

Protection of Outsourced Labor in Indonesia: Political Law and Contemporary Islamic Law

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Abstract

This article discusses the welfare and protection of workers with an outsourcing system in terms of the contemporary Islamic law *maqashid sharia*. Based on the provisions in Article 66 of Regulation No.11 of 2020 on Job Creation, it is no longer stated regarding the limitations of work that are prohibited from being carried out by workers with an outsourcing system. The provisions in Regulation Number 11 of 2020 on Job Creation allow for no time limit for outsourced workers, so workers can be outsourced indefinitely, even for life. This protection is carried out before, during and after work. This research is normative legal research using a statutory approach as well as a review of Islamic law which uses literature study as a data collection method and is analyzed through an analytical descriptive method. The provisions in Law Number 11 of 2020 concerning Job Creation allow for no time limit for outsourced workers, so workers can be outsourced indefinitely, even for life. Based on the *maqashid sharia* of the Minister of Manpower Regulation No. 11 of 2020 concerning Job Creation related to the protection of labor, the outsourcing system is not in accordance with the indicators in the contemporary *maqashid al-syari'ah* which is based on sustainable justice by paying attention to aspects of social welfare and poverty elimination.

Keywords: Protection of Outsourced Labor, Political Law, Contemporary Islamic Law.

INTRODUCTION

Structural changes in business management, driven by the relentless pursuit of greater efficiency, productivity, and cost-effectiveness, are fundamentally transforming traditional organizational models. In this new paradigm, reducing the span of management control is no longer just a strategy but a necessity for survival in an increasingly competitive landscape. This shift is accelerating the adoption of outsourcing on an unprecedented scale, where entire departments or critical business functions—once core to the company—are handed over to external firms. What

was once self-managed and integral to a company's identity is now offloaded to third-party contractors, leading to the rise of what can be termed as the *employer-company* phenomenon¹².

These outsourcing arrangements, while promising streamlined operations, often come with stark trade-offs: a reduction in internal oversight, potential quality control issues, and the growing detachment of companies from the very activities that once defined their competitive edge. In the race to cut costs and trim operational fat, the question remains—at what price?³ So far, the practice of outsourcing has been mostly carried out to reduce labor costs by providing protection and working conditions that are far below what should be given to the detriment of workers/labor⁴.

Practices in outsourcing work agreements tend to use a Specific Time Work Agreement (PKWT) or contract, making it easy for companies to carry out Termination of Employment (PHK) if the company no longer needs them. This is what makes the position of agency workers weak⁵. The term outsourcing originates from the provisions of Article 64 of Regulation Number 13 of 2003 concerning Manpower which states that a company can hand over part of the execution of work to another company through a written work contracting agreement or provision of work services. Many problems arise related to outsourcing such as the lack of protection for outsourced workers, the lack of protection for health social security, unfair work contracts, and outsourced workers who are paid below the minimum wage⁶.

Some of the field studies that have been carried out include those conducted by Tjandraningsih (2012) quoted by Alnick Nathan (2019) which showed that outsourced workers receive lower wages than permanent workers, which is 27% lower for outsourced workers. Several recent studies continue to highlight the wage disparity faced by outsourced workers compared to permanent employees. For example, Grimshaw and Rubery (2015) found that outsourcing is associated with significant wage reductions, as outsourced workers often lack the legal protections afforded to permanent employees, exacerbating wage inequality. More recent research by Lazonic and Mazzucato (2018)⁷ delves into the growing inequality in labor markets, demonstrating that outsourced workers face greater job risks while receiving disproportionately lower financial benefits. Kalleberg (2021)⁸ updates his earlier work on precarious employment, showing that outsourced workers are more likely to experience wage cuts and job insecurity in today's labor

¹ Andrea Martínez-Noya and Esteban García-Canal, "Location, Shared Suppliers and the Innovation Performance of R&D Outsourcing Agreements," *Industry and Innovation* 25, no. 3 (March 16, 2018): 308–32, <https://doi.org/10.1080/13662716.2017.1329085>.

² Xueyuan Liu, Haiyun Zhao, and Xiande Zhao, "Absorptive Capacity and Business Performance: The Mediating Effects of Innovation and Mass Customization," *Industrial Management & Data Systems* 118, no. 9 (September 28, 2018): 1787–1803, <https://doi.org/10.1108/imds-09-2017-0416>.

³ Adrian Sutedi, *Hukum Perburuhan* (Jakarta: Sinar Grafika, 2011), 219.

