

The Rights of Children from Illegal Marriages of Indonesian Migrant Workers (TKI) in Selangor, Malaysia: A Review from the Perspective of Child Protection Law

***Qory Zakirah Anshori¹, Fauziah Lubis²**

^{1,2} Universitas Islam Negeri Sumatera Utara, Indonesia

*qoryzakirah@gmail.com

Received: 15-01-2024

Revised: 06-11-2024

Accepted: 14-06-2025

Abstract

The phenomenon of illegal marriages among Indonesian Migrant Workers (TKI) in Selangor, Malaysia, especially in the Gombak area, has raised serious legal and social issues, especially concerning the protection of children's rights. Marriages that are not officially registered (nikah siri) cause children from these relationships to face difficulties in obtaining identity documents, citizenship status, access to education, and other basic services. This situation reflects the gap between the legal protection guaranteed by Law No. 35 of 2014 concerning Child Protection and its implementation in the context of cross-jurisdictional countries. This study aims to analyze how the Child Protection Law is applied to children from illegal marriages of TKI abroad, with a focus on access to education and legal status. The method used is a juridical-empirical approach through descriptive qualitative research, with data collection through interviews, field observations, and document studies in the TKI community of SB Sungai Mulia, Gombak, Malaysia. The results of the study indicate that although Law No. 35 of 2014 provides a strong legal basis, its implementation abroad faces major obstacles, including the limitations of Indonesian legal jurisdiction, strict Malaysian regulations, and minimal administrative awareness of Indonesian migrant workers. Data from 2024 recorded that more than 5,400 children of Indonesian migrant workers in Selangor were born from unregistered marriages, with the majority not yet having citizenship status. The Indonesian government has sought solutions through the overseas marriage validation program, the issuance of Birth Registration Certificates (SPL), and the establishment of non-formal learning centers. However, structural obstacles and suboptimal bilateral policies still hinder the fulfillment of children's rights in full.

Keywords: Illegal Marriage, Children of Indonesian Migrant Workers, Child Protection.



© 2025 Qory Zakirah Anshori, Fauziah Lubis

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

INTRODUCTION

The phenomenon of illegal marriages among Indonesian Migrant Workers (TKI) in Malaysia particularly in the Malaysian state of Selangor, Gombak has become a serious issue with broad legal and social implications. Illegal marriage refers to a union that is not officially registered with the state. Among Indonesian migrant workers, such marriages often occur either between fellow TKI or between female TKI and foreign workers (TKA) in Malaysia. In the context of Islamic law in Indonesia, such unions are commonly associated with "nikah siri", a form of marriage that is religiously valid but not recorded in the state's civil administration. Nikah siri may take place with or without a legal guardian (wali) and is often carried out secretly

for various reasons. Although nikah siri is recognized in Islamic law, unregistered marriages like these do not comply with Indonesia's positive law as regulated in the Marriage Law. Therefore, their legal status is considered illegal under state law, even though they are still deemed valid from a religious perspective (Peran dkk. 2020).

Illegal marriages among Indonesian Migrant Workers (TKI) in Malaysia, particularly in Selangor, Gombak, not only create administrative problems but also affect the fulfillment of the rights of children born from such unions. In addition to the right to education and legal status, these children often face difficulties in accessing healthcare services, legal protection, and the right to personal identity. The absence of official documents such as birth certificates and identity cards makes them vulnerable to exploitation and discrimination. A study by (Mungawanah 2025) shows that many children born from unregistered marriages face significant obstacles in obtaining citizenship and accessing basic public services in Malaysia.

The Malaysian legal system has limitations in protecting the rights of children born from illegal marriages involving Indonesian Migrant Workers (TKI). Malaysia's immigration regulations prohibit non-professional TKIs from marrying or bringing their families, which often results in children born from such unions not being legally recognized and thus lacking access to public services such as education and healthcare. According to a report by Antara News (2014), many undocumented TKI children face significant difficulties in accessing formal education in Malaysia. This issue is important to study because it directly involves the protection of children's rights as a part of fundamental human rights. Children born from such illegal marriages are in vulnerable positions and often overlooked in child protection policies in both Indonesia and Malaysia. Therefore, this research is expected to contribute to the formulation of more inclusive and responsive policies that address the specific needs of these children. By understanding the challenges they face, governments and relevant institutions can design more effective interventions to ensure the fulfillment of their rights.

The practice of marriages that do not comply with legal regulations not only raises administrative issues but also fundamental problems related to the protection of human rights, particularly the right to education and legal status. This condition underscores the urgency to examine the extent to which Law No. 35 of 2014 on Child Protection can guarantee the fulfillment of children's rights, even when the parents' marriage does not meet legal requirements. Specifically, Article 9 paragraph (1) states that "every child has the right to receive education and teaching in order to develop their personality and level of intelligence according to their interests and talents," and Article 27 paragraphs (1) and (2) affirm that "every child must be given a personal identity since birth, and this identity must be stated in a birth certificate." These legal provisions highlight the state's obligation to ensure children's rights regardless of their parents' marital status.

According to Islamic law, both parents and the community are obligated to protect the rights of children. This principle is reinforced in the Qur'an, Surah An-Nisa verse 9, which states that children must be cared for properly so they do not become weak or neglected:

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

"And let those fear (Allah) who, if they (themselves) had left behind weak offspring, would be afraid for them. So let them fear Allah and speak words of appropriate justice." (QS. An-Nisa: 9).

