

Analysis of Sharia Maqashid on PKWT in the Job Creation Law Article 18 No. 35 of 2021

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Abstract

This study analyzes the Fixed-Time Work Agreement (PKWT) in the Job Creation Law Article 18 No. 35 of 2021 through the perspective of Maqashid Sharia, focusing on the principles of Hifdzul Mal (property protection) and Hifzun Nafs (life protection). Indonesia's labor regulations were significantly changed by the Job Creation Law, including the removal of restrictions on the field of work that can use the outsourcing system. This change provides flexibility for the business world, but also poses challenges in protecting workers' rights. From Hifdzul Mal's point of view, this policy can improve business efficiency and encourage investment. However, from Hifzun Nafs' perspective, job uncertainty due to PKWT's flexibility has the potential to reduce workers' welfare. This research uses a qualitative method with a sharia maqashid approach that examines laws and regulations related to PKWT and the outsourcing system in the Job Creation Law. The analysis was carried out by examining legal documents, Constitutional Court decisions, and Maqashid Syariah theory to assess the implications of regulations on the welfare of workers and the business world. This research emphasizes the importance of comprehensive follow-up regulations and effective supervision mechanisms so that labor reform in the Job Creation Law can run according to the principles of justice and welfare in Maqashid Sharia.

Keywords : Maqashid Shariah; Outsourcing; Job protection.

Abstrak

Penelitian ini menganalisis Perjanjian Kerja Waktu Tertentu (PKWT) dalam UU Cipta Kerja Nomor 35 Tahun 2021 melalui perspektif Maqashid Syariah, dengan fokus pada prinsip Hifdzul Mal (melindungi harta benda) dan Hifzun Nafs (melindungi jiwa). Regulasi ketenagakerjaan Indonesia mengalami perubahan yang cukup signifikan akibat UU Cipta Kerja, antara lain dihilangkannya pembatasan bidang pekerjaan yang dapat menggunakan sistem alih daya. Perubahan ini memberikan keleluasaan bagi dunia usaha tetapi juga menimbulkan tantangan dalam perlindungan hak-hak pekerja. Dari sudut pandang Hifdzul Mal, kebijakan ini dapat meningkatkan efisiensi usaha dan mendorong investasi. Namun dari sudut pandang Hifzun Nafs, ketidakpastian pekerjaan akibat adanya keleluasaan PKWT telah menurunkan kesejahteraan pekerja. Penelitian ini menggunakan metode kualitatif dengan pendekatan maqashid syariah yang mengkaji peraturan perundang-undangan terkait PKWT dan sistem alih daya dalam UU Cipta Kerja.

Analisis dilakukan dengan menelaah dokumen hukum, putusan Mahkamah Konstitusi, dan teori Maqashid Syariah untuk mengkaji implikasi regulasi terhadap kesejahteraan pekerja dan dunia usaha. Penelitian ini menekankan pentingnya regulasi tindak lanjut yang komprehensif dan mekanisme pengawasan yang efektif agar reformasi ketenagakerjaan dalam UU Cipta Kerja dapat berjalan sesuai asas keadilan dan kesejahteraan dalam Maqashid Syariah.

Kata Kunci: Perlindungan Tenaga Kerja; Perjanjian Kerja Waktu Tertentu; Maqashid Sharia.

Introduction

Fact of employment In recent years, Indonesia has undergone many changes, especially with the implementation of Law Number 11 of 2020 concerning Job Creation, which aims to improve the investment climate and accelerate economic growth. One of the most prominent aspects of this law is the provisions relating to the Fixed-Time Work Agreement (PKWT), as such. This provision has given rise to various debates regarding its implications for workers' rights and the principle of social justice in the context of sharia maqashid.

According to Soepomo, based on Article 3 of Law No. 13 of 2003 concerning Manpower, a "worker" or "labourer" is any person who works for a company and is willing to work in exchange for wages, while the employers provide work and wages. The employment relationship between workers and employers is based on an employment agreement between the two parties.

In Islamic Sharia, there are rules of life set by Allah Ta'ala as a guide for mankind in living life. This rule was passed down with a noble purpose that is universal and acceptable to all. In the science of Ushul fiqh, "Maqashid as-shari'ah" meaning wisdom is a term used to describe the noble goal behind the establishment of Islamic sharia for the benefit of mankind.

