



THE INDONESIAN MIGRANT WORKERS IN THE SHACKLES OF AGAMBEN'S BIOPOLITICS POINT OF VIEW

Muhammad Rustamaji

Universitas Sebelas Maret (UNS), Indonesia, E-mail: muhammad_rustamaji@staff.uns.ac.id

Shalih Mangara Sitompul

Universitas Merdeka Malang (UNMER), Indonesia, E-mail: shalihmangarasitompul@gmail.com

Aldi Rizki Khoiruddin

Faculty of law, Universitas Indonesia, Indonesia, E-Mail: aldi.alkhoir@gmail.com

Alarico Mendonca Tilman

Universidade Dili, Timor Leste, E-mail: alaricotilman72@gmail.com

ARTICLE INFO

Keywords:

Biopolitics; Indonesian
Migrant; Protection;
Workers.

DOI :

10.26532/jh.41.i3.44016

ABSTRACT

The migration of Indonesian workers in search of better economic opportunities is a global phenomenon. However, behind the narratives of remittances and national development lies a grim reality of human rights abuses and systemic exploitation. While various frameworks, such as human rights. This study analyzes the persistent violence against Indonesian Migrant Workers (IMWs) in Malaysia—particularly shootings by the Malaysian Maritime Enforcement Agency—through Giorgio Agamben's biopolitical framework. It reveals a novel application of Homo Sacer, bare life, and state of exception concepts to show how sovereign power systematically strips undocumented IMWs of political recognition (Bios), reducing them to mere biological existence (Zoe) and legitimizing extrajudicial killings without accountability. This research used normative legal research and deductive reasoning, the findings demonstrate that these acts are not incidental law enforcement excesses but a deliberate biopolitical strategy embedded in Malaysia's state apparatus. By exposing the legal "grey zone" that enables such dehumanization, this research advances the theoretical link between Agamben's political philosophy and migrant protection, urging a fundamental rethinking of legal and diplomatic responses to dismantle the biopolitical logic that normalizes violence, exclusion and negates the presumption of innocence. Through Agamben's optic, the shooting of Indonesian Migrant Workers by Malaysian Maritime Enforcement Agency or Royal Malaysia Police is not just a case of ordinary human rights violations, but also a manifestation of how the modern state creates homo sacer.

1. Introduction

The shooting incident of Indonesian Migrant Workers by the Malaysian Maritime Enforcement Agency has reignited recurring concerns. As if not learning from previous experiences, based on a release from Migrant Care, from 2005 to

2025, 75 Indonesian Migrant Workers have lost their lives at the hands of Malaysian authorities¹. Even the Director of Migrant Care, Wahyu Susilo, stated that these 75 cases of death fall under "extrajudicial killing" or killings by the authorities without judicial process.

The act of shooting with live ammunition by Malaysian Maritime Enforcement Agency, which causes injuries and even loss of life, is an excessive law enforcement practice that simultaneously negates the human rights that are inherently attached to Indonesian Migrant Workers. The shooting by Malaysian Maritime Enforcement Agency officers is always preceded by the presumption that Indonesian Migrant Workers are 'Indons,' which in the Malay vocabulary is closer to being a perpetrator of crime or a criminal. Therefore, when the Malaysian Maritime Enforcement Agency officers fired live ammunition at the boat carrying the Indonesian Migrant Workers, it was always accompanied by a narrative of resistance against the officers. However, the allegation of resistance was denied by the victims (the injured HA and MZ are from Riau, while Muhammad Hanafiah and Andry Ramadhana are from Aceh) who testified to the Ministry of Foreign Affairs of the Republic of Indonesia². As a result of this shooting incident, one Indonesian citizen (initials B from Riau) was killed, while three others were injured.

Bilaterally, Mirza Nurhidayat (Director of ASEAN at the Ministry of Foreign Affairs of the Republic of Indonesia) stated that Southeast Asian countries (ASEAN) have an agreement to avoid the excessive use of force in cases of citizens crossing borders without legal channels. Specifically, the agreement between Indonesia and Malaysia regulates the handling of traditional fishermen who inadvertently enter the sovereign territory of both countries. Even Indonesia and Malaysia have a common guideline that regulates the handling of traditional fishermen who cross paths, to avoid detention³. Mirza also added that the bilateral agreement regarding measured actions also applies at the ASEAN regional level. Diplomatically, Mirza was reluctant to describe the shooting of Indonesian citizens by Malaysian Maritime Enforcement Agency as an act that violated the agreed-upon agreement. However, the loss of life and even the shooter being protected by their home country with a one-sidedly narrated chronology only strengthens the question.

If we borrow the thoughts of Giorgio Agamben⁴, the recurrence of the phenomenon of extrajudicial killings by Malaysian Maritime Enforcement Agency or the Royal Malaysia Police should be suspected and not merely confined to the realm of diplomacy or transparency in law enforcement. However, more

1 Kidi., Kasus Penembakan PMI di Malaysia, FISIP UNAIR Tekankan Urgensi Perlindungan Tenaga Migran. *Fakultas Ilmu Sosial dan Ilmu Politik (FISIP) – Universitas Airlangga*, February 5, 2025.

2 Salma., UGM Expert: Malaysian Authorities' Shooting of Indonesian Migrants Violates Human Rights. *Universitas Gadjah Mada*, February 5, 2025. <https://ugm.ac.id/>

3 Oktavia. , RI and Malaysia Agree to Solve the Fishermen Problem through Diplomacy. *Antara News*, January 30, 2012. <https://en.antaranews.com/>.

4 Lembcke, O. W., Giorgio Agamben's Political Theory. In D. Cloud (ed.), *Oxford Research Encyclopedia of Communication (Oxford University Press)*. 2018

deeply than that, we must question where humanism, human culture, and even the suspicion of the practice of the concept of biopolitics (politicization of life) have gone, which results in the condition of homo sacer, bare life⁵, as the cause of the state of exception⁶ regarding the current situation.

Examining the phenomenon of extrajudicial killings affecting Indonesia's foreign exchange heroes, a crucial question that then arises is whether the denial of human rights, homo sacer, and bare life is indeed happening to Indonesian Migrant Workers? This small question must be presented as a critique of most theories and philosophies that emerged in the 20th century, which were responses to the Renaissance era's notions of humanism and human culture. Many philosophers believe that humanism and culture have become ethically and politically impure categories⁷. It can be observed how many tragedies have unfolded in the history of human life, starting from the brutality of colonization, the violence of the industrial revolution, world wars, increasingly severe epidemics, the Cold War, economic wars, biological wars, environmental destruction, and currently, extrajudicial killings in the name of law enforcement by state apparatus. This fundamental question is very important to be elaborated theoretically, as an initial diagnosis of the existence of humanism (human rights) that continues to be confronted with the concept of Homo Sacer as its 'touchstone'. Therefore this research aims to explore the shooting of Indonesian Migrant Workers through the lens of Agamben's biopolitical theory.

Moreover, existing literature on Agamben's theory demonstrates significant similarities in how marginalized groups—such as refugees, undocumented migrants, and the economically impoverished—are subjected to systemic exclusion that reflects the condition of *Homo Sacer*. These individuals, like *Homo Sacer*, are stripped of political recognition and placed outside the scope of legal protection, rendering them vulnerable to state-sanctioned neglect and violence.⁸ The parallels are particularly evident in Gupta's analysis of poverty, where he illustrates how the poor are similarly abandoned by neoliberal state structures, existing in a condition where their lives are managed but not protected—mirroring the *bare life* status described by Agamben. This resemblance underscores the broader applicability of *Homo Sacer* beyond classical political theory, making it a powerful framework for understanding how modern states reproduce zones of exclusion through legal and economic

5 Christiaens, T., Agamben's 'Bare Life' and Grossman's Ethics of Senseless Kindness." *Journal of European Studies*, Vol.52 No.1, 2022. Page. 36–53.

6 Sullivan, G. & Goede, M., Between Law and the Exception: The UN 1267 Ombudsperson as a Hybrid Model of Legal Expertise. *Leiden Journal of International Law*, Vol.26 No.4, 2013, page. 833–854.

