



**MAŞLAHAH MURSALAH: AN ALTERNATIVE
APPROACH TO LEGAL DEVELOPMENT OF INDONESIA
LAW LABOR SYSTEM**

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Abstract

This study aims to offer an alternative approach to the implementation of the labor law system in Indonesia. With the approach of Islamic law and socio-legal research as its basic tools for analyzing the implementation of various labor law regulations, the results of the study show; *first*, various labor problems that arise at this time are caused by, among others, there is no common understanding yet on the concept of equal relationship between workers and employers, the lack of government political will in enforcing the rules, the low skills of labor, uncertainty of market mechanisms, uneven distribution of the worker, and the presence of foreign workers; *second*, the implementation of the labor system is still far away from the concept of *fiqh ijarah*; and *third*, the lack of work spirituality.

Keywords: *Maşlahah Mursalah*; Employment; Justice.

Abstrak

Studi ini bertujuan untuk menawarkan pendekatan alternatif bagi pelaksanaan sistem hukum ketenagakerjaan di Indonesia. Dengan pendekatan hukum Islam dan *socio-legal research* sebagai basis pijakan analisis atas pelaksanaan berbagai aturan hukum ketenagakerjaan, hasil studi menunjukkan; *pertama*, berbagai persoalan ketenagakerjaan yang muncul saat ini disebabkan oleh antara lain, belum adanya pemahaman bersama atas konsep relasi kerja yang berimbang antara pekerja dan pengusaha, kurangnya *political will* pemerintah dalam penegakan aturan, masih rendahnya skil tenaga kerja, ketidakpastian mekanisme pasar, penempatan kerja yang tidak merata, dan kehadiran tenaga kerja Asing; *kedua*, implementasi sistem ketenagakerjaan masih jauh dari konsep *fiqh ijarah*; dan *ketiga*, rendahnya spiritualitas kerja.

Kata Kunci: *Maṣlahah Mursalah*; Ketenagakerjaan; Keadilan

Introduction

As an economic being (*homo economicus*),¹ every individual (human beings) will always find a way to fulfill their needs, both in term of goods and services, for the welfare of their lives. From the various efforts they have carried out then will occur a process of interaction, which will form social agreements, or legal-rules in order to manage and guarantee the entire process of interaction to find the needs of every individual involved, and for the sake of creating a prosperous life together.

For the jointly stipulated rule of law to proceed properly, the process of drafting and implementing it must also consider the socio-cultural context, in which the rules will be enforced. Because the rule of law is a mirror of the practiced values by society.² So that the relationships that are built are not merely dominative relations-as is the idea of Karl Marx and contemporary Marxians-but a relationship that leads to a form of partnership relationship.

Industrial relations practices that have occurred in the Indonesian history are very complex. Starting from the slavery model,³ forced labor (compulsory

¹ Mark Granovetter and Richard Swedberg, *The Sociology of Economic Life*, editor. Mark Granovetter and Richard Swedberg (Colorado, USA: Westview Pres, Inc, 1992). See also, Sindung Haryanto, *Sosiologi Ekonomi* (Yogyakarta: Ar-Ruzz Media, 2011).

² Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: PT. Raja Grafindo Persada, 2004), p. 16. See also, Zainal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: PT. Raja Grafindo Persada, 2002), p. 34.; Iman Soepomo, *Pengantar Hukum Perburuhan* (Jakarta: PT. Raja Grafindo Persada, 1997), p. 39.

³ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, 4th ed. (Jakarta: Sinar Grafika, 2014), p. 18.

labor), criminal sanctions work (*poenale sanctie*);⁴ until the emergence of the legal system, including Law (Undang-Undang) Number 23, 1948 concerning Labor Inspection; Law Number 21, 1954 concerning Labor Agreements; Law Number 22, 1957 concerning Settlement of Labor Disputes; Government Regulations (Peraturan Pemerintah), Presidential Decrees (Kepres), Ministerial Regulations (Permen),⁵ until the formulation of the Pancasila Industrial Relations (PIR).⁶