In 2019, the government drafted Law Number 11 of 2020 concerning Job Creation to amend Law Number 13 of 2003. While this legislation was then detailed in Government Regulation (PP) Number 35 of 2021, it was widely rejected by the Indonesian people.¹

¹ Maryono, Maryono, and Markoni Markoni. "Juridical Analysis of the Provision of Fixed-Time Work Compensation Money for Outsourcing Companies Based on the Job Creation

Sharia Maqashid, which means Sharia purpose or intent, offers an ethical perspective that stresses a balance between rights and benefits for the various parties involved. In the context of PKWT and the Job Creation Law, these regulations meet the sharia objectives in providing social justice. Mujib highlighted that understanding Sharia Maqashid can help assess public policies, including employment policy, from a more holistic perspective.² This is very relevant considering that health and justice labour protection is one of the maqashid sharia foundations.

From the point of view of the Sharia Maqashid, it is important to consider whether the flexibility introduced by PKWT contributes positively to protecting workers' rights, or on the contrary, creates new vulnerabilities. His research highlights that although PKWT can provide new opportunities in the job market, lack of job security is a major issue that needs to be addressed.

The Ministry of Labor (2023) noted an increase in reports related to termination of employment that are considered detrimental to workers as the implementation of the Job Creation Law. This shows that there is an imbalance that needs to be evaluated in the execution of regulations that should bring benefits to all parties (Ministry of Agriculture. 2023). Meanwhile, according to the analysis, concerns arise regarding the impact of the Job Creation Law on workers' rights protection, especially in terms of job justice and security. Article 33 paragraph (1) and Article 27 paragraph (2) of the 1945 Constitution, which guarantees the right of every citizen to a decent job and livelihood, emphasizes that the economy is structured based on the principle of kinship, legal protection of workers is a must that cannot be ignored.³ This principle affirms that the state must ensure the basic worker's rights as part of efforts to achieve social justice and welfare for every Indonesian.

The Constitutional Court Decision No. 27/PUU-IX/2011, which emphasizes that workers' rights and obligations must be balanced, ultimately gives legitimacy

Constitution." *Indonesian Law Journal* 2.1 (2023): 25-34.

² Lubis, Rusdi Rizki, Januariansyah Arfaizar, and Edo Segara Gustanto. "Obligatory wills in the context of polygamous wives: maintaining equality and within the fair framework of sharia maqasyah." *al-Mawarid Journal of Sharia and Law (JSYH)* 6.1 (2024): 111-130.

³ Article 27 paragraph (2) of the 1945 Constitution, concerning the right of citizens to get a decent job and life.

to outsourcing practices in employment, shows that this system can be applied as long as it still pays attention to workers' rights.⁴

The government has an important role in ensuring regulation and supervising the implementation of labour regulations to secure workers' rights and realize fair industrial relations. Law Number 13 of 2003 concerning Manpower is one of the law benefits. This law creates the basis for regulating various aspects of work, including worker protection, the work system, and labour welfare in Indonesia.

Since the establishment of the employment cluster in Law Number 11 of 2020 concerning Job Creation began has been in the public spotlight. Various problems arise, ranging from the concept that is prepared, and the substance in each article, to the procedure for forming regulations, especially related to the employment cluster. One of the issues that is considered problematic is the provision regarding outsourcing.

In the context of employment, ideally, workers and employers establish mutually beneficial, balanced and harmonious cooperation. Workers contribute with their energy and expertise in creating goods or services, while employers are responsible for providing a decent wage as a form of reward for the work. However, in practice, various employment problems still often occur, one has to be related to the outsourcing system, also known as PKWT or Fixed-Time Work Agreement. This flexible work system creates uncertainty for workers, especially in social security and welfare, where workers' basic rights do not always receive adequate attention.

The Civil Code does not explicitly mention the term outsourcing. However, this concept can be found in Article 64 of the Manpower Law (UUK), which states that companies can hand over part of the execution of work to other companies through a written work outsourcing agreement. In other words, outsourcing allows a company to shift some of its workers' work to third parties.

Outsourced personnel face various problems that affect workers' welfare. One

⁴ Mariza, Siska, and Imam Budi Santoso. "Understanding the Legal Implications of Regulatory Transfer: Post-Judicial Analysis of the Constitutional Court's Decision No. 27/PUU-IX/2011 under the Omnibus Legal Framework." *Sultan Jurisprudence: Journal of Legal Research* 4.1 (2024): 123-140.

of the main issues is the transition of legal relationships which is often detrimental to workers, especially in labor rights. Many employees hired through outsourcing get wages and severance pay when they experience termination and have no social security for themselves or their families. In addition, legal protections for outsourced workers are still very weak, mainly due to their status as being bound by a time-limited Fixed-Time Work Agreement (PKWT). As a result, outsourced workers have no certainty about the sustainability of their work, creating unsafe working conditions and vulnerable to exploitation.