7 Noonan, Jeff., *Critical Humanism and the Politics of Difference*. Montreal: McGill-Queen's University Press. 2003

8 Santana, Á., Amin, A., & Santos, C., Direitos Humanos Dos Refugiados: A Violência Contra O Homo Sacer À Luz Da Corte Interamericana De Direitos Humanos / Human Rights Of Refugees: Violence Against Homo Sacer In The Light Of The Inter-American Court Of Human Rights. RFD- Revista Da Faculdade De Direito Da Uerj, Vol.42, 2023, page.1-37. Also see, Uzun, E., On The Refugee Crisis Discourse: A Critical Analysis Sitting in The Junction of International Criminal Law and International Refugee Law. *Mecmua*. 202

mechanisms.⁹

Additionally, this research aims to critically explore the roles of resistance and potential agency within Agamben's framework of *Homo Sacer*. Specifically, the study seeks to understand how marginalized communities, despite being subjected to exclusionary social hierarchies, can reclaim agency and challenge oppressive systems. Singh's examination of caste dynamics within Agamben's theoretical context illustrates how hierarchical structures actively produce conditions akin to *bare life*, thus underscoring the necessity of analyzing how oppressed communities might contest and transcend these imposed limitations¹⁰. Similarly, other scholars have argued that Agamben's conceptualization not only serves to identify sovereign exclusion but also provides analytical tools for questioning and resisting the structures perpetuating such marginalization¹¹. By highlighting these dynamics, the objective is to contribute to broader discussions on sovereignty, exclusion, and the potential for political and social transformation.

2. Research Methods

This research used normative legal research¹² which analyze prescriptive¹³ and applied in analyzing the legal issues of the shooting of Indonesian Migrant Workers by Malaysian Maritime Enforcement Agency and Royal Malaysia Police. The research approach uses a conceptual framework¹⁴ that unravels the concept of biopolitics proposed by Agamben, which results in the condition of homo sacer, bare life as the cause of the state of exception¹⁵ regarding the legal issue of the extra-judicial killing phenomenon that occurs. Primary legal materials and secondary legal materials were collected using library study techniques¹⁶ equipped with a comparative study approach and case studies and

9 Gupta, A., National Poverty and Global Poverty in The Age of Neoliberalism. *Cahiers D Études Africaines*, Vol.51, No.202-203, 2011, page.415-426.

10 Singh, N., Mapping B. R. Ambedkar Within The Matrix Of Manu's Patriarchy, The Mentoring Of Maharaja Sayajirao Gaekwad And The Dynamics of Agamben's Homo Sacer. *Contemporary Voice of Dalit*, Vol.11 No.1, 2019, page. 33-43. Also see, Rahmawati, D. and Sulistyowati, E., Teori Filsafat Politik Agamben Dalam Karya Sastra: Bare Life dan Homo Sacer. *Stilistika Jurnal Pendidikan Bahasa Dan Sastra*, Vol.15 No.1, 2022, page.146.

11 Darling, J., Becoming Bare Life: Asylum, Hospitality, and The Politics of Encampment. *Environment and Planning D Society and Space*, Vol.27 No.4, 2009, page.649-665.

12 Dwi Indriati, E. (Ervina), Saryana & Nugroho, N., Philosophy of Law and the Development of Law as a Normative Legal Science. *International Journal of Educational Research & Social Sciences*, Vol.3 No.1, 2022, page. 314–321.

13 Bazerman, M. H., Conducting Influential Research: The Need for Prescriptive Implications. *Academy of Management Review*, Vol.30 No.1, 2005, page. 25–31.

14 Varpio, L., Paradis, E., Uijtdehaage, S., & Young, M., The Distinctions between Theory, Theoretical Framework, and Conceptual Framework. *Academic Medicine*, Vol.95 No.7, 2020, page.989–994.

15 Waring, J. and Bishop, S., Health States of Exception: Unsafe Non-Care and The (Inadvertent) Production Of 'Bare Life' In Complex Care Transitions. *Sociology of Health & Illness*, Vol.42 No.1, 2019, page.171-190.

16 Al-Amaren, E. M., Hamad, A. M. A., Al Mashhour, O. F., & Al Mashni, M. I., An Introduction to the Legal Research Method: To Clear the Blurred Image on How Students Understand the

analyzed using deductive argument, through the major premise of Agamben's Biopolitics concept, which was combined with the minor premise of the extra-judicial killing phenomenon occurring among Indonesian Migrant Workers, to draw a conclusion¹⁷.

3. Results And Discussion

3.1 The Pillars of Giorgio Agamben's Thought

Giorgio Agamben is an Italian philosopher renowned for his thoughts in the fields of biopolitics, sovereignty, exception, and law, particularly in relation to the concepts of homo sacer, bare life, and state of exception¹⁸. His thoughts are heavily inspired by Michel Foucault, Carl Schmitt, and Walter Benjamin, although Agamben has succeeded in developing a more radical approach to the relationship between law, politics, and human life.

Conceptually, Agamben's thought begins with Biopolitics. The concept of biopolitics in Agamben's thought is influenced by Michel Foucault¹⁹, who argued that modernity has changed the way power operates, from power that represses in the form of disciplining the body and punitive measures, to power that regulates life²⁰. In the biopolitical system, the state not only controls individuals legally but also regulates the biological aspects of every citizen's life, such as health, reproduction, and death²¹. However, Agamben further shows that the concept of biopolitics essentially leads to the condition of bare life, in which individuals can be reduced to mere biological entities that can be controlled, excluded, or even exterminated in a state of emergency (*state of exception*)²².

Agamben questions and critiques Foucault's argument about the origins of biopolitics. Foucault said that life becomes politicized within a form of governance that manages its society through the implementation of various disciplinary techniques such as churches, prisons, hospitals, CCTV, and so on²³. According to Agamben's opinion, the politicization of life has actually occurred long before the forms of government as intended by Foucault. The politicization of life has been a long-standing issue, with various perspectives on the concept of life within political discourse. Foucault's exploration of biopolitics and

Method of the Legal Science Research. *International Journal of Multidisciplinary Sciences and Advanced Technology*, Vol.1 No.9, 2020, page. 50–55.

17 Stephen, T., and D. Gossner Jacob., Deductive Qualitative Analysis: Evaluating, Expanding, and Refining Theory, *International Journal of Qualitative Methods*, Vol. 23, 2024;

18 Bussolini, J., Critical Encounter between Giorgio Agamben and Michel Foucault: Review of Recent Works of Agamben. *Foucault Studies*, Vol.10, 2010. page. 108–143.

19 Malik, T. & Jan, F., Foucauldian Biopower, Homo Sacer and Resistance under The Taliban Rule in Afghanistan. *Liberal Arts and Social Sciences International Journal (LASSIJ)*, Vol.5 No.1, 2021, page. 582–596

20 Snoek, A., Agamben's Foucault: An Overview. *Foucault Studies*, Vol.10, 2010, page. 44–67.

21 Nilsson, J., *Foucault, Biopolitics and Governmentality*. Stockholm: Makadam Förlag. 2012;

22 Ojakangas, M., Impossible Dialogue on Bio-Power: Agamben and Foucault. *Foucault Studies*, Vol.2, 2005, page. 5–28.

23 Bussolini, J., Critical Encounter between Giorgio Agamben and Michel Foucault: Review of Recent Works of Agamben. *Foucault Studies*, Vol.10, 2010. page. 108–143.

governmentality delves into the complexities of life and its relationship to power and governance²⁴. Additionally, scholars like Nikolas Rose have examined the politics surrounding life itself, highlighting the nuances and challenges in defining and understanding life within political contexts. While these discussions offer valuable insights, the question of the politicization of life predating formal government structures as envisioned by Foucault remains open to interpretation and further analysis²⁵. At this point, Agamben explains that biopolitics has existed since the power of the sovereign community, which is manifested in the legal system. Referring to Aristotle's political philosophy regarding the sovereignty of state life, which establishes that a life is a human life, as long as that life is part of the existing state system. The substance of human life will be disregarded the moment the political aspect of its body is separated²⁶. For example, the Nazi concentration camps and totalitarian or authoritarian states of the 20th century, or the current colonization practiced by Israel against the Palestinian people. In those examples, substantial life or human rights are no longer recognized and can even be denied, simply because the person is no longer considered to have political rights as a sovereign citizen.

The next pillar of Agamben's thought is the concept of Homo Sacer and Bare Life. In his book *Homo Sacer: Sovereign Power and Bare Life* (1995), Agamben delves into the concept of homo sacer, which originates from ancient Roman law²⁷. Homo sacer is a figure of someone who can be killed but cannot be sacrificed²⁸. This means that someone with the status of homo sacer is placed outside the law or does not have legal rights, yet remains subject to the power of sovereignty. Therefore, bare life (*nuda vita*) is a condition that reduces individuals to mere biological life (*Zoe*), without rights or legal protection²⁹. In such a context, Agamben discusses the theme of Homo Sacer to explain that there is human life beyond politics.