The Pancasila Industrial Relations concept has the following characteristics; (a) recognizing and believing that work is not merely earning a material needs, but also a form of humanity's devotion to God, to fellow human beings, society, nation-state; (b) workers are not merely factors of production, but also as human being (personal) with full of their human dignity; (c) the relationship developed between workers and employers is a relationship of shared interests, and for the progress of the company; (d) conflict between workers and employers must be settled amicably; and (e) both parties must always maintain in balance condition between their representative rights and obligations. Not just for the sake of power balancing, but also for the sense of justice and propriety.⁷ But in its development, the implementation of this concept still led to some inequalities. Problem of the labor welfare are still questioned by the workers themselves.⁸

As a predominantly Muslim country, although Islam is not as the basic principle of the state, but Islam has become a spirit that animates every dimension of life of Indonesia, hereby the labor problem cannot be separated from the perspective of Islamic law. Whereas, in the Islamic teachings' workers are positioned on an equal position as well as other human beings (non- workers).

The success of a worker is not determined by what his/her religion, but rather because of tenacity and perseverance in their working. But practically, the existence of religion also influences, or at least becomes a motivation for each individual to be more tenacious and diligent in their working.⁹ The emergence of

⁴ Abdul Jalil, *Teologi Buruh* (Yogyakarta: LKiS, 2008), p. 247.

⁵ Adrian Sutedi, *Hukum Perburuhan* (Jakarta: Sinar Grafika, 2009), p. 33.

⁶ Adrian Sutedi, *Hukum Perburuhan*, p. 33.

⁷ Adrian Sutedi, *Hukum Perburuhan*, p. 27. Kompleksitas permasalahan ketenagakerjaan seringkali menjadikan pekerja sebagai 'korban' (dirugikan) dalam proses penyelesaian persoalan. See also, Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*. p. 57-58.

⁸ CNN Indonesia, "Hari Buruh 2019, Upah Minimum Masih Jadi Sorotan," CNN Indonesia, accessed 13 Mei 2019, <https://www.cnnindonesia.com/nasional/20190501154442-20-391155/hari-buruh-2019-upah-minimum-masih-jadi-sorotan>.

⁹ Richard Swedberg and Neil Smelser, "Introducing Economic Sociology," in *The Handbook of Economic Sociology*, ed. Neil J. Smelser and Richard Swedberg, 2nd ed., vol. 2 (USA: Princeton University Press and, 2005), 8-10. p. 8-10

business trends that are inspired or even use religion (Islam) as its label in some Muslim-majority countries,¹⁰ can be taken as an example of how religion has influenced the development of the business world. Like the emergence of various Islamic Business Entities and Islamic Banking in Malaysia and Indonesia.¹¹

Previous studies that discussed on spiritual and/or ideological motives of the work have indeed been done a lot. But regarding on how is the implementation process of the existing legal rules; especially when its seen based on Islamic law, has not been touched yet. Here is the urgency of this study. Considering, various labor-related issues in Indonesia, ranging from the large number of labor force amid the lack of employment opportunities, the low quality (skill) of labor, the uneven distribution of labor, the high enough unemployment rate, and the guarantee of the welfare of workers are still questionable. In fact, the implementation of a rule of law should be in line with the initial purpose of the emergence of a rule of law itself (*maqashid syariah*). For this reason, an alternative model for developing the labor law system in Indonesia is needed, so that its implementation is appropriate to the context and needs of the community.

1. Research Method

Based on the constructivism's paradigm, which emphasizes the frame of achieving the substantive value of justice,¹² combined with a socio-legal research approach that focuses on the implementation of the legal system in a community, complemented by the *al-Mursalah masalahah* method,¹³ with the *maqashid shariah* as its framework, the contextualization of regulations¹⁴ carried out, so that the implementation process becomes synergistic and based on justice.

Justice is the foothold in this development effort. The reference standards and indicators are adjusted to the state ideology, Pancasila. Where justice is also in line with the universal mission of Islam (*rahmatan lil 'alamiin*). This universal mission is clearly stated in the principle of *hifdz al-nasl wal irdli wa al-mal*. Here,

¹⁰ Daromir Rudnycky, "Islamizing Finance: from Magical Capitalism to a Spiritual Economy," *Anthropology Today* 32, no. 6 (2016), p. 8–12.