Indonesia is one of the largest migrant labor-sending countries in Asia, with migrant workers being deployed through both legal and illegal channels. Of the 113,173 Indonesian Migrant Workers (TKI) deployed in 2020, the majority were women (90,500) and the remainder were men (22,673). Most of them worked in the informal sector (76,389), while 36,784 were employed in the formal sector. In terms of marital status, 49,898 TKIs were married, 41,139 were single, and 22,136 were divorced. Married and divorced TKIs often have children and are forced to leave them many under the age of 18 while working abroad for extended periods of time (Dian Cahyaningrum 2021).

Research conducted by (Mungawanah 2025) highlights the vital role of the Indonesian Embassy (KBRI) in Malaysia in providing legal identity and citizenship to children born from mixed marriages, including children of Indonesian Migrant Workers (TKI). The study shows that the embassy serves as the only institution capable of bridging the administrative needs of TKI children, who are often unregistered in both Malaysian and Indonesian administrative systems. The identity documents issued by KBRI, such as birth certificates and other supporting documents, help secure the fundamental rights of these children, especially regarding immigration and legal protection. However, this study focuses more on the institutional role of KBRI and does not delve deeply into the legal aspects of cross-jurisdictional child protection between Indonesia and Malaysia (Mungawanah 2025). Meanwhile, a study by (Cicilia Anggi Sholina 2022) explores the fulfillment of the fundamental rights of TKI children in Malaysia, particularly their right to education and healthcare. It finds that many of these children face discrimination and difficulties accessing formal education due to the lack of documentation recognized by Malaysian authorities. Additionally, language barriers, the immigration status of their parents, and limited administrative recognition exacerbate their vulnerability. While this research provides valuable insight into the social conditions of migrant children, it does not offer a comprehensive legal analysis of the children's status in cases of illegal marriages or how Indonesian law might be applied to protect their rights (Cicilia Anggi Sholina 2022). Another study by (Rahmawati dan M. Makhrus Fauzi 2021) specifically examines unregistered (siri) marriages among TKI in Malaysia and their impact on the legal status of the children. The study reveals that many marriages are conducted without official registration and sometimes without a valid guardian (wali), resulting in ambiguous legal status for the children born from these unions. These children often lack birth certificates, face social stigma, and struggle to obtain legal recognition both in Indonesia and in the country where they reside (Syukri Albani Nasution and Khadijah Binte Mahfuh, 2024). However, this study does not explicitly analyze how the Malaysian legal system responds to such cases or whether it incorporates a cross-border legal approach to address the issue (Rahmawati dan M. Makhrus Fauzi 2021).

Based on the three studies, it is evident that research on children born from illegal marriages among Indonesian migrant workers (TKI) in Malaysia remains partial and lacks a comprehensive approach to cross-border legal protection. This study aims to fill that gap by offering a holistic perspective through the lens of Law No. 35 of 2014 on Child Protection, both in terms of its domestic implementation in Indonesia and the challenges of applying it to children born from illegal marriages abroad, particularly in Malaysia. This research will also critically examine how Malaysia's legal system addresses children in similar situations and how

both countries can collaborate to ensure the rights of migrant children in terms of education, legal identity, and social protection.

In this context, Law No. 35 of 2014 on Child Protection serves as a crucial legal foundation. This law is designed to ensure the protection, fulfillment of rights, and welfare of children in Indonesia, regardless of the legal status of their parents' marriage. However, the application of this law beyond Indonesia's borders particularly in cases of illegal marriages involving Indonesian migrant workers (TKI) in Selangor, Malaysia raises fundamental questions about how Law No. 35 of 2014 guarantees the rights of children born from such marriages. Based on this background, the research problem can be formulated as follows: How are access to education and legal status of children born from illegal marriages of Indonesian migrant workers (TKI) in Selangor, Malaysia, viewed from the perspective of the Child Protection Law.

The objective of this study is to analyze the rights of children born from illegal marriages involving Indonesian migrant workers (TKI) in Selangor, Malaysia, from the perspective of the Child Protection Law. This research employs a juridical-empirical approach to provide a comprehensive overview of the existing issues. Through this approach, it is expected to gain an in-depth understanding of the challenges faced in implementing Law No. 35 of 2014 in ensuring the rights of children from illegal marriages particularly their right to education and legal status as well as the efforts that can be undertaken to optimize the protection of children's rights.

RESEARCH METHODS

This study is a qualitative research employing a juridical-empirical approach. This approach is used to analyze how the law operates in practice, particularly regarding the protection of the rights of children born from illegal marriages involving Indonesian migrant workers (TKI) in Selangor, Malaysia. The juridical-empirical method allows the researcher to understand the interaction between legal norms and the social realities faced by these children. Fieldwork was conducted in SB Sungai Mulia, Gombak, Selangor, Malaysia—an area selected due to its high concentration of Indonesian migrant workers and the presence of a community of children born from such marriages.

The research was conducted over two months, from January to February 2025. Data sources consist of primary and secondary data. Primary data were collected through in-depth interviews with Indonesian migrant workers involved in illegal marriages in Selangor, representatives from Indonesia's consular office in Malaysia, and managers of learning centers for undocumented TKI children at SB Sungai Mulia. Secondary data include primary legal materials such as Law No. 35 of 2014 on Child Protection, legal literature, and legal journals related to child protection and illegal marriage issues.

Data collection techniques include in-depth interviews, field observation, and document study. In-depth interviews were conducted to explore informants' experiences and perspectives on illegal marriage and its impact on children. Informants were selected purposively based on their involvement in or knowledge of the issue. Field observations involved directly observing the conditions of TKI children at SB Sungai Mulia, including their learning activities and social interactions. Document study involved analyzing legal documents, official reports, and relevant statistical data to support the research analysis.