According to the Law of the Roman Empire, a person who commits a crime can be removed, exiled, or banished by society, and all their rights as a citizen are also stripped away. Therefore, Homo Sacer, who by definition has no rights, can be killed by anyone and the killer will not face any legal sanctions³⁰. Although there is a sacred title on his body, Homo Sacer cannot be used as a victim (in the status of a victim) in sacred ritual ceremonies. Homo Sacer is a

24 Dal Poz, I., *Foucault and the Politics of Self-Government*. Inggris Raya: PhD thesis University of Warwick, 2019

25 Jakob, Nilsson., *Foucault, Biopolitics, and Governmentality*, n.d. <https://www.diva-portal.org/>

26 Bussolini, J., Critical Encounter between Giorgio Agamben and Michel Foucault: Review of Recent Works of Agamben. *Foucault Studies*, Vol.10, 2010. page. 108–143.

27 Agamben, Giorgio., *Homo, Sacer. Sovereign Power and Bare Life*," <https://www.degruyter.com/> 1995.

28 Nikolopoulou, K., *Homo Sacer: Sovereign Power and Bare Life. Substance*, Vol.29 No.3, 2000, page. 124.

29 Weber, Samuel., *Bare Life and Life in General. Grey Room*, Vol.46, 2012, page. 6–25.

30 Olivier, B., Beyond Agamben's 'Homo Sacer': The 'Pandemic' as Final Reduction of Humanity to 'Bare Life'. *Psychotherapy & Politics International*, Vol.20 No.3, 2022, page. 1–23.

contradiction, he is like a man without the right to live, because his right to live is considered no longer worthy of being lived. In the case of Homo Sacer, his life is in a state of exception condition³¹.

Although it has been briefly mentioned before, Agamben's subsequent thought is about the State of Exception. The concept of the state of exception is borrowed by Agamben from the thought of Carl Schmitt, who stated that sovereignty is the power to declare a state of emergency. In this condition, the law can be suspended for the "interest of the state"³². However, Agamben asserts that in the modern world, the state of emergency is no longer temporary but has become a permanent norm. The excesses of the state of exception certainly have a direct impact, both on the aspect of individual rights that can be revoked without clear legal procedures, and on the state being able to detain someone without trial (as in the case of the Patriot Act in the US post-9/11). On a larger scale, democracy can turn into a veiled dictatorship when emergencies are used as a tool for permanent control. Agamben's thinking can thus be seen in how modern states continuously expand these states of emergency, for example, in the context of the COVID-19 pandemic³³, where lockdown policies and restrictions on individual rights are implemented in the name of public safety.

The next pillar of Agamben's thought is about Sovereignty and Law. Agamben argues that modern sovereignty operates in a contradictory manner, namely through the creation of a "grey zone" (anonymous) between law and anarchy. The modern state maintains legal legitimacy by creating a space outside the law that conditions individuals to be excluded from their fundamental rights³⁴.

Agamben also borrows Hannah Arendt's paradoxical concept of the nation-state and human rights. Arendt concluded that these two concepts 'kill' each other when faced with the case of refugees. Refugees are the outcasts, not citizens of any country, or stateless. Arendt's point in this context is that the case of refugees succinctly illustrates a real example that shows how sacred or inviolable rights (such as the right to life) simply vanish the moment they lose their status as citizens³⁵. In fact, humans are literally political beings, and citizenship is an exclusive status that must be possessed, and indeed should be possessed. In other words, humans do not possess their right to life, because their life is equated with the right of citizenship, while the authority over the right of citizenship is not themselves, but rather the government that

31 Prozorov, Sergei., A Farewell to Homo Sacer? Sovereign Power and Bare Life in Agamben's Coronavirus Commentary. *Law & Critique*, Vol.34 No.1, 2023, page. 63–80.

32 Andrea, Salvatore., Beyond Emergency Politics: Carl Schmitt's Substantive Constitutionalism. *Philosophy & Social Criticism*, Vol.50 No.10, 2024

33 Denysenko, V. & Trikoz, E., Biopolitics and Legal Issues of Emergency Situations in the Context of the Coronavirus Pandemic. *E3S Web of Conferences*, No.175, 2020, page. 14013.

34 Schaar, John H., *Legitimacy in the Modern State*. New Brunswick, NJ: Transaction Publishers. 1981

35 Perry, Michael J. *The Idea of Human Rights: Four Inquiries*. Oxford University Press, n.d.

represents the state.³⁶

On the spectrum of historicity, there are also various equivalent examples regarding the concept of 'refugee' in the context of Homo Sacer experiencing bare life, such as the "extraterritorial" Zone like Guantanamo Bay, which places detainees without legal protection. Another example of legal exclusion against minority groups, such as what occurred during the apartheid era or extreme anti-immigrant policies, even the use of terrorism issues as a reason to restrict or implement emergency laws that violate human rights.

3.2 The Litmus Test of Agamben's Thought on The Shooting of Indonesian Migrant Workers

Focusing on the context of the recent phenomenon of the shooting of Indonesian Migrant Workers by the Malaysian Maritime Enforcement Agency, it can theoretically be dissected using the optics of Giorgio Agamben. From Agamben's perspective, the case of the shooting of Indonesian Migrant Workers by Malaysian Maritime Enforcement Agency, as well as previously by the Royal Malaysian Police, which has never been resolved, can be analyzed through the concepts of Homo Sacer, Bare Life, and State of Exception.

3.2.1 Indonesian Migrant Workers as Homo Sacer

In the theory of Homo Sacer, an individual categorized as "homo sacer" is someone who lacks legal protection and can be killed without legal consequences for the killer³⁷. In the context of the shooting of Indonesian Migrant Workers by the Malaysian Maritime Enforcement Agency and the Royal Malaysia Police, migrant workers especially those without official documents are often considered to be outside the protection of the law (negating the presumption of innocence). Under such conditions, migrant workers are in a vulnerable position that places them especially those considered illegal at risk of being killed or tortured without serious legal accountability for the perpetrators of the violence. It is at this culmination of the concept of homo sacer occurs in the current situation of migrant workers, especially those considered illegal.

The contemporary situation of Indonesian migrant workers, especially the undocumented, starkly illustrates Agamben's concept of Homo Sacer within biopolitical governance, as these individuals are systematically excluded from legal protection and rendered as "bare life"—a status where state sovereignty normalizes violence and erasure without accountability. Studies in critical migration and border regimes confirm that such exclusion is not simply a matter of policy failure but a deliberate exercise of sovereign power, designating

36 Arpangi, A., Laksana, A.W., Widodo, H., Triyanto, T. and Suparmin, A., Resolution of Industrial Relations Disputes in Court Rulings and the Fair Fulfillment of Workers' Rights in Indonesia: An Islamic Legal Perspective. *JURIS (Jurnal Ilmiah Syariah)*, Vol.24 No.1, 2025, page. 51-62.

37 Andreas, Hiepkko. *Homo Sacer*, n.d.

migrant workers as expendable bodies outside the rule of law³⁸. In Malaysia's border enforcement, Indonesian migrants who lack documentation are subjected to arbitrary detention or lethal force with impunity, reflecting the biopolitical logic that determines whose lives are worth protecting and whose can be sacrificed³⁹. This paradigm exposes the ethical crisis embedded in contemporary migration governance, where the intersection of law, sovereignty, and political economy routinely suspends human rights and institutionalizes the migrant worker as Homo Sacer.

Malaysia, as a country receiving migrant workers, constructs the legal status of Indonesian Migrant Workers as a group that can be excluded from legal protection, especially for those considered illegal. In the case of the shooting of migrant workers, Malaysia as a state, through its government and apparatus, silently creates and places migrant workers as homo sacer, which means that every migrant worker can be killed but cannot be sacrificed (given victim status) in the legal ritual. It means there is no justice for the Indonesian Migrant Workers who are placed as Homo Sacer.

The right to life of Indonesian Migrant Workers is ultimately based only on their birthplace, their indigenous status, their Identity Card, or their passport. In the case of these migrant workers, it ultimately reveals a 'cancer' or radical crisis in the ideology that equates human rights with citizenship rights⁴⁰. At such a culmination, there is a flaw in the ethics that does not encompass the true meaning of ethics. According to Agamben, there is no ethics that excludes humans from humanity, even though humanity is reduced and very difficult to see⁴¹. For example, the May 1998 riots in Indonesia. Mass violence occurred in several major cities in Indonesia, culminating in the fall of the New Order government. It can be observed that such massive riots stem from economic problems, which then extend into humanitarian issues, such as discrimination against the Chinese ethnic group and the disappearance of activists⁴². In this context, it should be realized that sacred rights or human rights disappear shortly after the government 'revokes' their citizenship rights. Someone who loses their citizenship rights will subsequently lose their human rights. This is the myth of the 'indigenous' that actually discriminates against Chinese ethnic families who are born and have lived in Indonesia for generations, yet are still considered 'foreign' in their own country.

38 Prem Kumar Rajaram and Carl Grundy-Warr., The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand, *International Migration*, Vol.42 No.1, 2004, page. 33–64.