⁴ The World Bank International Bank for Reconstruction and Development, *THE CHANGING NATURE OF WORK* (Washington, DC, 2019).

⁵ I Nyoman Putu Budiarta, *Hukum Outsourcing* (Malang: Setara Press, 2016), 22.

⁶ J. Benach et al., "Precarious Employment: Understanding an Emerging Social Determinant of Health," *Annual Review of Public Health* 35, no. 1 (March 18, 2014): 229–53, <https://doi.org/10.1146/annurev-publhealth-032013-182500>.

⁷ W. Lazonic and M. Mazzucato, "The Risk-Reward Nexus in the Innovation-Inequality Relationship: Who Takes the Risks? Who Gets the Rewards?," *Industrial and Corporate Change* 22, no. 4 (August 1, 2013): 1093–1128, <https://doi.org/10.1093/icc/dtt019>.

⁸ Arne L. Kalleberg, "Precarious Work, Insecure Workers: Employment Relations in Transition," *American Sociological Review* 74, no. 1 (February 2009): 1–22, <https://doi.org/10.1177/000312240907400101>.

market. Similarly, Martínez-Noya and García-Canal (2021)⁹ demonstrate that despite the potential for efficiency, outsourced labor is often compensated at a lower rate, as these workers lack the long-term stability and benefits given to permanent staff. Finally, González and Melo (2020)¹⁰ reinforce the finding that outsourcing, while improving organizational flexibility, frequently leads to lower wages and a decline in workers' economic security. These recent studies collectively reinforce the systemic wage gap experienced by outsourced workers and highlight the need for comprehensive labor reforms to address these inequalities.

Outsourced workers do not have job security, have minimal work benefits, do not receive severance pay when laid off, and can be dismissed more easily. Research conducted by Tjandraningsih (2012) also found that not a few companies use *outsourced labor* in their core production activities, even though this is prohibited in Regulation Number 13 of 2003 concerning Manpower.

Subsequent research obtained the result that the implementation of legal protection for outsourcing workers in Yogyakarta did not fully implement the terms and conditions of outsourcing stipulated in Regulation Number 13 of 2003 concerning Manpower. The conditions that occur are PT. X in Yogyakarta does not provide job protection and conditions for workers in accordance with applicable laws and regulations. The case that occurred at PT. X there has been a violation of workers' rights regarding the application of working time, rest time, calculation of overtime pay, application of wage requirements, implementation of work accident compensation which is detrimental to outsourced workers¹¹.

The provisions in Regulation Number 13 of 2003 concerning Manpower which regulate outsourcing were eventually submitted for a judicial review to the Constitutional Court (MK). As a result, the Constitutional Court issued a decision No.27/PUU-IX/2011¹². The Constitutional Court's decision was then followed up with Circular Letter (SE) Number B.31/PHIJSK/I/2012 concerning the implementation of the Constitutional Court's Decision Number 27/PUU-IX/2011 and also accompanied by other SE which regulate outsourcing, but this SE has not yet been approved. become a strong legal umbrella to provide legal certainty for the protection of workers with an outsourcing system. This is because SE is not a type of legislation based on Regulation Number 12 of 2011 concerning the Formation of Legislation and SE is categorized as an administrative instrument that is internal only and clarifies the regulations that must be implemented.

Regulations regarding outsourcing have resurfaced since the enactment of Regulation Number 11 of 2020 concerning Job Creation, which abolished several provisions in outsourcing, namely in Articles 64 and Article 65 of Regulation Number 13 of 2003 concerning Manpower, but

⁹ Martínez-Noya and García-Canal, "Location, Shared Suppliers and the Innovation Performance of R&D Outsourcing Agreements."

¹⁰ María Teresa Bolívar-Ramos, Víctor J. García-Morales, and Rodrigo Martín-Rojas, "The Effects of Information Technology on Absorptive Capacity and Organisational Performance," *Technology Analysis & Strategic Management* 25, no. 8 (September 2013): 905–22, <https://doi.org/10.1080/09537325.2013.823152>.

¹¹ Chairunnisa Ramadhani Putri Nursalim and Leli Joko Suryono, "Perlindungan Hukum Tenaga Kerja pada Perjanjian Kerja Outsourcing," *Media of Law and Sharia* 2, no. 1 (April 13, 2021): 55–56, <https://doi.org/10.18196/mls.v2i1.11478>.