¹¹ Hilman Latief, "Philanthropy and 'Muslim Citizenship' in Post-Suharto Indonesia," *Southeast Asian Studies* 5, no. 2 (2016), p. 269–286.

¹² Sri Endah Wahyuningsih, "Rekonstruksi Asas-Asas Hukum Pidana Nasional Berlandaskan Nilasi-Nilai Kearifan Religius Dari Perspektif Hukum Islam" (Universitas Diponegoro Semarang, 2011).

¹³ Muhammad Ali Rusdi, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *DIKTUM: Jurnal Syariah dan Hukum* 15, no. 2 (2017), p. 151–168.

¹⁴ Mukti Fajar dan Julianto, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010), p. 47.

Hans Kelsen said that law as a social order can be declared fair if it can regulate human actions in a satisfying way, so that humans can achieved happiness.¹⁵

While in the perspective of Islamic Law, the discourse on labor is closely related to the concept of *fiqh ijarah*. Although it must also be recognized that the concept of labor in classical texts requires a reconstruction effort with consideration of the humanization of Islamic sciences. When it's viewed in terms of implementation, *fiqh ijarah* and labor laws system in Indonesia are substantively very much related to the socio-anthropological conditions of Indonesia. Labor is the result of human relations in carrying out socio-economic activities. This is where a progressive legal approach is needed, in which the method of law must consider not only based on the application of positive-legalistic law, but also an action (effort) in its implementation process.¹⁶

2. Indonesian Law Labor System

Historically, the Indonesia law labor system began with a dark period.¹⁷ Meanings, the 'dark' system of Indonesian employment has occurred in Indonesia. The slavery system began in the Dutch East Indies and was regulated in 1817, the contents of which arranged for the sending of slaves from outside Java to Java Island. This system was later abolished in 1860 with the issuance of *Regeringsreglement*. While the labor system occurred during the Heandrik William Deandels served as Governor General of the Dutch East Indies in 1807-1811. At that time, forced labor was carried out in the interests of building a highway from Anyer (West Java-Banten at present) to Panarukan, East Java. Whereas the *Punale* sanction system is a product that emerged in 1870 and ended in 1941. All of these systems, in practice together led to an imbalance between workers' rights and obligations.

In the independence era, the efforts were made to eradicate the old labor system (the colonial system) with a system that was (considered) more liberating.¹⁸ An employment system is reformulated in such a way, as an effort to realize national development that is directed to regulate, foster and

¹⁵ Hans Kelsen, *General Theory of Law and State*, ed. Raisul Muttaqien (terjemah) (Bandung: Nusa Media, 2011), p. 7.

¹⁶ Satjipto Raharjo, *Hukum Progresif: Aksi, Bukan Teks Dalam Memahami Hukum Dari Konstruksi Sampai Dengan Implementasi* (Jakarta: Rajawali Press, 2009), p. 3.

¹⁷ Zaini Asyhadie dan Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori Dan Praktik* (Jakarta: Prenade Media Group, 2019), p. 23-35.

¹⁸ Soepomo, *Pengantar Hukum Perburuahan* (Jakarta: Djambatan, 1985), p. 3.

oversee all activities related to labor, in the framework of realizing order and achieving justice.¹⁹

Although it continues to experience development, but clearly the practice of the labor system in Indonesia is still far from meeting the welfare of workers. Because labor problems are not only related to wages, but also freedom, guarantees and sustainability of national development. Various efforts to create a just system continue to be pursued by all parties.