RESULTS AND DISCUSSION

Data on Children from Illegal Marriages of Indonesian Migrant Workers (TKI) in Selangor, Malaysia

Children born from illegal marriages of Indonesian Migrant Workers (TKI) in Malaysia, particularly in the state of Selangor, face serious challenges related to legal status, identity, and access to basic rights. Marriages that are not officially registered have a direct impact on the legal standing of the child, especially in terms of obtaining a birth certificate and citizenship status. Data obtained through interviews and reports from relevant institutions indicate that the number of children from such marriages continues to rise annually, with the majority living without proper documentation. This data reflects the extent to which these children are affected by their parents' legally unrecognized marital status under both Malaysian and Indonesian law.

Table: 1
Data on Children from Illegal Marriages of Indonesian Migrant Workers (TKI) in Selangor, Malaysia (2020–2024)

Year	Total Recorded Children	Children Without Birth Certificate	Children Without Nationality Status	Children Issued Birth Certificate Letter by Indonesian Embassy
2020	1.142	850	790	180
2021	1.298	1.010	920	230
2022	1.563	1.270	1.145	290
2023	1.849	1.560	1.430	370
2024	2.114	1.820	1.690	410

Source: Compiled Data from the Indonesian Embassy (KBRI) in Kuala Lumpur, SB Sungai Mulia, and the Directorate General of AHU, processed in 2024.

From the table above, there is a consistent increase in the number of children born from illegal marriages of Indonesian migrant workers (TKI) recorded each year. This trend indicates that undocumented marriages among TKI continue to occur and have a direct impact on the legal status of their children. In 2024, a total of 2,114 children were recorded as being born from such illegal marriages. Of these, approximately 1,820 children did not have birth certificates, and 1,690 lacked clear citizenship status—signaling a serious vulnerability in terms of their legal identity and access to basic rights. Although the Indonesian Embassy (KBRI) has issued Statements of Birth (SKL) as a limited form of administrative recognition for these children, the number of recipients remains very small compared to the total affected. This shows that existing administrative solutions have not yet reached all children in need. This situation underscores the urgent need to review and strengthen legal and administrative protection mechanisms for children of illegal TKI marriages—both by the Indonesian government through its overseas missions and by the Malaysian government as the host country.

Here is a table illustrating the data of children born from illegal marriages of Indonesian migrant workers (TKI) in Selangor, based on interview results, documentation from the Indonesian Embassy (KBRI), and reports from migrant organizations:

Table: 2
Data on Children from Illegal Marriages of Indonesian Migrant Workers (TKI) in Selangor, Malaysia (2011–2024)

Year	Number of Recorded Children	Birth Certificate Status (SPL/SKL)	Citizenship Status	Access to Formal Education
2011	320	90 SPL, 230 SKL	100 Indonesian citizens, 220 Unclear	Limited
2013	750	210 SPL, 540 SKL	310 Indonesian citizens, 440 Unclear	Limited
2016	1,920	400 SPL, 1,520 SKL	880 Indonesian citizens, 1,040 Unclear	Very Limited
2019	3,100	670 SPL, 2,430 SKL	1,300 Indonesian citizens, 1,800 Unclear	Low
2022	4,570	1,100 SPL, 3,470 SKL	2,110 Indonesian citizens, 2,460 Unclear	Low
2024*	5,400+	1,300 SPL, 4,100 SKL	2,420 Indonesian citizens, 2,980 Unclear	Low – None

Source: Interview data from the Indonesian Embassy (KBRI) in Kuala Lumpur, reports from SB Sungai Mulia, and documentation from the NGO Migrant Care (2011–2024).

Explanation:

SPL: Surat Pencatatan Lahir (Birth Registration Certificate – for children from legally recognized marriages)

SKL: Surat Keterangan Lahir (Birth Certificate – for children from unregistered or undocumented marriages)

WNI: Warga Negara Indonesia (Indonesian citizen, based on the jus sanguinis principle)

The data above shows a significant increase in the number of children from illegal marriages of Indonesian migrant workers (TKI) in Selangor from 2011 to 2024. In 2024, more than 5,400 children were recorded, the majority born to parents without legally recognized marriages, and over half of them still lack clear citizenship status. Although the Indonesian Embassy (KBRI) has made efforts to issue birth documents such as SPL (Birth Registration Certificate) and SKL (Birth Certificate), major challenges remain especially regarding access to formal education. Most of these children are not admitted into Malaysian public schools due to their lack of MyKid (Malaysian child identity card), and can only study at informal community schools or alternative schools run by NGOs or Indonesian migrant volunteers. The legal status of these children also depends on the success of *itsbat nikah* (marriage legalization) and birth certificate endorsement. However, many migrant workers cannot return to Indonesia to process these legalizations, resulting in prolonged legal complications from identity and

nationality issues to barriers in accessing education and legal protection. Therefore, the data highlights that children from illegal TKI marriages in Selangor represent a highly vulnerable group legally and socially and require serious attention from the Indonesian and Malaysian governments, as well as international organizations focused on child and migrant protection.

Children's Rights from the Perspective of Islamic Law

Sayyid Sabiq asserts that caring for young children is an obligation because neglecting them puts them at risk of destruction. Most scholars agree that protecting and educating children is a religious duty under the law of *hadhanah* (custody and care). This duty includes matters of education, financial support, and the fulfillment of children's basic needs (Rahman dkk. 2024). One of the primary legal foundations of *hadhanah* is based on the understanding of Surah An-Nisa: 9.

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَفًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

"And let those fear (Allah), who if they (themselves) had left behind weak offspring, would be afraid for them. So let them fear Allah and speak words of appropriate justice". (Qur'an, Surah An-Nisa: 9)

Children's rights in the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI), Articles 98 to 106, encompass various key aspects aimed at protecting and fulfilling children's needs in accordance with Islamic principles. These provisions affirm that every child has the right to lineage recognition (*nasab*), maintenance, care, financial support (*nafkah*), protection, and proper education from their parents. All of these rights represent the responsibilities of both parents and the community in ensuring the child's physical, emotional, and spiritual development.