39 Anne McNevin., Border Politics: Migrants, States, and the Power of Exclusion, *Politics and Society*, Vol.47 No.2, 2019, page. 229–244

40 Andri W Laksana, Jarot J. Bagus., Re-orientation Of Legal Policy For Using Of Foreign Workers In Indonesian Justice. *Jurnal Akta*, Vol.8 No.2, Jun 2021, page. 109-120

41 Gündoğdu, A., Potentialities of Human Rights: Agamben and the Narrative of Fated Necessity. *Contemporary Political Theory*, Vol.11, 2012. Page. 2–22.

42 Himawan, E. M., Pohlman, A., & Louis, W., Revisiting the May 1998 Riots in Indonesia: Civilians and Their Untold Memories. *Journal of Current Southeast Asian Affairs*, Vol.41 No.2, 2022, page. 240–257.

Through the same optic, when Agamben's thoughts are linked to the shooting of Indonesian Migrant Workers, it certainly explains the existence of a 'cancer' or radical crisis in the ideology of humanism that equates human rights (HAM) with citizenship rights by Malaysian Maritime Enforcement Agency and Royal Malaysia Police. The massive violence that has even lasted for a decade with 75 Indonesian Migrant Workers fatalities, its root cause is economic problems, then it enters the realm of humanity in the form of discrimination against Indonesian Migrant Workers. At this nadir, the sacred right (the right to life) or human rights are lost momentarily after Malaysia, through its government and apparatus, 'revokes' the political rights or citizenship rights of the migrant workers. A Indonesian Migrant Workers who loses their citizenship rights will subsequently lose their human rights. This is the fulfillment of the Homo Sacer theory, which actually discriminates against Indonesian Migrant Workers who have been economically exploited, yet are still considered 'Indon,' meaning criminals whose lives are deemed expendable⁴³.

3.2.2 Bare Life: Life Left in Danger

The concept of Bare Life in Agamben's thought refers to individuals who are reduced to merely "biological life" (Zoe) without the legal and political status of recognized citizens (Bios)⁴⁴. The migrant workers, especially those who enter Malaysia without valid documents, are treated as bare life, meaning their existence is only recognized in terms of biological aspects (working for the economy), but their political and legal rights are ignored. In the context of Indonesian Migrant Workers, Malaysia continues to utilize Indonesian Migrant Workers labor, but on the other hand, the state does not provide adequate legal protection (negating the presumption of innocence) for Indonesian Migrant Workers. Therefore, when a Indonesian Migrant Workers is shot, the state does not consider it a serious legal violation because Indonesian Migrant Workers have been constructed as "non-citizens," "illegal," or "criminals," "criminal offenders," making it seem as though the murder of a Indonesian Migrant Workers is considered acceptable.

A comparative study utilizing Giorgio Agamben's theory of Homo Sacer and the concept of bare life can be articulated through several critical events and contexts across various countries. The exploration of these concepts provides profound insights into how marginalized groups are treated within the frameworks of state power and sovereignty.

One of the most relevant applications of Agamben's theory is in the context of irregular migration, as illustrated in the examination of migration and detention practices in Australia, Malaysia, and Thailand. The work by Rajaram and Grundy-Warr identifies irregular migrants as exemplars of Homo Sacer, who

43 Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019

44 Hansen, S. K., *Zoe, Bios and the Language of Biopower*. Tennessee: PhD dissertation, Vanderbilt University), 2010

exist in a state of bare life, devoid of rights and protections under the law⁴⁵. In these countries, the policies enacted against irregular migrants often reflect a sovereign decision to exclude them from the political community, rendering them as life forms that can be subjected to detention without due process,⁴⁶ much like the figure of Homo Sacer in Ancient Roman law. This becomes evident in the way migrants are often held in detention centers, stripped of their political identity and subjected to the whims of state power, illustrating Agamben's assertion that sovereign governance is essentially about deciding who is worthy of inclusion in the political community and who can be excluded⁴⁷.

A critical analysis of the treatment of sex offenders⁴⁸ in Western societies further exemplifies Agamben's concepts, wherein sex offenders are often treated as Homo Sacer. Spencer's study indicates that the legal and social regulations placed on sex offenders produce a form of abjection, akin to that experienced by Homo Sacer⁴⁹. These individuals are placed in a liminal space, being denied full citizenship and subjected to societal violence and discrimination. The community notification laws and civil commitment primarily aim to protect society from potential harm, similarly to the exclusionary logic that characterizes the treatment of irregular migrants. Hence, both categories reveal the sociopolitical mechanisms through which certain individuals are relegated to the status of bare life.

The rise of Cyber Islamophobia, particularly in the wake of events such as the Muslim Ban in the United States, also provides a contemporary lens for examining Agamben's theories. Farokhi argues that the proliferation of anti-Muslim sentiments online creates a "Cyber Homo Sacer," where Muslims are stripped of political rights and dignity in digital spaces⁵⁰. This online rhetoric mirrors the historical conditions of exclusion, reinforcing the perception of targeted groups as threats to societal security. Here, Agamben's notions of a state of exception are especially pertinent, as they highlight how governments can suspend rights and protections in the name of national security, treating whole communities as expendable.

In relation to the impact of natural disasters, the aftermath of Hurricane Katrina serves as another poignant case for analyzing Agamben's concepts of bare life.

45 Rajaram, P. & Grundy-Warr, C., The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand. *International Migration*, Vol.42 No.1, 2004, page. 33–64

46 Muhammad Rustamaji et al., The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality', *Journal of Human Rights, Culture and Legal System*, Vol.5 No.2, 2025, page. 445.

47 Rajaram, P. & Grundy-Warr, C., The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia, and Thailand. *International Migration*, Vol.42 No.1, 2004, page. 33–64

48 Weheliye, A., Pornotropes. *Journal of Visual Culture*, Vol.7 No.1, 2008, page. 65-81.

49 Spencer, D., Sex offender as homo sacer. *Punishment & Society*, Vol.11 No.2, 2009, page. 219-240.

50 Farokhi, Z., Cyber Homo Sacer: A Critical Analysis of Cyber Islamophobia in the Wake of The Muslim Ban. *Islamophobia Studies Journal*, Vol.6 No.1, 2021.

The works of Jesmyn Ward and Kara Walker critically engage with the notion of lives stripped of political significance during the disaster's aftermath, embodying Agamben's "bare life"⁵¹. The systemic failures in response to the predominantly African American communities reflect a continued legacy of exclusion and the reduction of individuals to their biological existence, echoing Agamben's concerns with sovereign power's capacity to produce and manage life itself through neglect and abandonment.

Furthermore, the experiences of undocumented children in the United States illustrate a shift from being viewed purely as bare life to becoming active political agents. Gonzalez-Gorman critiques the application of Agamben's concepts to these youths, arguing that they can influence policy and thus escape the totalizing gaze of Homo Sacer⁵². This reinterpretation calls for a reevaluation of the ways in which such individuals interact with state frameworks, suggesting that they may transcend their categorization as merely bare life.

In summary, Agamben's theories of Homo Sacer and bare life provide a powerful lens through which to analyze and compare various events and circumstances in multiple contexts. These frameworks critically expose the mechanisms of exclusion and dehumanization perpetuated by sovereign powers and highlight both systemic vulnerabilities and avenues for resistance among disenfranchised communities across the globe.

3.2.3 State of Exception: Suspension of Law against Indonesian Migrant Workers

Agamben asserts that the state can create a "state of exception," in which case the law can be suspended for certain groups⁵³. In the case of Malaysia, the law applies to its own citizens, but not to migrant workers who are considered illegal. Malaysian Maritime Enforcement Agency and Royal Malaysia Police in the last decade have often justified acts of violence, even extrajudicial killings against migrant workers, under the pretext of security, immigration violations, or resistance during arrests. The actions of Malaysian Maritime Enforcement Agency and Royal Malaysia Police actually show that Malaysia has created a "state of exception" for migrant workers, in which the state can use violence without legal accountability (negating the presumption of innocence). A concrete example of this state of exception is how Malaysia often uses Immigration Operations to arrest, deport, or even commit violence against migrant workers without providing access to a fair legal process. Isn't the appropriate sanction for immigration violators to be arrested and imprisoned, rather than shot with live ammunition until they lose their lives under the

51 Brown, H., Figuring Giorgio Agamben's "Bare Life" In The Post-Katrina Works of Jesmyn Ward and Kara Walker. *Journal of American Studies*, Vol.51 No.1, 2016, page.1-19.

52 Gonzalez-Gorman, S., Disrupting Agamben: Beyond Undocumented Children as 'Homo Sacer'. *Human Geography*, Vol.16 No.1, 2022, page. 17-30.

53 Giordanengo, G., The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben's Critique of Carl Schmitt. *International Journal of Political Theory*, Vol.2 No.3, 2017, page. 327-342.

pretext of a state of exception?