As part of the workers, the struggle to make improvements is done through various forms of association and movement. Hereby, emerged the existence of a Joint Work Agreement, the Trade Union, and the Biparti and Triparti Cooperation Institution. While from the government side, it continues to improve labor systems, by accommodating demands for justice, welfare and various guarantees of human rights' protection.²⁰

However, various efforts in its implementation still found various obstacles and challenges. *First*, related to workers' skills. Skills are a form of skill needed in the labor market to provide productivity and value for labor. The higher the skill, the better the quality of production. *Second*, demographic bonus. This challenge is how to shift the work mix to work with high quality and productivity in the formal sector, which will increase government revenues and revenues, thus enabling better services.²¹

Third, miss-match work placement. This does not necessarily question the demand and employment opportunities, but rather looks at the discrepancy between the educational background (workers) with the type of work carried out. As a result, employment in the education sector is low even though the percentage is higher than those with higher education.²² *Fourth*, technological progress. The rapid growth of online devices (online platforms) creates opportunities for digital-based work services. As a result, new job opportunities resulting from the use of technology are far greater in the trade and service sectors than others.²³

Fifth, the presence of foreign workers who are considered to have helped threaten the existence and sustainability of domestic workers (whose

¹⁹ Laurensius Arliman S, "Perkembangan dan Dinamika Ketenagakerjaan di Indonesia," *Jurnal Selat* 5, no. 1 (2017).

²⁰ Departemen Tenaga Kerja dan Transmigrasi dan ILO, *Panduan Kesempatan Dan Perlakuan Sama Dalam Dunia Kerja* (Jakarta: ILO Publisher, 2005), p. 5.

²¹ OECD, *Surve Ekonomi Indonesia 2018* (Jakarta, 2018), p. 39.

²² INDEF, "Development of Economics and Finance," *www.Indef.or.Id*.

²³ ILO, *Laporan Ketenagakerjaan Indonesia 2017* (Jakarta, 2018), p. vi.

skills are low).²⁴ *Sixth*, the rapid flow of globalization further widens the gap in competition between domestic and foreign workers. This will certainly return to the issue of the need for high-quality of workers skill.²⁵

Today, the labor system in force in Indonesia is referring to Law Number 13, 2003, and Law Number 2, 2004. When viewed from the perspective of Islamic law, the substance is not generally contrary to Islamic teachings. But when viewed from the side of its implementation there are still many gaps, even practices that contradict Islamic teachings—especially in the implementation of the principle of justice. Apart from the fact that the work paradigm is still more dominated by a profit-materialistic orientation, the principle of *ijarah* has not yet been fully adopted in the implementation of the labor law system in Indonesia.

For this reason, a formulation of the development of the labor system is needed by adopting the substantive values of Islamic law; by promoting the principles of justice and truth. This formulation begins by shifting paradigms and understandings related to the world of labor, by inserting spirituality of work as part of the work principles.

3. *Maṣlahah Mursalah*: Approach to Legal Development

Based on *fiqh* (Islamic Jurisprudence), industrial relations between workers and employers are conceptualized through *ijarah* principal contracts (exchange of benefits and wages).²⁶ The principle is to lead to the realization of equal opportunity and mutual prosperity.²⁷ Between workers and employers must be seen as having the same position (relational); namely as a creature that has the obligation as well as the right to obtain good fortune in accordance with their respective roles and functions. From this was born the principle of partnership relations in production, where both parties have a balanced position.²⁸

Sociologically, the Pancasila industrial relations model can be seen as a form of effort to contextualize (or develop) a justice—based labor law system that is adapted to the socio-cultural conditions of the community, nation-state. This industrial relation emerged as an alternative step in addressing as well as finding

²⁴ Abdul Rachmat Budiono, *Hukum Perburuahan Di Indonesia* (Jakarta: Raja Grafindo, 1998), p. 115.

²⁵ Jepi Adiando dan Muhammad Fedryansyah, “Peningkatan Kualitas Tenaga Kerja Dalam Menghadapi Asean Economy Community,” *Jurnal Pekerjaan Sosial* 1, no. 2 (2018).

²⁶ Ahmad Ghojali, *Menuju Masyarakat Industri Islami* (Jakarta: Dwi Cahaya, 1995), p. 67.

²⁷ Faozan Amar, *Ekonomi Islam; Suatu Pengantar* (Jakarta: UHAMKA Press, 2016), p. 45-51.