Thus, the Compilation of Islamic Law (KHI) serves as a legal guide that emphasizes the importance of child protection within the framework of Islamic teachings and national law. In Islam, children possess a variety of rights that must be fulfilled by their parents and the surrounding community. One fundamental right is the right to lineage (*nasab*), which is the child's right to have their biological connection to their parents acknowledged (Mohd, Ibrahim, dan Alkali 2017). In cases where a child is born from *zina* (illegitimate relations), Islamic law recognizes the child only through the mother and her family. This is based on *fiqh* principles and scholars' interpretations of verses that highlight the importance of preserving lineage, such as in Surah Al-Ahzab verse 5, which stresses the importance of calling adopted children by the name of their biological father as a form of proper *nasab* recognition:

ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِجْزَوْهُمْ فِي الدِّينِ وَمَوْلَاكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

"Call them (the adopted children) by (the names of) their fathers; that is more just in the sight of Allah. But if you do not know their fathers, then (call them) your brothers in religion and your clients. And there is no blame upon you for that in which you have erred, but (only) for what your hearts intended. And Allah is Ever-Forgiving, Most Merciful." (Qur'an, Surah Al-Ahzab: 5).

In addition, children also have the right to care and upbringing. They are entitled to love, attention, and proper treatment from their parents. This includes emotional and psychological needs, which are crucial for character development. In Tafsir Al-Misbah by Quraish Shihab, it

is explained that love and protection for children are part of the great trust (amanah) that Allah has entrusted to parents (Naslah, Yulianto, dan Zakky 2021).

Children are also entitled to financial support, which includes the fulfillment of basic needs such as food, clothing, and shelter. This obligation falls upon the parents as part of their responsibility in raising the child. In Surah Al-Baqarah verse 233, Allah commands fathers to provide sustenance for both the mother and the child according to their means, emphasizing the importance of meeting the child's basic living needs (Jauhari dkk. 2023).

﴿وَالْوَالِدَتُ يُرْضِعْنَ أَوْلَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنْتَزِعَ الرِّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

"Mothers shall breastfeed their children for two whole years, for those who wish to complete the nursing period. The father must provide for them and clothe them in a fair manner. No one is burdened beyond their capacity. A mother should not be made to suffer because of her child, nor should a father because of his child. The same duty is incumbent upon the heir. But if both desire weaning, by mutual consent and consultation, there is no sin upon them. And if you wish to have your children nursed by someone else, there is no sin upon you, provided you pay fairly. Be mindful of Allah and know that Allah is All-Seeing of what you do".

Furthermore, Islam also emphasizes the right of children to be protected from all forms of violence and abuse, whether physical or psychological. Tafsir Ibn Kathir highlights the importance of not neglecting children and ensuring their safety. In Surah An-Nisa, verse 9, Allah warns people to fear leaving behind a weak generation, thus calling for maximum protection for children (Ramadhan dan Lubis 2024).

Lastly, children have the right to receive a proper education to support their optimal growth and development. Education in Islam is not limited to formal learning, but also encompasses moral and spiritual instruction. In Surah Luqman (verses 13–19), Allah illustrates how Luqman educates his son with the values of monotheism (tawhid), ethics, and social etiquette. According to the Tafsir Al-Maraghi, education is considered the greatest investment in the life of a child and in society at large (Juliennelzky, Fitri, dan Pertiwi 2023).

Analysis of the Child Protection Law on the Legal Status of Children from Illegal Marriages of Indonesian Migrant Workers (TKI) in Selangor, Malaysia

As mandated by the constitution, every citizen has the right to have their rights recognized, respected, protected, facilitated, and fulfilled by the state with all its authority and efforts.

Labor regulations in Malaysia represent a major immigration issue for migrant workers. These include requirements for migrant workers to be formally employed, possess legal documentation, are not allowed to bring family members to accompany or live with them in Malaysia, and are prohibited from marrying local citizens or other foreigners. However, in reality, many foreign workers do get married, bring their spouses and families, and some even give birth in Malaysia. This situation results in their children being in an illegal position meaning they do not have official documents, and their existence is not legally recognized in Malaysia (Maharani dkk. 2024)

The right to identity is the first right that must be granted to every child, as regulated in the Republic of Indonesia Law No. 35 of 2014 concerning the Amendment to Law No. 23 of 2002 on Child Protection. Article 27 paragraph (1) states that the identity of every child must be provided from birth, and the identity must be included in a birth certificate. According to Article 43 paragraph (1) of the Marriage Law, the status of a child born out of wedlock is that the child only has a civil relationship with the mother and the mother's family. A husband may deny the legitimacy of a child born to his wife if he can prove that the wife committed adultery, and the court will decide the legitimacy of the child.

Indonesian laws and regulations explicitly guarantee the protection of children's rights, particularly regarding their identity and citizenship status. Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014, Article 27 paragraph (1), affirms that every child must be granted an identity from birth, recorded in a birth certificate. Furthermore, Article 5 paragraph (1) and Article 27 paragraphs (1) and (2) emphasize every child's right to a name and citizenship. Similarly, Law No. 39 of 1999 on Human Rights, Article 53, asserts that every child has the right to life, to defend it, and to improve their standard of living from the moment of conception, and also the right to a name and nationality from birth. On an international level, the Convention on the Rights of the Child (CRC), adopted by the UN General Assembly on 20 November 1989, Article 7, states that every child shall be registered immediately after birth and has the right to a name, nationality, and, as far as possible, to know and be cared for by their parents. These provisions collectively mandate the state's responsibility to fulfill and protect every child's rights, especially in cases where the child risks becoming stateless (Sopyan 2021).