3.2.4 Legal Consequences and Sovereignty

According to Agamben, modern sovereignty operates by creating an ambiguous legal space, which allows the state to decide who is entitled to legal protection and who can be excluded. In the case in question, Malaysia acts as a sovereign power entitled to determine the life and death of migrant workers without legal accountability. The status of Indonesian Migrant Workers as *homo sacer* makes Indonesian Migrant Workers vulnerable to acts of violence legitimized by the state (Malaysia), both directly (shootings) and indirectly (tolerating labor exploitation).

In its development, legal evolution is founded on the principle of *equality before the law*. However, this principle requires reconstruction, as it is often narrowly interpreted in a formal sense—namely, that the law applies equally to everyone. The essence of *equality before the law*, however, lies in ensuring equal access to law for different societal groups with varying circumstances. In the context of Indonesian Migrant Workers, a purely formal application of this principle obscures the structural barriers and discriminatory practices that prevent them from accessing legal protection. Thus, a substantive reinterpretation is necessary to guarantee that marginalized groups, such as undocumented migrant workers, enjoy not only theoretical equality but also practical and effective protection under the law.⁵⁴

3.3 Indonesian Migrant Workers in The Concept of Zoe and Bios

According to Giorgio Agamben's thought, the concept of *Homo Sacer* is closely related to the distinction between *Zoe* and *Bios*, two forms of life that originate from ancient Greek philosophy. If Agamben's thought is examined in the context of Malaysian Maritime Enforcement Agency or Royal Malaysia Police treating Indonesian Migrant Workers as *Homo Sacer*, it can be understood how the Malaysian government, through its apparatus, creates a legal system that excludes Indonesian Migrant Workers from legal protection.

3.3.1 Zoe and Bios: Two Forms of Life

Zoe refers to pure biological life, that is, life as a living being without political or social status. Whereas *Bios* refers to life that is recognized politically and legally, that is, life as a citizen with rights and legal protection. In the modern political system, the state only recognizes *Bios*, while *Zoe* can be separated and left without legal protection (negating the presumption of innocence).

Aristotle expressed in his book titled *Politics* that humans are beings born for life, but they exist essentially for the good life "...born with regard to life, but existing essentially with regard to the good life"⁵⁵. The phrase 'the good life' can only be realized through political practice and state life centered on *Bios*, not on *Zoe*. Based on Aristotle's thinking, Agamben argues that Western

54 M. Rustamaji., *Dekonstruksi Asas Praduga Tidak Bersalah*, 1st ed. Yogyakarta: Thafa Media, 2019.

55 Kraut, Richard., *Aristotle: Political Philosophy*. Oxford: Oxford University Press. 2002

Philosophy is less familiar with the understanding of human life outside the political network. However, life within this political network contains a series of quite complex knots regarding legal systems, rights, and the obligations of a citizen⁵⁶. Meanwhile, ancient Greek philosophy did not distinguish between living and living as a citizen. At this point, Agamben certainly wants to emphasize the encounter between these two types of life, Zoe and Bios⁵⁷.

3.3.2 Indonesian Migrant Workers as Homo Sacer: Reduction to Zoe

According to Agamben, the modern state produces humans in two categories, namely humans who have political status (Bios) and humans who are reduced to mere biological life (Zoe)⁵⁸. In the case of migrant workers, particularly those without official documentation or considered illegal in Malaysia, the Malaysian government through its apparatus potentially falls into a condition that systematically reduces the status of migrant workers from Bios to Zoe.

In the context of the concept of homo sacer, migrant workers in Malaysia are considered to possess only Zoe, not Bios, because migrant workers especially those deemed illegal are not recognized as part of the Malaysian legal and political system. Because migrant workers do not possess Bios, they do not have political rights or legal protection in Malaysia. At the same time, the Royal Malaysia Police and the Malaysian Maritime Enforcement Agency seem to have full power over migrant workers especially those considered illegal even to the extent of taking their lives in a state of bare life without fear of the legal consequences they should face. That is, when Indonesian Migrant Workers is considered illegal, the state, in this case Malaysia, no longer sees them as individuals with legal rights, but merely as biological beings (Zoe) exposed to violence anytime and anywhere.

3.3.3 Malaysia and the State of Exception: Suspension of Bios for Migrant Workers

Based on the concept of the State of Exception, the state can create conditions that render the law inapplicable to certain groups⁵⁹. The Malaysian government, through its apparatus in the context of the shooting of Indonesian Migrant Workers, can be suspected of deliberately creating a state of emergency for Indonesian Migrant Workers, especially those suspected of being illegal, so that these Indonesian Migrant Workers do not have legal protection. In the claimed state of emergency, the Malaysian Maritime Enforcement Agency and Royal Malaysia Police authorities are given the power to shoot dead Indonesian Migrant Workers deemed "threatening," even without legal proceedings. The Malaysian government, through its apparatus, is suspected of having created a

56 Papastergiadis, N., The Invasion Complex: The Abject Other and Spaces of Violence. *Geografiska Annaler. Series B, Human Geography*, Vol.88 No.4, 2006, page. 429–442.

57 Bagwell, S., An Examination of 'Life' in Aristotle Concerning the Distinction Between Bios and Zoe. Canada: M.A. thesis, University of Saskatchewan, 2018.

58 Jamali, A., Re-appropriating Freedom: Agamben's Form-of-Life as a Response to Foucault's Biopower. *Sophia*. 2024

59 Van Asselt, H. & Harrould-Kolieb, E., Agamben's State of Exception Theory. *Carbon & Climate Law Review*, Vol.16 No.3, 2022, page. 203–218.

legal "gray zone" (anonymous), which places potential migrant workers at risk of being exploited, imprisoned, or even killed without the state having to take responsibility for the bare life conditions that occur. In this zone of legal (anonymous) absence, migrant workers are treated merely as Zoe, a life that is only valuable if they work, but have no right to life if deemed a threat to law and order. For example, when there is a raid or crackdown on illegal Indonesian Migrant Workers, Malaysian Maritime Enforcement Agency or Royal Malaysia Police can take actions that fall into the category of torture or even killing Indonesian Migrant Workers without fear of legal consequences. The narrative of an emergency situation, resistance, or attacks on the authorities becomes a justification for negating the human rights of the Indonesian Migrant Workers, who are actually in a State of Exception.

3.3.4 Differences in the Conditions of Malaysian Citizens and Indonesian Migrant Workers (Bios vs Zoe) (Bios vs Zoe)

Based on the concept of Bios and Zoe. It can be compared that the conditions of Indonesian Migrant Workers with Malaysian citizens, it becomes clear that there is a difference in the conception of their capacities as Bios and Zoe applied by the state:

Comparison Point	<i>Bios, (Malaysian Citizen)</i>	<i>Zoe, (Indonesian Migrant Workers, especially the illegal ones)</i>
Legal Status	Having human rights and full legal protection (Citizen Rights)	Do not have strong legal rights because do not have citizenship rights.
Recognition of State	Recognized as part of the political system	Can be excluded at any time because without recognition of rights (the part that is not part)
If Killed by the Authorities	There is an investigation and legal responsibility for the perpetrators	The taking of a life is considered legitimate or not investigated further.
Treatment by the State	Regarded as a human rights defender with citizenship rights	Seen as cheap labor with the threat of statelessness

Based on the table above, in the context of Bios and Zoe, it is suspected that the Malaysian government, through its apparatus, has created conditions where Indonesian Migrant Workers, especially the illegal ones, are only recognized in an economic capacity (as workers), but not in a political and legal capacity. Based on Giorgio Agamben's concepts of Bios and Zoe, the comparison between the conditions of Indonesian Migrant Workers and Malaysian citizens reveals a fundamental distinction in how the state constructs and values their lives. Malaysian citizens are regarded as "Bios"—that is, life recognized and integrated within the political and legal order, endowed with civil rights, legal protection, and full recognition as legal subjects. As Bios, their existence is not only biological but also political, so any violation against them is addressed through established legal processes and safeguarded by human rights

principles. In stark contrast, Indonesian Migrant Workers—particularly those who are undocumented—are relegated to the status of “Zoe,” meaning mere biological life, stripped of political recognition and legal protection. In practice, the Malaysian state, through its apparatus, can effectively suspend the legal status of Indonesian Migrant Workers, reducing them to “bare life” or Homo Sacer: individuals whose lives can be taken without legal consequence for the perpetrators and who are denied access to justice. This status is exacerbated by narratives of criminalization and stigmatization, which serve to legitimize violence or even extrajudicial killings, while the state shields its officials and closes off avenues of accountability. Thus, the distinction between Bios and Zoe is not merely theoretical but is manifest in policies, legal practices, and lived experiences: Malaysian citizens live within a legal order that guarantees their rights, whereas Indonesian Migrant Workers—especially the undocumented—exist in a state of legal uncertainty, vulnerability, and the ever-present threat of state-sanctioned violence. This comparison underscores that legal status and political recognition are the decisive factors determining whether a person is treated as a full legal subject (Bios) or as a disposable biological object (Zoe) within the machinery of state power.