The use of outsourced labour often causes various problems that hurt workers. One of the main issues is the shift in legal relationships in the outsourcing system that harms employees, such as the unavailability of salary guarantees and compensation. When there is a Termination of Employment (PHK). In addition, outsourced workers often do not get basic rights such as participation in social security programs for themselves and their families. Not only that, the low legal protection further worsens their condition, considering the status of outsourced workers is bound by the Fixed-Time Work Agreement (PKWT).⁵ With limited working hours, they face uncertainty about the sustainability of their work, creating unstable working conditions and vulnerable to exploitation.

Analyze According to contract law, PKWT in Government Regulation No. 35 of 2021 and Islamic alliances. This study shows that there is still legal uncertainty related to the protection of PKWT workers, so further studies are needed to ensure the conformity of regulations with the principles of *Maqashid Sharia*.

Most of the literature that discusses PKWT in the Job Creation Law emphasizes formal juridical aspects. However, there has not been much research that integrates the maqashid sharia approach, especially in assessing the balance between legal certainty and the protection of workers' rights within the framework of Islamic justice. The Constitutional Court's ruling on outsourcing provisions has been an important milestone, it has not been analyzed in depth through the sharia Maqashid

⁵ Assek, A. (2012). *The Outsourcing Labor Agreement System is reviewed according to Islamic Economics* (Doctoral dissertation, Sultan Syarif Kasim State Islamic University, Riau).

approach that places the protection of life and property as a basic principle.⁶ Although Article 18 provides a legal framework for outsourced workers protection, its effectiveness in ensuring Maqashid such as economic justice and worker welfare remains an unanswered problem.

Although many studies on Job Creation Law and outsourcing, the Sharia Maqashid approach has not been widely used to assess the effectiveness of this regulation. In particular, there is not much research that focuses on how Article 18 of Law No.35 of 2021 can reflect the principles of Hifdz al-Mal and Hifz al-Nafs. This shows that there are important research gaps to be filled.

This study aims to analyze in depth the sharia Maqashid in the PKWT agreement by assessing the relevance of employment relations and the effectiveness of the performance of the Job Creation Law article 18 number 35 of 2021, to find the best solution that can advance the interests of all parties involved in an inclusive and equitable Islamic framework

Research Methods

This research is normative because it focuses on written legal studies, namely Article 18 No. 35 of 2021 in the Job Creation Law, and compares it with the principles of *Maqashid Sharia*. This research uses a Legislative Approach. Analyzing Article 18 No. 35 of 2021 in the Job Creation Law and other related regulations, such as Indonesian labour law and Islamic law regarding labour relations the conceptual approach uses *the theory of Maqashid Syariah* to assess justice and welfare in PKWT based on five main principles (*Hifz Al-Nafs* and *Hifz Al-Mal*).

The analysis of sharia Maqashid can be carried out by examining the extent to which the regulation is in line with the main purpose of sharia in safeguarding human welfare,⁷ then associated with article 18 No.35 of 2021 to analyze more

⁶ MUNAWAR, MUCHLIS. THE EFFECTIVENESS OF LEGAL PROTECTION FOR WORKERS WITH FIXED-TERM EMPLOYMENT AGREEMENTS AFTER THE ENACTMENT OF LAW NO. 6 OF 2023 CONCERNING THE JOB CREATION REGULATION. Diss. Sultan Agung Islamic University Semarang, 2024.

⁷ Saputra, Refki, and Abdurrahman Hilabi. "Actualization of Sharia Maqashid in the Construction of Fiqh Perspective on Sharia Banking Activities and Products." *Al Maal: Journal of*

deeply how this regulation affects aspects of sharia maqashid.

Results and Discussion

Legal Protection of Workers of Outsourcing Companies in Indonesia

Legal protection, referred to as legal protection in the Netherlands and the UK called Rechtsbescherming, has an important role in guaranteeing the rights and interests of individuals. According to the Great Dictionary of the Indonesian Language (KBBI), legal protection is stipulated as a place of refuge, an action, and a process in protecting a person or an interest.⁸ Essentially, legal protection is a legal effort to cover certain rights by ensuring that the interests that need to be safeguarded are recognized by law. Thus, an extension of legal protection is the main foundation for creating justice and legal certainty for human beings.

The role and function of law as a tool to control and protect social interests is closely related to legal protection. In his book *Crime and Custom in Savage Society*, Bronislaw Malinowski says that laws do not only function in conditions of disputes or acts of violence, but also function in regulating daily activities.⁹ This view emphasizes that the law is not only a tool to resolve disputes, but also a mechanism that maintains social order, provides a sense of security, and ensures justice in various aspects of people's lives.

Given their weaker position in employment relationships, legal protections for workers or outsourced workers are essential. The rights of basic workers who are not protected are at risk of being neglected, thus creating inequality in the world of work. Therefore, these protection efforts aim to ensure that the fundamental rights of workers are met, provide equal opportunities, and prevent discrimination of any kind. With strong legal guarantees, workers' welfare can be realized, creating a more reasonable and long-lasting work environment.