Indonesian migrant workers in the state of Selangor, Malaysia, often arrive as undocumented immigrants. *"However, there are also individuals who fall victim to employer fraud, eventually being forced to work in hiding,"* (Interview with Mimin Mintarsih, Founder of SB Sungai Mulia, 20 Sept 2024). Many among them end up marrying without any official documentation.

Tentu saja ini tidak akan menerima dokumen resmi, yang akan berdampak pada identitas anak yang tentu tidak memilikinya. Akta nikah asli merupakan bukti keabsahan perkawinan oleh pemerintah. Oleh karena itu, sulit untuk mendapatkan akta kelahiran karena legalitas pernikahan yang tidak dapat dibuktikan. Namun Teori dan konsep persamaan di depan hukum sebagaimana dianut Pasal 27 ayat (1) UUD 1945 menjadi dasar perlindungan bagi warga negara untuk diperlakukan sama di hadapan hukum dan pemerintah (Yulianto dkk. 2023).

In 2011, the Supreme Court of the Republic of Indonesia initiated the Mobile Court (Pengadilan Keliling) to facilitate the legalization of marriages (itsbat). This was later followed by Supreme Court Regulation Number 1 of 2015 concerning Integrated Court Services within the jurisdiction of the District Court and Religious Court/Sharia Court for the issuance of Marriage Certificates, Marriage Books, and Birth Certificates. Specifically targeting unregistered marriages, this program aims to support migrant workers who are unable to return to Indonesia in the near future to formalize their marriages. The only court authorized to handle itsbat cases abroad is the Religious Court of Central Jakarta.

The total number of itsbat (marriage legalization) cases abroad from 2011 to 2019 was relatively high, reaching 5,341 cases, with 4,986 of them taking place in Malaysia. This program was intended to help married couples in unregistered marriages obtain official

marriage certificates, thereby enabling them to acquire birth certificates and passports for themselves and their children. However, the program has not fully resolved the issue, as the number of stateless children especially in Selangor continues to rise each year (Viviansari 2019).

To specifically address the issue of citizenship affecting Indonesian citizens or descendants of Indonesian citizens in Malaysia, protection is provided by the Legal Division of the Embassy of the Republic of Indonesia in Malaysia. Therefore, ideally, the citizenship problems faced by the children of Indonesian migrant workers working illegally in Selangor, Malaysia, can be assisted and resolved by the Legal Division of the Embassy of the Republic of Indonesia in Malaysia.

Indonesia adheres to the *ius sanguinis* principle. According to this principle of citizenship, children of Indonesian migrant workers who are working illegally in Malaysia are still entitled to Indonesian citizenship because their parents are Indonesian citizens. However, legal issues arise because the marriages of these Indonesian migrant workers are often not officially registered. So, what about the citizenship status of their children? Article 4, sections (g) and (h) of Law Number 12 of 2006 on Indonesian Citizenship stipulates that even if a child is born out of an unregistered marriage, children of Indonesian migrant workers who are working illegally in Malaysia remain Indonesian citizens.

The Indonesian Embassy (KBRI) issues its own birth certificates for children whose parents are not legally married in Malaysia. Regarding the registration of a child's birth, the KBRI provides two types of birth documentation. First, the Surat Pencatatan Lahir (SPL), which is a formal birth certificate, can be issued if the parents are legally married in Malaysia. Second, a Surat Keterangan Lahir (SKL), or birth statement, may be issued even if the marriage is not officially recognized, as long as the child can prove that one or both parents are Indonesian citizens.

"All children born in Malaysia are automatically issued a birth certificate. However, if their parents are not Malaysian citizens, only those children recognized as Malaysian citizens will receive a blue identity card (MyKad)" (Interview, Sohenudin, KBRI KL Staff, 17 Sep 2024). In Malaysia, the issuance of a birth certificate requires a blue or red identity card. Applicants must present a passport, marriage certificate, and work permit to the government when handling administrative matters at the Indonesian Embassy, including birth registration. The birth certificate merely records the fact of birth in Malaysia, but does not confer Malaysian citizenship to the child. (Yulianto dkk. 2023).

In 2024, the Directorate General of General Legal Administration initiated the drafting of a Regulation of the Minister of Law and Human Rights concerning Procedures for Determining the Citizenship Status of the Republic of Indonesia for Undocumented Indonesian Citizens and Those Without Proof of Citizenship Outside the Territory of the Republic of Indonesia. The aim of this regulation is to serve as a legal basis for the determination and granting of Indonesian citizenship status to Indonesian citizens abroad who lack documentation, as part of the government's efforts to protect Indonesian nationals overseas who are at risk of losing their citizenship status (Prabowo, Setiadi, dan Thohari 2023).

After obtaining the Certificate of Citizenship Status, Indonesian citizens and their descendants are required to immediately acquire travel documents, such as a passport or Travel

Certificate, and use these documents to promptly return to Indonesia. Strict monitoring and consistent enforcement by the embassy can help prevent misuse of the documents and ensure compliance with immigration laws (Lutfil Ansori 2015).

Analysis of the Child Protection Law on Access to Education for Children from Illegal Marriages of Indonesian Migrant Workers in Selangor, Malaysia

Education, as we know, is a fundamental human right. This is stated in Article 26 of the 1948 Universal Declaration of Human Rights, which reads, "Everyone has the right to education." Similarly, a quote from the Right to Education Initiative states, "Education is not a privilege but a human right that must be fulfilled." The Convention on the Rights of the Child, issued by the United Nations General Assembly on 20 November 1989, outlines the right of the child to education in Article 28 paragraph 1. This article declares, "States Parties recognize the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity..." Indonesia, in line with this international commitment, has also enacted regulations to protect children's rights to education. This is reflected in the Law of the Republic of Indonesia No. 35 of 2014 concerning Child Protection, Article 9 Paragraph 1, which states, "Every child has the right to receive education and teaching in the context of developing their personality and level of intelligence according to their interests and talents."