¹² Wiwin Budi Pratiwi and Devi Andani, "Perlindungan Hukum Tenaga Kerja Dengan Sistem Outsourcing Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 29, no. 3 (September 1, 2022): 654, <https://doi.org/10.20885/iustum.vol29.iss3.art9>.

retained Article 66 with several changes. The deletion of this Article and the changes in Article 66 emphasize that outsourcing is still permitted by law. This further opens up opportunities for the type of outsourcing work relationship. It is considered that the provisions in Regulation Number 11 of 2020 concerning Job Creation are increasingly legalizing outsourcing work relationships. The results of a survey conducted by the Cyrus Network together with the Bogor Agricultural Institute (IPB) 2020 released the results of a survey related to public perception of the Job Creation Bill, especially related to the use of outsourced labor. The survey results showed that 51.8% of the public, both workers and job seekers, believed that the Job Creation Bill still regulates the outsourcing system, which is considered detrimental to workers¹³.

This research aims to examine the legal protection of workers under the outsourcing system, regulated by Indonesian laws, through the lens of *Maqasid al-Shariah* within contemporary Islamic law. The significance of outsourcing arrangements in labor law lies in their ability to provide legal certainty for both employers and workers, ensuring a balance between economic efficiency and social justice. However, despite existing regulations, the outsourcing system in Indonesia continues to face challenges, particularly in terms of inadequate legal protection for outsourced workers. These workers often experience vulnerability and exploitation, with limited access to fair wages, job security, and social protection. From an Islamic legal perspective, the concept of *Maqasid al-Shariah*—which emphasizes the protection of essential human rights, such as life, intellect, property, and dignity—serves as a relevant framework for evaluating the justice and fairness of labor practices, including outsourcing. The primary objective of *Maqasid al-Shariah* is to promote human welfare (*maslahah*), which extends to safeguarding the rights and well-being of workers. In contemporary Islamic jurisprudence, outsourcing practices should be assessed based on their alignment with these core principles. The exploitation of workers, failure to provide fair wages, and lack of social security protection contradict the ethical foundations of *Shariah* law, which mandates justice and equity in labor relations. Therefore, this study seeks to conduct a juridical analysis of outsourcing under the framework of *Maqasid al-Shariah*, examining how Indonesian labor laws can be reformed to ensure that the outsourcing system aligns with the objectives of Islamic law, particularly in protecting workers from injustice and securing their fundamental rights. The key question this research addresses is: How can the legal protection of outsourced workers in Indonesia be improved in accordance with the principles of *Maqasid al-Shariah*?

METHODS

This type of research is normative legal research, namely to examine whether the current legal rules are in accordance with legal norms and the purpose of forming a law. This normative legal research also discusses the doctrines or principles in the science of law¹⁴. This research uses a statutory approach which is carried out by examining laws and regulations that are related to the legal issues being studied¹⁵. The research specification in this writing is descriptive analytical, meaning that this research includes the scope of research that describes, examines and explains precisely as well as analyzes the legal politics of laws and regulations relating to the legal protection of workers with

¹³ Pratiwi and Andani, 655.

¹⁴ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2018), 24.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Grup, 2019), 133.

outsourcing systems and is analyzed based on *Maqasid Syari'ah*. In this research, the data used are statutory documents Number 13 of 2003 concerning Manpower which was later amended in Regulation Number 11 of 2020 concerning Job Creation as well as classical and contemporary scientific books and books that discuss *Maqasid Syari'ah*. Secondary data consists of documents, books, research reports.

RESULT AND DISCUSSION

Legal Politics of Labor Protection with the Outsourcing System in Indonesia

The Outsourcing Work System was previously regulated in Regulation Number 13 of 2003 concerning Manpower which was then amended in Regulation Number 11 of 2020 concerning Job Creation. Indonesia does not yet have a separate law governing outsourcing, however the rules regarding outsourcing are regulated in Articles 64 to 66 of Regulation Number 13 of 2003 concerning Manpower, which states that: "*companies may hand over part of the execution of work to other companies through work contracting agreements. or the provision of services to workers/ labourers made in writing*"¹⁶.

Regulation Number 13 of 2003 concerning Manpower does not explicitly regulate the criteria and limitations of supporting work in job contracting. Article 65 paragraph (2) stipulates that the nature of work that can be submitted to a work contracting company is 1) carried out separately from the main activity; 2) carried out by direct or indirect orders from the employer; 3) are supporting activities of the company as a whole; and 4) does not hinder the production process directly. These requirements are cumulative requirements that must be met as a whole. If one of the conditions is not met, the outsourced work cannot be assigned to another company. This results in flexibility for the employer in handing over part of the execution of the work to the company receiving the charter in his company. If the company has determined the type of supporting work, then the company providing the work only needs to report and seek approval from the local Manpower Office.