3.3.5 The Consequences of the Homo Sacer Concept and Violence Against Indonesian Migrant Workers

Because migrant workers are positioned as Homo Sacer, violence against migrant workers especially those considered illegal—is no longer seen as a violation of the law, but rather as part of the state's mechanism of power. Through a one-sided chronological account, the shooting actions by Malaysian Maritime Enforcement Agency apparatus or on other occasions by the Royal Malaysia Police are considered legitimate actions, because Indonesian Migrant Workers especially those deemed illegal—are regarded as “disturbers of public order” or criminals. The logical consequence is that the Malaysian government and its apparatus do not feel the need to apologize or acknowledge the wrongdoing for the murder or loss of life of the Indonesian Migrant Workers. This is because, structurally, the law does not recognize Indonesian Migrant Workers as full legal subjects (Bios). Therefore, the exploitation of Indonesian Migrant Workers continues to occur and repeat even in the last decade without a clear resolution. At such a culmination, the Malaysian government and its apparatus view migrant workers only in economic terms⁶⁰, not as human beings with legal citizenship rights, like Bios⁶¹. In short, Malaysia uses violence as a way to assert its power over Indonesian Migrant Workers categorized as Zoe, that is, humans who can be excluded from legal protection.

If the phenomenon affecting Indonesian Migrant Workers is examined through the lens of Homo Sacer, Agamben very clearly wants to express that what is meant by a human's life lies in their political life or political rights, so that when

60 Feldman, G., *We Are All Migrants: Political Action and the Ubiquitous Condition of Migrant-Hood*. Redwood City, CA: Stanford University Press. 2015

61 Bast, Jürgen. (n.d.), *Human Rights in Migration Societies: Exploring the Intersection of Human Rights and Migration in Law, Politics, and Everyday Life*. (Book of abstracts).

those political rights are revoked, they will be in a state of legal exception. In that state of exception, Homo Sacer will live a naked or bare life⁶². Someone in a state of bare life is actually part of politics, but only in the form of an exception (states of exception). If compared to Alain Badiou's political theory, a mathematical term can be found to describe this, namely that there is a 'part of no part'⁶³. The concept of 'part of no part' is logically similar to what Agamben means by bare life as a consequence of the state of exception.

The concept of the state of exception is essentially a concept borrowed from Carl Schmitt's definition of sovereignty. According to Schmitt's opinion, sovereignty is a form of power that is able to decide on an exception to the existing legal order⁶⁴. "... the sovereign is he who decides on the states of exception"⁶⁵. For example, in Ancient Roman Law, sovereignty could decide that there were certain forms of crime that could be attributed to one of its citizens that could not be categorized within the points of the applicable legal system. Schmitt also explains that because in a state of exception it cannot be codified according to the applicable legal system, the decisions made are no longer based on those norms or legal system. It can be clearly observed that when the shooting of the Indonesian Migrant Workers was finally carried out, the decisions of the Malaysian Maritime Enforcement Agency and Royal Malaysia Police were no longer based on norms or legal regulations, but were justified by the state of emergency and as an expression of the sovereignty of the authorities who had the power to make decisions. In this state of exception, the Indonesian Migrant Workers becomes an accused person beyond the reach of the law and, consequently, their political rights are also stripped away.

Just as Jean Luc Nancy explained the concept of Abandonment, Agamben sees a connection between life and law with the concept of abandonment or discarding or being left behind⁶⁶. Thus, Agamben argues that in modern society, every individual has the potential to become homo sacer when the state decides to revoke their basic rights⁶⁷, as seen in the cases of refugees, Guantanamo detainees, colonization, or currently, Indonesian Migrant Workers shot by Malaysian Maritime Enforcement Agency and Royal Malaysia Police with live ammunition as people affected by the state of emergency (state of exception).

62 DeCaroli, Steven., DeCaroli, S., Political Life: Giorgio Agamben and the Idea of Authority. *Research in Phenomenology*, Vol.43 No.2, 2013, page. 220–242.

63 Malicki, Maciej., Matheme and Mathematics: On the Main Concepts of the Philosophy of Alain Badiou. *Logique et Analyse*, No.231, 2015, page. 417–432.

64 Gian, Giacomo., Normalising Sovereignty: Reflections on Schmitt's Notions of Exception, Decision, and Normality. *International Journal of Political Theory*, Vol.26 No.1, 2017, page. 49–66.

65 Vinx, L., Carl Schmitt's Defense of Sovereignty. In T. Poole & D. Dyzenhaus (eds.), *Theorists of Constitutional Crisis: Oakeshott, Hayek and Schmitt on Law, Liberty and the Rule of Law*, Cambridge: Cambridge University Press. 2015. page. 163–197.

66 Armstrong, P., Notes on Abandonment. In *Precarity and International Relations*, 2021, page. 37–61.

67 Agamben, G. (n.d.). *Refugees as Homo Sacer: A Life Without Rights in the State of Exception*. <https://research.cbs.dk/>;

Based on the previous description, in the context of comparative legal studies it can be seen that the consequences of the Homo Sacer concept in both theoretical and practical contexts present a multifaceted perspective, especially when viewed through a comparative legal lens across various countries. Agamben's ideas regarding bare life and the state of exception have significant implications for understanding how individuals are treated under the law, particularly marginalized populations that are often rendered as "bare life."

Theoretical Consequences: 1). Redefinition of Sovereignty: The Homo Sacer concept redefines traditional conceptions of sovereignty by illustrating how state power operates through exclusion. As outlined in Agamben's work, individuals classified as Homo Sacer can be killed without legal repercussions and exist in a space of exception where they are stripped of rights⁶⁸. Theoretical discussions reflect how this framing invites a reevaluation of biopolitics as a mechanism of control over populations, creating distinctions between those who are included in the polity and those who exist merely as life⁶⁹. 2). Legal Frameworks and Human Rights: The legal ramifications of labeling individuals as Homo Sacer ripple through human rights discourse. For instance, Spencer highlights how sex offenders in Western societies are often treated as non-citizens or "bare life," resulting in a legal framework that denies them fundamental rights and subjects them to community notification laws and civil commitment⁷⁰. This reclassification fundamentally challenges human rights protections and raises ethical questions about who deserves legal protection and under what circumstances. 3). Political Resistance and Agency: The discourse around Homo Sacer also encompasses the agency and resistance of those subjected to such categorizations. Singh notes that while Agamben's framework emphasizes exclusion, it does not adequately address resistance to these dynamics⁷¹. This theoretical gap invites further exploration into how marginalized communities assert their rights, potentially redefining their status from bare life to that of engaged political actors.

Practical Contexts: 1). Migrant Detention in Australia and Southeast Asia: Practical applications of Agamben's theories can be witnessed in the treatment of undocumented migrants. Rajaram and Grundy-Warr illustrate how irregular migrants in Australia and neighboring countries become subjected to detention policies that echo the characteristics of Homo Sacer⁷² (Rajaram & Grundy-Warr,

68 Spencer, D., Sex offender as homo sacer. *Punishment & Society*, Vol.11 No.2, 2009, page.219-240.

69 Tsang, E., Profit Making Disguised As Rehabilitation: The Biopolitics Of Homo Sacer In China's Custody Education Program For Sex Workers. *The Prison Journal*, Vol.100 No.1, 2019, page.27-48.

70 Spencer, D., Sex offender as homo sacer. *Punishment & Society*, Vol.11 No.2, 2009, page.219-240.

71 Singh, N., Mapping B. R. Ambedkar Within The Matrix Of Manu's Patriarchy, The Mentoring Of Maharaja Sayajirao Gaekwad And The Dynamics Of Agamben's Homo Sacer. *Contemporary Voice of Dalit*, Vol.11 No.1, 2019, page. 33-43.

72 Rajaram, P. and Grundy-Warr, C., The Irregular Migrant As Homo Sacer: Migration And Detention In Australia, Malaysia, And Thailand. *International Migration*, Vol.42 No.1, 2004, page.33-64.