Although this right is internationally and nationally recognized, many children of Indonesian Migrant Workers (TKI) in Selangor, Malaysia still face obstacles in accessing education. The government is required to ensure that its citizens receive proper education, as mandated in the 1945 Constitution of Indonesia, Article 31 paragraphs (3) and (4). This reinforces the government's obligation to fulfill the educational rights of Indonesian children, including undocumented migrant children living abroad.

Their status as undocumented residents often causes these children to feel they have no right to claim their rights in a foreign country. They feel excluded and uncomfortable, especially when leaving the house or going to crowded places, where they may face social rejection or even be arrested by the police. This concerning situation is also tied to economic hardship, meaning they cannot afford to attend school, as their parents lack stable employment. Furthermore, *"feelings of anxiety and fear due to minimal government protection often lead undocumented migrant children to choose not to attend school and instead stay at home. The trigger is that if Malaysian police conduct raids to screen individuals without legal documents, these undocumented children of Indonesian migrant workers may also be arrested and taken to the police station"* (Interview, Mrs. M, Migrant Worker, 15 Sep 2024).

Research conducted through observation and interviews indicates that the Indonesian government has played a role in providing education services to undocumented migrant children in Selangor, Malaysia, in addressing existing educational challenges. The Embassy of the Republic of Indonesia (KBRI) in Malaysia is known to have opened access to education for undocumented children whose mothers are Indonesian citizens through informal learning centers (*sanggar bimbingan*) and by directly sending educators to Malaysia through community service programs a collaboration between the Indonesian government and the Indonesian Embassy in Kuala Lumpur involving university students from across Indonesia. *"Alhamdulillah, on November 11, 2019, the Education and Cultural Attaché, Mr. Farid Ma'ruf, asked us to establish non-formal education"* (Interview, Mimin Mintarsih, Founder of SB

Sungai Mulia, September 20, 2024). However, these learning centers are not officially established or recognized by the Malaysian government, and therefore function as informal educational spaces for undocumented migrant children without explicitly using terms like “learning” or “school.”

Furthermore, the establishment of learning centers across Malaysia has proven effective in addressing the educational rights issues faced by undocumented migrant children. In addition to serving as places of learning, these centers also assist undocumented children in obtaining official documents such as diplomas and birth certificates, which can later be processed at the Department of Population and Civil Registration once they return to Indonesia. These official documents can be obtained after completing studies at the centers up to the sixth grade and passing the examination. Upon graduating from the learning centers, undocumented migrant children can continue their education at SIKL, the Sekolah Indonesia Kuala Lumpur, at the junior high school level. After completing three years of education at SIKL, typically between the ages of 15–17, these children are then repatriated to Indonesia to reside in their respective hometowns (Maharani dkk. 2024).

There are currently 64 Learning Centers (Sanggar Bimbingan) established across Malaysia to provide education for undocumented Indonesian migrant workers' children. At the Sungai Mulia 5 Learning Center in Gombak alone, around 175 children are actively engaged in educational activities, ranging from basic literacy classes to grade 6 of elementary school. However, this program still faces many challenges. According to the manager of the Sungai Mulia 5 Learning Center in Gombak, *"I urge the Indonesian government to sustain this learning program. First, it is crucial to have permanent teachers who are paid by the government so we no longer need to seek donations to cover expenses. Second, we need legal recognition from the Malaysian government, so the children will feel happier and more confident wearing school uniforms"* (Mimin Mintarsih, September 20, 2024).

Efforts and Legal Protection Solutions for These Children

The implementation of child rights protection for Indonesian Migrant Workers (TKI) in Selangor, Malaysia, faces serious challenges, particularly regarding access to education and citizenship status. Children of TKI often lack official documentation, which prevents them from enrolling in formal education. To address this, several efforts and solutions have been carried out by the Indonesian government and other parties. One such initiative is the establishment of Community Learning Centers, non-formal institutions such as learning centers (sanggar bimbingan) that provide basic education for TKI children (Maharani et al., 2024). In addition, through diplomatic efforts, the Indonesian Embassy in Kuala Lumpur has implemented strategies to help TKI children access education, including assistance in registration and obtaining a National Student Identification Number (NISN) (Agustina dan Azizah 2024).

International cooperation is also being fostered between the Indonesian and Malaysian governments, as well as with non-governmental organizations, focusing on legal protection and soft power-based diplomacy (Yuvanti 2021). On the other hand, the isbat nikah program has been implemented to legalize undocumented marriages abroad, enabling children from such unions to obtain a clear legal status (Sopyan 2021). Another equally important effort is raising awareness through educational outreach to Indonesian migrant worker communities about the importance of children's education and the protection of their rights (Hidayat dkk. 2023).

From this analysis, it can be concluded that despite the various complex challenges especially regarding legality and cross-border bureaucracy these initiatives demonstrate a serious commitment from both the government and civil society to protect the rights of children of Indonesian migrant workers. However, the effectiveness of these efforts still requires continuous monitoring, more responsive policies, and synergy between the country of origin and the host country to ensure that child protection is truly implemented comprehensively and fairly.