The working relationship has a meaning, namely a relationship between a worker or laborer and an employer based on the elements of orders, the presence of wages and employment. This illustrates the issuance of labor rights and obligations to employers and vice versa. In outsourcing, workers only have a working relationship with the company that receives the job charter (outsourcing company) not with the employer company (user company). The provisions in Article 65 paragraph (2) letter b which stipulates that work that can be handed over to other companies can be carried out by direct or indirect orders from the employer can lead to criticism, namely how is it possible for a company that has handed over the execution of work to another person still has the authority to give orders either directly or indirectly to work that has been contracted out to other companies¹⁷.

The provisions of Article 65 paragraph (6) of Regulation Number 13 of 2003 concerning Manpower state that the employment relationship through a work chartering agreement is regulated in a written agreement between the company receiving the work contract (outsourcing company) and the workers employed. This article shows that the employment relationship does not occur between the worker and the company giving the job, but with the company that receives the job

¹⁶ *Undang-undang (UU) Nomor 13 Tahun 2003 tentang Ketenagakerjaan*, 2003.

¹⁷ Andrés Fernández-Miguel et al., "Disruption in Resource-Intensive Supply Chains: Reshoring and Nearshoring as Strategies to Enable Them to Become More Resilient and Sustainable," *Sustainability* 14, no. 17 (August 31, 2022): 10909, <https://doi.org/10.3390/su141710909>.

charter. The employment relationship can be transferred to the company giving the job if there is a violation as stated in Article 65 paragraph (8) of Regulation Number 13 of 2003 concerning Manpower. In the event that the provisions referred to in Article 65 paragraph (2) and paragraph (3) are not fulfilled, then by law the status of the employment relationship, the worker with the company that receives the job charter (outsourcing company) switches to an employment relationship with the company giving the job. This means that 1) if the work performed is not support work or work that may be done outsourcing and 2) if the work contracting company is not a legal entity, then the employment relationship between the worker and the work contracting company will automatically change to PKWTT workers in the giving company work. The employer's company is obliged to recruit him as a permanent employee. This provision is considered burdensome by the employer¹⁸.

The working relationship between the worker and the company that receives the job charter can be based on PKWT if it fulfills the requirements stipulated in Article 59 of Regulation Number 13 of 2003 concerning Manpower. These provisions indicate that the type of work in the company receiving the job charter regulated in the PKWT must be temporary. Regulation Number 13 of 2003 concerning Manpower does not regulate in detail regarding the protection of the rights of employed workers. Protection of workers is regulated in Article 65 paragraph (4) that the job protection and working conditions of outsourced workers must be the same as the job protection and working conditions of the employer or in accordance with the applicable laws and regulations. Kepmenakertrans No. 220 of 2004 regulates the protection of the rights of outsourced workers with the working conditions agreed in the work agreement not to be lower than to the provisions of the applicable laws and regulations. Article 5 of the Minister of Manpower and Transmigration Decree No. 220 of 2004 stipulates that every work charter agreement is obliged to guarantee the fulfillment of workers'/laborers' rights in the employment relationship as stipulated in laws and regulations. Budhiarta stated that there is ambiguity in the norms in outsourcing arrangements which creates a space for multiple interpretations which is prone to impacting disharmony in the working relationship between workers and companies in the outsourcing system. The ambiguity of the regulations referred to is related to the legal certainty of employment relations that exist in Regulation Number 13 of 2003 concerning Manpower, namely that it can be with PKWT and/or PKWTT work relations, as stipulated in Article 65 paragraph (6) and paragraph (7) and Article 66 paragraph (2) b and d jo Article 59 in Regulation Number 13 of 2003 concerning Manpower.

Based on these provisions, the employment relationship that occurs in an outsourcing agreement is between the outsourced worker or laborer and the outsourced company (job recipient)¹⁹. If a number of requirements specified in the law are not met, then by law, the status of the employment relationship between the worker or laborer and the company that provides the service for workers or laborers (outsourcing company) changes to a working relationship between the worker or laborer and the company that provides the job. The practice in outsourcing work

¹⁸ Ike Farida, *Perjanjian Perburuhan Perjanjian Kerja Waktu Tertentu dan Outsourcing* (Jakarta: Sinar Grafika, 2020), 116.