In theory, in the Pancasila Industrial Labour relationship, workers and

Islamic Economics and Banking 4.1 (2022): 31-49.

⁸ Son, Chandra Adi Gunawan, I. Nyoman Putu Budiarta, and Ni Made Puspasutari Examination. "Legal Protection for Consumers in the Perspective of Public Legal Awareness." *Journal of Legal Construction* 4.1 (2023): 13-19.

⁹ Senft, Gunter. "'Evil and Habit...' auf den Trobriand Inseln. Der Fall Tokurasi." *Anthropos* (1995): 17-25.

employers should have an equal position as partners.¹⁰ However, really, that balance is difficult to achieve. Employers typically have greater authority than workers, especially when related to finances. Establishment of company policies and regulations. This inequality shows that unfair, workers will continue to be in vulnerable positions. Therefore, the Government must be responsible for providing legal protection to create justice in the world of employment and ensure that workers' rights are fulfilled fairly and equitably.

The concept of a welfare state accommodated in the Preamble to the 1945 Constitution of the Republic of Indonesia emphasizes that the state has an active role in creating a balance in labour relations. In this context, the of workers is part of the state's responsibility to prevent exploitation by employers. As a more vulnerable and limited group, workers not only require legal care but also have the right to get it as a constitutional right. This right is affirmed in Article 27 paragraph 2 of the 1945 Constitution, every citizen has the right to work and a decent livelihood for humanity.

Therefore, the state must ensure that the employment relationship established reflects justice and welfare for all workers. As a result, the state must ensure that the employment relationship built not merely well benefits one party but also reflects justice and welfare for the entire workforce.

The key of the state in regulating coexistence has a strong justification basis, considering that the state is present amid a society that has developed first. As an entity that plays a role in regulating and maintaining social balance, the state cannot be separated from the process of forming legal norms that are the basis for running the government. The study of law's primary role in the commission of normative rules as a guideline in shaping and managing the state. With a clear rule of law, the state can carry out its functions effectively, create order, and ensure justice for all people.

The scope of legal guarantees for labour stipulated in the regulations of the Manpower Law (UUK) emphasizes the importance of fulfilling labour rights. This

¹⁰ Suyanto, Heru, and Andriyanto Adhi Nugroho. "Legal Protection of the Rights of Outsourcing Workers Based on the Principle of Justice." *Journal of Juridical* 3.2 (2016): 61-74.

protection covers various aspects, including the special rights granted to women workers and child labourers. The law regulated the special rights given to female workers by Article 76 paragraph (2), such as the conditions complied with by companies if they employ women from 23.00 to 07.00 as stipulated in Article 76 paragraph (3) of the Law. Companies' duties to provide pick-up and drop-off facilities for female workers during these hours are based on Article 76, paragraph (4) of the Employment Law.¹¹ Legal protection also includes child workers in the worker's category, who require special attention, so their rights are safeguarded based on applicable labour standards. This shows that labour regulations not only function as a legal instrument, but also as a form of state responsibility in creating a safe and fair work environment for all workers.

Legal protection As regulated in the Employment Law, workers belong to various vulnerable groups, including children and people with disabilities. Strict legal protection is given to child labourers, defined according to Article 1 point 26 of the UUK as individuals under 18 years old. Procedures are regulated in these rules employing children, as stated in Article 68, 69 paragraphs (1) and (2), Article 72, Article 73, and Article 74 paragraph (1) of the Criminal Code, to ensure that their rights are not neglected.

In addition, protection is also provided for workers with disabilities. Employers who employ them are protected by the type and level of disability regulated in Article 76 paragraph (1) of the Law. This protection includes personal protection, adequate accessibility, and proper work tools for workers. It affirms that a fair employment system must encompass all groups of people, without discrimination, by creating a more humane and inclusive workplace. Health and safety protection (K3) in the workplace is a fundamental right for every worker, as stipulated in Article 86 paragraph (1) of the Manpower Law. As a result, employers are responsible for implementing occupational safety and systematic health standards and integrating them with the company's management system. This step aims to create a safe work environment, by optimally increasing labour productivity. These

¹¹ Article 76 of Law Number 13 of 2003 concerning Manpower (UUK) regulates the protection of women workers.

protection efforts include various aspects, such as preventing work accidents, controlling light exposure in the workplace, promoting health, and providing treatment and rehabilitation facilities. By prioritizing occupational safety and health, it is hoped that the welfare of workers can be guaranteed while supporting the sustainability and operational efficiency of the company.