2004). They illustrate a troubling trend in which these individuals are removed from civil society, reinforcing their vulnerabilities to violence and exploitation amidst political inaction. 2). Undocumented Migrants in Africa: The application of Homo Sacer theory is evident in Botswana and South Africa⁷³, where undocumented migrants face systemic violence and discrimination, as highlighted by Maphosa and Ntau⁷⁴. The contemplative examination of these cases shows how legal frameworks often enable the state to disregard the rights of these individuals, placing them in a position akin to Agamben's depiction of being stripped down to bare life. The implications of such treatment resonate with broader discussions on nationalism, security, and the dehumanization of others. 3). Criminal Justice and Reform: The implications of the Homo Sacer theory extend to the experiences of marginalized groups within the criminal justice system. The treatment of sex offenders in various countries serves as a case study for understanding how legalities can marginalize specific groups further, subjecting them to punitive measures that reduce them to Homo Sacer⁷⁵. In this context, legal responses can function as mechanisms of state control, shaping societal perceptions of safety and permissible violence towards certain individuals. 4). Public Health and Pandemics: A recent application of Agamben's frameworks is seen in the context of the COVID-19 pandemic. Espina and Narruhn discuss how marginalized communities, particularly during health crises, experience disproportionate violence and neglect, thus embodying the principles of Homo Sacer and life stripped of value⁷⁶. The legal and practical responses to the pandemic, particularly concerning vulnerable populations, highlight the usability of Agamben's concepts in contemporary public health discourses.

4. Conclusion

According to Agamben's thinking, the modern state essentially always creates homo sacer, while maintaining the illusion of democracy and the supremacy of law. Through Agamben's optic, the shooting of Indonesian Migrant Workers by Malaysian Maritime Enforcement Agency or Royal Malaysia Police is not just a case of ordinary human rights violations, but also a manifestation of how the modern state creates homo sacer. Migrant workers, especially the illegal ones, are systematically turned into "human beings outside the law" (state of exception), who can be exploited, tortured, or even killed, without the state having to hold the perpetrators accountable. The phenomenon of the shooting of Indonesian Migrant Workers that keeps recurring without any clarity on legal

73 sCooper-Knock, S., Beyond Agamben: Sovereignty, Policing And 'Permissive Space' In South Africa, And Beyond. *Theoretical Criminology*, Vol.22 No.1, 2017, page.22-41

74 Maphosa, F. and Ntau, C., Undocumented Migrants As Homo Sacer: Cases From Botswana And South Africa. *Journal of Asian and African Studies*, Vol.56 No.4, 2020, page.872-888.

75 Spencer, D., Sex offender as homo sacer. *Punishment & Society*, Vol.11 No.2, 2009, page.219-240.

76 Espina, C. and Narruhn, R., "I Can't Breathe": Biopower In The Time Of Covid-19. *Advances in Nursing Science*, Vol.44 No.3, 2021, page. 183-194. Also see, Jenkins, D., Chechel, L., & Jenkins, B. M., Nursing in deathworlds: necropolitics of the life, dying and death of an unhoused person in the United States healthcare industrial complex. *Nursing Philosophy*, Vol.24 No.4, 2023;

resolution for the perpetrators reinforces Agamben's thesis that Indonesian Migrant Workers (especially illegal Indonesian Migrant Workers) in Malaysia are no longer considered as *Bios* with citizenship rights, but are reduced to *homo sacer* in a state of bare life. Indonesian Migrant Workers are not positioned as *Bios*, but only as *Zoe*, so Indonesian Migrant Workers are only recognized as economic workers, but not as humans with political and legal rights. In such conditions, the Malaysian government through its apparatus falls into a state of exception. For Indonesian Migrant Workers, the state of emergency (state of exception) becomes a reason for the law to be suspended and violence to be carried out without legal accountability for the perpetrators. Both the Royal Malaysia Police and Malaysian Maritime Enforcement Agency act as representations of state sovereignty, possessing the power to determine the life and death of Indonesian Migrant Workers deemed illegal. On a broader spectrum, the modern state not only controls human life but also creates conditions that allow some humans to be sacrificed without legal accountability. The shooting of Indonesian Migrant Workers by the Malaysian Maritime Enforcement Agency is a concrete example of how the state uses the concepts of *Homo Sacer*, *Zoe*, and *Bare Life* to justify violence against groups considered as "abandoned" within its legal and political system.

BIBLIOGRAPHY

Journals:

- Agamben, G., I. *Homo Sacer: Sovereign Power and Bare Life*. Redwood City: Stanford University Press. *The Omnibus Homo Sacer*, 2017;
- Al Amaren, E. M., Hamad, A. M. A., Al Mashhour, F., and Al Mashni, I., An Introduction to the Legal Research Method: To Clear the Blurred Image on How Students Understand the Method of the Legal Science Research. *International Journal of Multidisciplinary Sciences and Advanced Technology*, Vol.1 No.9, 2020;
- Arpangi, A., Laksana, A.W., Widodo, H., Triyanto, T. and Suparmin, A., Resolution of Industrial Relations Disputes in Court Rulings and the Fair Fulfillment of Workers' Rights in Indonesia: An Islamic Legal Perspective. *JURIS (Jurnal Ilmiah Syariah)*, Vol.24 No.1, 2025;
- Bast, J., Human Rights in Migration Societies: Exploring the Intersection of Human Rights and Migration in Law, Politics, and Everyday Life. In *Book of Abstracts and Bios of the*. 2024;
- Bazerman, M. H., Conducting Influential Research: The Need for Prescriptive Implications. *Academy of Management Review*, Vol.30 No.1, 2005;
- Brown, H., Figuring Giorgio Agamben's 'bare life' in the post-Katrina works of Jesmyn Ward and Kara Walker. *Journal of American Studies*, Vol. 51 No.1, 2016;
- Bussolini, J., Critical Encounter Between Giorgio Agamben and Michel Foucault: Review of Recent Works of Agamben. *Foucault Studies*, Vol.10, 2010;

- Christiaens, T., Agamben's 'bare life' and Grossman's Ethics of Senseless Kindness. *Journal of European Studies*, Vol.52 No.1, 2022;
- Chuasanga A., Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019;
- Cooper-Knock, S., Beyond Agamben: Sovereignty, Policing and 'Permissive Space' in South Africa, and Beyond. *Theoretical Criminology*, Vol.22, No.1, 2017;
- Croce, M. and Salvatore, A., Beyond Emergency Politics: Carl Schmitt's Substantive Constitutionalism. *Philosophy & Social Criticism*, Vol.50 No.6, 2024;
- Darling, J., Becoming Bare Life: Asylum, Hospitality, and The Politics of Encampment. *Environment and Planning D: Society and Space*, Vol.27 No.4), 2009;
- DeCaroli, S., Political Life: Giorgio Agamben and the Idea of Authority. *Research in Phenomenology*, Vol.43 No.2, 2013;
- Denisenko, V. and Trikoz, E., Biopolitics and Legal Issues of Emergency Situations in The Context of Coronavirus Pandemic. *E3S Web of Conferences*, Vol.175. 2020;
- Ervina, D., Indriati, S. A., & Nugroho, N., Philosophy of law and the development of law as a normative legal science. *International Journal of Education and Research in Science and Social Sciences*, Vol.3 No.1, 2022;
- Espina, C. and Narruhn, R., I can't breathe": biopower in the time of COVID-19. *Advances in Nursing Science*, Vol.44 No.3, 2021;
- Farokhi, Z., Cyber Homo Sacer: A Critical Analysis of Cyber Islamophobia In The Wake of The Muslim Ban. *Islamophobia Studies Journal*, Vol.6 No.1, 2021;
- Gian, G., Normalising Sovereignty: Reflections on Schmitt's Notions of Exception, Decision and Normality. *Journal of Global Constitutionalism*, Vol.6 No.2, 2017;
- Gonzalez-Gorman, S., Disrupting Agamben: Beyond Undocumented Children As 'Homo Sacer'. *Human Geography*, Vol.16 No.1, 2022;
- Gündoğdu, A., Potentialities of Human Rights: Agamben and the Narrative of Fated Necessity. *Citizenship, Theory and Practice*, Vol.6 No.3, 2012;
- Gupta, A., National Poverty and Global Poverty in The Age of Neoliberalism. *Cahiers d'Études Africaines*, Vol.51, 2011;
- Himawan, E. M., Pohlman, A., & Louis, W., Revisiting the May 1998 Riots in Indonesia: Civilians and Their Untold Memories. *Journal of Current Southeast Asian Affairs*, Vol.41 No.2, 2022;
- Jamali, A., Re-appropriating Freedom: Agamben's Form-of-Life as a Response