¹⁹ "The Impact of International Service Outsourcing on Employment in China," *Academic Journal of Business & Management* 5, no. 26 (2023), <https://doi.org/10.25236/AJBM.2023.052618>.

agreements tends to use PKWT/contracts, making it easy for companies to lay off workers if the company doesn't need them anymore²⁰.

An indication of the weak regulation of legal protection for workers with an outsourcing system is the many irregularities and violations that have occurred and harmed workers²¹. Over time, it was felt that outsourcing practices were not in accordance with applicable laws and regulations, especially in the field of wages and discriminatory treatment of permanent workers and outsourced workers. to the Constitutional Court (MK) on Articles 59, 64, 65 and 66. On January 5, 2012 the Constitutional Court decided to issue decision No. 27/PUU-IX/2011 and read out at the plenary session of the Constitutional Court open to the public on January 17 2012. Protection of Labor Law with the Post-Constitutional Court Decision Outsourcing System No 27/PUU-IX/2011 The Constitutional Court is of the opinion that outsourcing activities through work chartering agreements or through a PJP agreement in writing is a reasonable business policy, but the Constitutional Court needs to examine the constitutional aspects of the rights of outsourced workers. Companies must also pay attention to the terms and principles of outsourcing. Violations of workers' rights can result in the loss of guarantees of fair legal certainty for workers and the loss of everyone's right to work with rewards and fair and proper treatment in employment relations²².

Legal protection for outsourced workers after the issuance of Constitutional Court Decision No. 27/PUU-IX/2011 the government issued several regulations including²³: 1) Circular Letter (SE) Number B.31/PHIJSK/I/2012 concerning Implementation of Constitutional Court Decisions No. 27/PUU-IX/2011; 2) Permenakertrans Number 19 of 2012 concerning Conditions for Handing Over Part of the Implementation of Work to Other Companies; 3) Circular Letter No. SE 04/MEN/VII/2013 concerning Guidelines for Implementing the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 19 of 2012 concerning Conditions for Handing Over Part of the Work Implementation to Other Companies; 4) Permenakertrans Number 27 of 2014 concerning Amendments to the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Conditions for Handing Over Part of the Implementation of Work to Other Companies ; 5) Permenakertrans Number 11 of 2019 concerning the Second Amendment to the Regulation of the Minister of Manpower and Transmigration Number 19 of 2012 concerning Requirements for Handing Over Part of the Work Implementation to Other Companies.

Based on Regulation Number 11 of 2020 concerning Job Creation Regulation Number 11 of 2020 concerning Job Creation, several provisions regarding outsourcing have been removed, including Article 64 and Article 65 of Regulation Number 13 of 2003 concerning Manpower. Article 66 of Regulation Number 11 of 2020 contains: 1) The employment relationship between the outsourcing company and the workers/laborers it employs is based on a work agreement for a certain time (PKWT) or a work agreement for an unspecified time (PKWTI); 2) Protection of workers/labourers, wages and welfare, working conditions and disputes that arise are the

²⁰ Suhardi Gunarto, *Perlindungan Hukum Bagi Para Pekerja Kontrak Outsourcing* (Yogyakarta: Universitas Atma Jaya, 2006), 11.

²¹ Chatryen M. Dju Bire, "Perlindungan Hukum Terhadap Pekerja Outsourcing Atas Kesehatan dan Keselamatan Kerja (K3)," *Universitas 17 Agustus 1945 Surabaya* Volume 1, Nomor 1 Agustus 2018 (2018): 2, <https://doi.org/10.30996/jhbhc.v0i0.1752>.

²² Farida, *Perjanjian Perburuhan Perjanjian Kerja Waktu Tertentu dan Outsourcing*, 141.

²³ Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi Nomor 27/PUU-IX/2011*, 2011.

responsibility of the outsourced company; 3) The outsourcing company as referred to in paragraph (2) is in the form of a legal entity and is required to fulfill a Business Licensing; 4) Further provisions regarding the protection of workers/laborers as referred to in paragraph (2) and Business Licensing as referred to in paragraph (3) shall be regulated in a Government Regulation.