Labor Social Security shields workers or labourers to protect them from various risks associated with their work. This guarantee functions as compensation in the form of money to replace part of the income lost or reduced due to certain events, as stipulated in Article 1 paragraph (1) of Law Number 3 of 1992. The various components of this protection include work accidents, illnesses, pregnancy, childbirth, old age, and death. With this protection, employees have social and economic security to deal with various situations that may occur in their lives.

Because it is directly related to the welfare of workers or labourers, wages are an important part of labour protection. Every worker is entitled to an income that meets a decent standard of living for humans, as stated in paragraph (1) of Article 88 of the Manpower Law. This includes enough income to meet the basic needs of workers and their families, such as food, clothing, housing, education, health, entertainment, and health insurance for old age. Therefore, the salary must meet the minimum wage provisions as stipulated in the Regulation of the Minister of Manpower Number Per-01/Men/1999 jo Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. KEP-226/PRIA/2000. This minimum wage includes basic wages such as fixed allowances to ensure a decent standard of worker living.¹²

The Constitutional Court Decision Number 27/PUU-IX/2011 emphasizes that the rights and obligations of workers must be balanced, especially in the outsourcing system. The decree stipulates that workers' rights must be protected in the employment agreements of outsourcing workers. One of the provisions is that the employment agreement between workers and outsourcing companies must be

¹² Later, Friska Julyani. "Review of the Provincial Minimum Wage (UMP) for Employees of Private Companies According to Law No. 13 of 2003 concerning Manpower." LEX CRIMEN 7.6 (2018).

in an Indefinite Time Work Agreement (PKWTT), not PKWT. In addition, this decision also applies the principle of transfer of protection for employees who work for outsourcing service providers. With this provision, all outsourcing employees obtain better legal certainty and safeguards, and their position in the user company becomes more secure.

The weak balance of rights and obligations for outsourced workers is influenced by various factors that make their position increasingly vulnerable in the work world. One of the main causes is the lack of employment, which causes many individuals to be willing to work without clearly understanding their rights and obligations. In addition, fierce competition in getting jobs, especially in institutions or companies that implement strict selection according to the skills needed, also worsens the situation. The difficulty of getting a job is also related to the limited skills and experience of job seekers who have just completed their education, while companies demand certain skills. Not only that, workers' lack of understanding of the Labor Law makes them unaware of their rights, including provisions regarding Fixed-Time Work Agreements (PKWT).¹³

Another factor that exacerbates this condition is the low level of education and skills of workers, especially in the manufacturing industry that relies on technology. As a result, many workers are willing to accept low wages without considering their rights as workers who should be entitled to the protection they deserve.

After the enactment of the Job Creation Law, outsourcing work system was expanded and allowed, ultimately becoming one of the main issues in labour regulations. In simple terms, outsourcing can be interpreted as a mechanism for providing labour by a third party outside the main company. In this system, outsourced workers are legally not part of the company they work for, but part of an outsourcing service provider. This concept confirms that employment relationships Outsourced workers have a closer relationship with labour compared to companies that use their services, which affects the rights and protections they obtain in the work environment. As a result of the outsourcing system, the working

¹³ Hanifah, Ida. "Opportunities for foreign workers to work in Indonesia based on the draft Job Creation Law." *De Lega Lata: Journal of Law* 6.1 (2021): 168-173.

relationship between workers and employers becomes more flexible, which has a significant impact, especially on worker welfare.

One of the most felt consequences is cutting workers' salaries as an "incentive" for outsourcing service providers. This condition often causes dissatisfaction among workers, and wages that should be their full rights are diminished by outsourcing companies. Moreover, in other cases, transparency regarding salary cuts is still a problem, where workers do not get clarity on the amount or reason for the cuts. In addition to the impact on income, the increasing flexibility in the outsourcing system also increases the opportunity for businesses to facilitate termination, which ultimately worsens the position of workers in an increasingly unstable world of work.

One of the main problems in the Job Creation Law related to the outsourcing system is that instead of abolishing this practice, the government has expanded and legalized the work field that can use the outsourcing system. Previously, the outsourcing system was only applied to work that was supportive or not part of the production core, such as security, catering, transportation, and hygiene. However, with the changes regulated in the Job Creation Law, restrictions on fields of work that can use outsourcing are abolished and replaced with new provisions. Previously, this restriction was regulated in Article 66 paragraph (1), which affirmed the limitations of the outsourcing system in the world of work. With these changes, more and more fields of work can use outsourcing systems, which impact job security and worker welfare.