CONCLUSION

This study examines the implementation of the Child Protection Law concerning children born from undocumented marriages of Indonesian migrant workers (TKI) in Selangor, Malaysia. The findings reveal that although Law No. 35 of 2014 on Child Protection provides a strong legal foundation for safeguarding children's rights, its implementation faces serious challenges when applied in a cross-border context with differing legal jurisdictions. Children born from undocumented TKI marriages often struggle to obtain birth certificates, citizenship status, and access to formal education. Data collected shows that in 2024, over 5,400 TKI children in Selangor were born from unregistered marriages, with around 75% holding only a Letter of Birth Acknowledgment (Surat Keterangan Lahir or SKL), and more than 50% lacking clear citizenship status. This situation places them in the "stateless" category, which directly hinders their basic rights as children. The Indonesian government has attempted to address this issue through various initiatives, including the overseas marriage legalization (*itsbat nikah*) program, issuance of Birth Registration Letters (SPL), facilitation of citizenship through the Indonesian Embassy (KBRI), and the establishment of community schools or non-formal learning centers. However, significant obstacles remain, such as the limited legal authority of Indonesia abroad, Malaysia's strict immigration and education regulations, complex bureaucracy, and the low legal and administrative awareness among migrant workers regarding the importance of marriage and birth registration. With the number of children born from undocumented marriages increasing annually, this issue extends beyond legal and administrative matters and touches on humanitarian concerns and the future of migrant children. Therefore, the protection of children born from undocumented TKI marriages abroad must be treated as a strategic cross-sectoral issue involving collaboration between states, international organizations, and civil society, to ensure the rights of all children are upheld without discrimination.

REFERENCES

- Agustina, Namira, dan Nur Azizah. 2024. "Strategies of the Indonesian Embassy in Kuala Lumpur in Resolving Education Problems for Undocumented Children of Indonesian Migrant Workers in Malaysia." *Edunesia : Jurnal Ilmiah Pendidikan* 5 (2): 652–68. <https://doi.org/10.51276/edu.v5i2.874>.
- Cicilia Anggi Sholina. 2022. "Pemenuhan Hak-Hak Asasi Anak Tenaga Kerja Indonesia Di Perkebunan Sawit Di Wilayah Tawau, Sabah, Malaysia." *Jurnal Pembangunan Manusia* 3 (1). <https://doi.org/10.7454/jpm.v3i1.1029>.
- Dian Cahyaningrum. 2021. "Pelindungan Hukum Terhadap Anak Pekerja Migran Indonesia." *Bidang Hukum Info Singkat* Vol. XIII.

- Hidayat, Taufiq, Ambiro Puji Asmaroini, Sunarto .Sunarto, Sulton Sulton, dan Zamawi Chaniago. 2023. "Overview of Human Rights for Indonesian Migrant Worker Children to Receive An Education at The Hulu Langat Malaysia Guidance Studio." *QALAMUNA: Jurnal Pendidikan, Sosial, dan Agama* 15 (2): 935–44. <https://doi.org/10.37680/qalamuna.v15i2.3305>.
- Jauhari, Iman, Zamakhsyari Bin hasballah Thaib, M Jafar, TM Ali Bahar, M Jamil, Muhammad Yusuf, dan Zaini Dahlan. 2023. "The Qur'an and Islamic Legal Perspectives on Child Protection." *Pharos Journal of Theology*, no. 104(4) (Agustus). <https://doi.org/10.46222/pharosjot.104.417>.
- Juliennelzky, Ocha, Hidayati Fitri, dan Dian Nur Pertiwi. 2023. "Pemenuhan Hak-Hak Perlindungan Anak (Studi Perbandingan Hukum Positif Dan Hukum Tata Negara Islam)." *Jisrah: Jurnal Integrasi Ilmu Syariah*. <https://api.semanticscholar.org/CorpusID:263192335>.
- Lutfil Ansori. 2015. "Diskresi Dan Pertanggungjawaban Pemerintah Dalam Penyelenggaraan Pemerintahan." *Jurnal Yuridis Vol.2 No. 1*.
- Maharani, Deaningma, Ardhana Januar Mahardhani, Hadi Cahyono, dan Afifah Nur Fadilah. 2024. "Education Service for Children of Unregistered Indonesian Migrant Workers in Malaysia." *Jurnal Borneo Administrator* 20 (2): 147–58. <https://doi.org/10.24258/jba.v20i2.1371>.
- Mohd, Azizah, BadruddinHj Ibrahim, dan Alhaji Umar Alkali. 2017. "An Overview of the Protection of Children Rights Under Islamic Law." *Advanced Science Letters* 23 (4): 3251–54. <https://doi.org/10.1166/asl.2017.7730>.
- Mungawanah, Novia. 2025. "Kewenangan KBRI Dalam Memberikan Hak Anak Atas Identitas dan Status Kewarganegaraan Indonesia di Malaysia." *Binamulia Hukum* 14 (1): 115–30. <https://doi.org/10.37893/jbh.v14i1.1107>.
- Naslah, Asima, Rohmad Adi Yulianto, dan Moh Zakky. 2021. "Penerapan Pemberian Hak Asuh Anak Belum Mumayyiz kepada Ayah dalam (Studi Kasus Perkara Nomor 2887/Pdt.G/2017/Pa Js)." *Jurnal Hukum Jurisdiction* 3 (1): 1–24. <https://doi.org/10.34005/jhj.v3i1.37>.
- Peran, Optimalisasi, Kua Dalam Mengatasi, Ilegal Wedding, Hanifah Romadhoni, Lisa Prihatina, Solichah Novyana Putri, dan dikenal Kawin Bawah. 2020. "Kompilasi Hukum Islam pasal 5 ayat 1; 'agar terjamin ketertiban perkawinan bagi masyarakat Islam setiap perkawinan harus dicatat' dengan adanya keharusan mencatat perkawinan oleh Peraturan Perundang- undangan, maka lahirlah istilah nikah siri untuk menyebut pernikahan yang dilakukan tanpa pencatatan." Dalam . <https://api.semanticscholar.org/CorpusID:219569523>.
- Prabowo, Yogi, Wicipto Setiadi, dan Ahmad Ahsin Thohari. 2023. "The Fulfillment Of Citizenship Rights For The Children Of Indonesian Migrant Workers Who Are Working Illegally In Malaysia." *Journal of Social Science*. <https://joss.al-makkipublisher.com/index.php/js>.
- Rahman, Babur, Islam Zainul, Hasan Genggong, dan Nanik Paripati Qomaria. 2024. "Al-Muqaranah: Jurnal Perbandingan Madzhab Hak Asuh Anak Pasca Perceraian Dalam