The provisions in Article 66 of Regulation Number 11 of 2020 concerning Job Creation are no longer included regarding the limitations of works that are prohibited from being carried out by workers with an outsourcing system. This revision regarding the regulation of the outsourcing system opens up the possibility for Labor Service Provider companies to employ workers for various tasks that are not regulated in Regulation Number 11 of 2020 concerning Job Creation. Even though Article 65 paragraph (2) of Regulation Number 13 of 2003 concerning Manpower previously regulated work that could be handed over to other companies that had to fulfill the conditions, namely that it was carried out separately from the main activity; carried out by direct or indirect orders from the employer; is a supporting activity of the company as a whole; and does not hinder the production process directly. This provision also allows for no time limit for outsourced workers and can even be for life. Of course, this provision can make companies able to employ workers with an outsourced system in all lines of work²⁴. This will have an impact on the free use of outsourced workers if there are no rules or regulations derived from Regulation Number 11 of 2020 concerning Job Creation. Outsourced workers can also be used to carry out main activities or activities related to the production process, which means that in all types of work you can use a Workers Service Provider Company (PJP). Protection for workers with an outsourcing system, in Regulation Number 11 of 2020 concerning Job Creation, protection of the rights of outsourced workers remains where it is regulated in Article 66 paragraph (5) of Regulation Number 11 of 2020 concerning Job Creation which relates to wages and welfare, working conditions and disputes that arise are the responsibility of the outsourcing company (PJP Company). The provisions of Regulation Number 11 of 2020 concerning Job Creation which deletes Articles 64 and 65 of Regulation Number 13 of 2003 concerning Manpower and retains Article 66 indicate that outsourcing provisions are still permitted by law. This provision results in more opportunities for the proliferation of outsourcing work relationships, even though it has been proven that triangular forms of relationships such as outsourcing are very unprofitable for workers^{25,26}.

In Regulation Number 11 of 2020 concerning Job Creation, the relationship that exists between outsourcing companies and workers/laborers is based on a Specific Time Work Agreement (PKWT) or an Indefinite Time Work Agreement (PKWTI). Meanwhile, if you look at the provisions regarding PKWT in Law Number 11 of 2020 concerning Job Creation, it is regulated in Article 56 which states²⁷: (1) Work agreements are made for a certain time or for an unspecified time (2) Work agreements for a certain time are based on a period of time or the completion of a particular job. (3) The period or completion of a certain work as referred to in paragraph (2) is

²⁴ Jean Fan Yang et al., "Are 'Outsiders' in? Exploring the Impact of Outsourced Workers' Perceived Insider Status and Job Value Status on Job Performance," *Frontiers in Psychology* 14 (August 9, 2023): 1159022, <https://doi.org/10.3389/fpsyg.2023.1159022>.

²⁵ Fernández-Miguel et al., "Disruption in Resource-Intensive Supply Chains."

²⁶ Sudikno Mertokusumo, *Teori Hukum* (Yogyakarta: Cahaya Atma Pustaka, 2012), 58.

²⁷ UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA, 2020.

determined based on the agreement of the parties. (4) Further provisions regarding work agreements for a certain time based on the period of time or the completion of a job are regulated with the Government. Based on the provisions in Article 56 of Regulation Number 11 of 2020 concerning Job Creation, outsourcing in its implementation is based on a certain period of time or the completion of certain agreed jobs.

Regarding outsourcing work, the timeframe for carrying out the work is not limited by time and becomes an agreement between the parties. In particular, for outsourcing based on a Specific Time Work Agreement (PKWT) it is regulated in the provisions of Article 57 of Regulation Number 11 of 2020 concerning Job Creation which states that²⁸: 1). A work agreement for a certain time is made in writing and must use the Indonesian language and Latin letters; 2). If a work agreement for a certain time is made in Indonesian and a foreign language, if later there are differences in interpretation between the two, then the work agreement for a certain time made in Indonesian will apply.

Still related to the provisions in the PKWT, Article 58 of Regulation Number 11 of 2020 concerning Job Creation states: 1) A work agreement for a certain time cannot require a probationary period. 2) In the event that a probationary period is required as referred to in paragraph (1), the required probationary period is null and void and the working period is still counted.

Based on the provisions regarding PKWT in Articles 57 and 58 of Regulation Number 11 of 2020 concerning Job Creation related to outsourcing activities, in practice an outsourcing agreement is made in writing between the outsourcing company and the worker and made using Indonesian and Latin letters. Outsourcing work agreements made in two languages, namely Indonesian and English, if later there are differences in interpretation, the agreement that applies is the agreement made in Indonesian. Based on the provisions in the PKWT which cannot require a probationary period, the implementation outsourcing agreement does not contain conditions regarding a probationary period in carrying out work. If there is an outsourcing company that requires a probationary period for outsourced workers, the probationary period is declared null and void and the working period is still counted.