Previously, in Article 66 paragraph (1) of the Manpower Law, the outsourcing system had clear limitations, where the workers of service providers companies could not be used to perform the main tasks or those directly related to the production process. Only supporting duties not directly related to the company's production core can be outsourced. However, after the Job Creation Law was enacted, this provision was amended through Article 81 number 20 paragraph (1), which stipulates that outsourcing companies and their employees must have an employment relationship based on a written employment agreement, be it a Fixed-Time Work Agreement (PKWT) or an Indefinite Time Work Agreement (PKWTT).

This change opens up wider opportunities for the exercise of outsourcing systems in various job sectors, including in the production process, which was previously prohibited, thus potentially changing the employment landscape significantly.

By eliminating restrictions on business sectors that can use the outsourcing system, the application of this system will become wider in all fields without exception.¹⁴ This allows companies to be more flexible in recruiting workers through third parties, which greatly supports the company's core work and activities. As a result, the outsourcing system can be applied freely in various industries, which has the potential to change the dynamics of employment relations and affect the stability and certainty of work for employees.

Article 18 paragraph (1), the employment relationship between an outsourcing company and the worker or labourer employed is based on a Fixed-Time Work Agreement (PKWT), also known as an Indefinite Time Work Agreement (PKWTT), which is made in writing.¹⁵ According to Article 18, paragraph 2, ensuring workers or labourers related wages, welfare, working conditions, and dispute resolution is the responsibility of the outsourcing company, and it is carried out by the provisions of laws and regulations at least. Article 18 paragraph (3) states that outsourcing companies must stipulate regulations in the employment agreement if workers or labourers are employed based on the company's PKWT, or joint employment agreements there is legal protection for the rights of workers or labourers in the event of a change in the outsourcing company, as long as the protection for workers or Article 18 of Government Regulation No. 35 of 2021 regulates the employment relationship of outsourced workers with outsourced companies. This article stipulates that the employment relationship between the outsourcing company and the worker must be based on a Fixed Time Work Agreement (PKWT) or an Indefinite Time Work Agreement (PKWTT), which must be made in writing.

In addition, outsourcing companies are responsible for protecting workers from

¹⁴ Ibrahim, Hilmi Rahman, and Hamka Halkam. "International Trade & Import Control Strategies." National University Publishing Institute (LPU-UNAS) (2021).

¹⁵ Government Regulation No. 35 of 2021, "Regarding Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time".

wages, welfare, and working conditions, as well as the settlement of disputes that arise, by applicable laws and regulations. Outsourcing companies are also obliged to require in the employment agreement that there is legal protection for the rights of outsourcing workers if the outsourcing company is replaced as long as the work object remains.

With this provision, the government ensures that the rights of outsourced workers are protected through a clear employment agreement mechanism and applicable regulations. It provides legal security for outsourced workers and companies. The results are still available. However, Article 18 of Government Regulation No. 35 of 2021 has organized the working relationship between outsourcing companies and workers or labourers, the author still views that legal certainty related to protection for outsourcing workers is still not fully guaranteed.

This is due to uncertainty in enforcing worker protection, especially regarding job security, welfare, and rights transfer mechanisms when outsourcing companies are sold. Although these regulations govern the responsibilities of outsourcing companies, government oversight is still necessary to guarantee that workers' rights are properly protected. Without a more detailed supervisory mechanism and derivative policies, it is feared that there will be uncertainty about legal protection for outsourcing workers. Therefore, the government's prominent role in supervising and enforcing the implementation of this regulation is to ensure the welfare and rights of outsourced workers.

Analysis of the Harmony of Employment Relations of Outsourcing Companies in the Job Creation Law with Maqashid Syariah

Employment relations in the outsourcing system have become an important issue in the work area, especially after the enactment of the Job Creation Law (Law No. 11 of 2020).¹⁶ This law brings various changes in the labour arrangement, including those related to the *outsourcing* system regulated by the previous Labor

¹⁶ Iswaningsih, May Linda, I. Nyoman Putu Budiarta, and Ni Made Puspasutari Test. "Legal Protection of Local Workers in Law Number 11 of 2020 concerning the Omnibus Law on Job Creation." *Journal of Legal Preferences* 2.3 (2021): 478-484.

Law No. 13 of 2003.

From the perspective of Maqashid Sharia, the principles of justice in employment must always be maintained to ensure the welfare of workers and business sustainability.¹⁷ The Maqashid Syariah encompasses five main aspects: Hifdz al-Mal (protection of property), Hifdz al-Aql (protection of reason), Hifdz al-Nasl (protection of heredity), Hifdz al-Nafs (protection of life), and Hifdz al-Din (protection of religion). Therefore, the analysis of the harmony of labour relations in the outsourcing system based on the Job Creation Law needs to be reviewed within the framework of Maqashid Sharia.