²⁸ Armansyah Walian, “Konsep Tenaga Kerja Dalam Islam,” *Jurnal An-Nisa* 8, no. 1 (2013).

solutions to various problems in the world of labor in Indonesia. Bearing in mind, the relationship between workers and employers is not merely a structural-dominative relationship,²⁹ but also relations within the framework of bringing about balance, harmony and mutual prosperity. However, there are basic principles that must be met, namely the results or orientation of the work must lead to the realization of benefit, both in the world and the hereafter.³⁰ Because it works, it must be understood and believed to be no longer just a form of physical routine (*jismāniyyah*), but also part of worship activities. From this came the concept of *istikhlāf*; where every human being has the responsibility to prosper the world, and at the same time is responsible for investing in and developing the assets he has acquired to cover the needs of others. So, work must be understood not only as a form of activity that emphasizes vertical relations (humans and God), but also maintains horizontal relations (humans and fellow creatures of God).³¹

Justice is the key word for the formulation and implementation of law. The principle of equality before the law, becomes its basic foundation. Because a law can only be established in relation to justice.³² Equal rights (not leveling) are the frames. Because, justice is also the main foothold of the presence of social institutions (social institutions).³³ Where, each individual must be positioned equally in the society. There is no difference in their status and position. So that, the principle of interaction is reflective *equilibrium* (equal), in which the characteristics of rationality, freedom, and equality as the basic structure of society. If problems arise injustice, then it must be seen that there is a part of the social structure that is experiencing dysfunction. The settlement must refer to three (3) principles; namely freedom,³⁴ differences, and fair equality to get opportunities for everyone.³⁵

Thus, the work relations carried out refer to the synergistic relations in the context of the position, as well as the rights and obligations of each party,³⁶ as outlined in the agreement, starting from the duties, wages, and various other

²⁹ Bisnis Indonesia, "Sistem Ketenagakerjaan Indonesia Masih Feodal," Jakarta, 2018.

³⁰ Abdul Muim Salim, *Konsepsi Kekuatan Politik Dalam Islam* (Jakarta: UIN Syarif Hidayatullah Jakarta, 1989), p. 149.

³¹ Muslich, *Etika Bisnis Islami; Landasan Filosofi, Normatif, Substantif, Implementatif*, (Yogyakarta: Ekonisia, 2004), p. 40.

³² Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis* (Bandung: Nuansa dan Nusamedia, 2004), p. 24.

³³ Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis*, p. 139-140.

³⁴ John Rawls, *A Theory of Justice*, ed. Revised Edition (Cambridge: Harvard University Press, 1999), p. 53.

³⁵ John Rawls, *A Theory of Justice*, p. 63.

³⁶ Soepomo, *Pengantar Hukum Perburuhan*, p. 70.

guarantees.³⁷ So that the relationship between the two parties (workers and employers) is a relationship as a comrade in the production process. Workers and employers alike have an obligation to work together and help run a business, with the ultimate goal of improving welfare and increasing production. The principle used is three (3) the principle of partnership: namely partnership in responsibility, partnership in production, and partnership in profit.³⁸

Conclusion

In general, the implementation of the labor system in Indonesia today, besides being thick with feudalistic nuances. The ratio is not balanced, because workers are often still used as mere “means of production”. While the orientation of workers is still dominated by the orientation of physical needs. The government, which is expected to be an intermediary, is politically impressed by the lack of regulation. So many labor problems are not resolved.

For this reason, a development breakthrough is needed in the effort to implement the labor law system. One of them by offering the concept of *fiqh ijarah*. To realize it must first change the mindset and work orientation by returning to human nature as God’s creatures. Where the mission of human creation as a caliph on earth must be implemented within the framework of mutual benefit. So that the ultimate goal of work is not just the fulfillment of worldly needs, but also *ukhrowi* (hereafter) orientation. Because working as part of worship. So that, the relationships that are built are partnership relations: partnership in responsibility, partnership in production, and partnership in profit.

³⁷ G. Kartasapoetra (dkk), *Hukum Perburuhan Di Indonesia Berlandaskan Pancasila* (Jakarta: Sinar Grafika, 1994), p. 18-30.

³⁸ Adrian Sutedi, *Hukum Perburuhan*, p. 37-38.

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