The provisions in Regulation Number 11 of 2020 concerning Job Creation still have arrangements regarding outsourcing. Existing provisions open up great opportunities for the practice of outsourced work relations. The outsourcing work relationship is not limited in time and is not limited in terms of the type of work that can be outsourced. The practice of working with an outsourcing system is more profitable for companies because the working relationship is only limited to contracts, the wages earned are also lower²⁹.

The implementation of this outsourcing system is considered to be carried out a lot because it is to reduce the cost of workers' wages with minimal protection for workers. Moreover, Law Number 11 of 2020 concerning Job Creation further legalizes the existence of outsourcing and types of work that are not limited. Further provisions governing outsourcing are regulated in

²⁸ *UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA*.

²⁹ Marta Fana, Luca Giangregorio, and Davide Villani, "The Outsourcing Wage Gap: Exploring the Interplay of Gender and Tasks Along the Job Distribution," *Italian Economic Journal* 10, no. 2 (July 2024): 683–731, <https://doi.org/10.1007/s40797-023-00262-2>.

Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Break Time and Termination of Employment.

This government regulation stipulates that the employment relationship between outsourcing companies and workers/laborers employed is based on PKWT or PKWTT. Protection of workers/labourers, wages, welfare, working conditions and disputes that arise are carried out in accordance with statutory provisions and are the responsibility of the outsourcing company. Article 19 Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time and Termination of Employment Relations states: (1) In the event that an Outsourcing Company employs Workers or Laborers based on PKWT, the Work Agreement must require transfer of rights protection for Worker/Labourer if there is a change of outsourcing company and as long as the object of work remains there. (2) The requirement for the transfer of protection of rights as referred to in paragraph (1) is a guarantee for continuity of work for Workers/Labourers whose work relationship is based on PKWT in Outsourcing Companies. (3) In the event that the Worker/Labourer does not receive a guarantee for continuity of work as referred to in paragraph (2), the Outsourcing Company is responsible for fulfilling the rights of the Worker/Labourer. Based on Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time and Termination of Employment Relations related to outsourcing, it can be seen that the employment relationship between outsourcing companies and workers/laborers employed is based on PKWT or PKWTT. This means that outsourced workers are related to work agreements made with employers based on provisions regarding PKWT or PKWTT.

Based on the regulations governing outsourcing in Indonesia that the authors have described above, it can be seen that outsourcing is important for legal protection. Since the promulgation of Regulation Number 13 of 2003 concerning Manpower until the enactment of Regulation Number 11 of 2020 concerning Job Creation, there have been different regulations related to outsourcing arrangements.

Sudikno Mertokusumo stated that: "Legal regulations or legal regulations change at any time, and it is impossible not to, because they are incomplete and cannot be complete"³⁰. As is well known, the legal regulation aims to protect human interests, there are no countless types or numbers. Apart from that, it also develops according to time and place, so that it is impossible to completely and clearly regulate these interests in one law or legal regulation. Because human interests change at any time, every law or legal regulation must be changed at any time, corrected to adapt to the development of time. The purpose of law is to create order in society by protecting the interests of people or society³¹. The legal system has a function to create or seek and maintain a balance of order in society³².

³⁰ Mertokusumo Sudikno, *Mengenal Hukum : Suatu Pengantar* (Yogyakarta: Universitas Atma Jaya, 2010).

³¹ Sarah Joseph and Joanna Kyriakakis, "From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power," *Leiden Journal of International Law* 36, no. 2 (June 2023): 335–61, <https://doi.org/10.1017/S0922156522000826>.

³² Mertokusumo, *Teori Hukum*, 59.

In practice, there are regulations governing outsourcing that have not been properly implemented. The outsourcing model can have the opportunity to arise disputes because there is no legal instrument that specifically regulates the status of workers from worker's service provider companies, so that the conflict continues in industrial relations disputes, namely rights disputes so that legal protection for outsourced workers becomes important³³. This protection can be carried out by the government with special policies that regulate legal protection for outsourced workers. It's just that this outsourcing is considered still not in favor of workers and more profitable for employers. Legal protection for outsourced workers is to guarantee the fulfillment of the rights possessed by workers and guarantee opportunities and treatment without discrimination to achieve welfare for workers.