- to Foucault's Biopower. *Sophia*, Vol.63 No.1, 2024;
- Jenkins, D., Chechel, L., & Jenkins, B. M., Nursing in Deathworlds: Necropolitics of The Life, Dying and Death of an Unhoused Person In The United States Healthcare Industrial Complex. *Nursing Philosophy*, Vol.24 No.4. 2023;
- Laksana, Andri Winjaya, Jarot J. Bagus., Re-orientation of Legal Policy For Using Of Foreign Workers In Indonesian Justice. *Jurnal Akta*, Vol.8 No.2, 2021;
- Lembcke, O., Giorgio Agamben's Political Theory. In *Oxford Research Encyclopedia Of Politics*. 2018;
- Malicki, M., Matheme and Mathematics: On the Main Concepts of the Philosophy of Alain Badiou. *Logique et Analyse*, 2015;
- Malik, T. and Jan, F., Foucauldian Biopower, Homo Sacer and Resistance Under The Taliban Rule in Afghanistan. *Liberal Arts and Social Sciences International Journal (LASSIJ)*, Vol.5 No.1, 2021;
- Maphosa, F. and Ntau, C., Undocumented Migrants as Homo Sacer: Cases from Botswana and South Africa. *Journal of Asian and African Studies*, Vol.56 No.4, 2020;
- McNevin, A., Border Politics: Migrants, States, and the Power of Exclusion. *Politics and Society*, Vol.47 No.2, 2019;
- Neal, A., Giorgio Agamben and the Politics of The Exception. *Working Paper*. 2020;
- Nikolopoulou, K., Homo Sacer: Sovereign Power and Bare Life. *SubStance*, Vol.93 No.1, 2000;
- Ojakangas, M., Impossible Dialogue on Bio-Power: Agamben and Foucault. *Foucault Studies*, Vol.0 No.2, 2005;
- Olivier, B., Beyond Agamben's 'Homo Sacer': The 'pandemic' as Final Reduction of Humanity to 'Bare Life'. *Psychotherapy & Politics International*, Vol.20 No.3, 2022;
- Papastergiadis, N., The Invasion Complex: The Abject Other and Spaces of Violence. *Geografiska Annaler: Series B, Human Geography*, Vol.88 No.4, 2006;
- Pogrebnyak, A., The Inappropriable: The Landscape. *Versus*, Vol.3 No.2, 2023;
- Prozorov, S., A Farewell to Homo Sacer? Sovereign Power and Bare Life in Agamben's Coronavirus Commentary. *Law & Critique*, Vol.34 No.1, 2023;
- Rahmawati, D. and Sulistyowati, E., Teori Filsafat Politik Agamben dalam Karya Sastra: Bare Life dan Homo Sacer. *Stilistika: Jurnal Pendidikan Bahasa dan Sastra*, Vol.15 No.1, 2022; ;
- Rajaram, P. and Grundy-Warr, C., The Irregular Migrant as Homo Sacer:

- Migration and Detention In Australia, Malaysia, And Thailand. *International Migration*, Vol.42 No.1, 2004;
- Rustamaji, Muhammad et al., The Reduction of Criminal Justice Policy in Indonesia: Justice versus Virality, *Journal of Human Rights, Culture and Legal System*, Vol.5 No.2, 2025;
- Santana, Á., Amin, A., & Santos, C., Direitos Humanos dos Refugiados: a Violência Contra o Homo Sacer à luz da Corte Interamericana de Direitos Humanos / Human Rights of Refugees: Violence Against Homo Sacer in the Light of the Inter-American Court of Human Rights. *Revista da Faculdade de Direito da UERJ*, Vol.42, 2023;
- Singh, N., Mapping B. R. Ambedkar within the Matrix Of Manu's Patriarchy, The Mentoring Of Maharaja Sayajirao Gaekwad And The Dynamics Of Agamben's Homo Sacer." *Contemporary Voice of Dalit*, Vol.11 No.1, 2019;
- Snoek, A., Agamben's Foucault: An Overview. *Foucault Studies*, Vol.10, 2010;
- Spencer, D., Sex Offender as Homo Sacer. *Punishment & Society*, Vol.11 No.2, 2009;
- Stephen, T. and Gossner, J., Deductive Qualitative Analysis: Evaluating, Expanding, and Refining Theory. *International Journal of Qualitative Methods*, Vol.23, 2024;
- Sullivan, G. and Goede, M., Between Law and The Exception: The UN 1267 Ombudsperson as A Hybrid Model of Legal Expertise. *Leiden Journal of International Law*, Vol.26 No.4, 2013;
- Tsang, E., Profit Making Disguised as Rehabilitation: The Biopolitics of Homo Sacer In China's Custody Education Program for Sex Workers. *The Prison Journal*, Vol.100 No.1, 2019;
- Uzun, E., On The Refugee Crisis Discourse: A Critical Analysis Sitting in The Junction of International Criminal Law and International Refugee Law. *Mecmua*, Vol.78 No.4, 2021;
- Van Asselt, H. and Harrould-Kolieb, E., Agamben's State of Exception Theory. *California Law Review*, Vol. 23, 2020;
- Varpio, L., Paradis, E., Uijtdehaage, S., & Young, M., The Distinctions Between Theory, Theoretical Framework, and Conceptual Framework. *Academic Medicine*, Vol.95 No.7, 2020;
- Vinx, L., 2015, *Carl Schmitt's Defense of Sovereignty*. Ph.D. thesis, University of Cambridge. Cambridge;
- Waring, J. and Bishop, S., Health States of Exception: Unsafe Non-Care and The (Inadvertent) Production of 'Bare Life' in Complex Care Transitions. *Sociology of Health & Illness*, Vol.42 No.1, 2019;
- Weber, S., Bare Life and Life in General. *SubStance*, Vol.41 No.2, 2012;

Weheliye, A. G., Pornotropes. *Journal of Visual Culture*, Vol.7 No.1, 2008;

Books:

Armstrong, P., 2021, Notes on Abandonment. In R. Vij, T. Kazi, & E. Wynne-Hughes (Eds.), *Precarity and International Relations*. Palgrave Macmillan. London;

Bagwell, S., *An Examination of 'Life' in Aristotle Concerning the Distinction Between Βίος (Bios) and Ζωή (Zoe)*. Canada: M.A. Thesis, University of Saskatchewan. 2018;

Brophy, S., 2021, *A Politics Like No Other: Agamben, Fanon and the Colonial Fracture*. In Agamben and the Existentialists. Edinburgh University Press. Edinburgh;

Dal Poz, I., 2019, *Foucault and the Politics of Self-Government*. Ph.D. thesis, University of Warwick. Inggris Raya;

De, Benoist Alain., *Carl Schmitt Today: Terrorism, 'just' War, and the State of Emergency*. Arktos, n.d;

DeCaroli, S., 2007. *Boundary Stones: Giorgio Agamben and the Field of Sovereignty*. In M. Calarco & S. DeCaroli (Eds.), Giorgio Agamben: Sovereignty and Life. Stanford University Press. Redwood City;

Feldman, G., 2020. *We Are All Migrants: Political Action and the Ubiquitous Condition of Migrant-Hood*. Stanford University Press. Redwood City;

Felice, William F., *Taking Suffering Seriously: The Importance of Collective Human Rights*. Suny Press, n.d;

Frost, T., 2011. Agamben, the Exception and Law. In D. Frenkel (Ed.), *Legal Theory, Practice and Education*. ATINER, Athens;

Hiepkö, A., 2020. *Homo Sacer*;

Jakobsson, N., 2020. *Foucault, Biopolitics and Governmentality*. M.A. thesis, Uppsala University. Sweden;

Kraut, R., 2020. *Aristotle: Political Philosophy*. Oxford University Press. New York;

Noonan, Jeff., *Critical Humanism and the Politics of Difference*. McGillQueens PressMQUP, n.d;

Perry, Michael J., *The Idea of Human Rights: Four Inquiries*. Oxford University Press, n.d.

Rustamaji, Muhammad., 2019, *Dekonstruksi Asas Praduga Tidak Bersalah*, 1st ed. Thafa Media, Yogyakarta;

Sarah, K., Zoe, 2020, *Bios and the Language of Biopower*. Unpublished manuscript, Vanderbilt University. Tennessee;

Schaar, John H., *Legitimacy in the Modern State*. Transaction Publishers, n.d.,

Website:

Agamben, Giorgio., *Refugees as Homo Sacer A Life Without Rights in the State of Exception*, n.d. <https://research.cbs.dk/>;

Agamben, Giorgio., *Homo, Sacer., Sovereign Power and Bare Life*, 1995. <https://www.degruyter.com/>;

Kidi., *Kasus Penembakan PMI di Malaysia*. Fakultas Ilmu Sosial dan Ilmu Politik (FISIP) - Universitas Airlangga, February 5, 2025. <https://fisip.unair.ac.id/>;

Oktavia., *RI and Malaysia Agree to Solve the Fishermen Proble*. Antara News, January 30, 2012. <https://en.antaranews.com/>;

Salma., *UGM Expert: Malaysian Authorities' Shooting of Indonesian*. Universitas Gadjah Mada, February 5, 2025. <https://ugm.ac.id/>.