula ART KBB Bekerja hingga Berakhir Disiksa Majikan*. Detik Jabar.

Hidayati, I. N. N. (2017). *Pengupahan dalam Perspektif Hukum Islam dan Hukum Positif*. <https://ejournal.uin-suka.ac.id/syariah/azzarqa/article/view/1463/1272>

Hidayati, N. (2014). Perlindungan terhadap Pembantu Rumah Tangga (PRT) Menurut Permenaker No . 2 Tahun 2015. *Ragam Jurnal Pengembangan Humaniora*, 14(3), 213–217.

Idrus, A. M. (2021). Kebijakan negara dalam Perspektif Kaidah Fiqh : Tasarruf Al-Imam Manutun Bil Maslahah. *Ad-Daulah*, Vol. 10 No.

Idx Channel. (2022). *Gaji Pembantu Rumah Tangga Tahun 2022, sampai Rp2,5 Juta Per Bulan*.

Komnas Perempuan. (2021). *Kertas Posisi Rancangan Undang-Undang Pelindungan Pekerja Rumah Tangga, 2021 Penulis: Komnas Perempuan*.

Mochtar, Z. A. (2022). *Politik Hukum Pembentukan Undang-Undang*. EA books.

Nila Winarni, L. (2018). Protection of Domestic Workers in Indonesian Legal System. *International Journal of Business, Economics and Law*, 15(5), 1–8.

Nola, F. L. (2012). Aspek Hukum Larangan Mempekerjakan PRT Anak. *Negara Hukum*, 3(2), 275–297.

Organisasi Perburuhan Internasional. (2006). *Peraturan tentang pekerja rumah tangga di Indonesia*.

Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 2 Tahun 2015 Tentang Perlindungan Pekerja Rumah Tangga (2015).

Pranoto, B. I. (2022). Perlindungan Hukum Bagi Pekerja Rumah Tangga di Indonesia. *Lex Renasaince No. 4, Vol. 7*, 745–762.

Sofiani, T. (2020). *Perlindungan Hukum Pekerja Rumah Tangga Berbasis Hak Konstitusional*. Deepublish.

Sofiani, T., Rahmawati, R., & Rismawati, S. D. (2006). Membangun Konsep Ideal Hubungan Kerja Antara Pekerja Rumah Tangga dan Berbasis Hak-Hak Buruh Dalam Islam. *Conference Proceedings: Annual International Conference on Islamic Studies (AICIS) XI*, 2381–2399.

Syamsidah, & Muhiddin, A. (2022). *Pembantu Rumah Tangga Suatu Kajian Sosiologis*.

Undang-Undang Dasar (1945).

Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak (2002).

Wati, B. E. (2014). Dimensi-Dimensi Perlindungan Hukum Bagi Pekerja Rumah Tangga Di era Industrialisasi. *Palastren*, 7(1), 163.

Yasirwan, Y., Ikhsan, M. H., & Dalimunthe, N. (2023). *Perlindungan Pekerja*

- Rumah Tangga (PRT) Melalui Kepastian Hukum di Indonesia dan Hukum Islam. *El-Qanuniy*, 9 Nomor 1, 48–63.
- Yuanita, A. C. (2022). Menelaah Konsep Keadilan Hukum Teori Keadilan John Rawls dalam Pemutusan Hubungan Kerja secara Sepihak terhadap Pekerja Migran Indonesia di Luar Negeri. *Interdisciplinary Journal on Law, Social Sciences and Humanities*, 3(2), 130.
<https://doi.org/10.19184/idx.v3i2.34553>
- Zuhaily, W. (2011). *Fiqh Islam Wa Adillatuhu Jilid 5*. Gema Insasni.