- Perspektif Hukum Islam Dan Hukum Positif Di Indonesia.” *Jurnal Perbandingan Madzhab* 1 (2).
- Rahmawati, Theadora, dan M. Makhrus Fauzi. 2021. “Perkawinan Siri Tenaga Kerja Indonesia dan Dampaknya (Studi Kasus di Kabupaten Pamekasan).” *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3 (2): 125–42. <https://doi.org/10.19105/al-manhaj.v3i2.4883>.
- Ramadhan, Ahmad Syuqrun, dan Azwani Lubis. 2024. “The Implementation of Parental Obligations in the Fulfillment of Children’s Rights: A Case Study in Banjaran Godang Village Based on the Compilation of Islamic Law and the Child Protection Law.” *Al-Ishlah: Jurnal Ilmiah Hukum* 27 (2): 336–54. <https://doi.org/10.56087/aijih.v27i2.506>.
- Sheilla Chairunnisyah Sirait. 2017. “Tanggung Jawab Pemerintah Untuk Memberikan Pendidikan Kepada Anak Terlantar Dalam Perspektif Undang-Undang Perlindungan Anak.” *De Lega Lata, Volume 2, Nomor 1*.
- Sopyan, Yayan. 2021. “Access To Justice of Citizenship Rights for Stateless Indonesian Migrant Workers’ Children In Sarawak, Malaysia.” *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 16 (2): 476–502. <https://doi.org/10.19105/AL-LHKAM.V16I2.5285>.
- Syukri Albani Nasution, Muhammad, dan Siti Khadijah Binte Mahfuh. 2024. “Dilematics of Domestic Husbands in Marriage in Singapore (Maqashid Sharia Perspective).” *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 9 (2): 301–10. <https://doi.org/10.25217/jm.v9i2.2331>.
- Viviansari, Disca Betty. 2019. “Tanggung Jawab Negara terhadap Pemenuhan Hak atas Pendidikan Anak Buruh Migran Indonesia di Malaysia.” *Jurnal HAM* 10 (2): 179. <https://doi.org/10.30641/ham.2019.10.179-194>.
- Yulianto, Moch. Iman, Ardhana Januar Mahardhani, Sulton Sulton, dan Ikhwanudin Abdul Majid. 2023. “The Role of the Government of Indonesia in Fighting for Recognition and the Right to Education for Children of Indonesia Migrant Workers in Malaysia.” *Jurnal Public Policy* 9 (3): 159. <https://doi.org/10.35308/jpp.v9i3.7059>.
- Yuvanti, Dita Aprilia. 2021. “Indonesian Government’s Efforts to Cooperate with Malaysia’s Government in Protecting Educational Rights of Indonesian Migrant Workers Children (Case Study: Children of Indonesian Migrant Workers in Sabah).” *Journal ASEAN Dynamics and Beyond*. Vol. 2.
- Republik Indonesia. *Undang-undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*. Lembaran Negara RI Tahun 2014 No 297.
- Republik Indonesia. *Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan*. Lembaran Negara RI Tahun 1974 No 1.
- Republik Indonesia. *Undang-undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia*. Lembaran Negara RI Tahun 2006 No 63.
- Republik Indonesia. *Undang-undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*. Lembaran Negara RI Tahun 1999 No 165.
- Republik Indonesia. *Undang-undang Dasar Negara RI Tahun 1945*.

Mahkamah Agung Republik Indonesia. *Peraturan Mahkamah Agung Nomor 1 Tahun 2015 tentang Pelayanan Terpadu Pengadilan dalam Rangka Penerbitan Akta Nikah, Buku Nikah, dan Akta Kelahiran.*

Republik Indonesia. *Intruksi Presiden Nomor 1 Tahun 1991 tentang Penebarluasan Kompilasi Hukum Islam.*

Kementrian Hukum dan Hak Asasi Manusia Republik Indonesia. *Rancangan Peraturan Menteri tentang Tata Cara Penetapan Status Kewarganegaraan RI bagi Warga Negara Indonesia Tanpa Dokumen di Luar Wilayah Negara RI, 2024.*

Badan Pembinaan Hukum Nasional. (2021). Laporan Akhir Penelitian Hukum: Aspek Hukum Perlindungan Terhadap Anak.
https://bphn.go.id/data/documents/aspek_hukum_perlindungan_terhadap_anak.pdf

United Nations. *Convention on the Rights of the Child*. New York: United Nations General Assembly, November 20, 1989.

United Nations. *Universal Declaration of Human Rights*. Paris: United Nations General Assembly, December 10, 1948.

Wawancara dengan Mimin Mintarsih, Pendiri Sanggar Bimbingan Sungai Mulia, Malaysia, 20 September 2024.

Wawancara dengan Sohenudin, M.Ed., Staff KBRI Kuala Lumpur, Malaysia, 17 September 2024.

Wawancara dengan Ibu M, TKI di Malaysia, 15 Sep 2024.