Based on Article 18. Government Regulation No. 35 of 2021, a derivative of the Job Creation Law, regulates that outsourcing agreements are still recognized with more specific arrangements. This regulation emphasizes that employment relationships in the outsourcing mechanism must meet the requirements for labour protection, including the certainty of the rights and welfare of outsourced workers.

From the perspective of Hifzul Mal (property protection) in Maqashid Syariah, outsourcing must be managed fairly so, as not to harm workers and labour providers. This principle demands that the outsourcing system does not lead to the exploitation of workers, but rather becomes a means to maintain an economic balance between employers and workers.

In line with the thinking of outsourcing, it can be categorized into two main forms: first, wholesale work agreements that focus on work in the form of products or services, and second, the provision of employee or labour services that focus more on the direct utilization of labour.

These two forms, in their execution, pay attention to aspects of economic justice and labour welfare so as not to contradict the principle of Hifzul Mal, which emphasises the protection of property and individual economic rights in society.

Wholesale work agreement as regulated One form of submitted part of the implementation of work to another company is regulated in Article 65 of the

¹⁷ ARINIE, DAMAYANTI. ANALYSIS OF SUSTAINABLE BUSINESS IN THE ERA OF DIGITALIZATION IN AN EFFORT TO IMPROVE THE WELFARE OF BUSINESS ACTORS IN THE PERSPECTIVE OF ISLAMIC ECONOMICS (Study on Yellow Bamboo Traders Trade Center Bandar Lampung City). Diss. UIN RADEN INTAN LAMPUNG, 2024.

Manpower Law (UUK). In addition, by Article 18 of Law Number 35 of 2021 concerning Job Produce, the contract for the work outsourcing must be made in writing to ensure legal certainty and the protection of the rights and obligations of the parties involved.

The Employment Law regulates in a limited way that work that can be outsourced to another company through an employment agreement must meet certain conditions, namely: (1) it must be carried out separately from its main activities, and (2) it must be carried out on direct or indirect orders from the employer. This requirement ensures that the outsourcing mechanism does not ignore workers' rights, maintains a balance between business flexibility and labour protection, and provides certainty in employment relations by the values stipulated in Article 18 of Law Number 35 of 2021.

In 2020, the objective of Law Number 11 of 2020 concerning Job Creation has been published, which was passed by the House of Representatives of the Republic of Indonesia on October 5, 2020, and promulgated on November 2, 2020, is to increase employment and encourage domestic and foreign investment.

Then, to improve and adjust several provisions in the Job Creation Law Number 35 of 2021, Article 18 regulates the labour relations mechanism to provide legal certainty and protection for workers and business actors. This regulation aims to balance the flexibility of the business world with the protection of workers' rights, to create a more conducive work environment, following the spirit of the reform of the Job Creation in Employment Constitution regulations.

After being passed and enacted, the Job Creation Law amended some national laws, including Law Number 13 of 2003 concerning Manpower. Several articles in the Law have changed, including the abolition of Articles 64 and 65, which were then replaced by provisions in Article 81 numbers 18 and 19 of the *Job Creation Law*.¹⁸ With this change, Article 81 number 20 of the Job Creation Law can only regulate outsourcing or outsourcing. It changes the provisions in Article 66 of the

¹⁸ FEBRIANTO, FEBRIANTO. RECONSTRUCTION OF THE REGULATION OF THE PROTECTION OF FIXED-TIME CONTRACT LABOR BASED ON JUSTICE. DISS. SULTAN AGUNG ISLAMIC UNIVERSITY, 2023.

Constitution, including regulating the employment relationship between outsourcing companies and workers.

From the perspective of *Maqashid Sharia*, especially the principles of *Hifdzul Mal* (protection of property) and *Hifzun Nafs* (protection of life), these regulatory changes must be understood as part of an effort to balance economic interests with the protection of labour. *Hifdzul Mal* is reflected in policies that provide legal certainty for employers and workers so that outsourcing-based employment relationships can run transparently and fairly.¹⁹ Meanwhile, *Hifzun Nafs* stressed the importance of protecting workers' rights so that exploitation does not occur that can harm their welfare and safety.

This employment arrangement aims to ensure that workers continue to get their rights, while the business world can operate more flexibly and efficiently. Thus, this change is expected to create a more equitable and sustainable employment ecosystem. Legal protection for workers aims to realize social justice in the world of work by limiting the authority of employers who are not limited by applicable laws.

Article 66 of the Manpower Law (UUK) has undergone several significant changes, under Article 81 of the Job Creation Law. Among the changes made are provisions regarding the types of jobs that can be transferred to outsourcing companies, and rules that add protections for workers if outsourcing companies resign.

In addition, there are additional arrangements related to the licensing of outsourcing companies to ensure compliance with labour standards. This change follows Article 18 of Law Number 35 of 2021, which aims to guarantee workers' rights, improve labour protection, and provide legal certainty in employment relations in outsourcing schemes.

With the regulations related to licensing and worker protection when there is a change in outsourcing companies, it is hoped that industrial relations will be more transparent, fair, and able to create a sustainable work environment for workers and

¹⁹ Safa'at, Muchamad Ali, et al. DEVELOPMENT OF ISLAMIC LAW: Its Existence, Relevance, and Challenges in Post-Reform Indonesia. Literature of Civilization, 2022.

business actors.

In the material test of Law Number 13 of 2003 concerning Manpower, the Constitutional Court (MK) granted part of it in 2011 as proposed by Didik Suprijadi from the Alliance of Indonesian Electric Meter Reader Officers (AP2ML).²⁰ As stated in the Constitutional Court Decision No. 27/PUU-IX/2011, the terms "fixed-time employment agreement" in Article 65 paragraph (7) and "employment agreement for a certain time" in Article 66 paragraph (2) b each have the same meaning contrary to the 1945 Constitution when the employment agreement does not include provisions for the protection of workers' rights, especially in conditions where the object of work remains even though the service provider company changes.²¹

This ruling emphasizes that the *outsourcing system* must provide certainty of protection for workers, especially in the face of the sustainability of their rights and welfare. In line with Article 18, Law Number 35 of 2021, this case, also regulates aspects of legal certainty in employment relations and reinforcement of labour protection in outsourcing schemes. The shift has affirmed the importance of workers' security. The transfer of work by a service provider must not deprive workers of their rights. With this regulation, the outsourcing system in Indonesia will be fairer and more transparent, and business actors and workers will have legal security.

Conclusion

Law Number 13 of 2003 concerning Manpower, especially Articles 64 to 66, regulates the outsourcing system in Indonesia, which provides restrictions on the field of work that can use the outsourcing system. However, after the Job Creation Law Number 11 of 2020 was enacted, there were significant changes, where Article 64 and Article 65 were deleted, while Article 66 was amended

²⁰ Syurkati, Khair Khali. "THE EXISTENCE OF OUTSOURCING AND ITS ROLE AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 27/PUU-IX/2011." *Scientific Journal of Administration* 7.1 (2016): 28-42.

²¹ Pratiwi, Wiwin Budi, and Devi Andani. "Labor Law Protection with Outsourcing System in Indonesia." *Journal of Law Ius Quia Iustum* 29.3 (2022): 652-673.

through Article 81 number 20 of the *Job Creation Law*. One of the major changes was the removal of restrictions on business sectors that allowed the use of outsourcing systems, resulting in workforce flexibility in the business world.

From the perspective of *Maqashid Shariah*, especially *Hifdzul Mal* (property protection) and *Hifzun Nafs* (life protection), these changes demand a balance between the interests of the business world and ensuring workers' rights.²²

*Hifdzul Mal is reflected in policies that allow investment and business efficiency through outsourcing systems. Hifzun Nafs demands legal guarantees for workers so that they do not experience uncertainty in employment relationships.*²³

The Constitutional Court Decision Number 27/PUU-IX/2011 has previously strengthened the importance of transferring the protection of workers' rights in the outsourcing system, by requiring that work agreements be in the form of Indefinite Time Work Agreements (PKWTT) and ensuring that workers' welfare is guaranteed.

However, due to the Job Creation Law, the protection of the rights of outsourced workers is now more focused on wage protection and welfare. In addition, companies are now required to protect workers in employment agreements if the outsourcing company is overthrown, as long as the work remains. In addition, labour providers must now meet business licensing requirements using the Online Single Submission (OSS) system, so that government supervision can be optimal.

The objective of law enactment, as stated in Article 18 of Law Number 35 of 2021, is to create legal certainty for workers and the business world. However, the main problem still lies in the exercise of this policy, considering that the implementing regulations stipulated in Article 81, point 20 (6) of the Job Creation Law have not been issued by the government. Therefore, employment protection, clear follow-up regulations and effective implementation are needed. Employment reform objectives can be achieved by paying attention to the principles of justice

²² MUSTAHIK, DHUAFA TOWARDS WELL-BEING. "SHARIA ECONOMICS STUDY PROGRAM, FACULTY OF ISLAMIC ECONOMICS AND BUSINESS, STATE ISLAMIC UNIVERSITY, AR-RANIRY, BANDA ACEH, 2022 M/1443 H."

²³ Safa'at, Muchamad Ali, et al. *DEVELOPMENT OF ISLAMIC LAW: Its Existence, Relevance, and Challenges in Post-Reform Indonesia*. Literature of Civilization, 2022.

and welfare for all parties.

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