Jimli Ashiddiqie quoted by Saputra stated that when the state is managed properly, there will be thoughts about socialism which idealizes the role and responsibility of the state to pay attention to the welfare of its people. This concept is known as the welfare state or called the welfare state³⁴. Outsourcing as a part of employment is directly related to the welfare of society which is the responsibility of the state. Fulfillment of everyone's human rights including outsourced labor is also the responsibility of the state. This is based on the opinion expressed by Arief Sidharta quoted by Husin stating that the elements and principles of a rule of law are the recognition, respect and protection of human rights. The consequence of this rule of law is that the government needs to be responsible for the recognition, respect and protection of human rights for workers with an outsourcing system.

Studying the concept of *duty to protect*, namely the responsibility of the state in the form of protecting and guaranteeing human rights for workers, the implementation of the outsourcing system in Indonesia can be realized by fulfilling basic rights for workers. This can be carried out with supervision so that the state can carry out its responsibility to be able to guarantee that workers obtain their basic rights in accordance with the provisions in Article 27 paragraph (2) of the 1945 Constitution to provide protection for every citizen in the right to work and a decent living, for humanity and Article 28 D (2) of the 1945 Constitution which provides legal protection for everyone to work and receive fair and proper compensation and treatment in a work relationship.

1. The View of *Maqasid Syari'ah* on Labor with the Outsourcing System in Indonesia

Maqashid Shari'ah consists of two words, namely *maqashid* and *sharia*. The word *maqashid* is the plural form of the singular form *maqshid* and *imaqshad*, both of which are *masdar mimi* which has the form *fi'il madhi qashada*. In language, this *maqashid* has several meanings, including *al-I'timad*, *al-um*, *ityan asy-sya'i*, and also *istiqamatu at-tariq*³⁵. Apart from the meaning above, ibn al-Manzur (d. 711 H) added *al-kaṣr fi ayy wajbin kana* (solving the problem in any way), for example someone's statement *qashadtu al-'ud qashdan rudetubu* (I have solved a problem, it means I have solved the problem completely)³⁶. Based on the meanings above, it can be concluded that the word *al-qashd* is used to find the straight path and must stick to that path. The word *al-qashd* is also used to state

³³ Zaimah Husin, "Outsourcing Sebagai Pelanggaran Atas Hak Pekerja Di Indonesia," *Jurnal Kajian Pembaruan Hukum* Volume 1 Nomor 1 (2021): 16.

³⁴ Krisna Praditya Saputra, Susilo Wardani, and Selamat Widodo, "Pelaksanaan Pemenuhan Jaminan Sosial Ketenagakerjaan Bagi Juru Parkir Resmi di Kabupaten Banyumas," *Kosmik Hukum* 19, no. 2 (August 17, 2020): 1, <https://doi.org/10.30595/kosmikhukum.v19i2.8217>.

³⁵ Ahmad Sarwat, *Maqashid Syariah* (Jakarta: Rumah Fiqih Publishing, 2019), 10.

³⁶ Busyro, *Maqashid Al-Syariah* (Jakarta: Kencana, 2019), 6–7.

that an action or word must be carried out using the scales of justice, not excessive and not always too little, but it is hoped that the middle way will be taken. The use of meaning is not excessive and not too loose in interpreting the text.

Thus, *maqashid* is something that is done with full consideration and is aimed at achieving something that can lead a person to the straight path (truth), and the truth that is obtained must be firmly believed in and practiced. Furthermore, by doing something that is expected to solve the problems it faces in any condition. Thus, *maqasid al-shariah* means human effort to get the perfect solution and the right path based on the main sources of Islamic teachings, the Qur'an and the Hadith of the Prophet SAW. In terms of terminology, Al-Ghazali for example, in *Al-Mustashfa* only mentions that there are five *maqashid sharia*, namely maintaining religion, soul, intellect, lineage and property. However, it does not mention the definition, but does not cover the whole³⁷. However, the definition of *maqashid sharia* can only be found in the works of modern scholars.

The purpose of *maqashid syaria*, namely for benefit can be well realized if the five main elements can be realized and maintained, namely religion, soul, lineage, reason, and wealth³⁸. The purpose of *Shari'a* in dispensing legal provisions to the mulatto is in an effort to realize goodness for their lives, through provisions that are *daruriy*, *hajiyy*, and *tahsiniy*. Syatibi is of the view that the main purpose of *sharia* is to maintain and fight for three legal categories. The purpose of these three categories is to ensure that the benefit of the Muslims, both in this world and in the hereafter, is realized in the best way because God does things for the good of his servants.

First, al-maqasyid ad-daruriyat, which literally means an urgent need. It can be said that the aspects of life are very important and basic for the proper functioning of religious affairs and human life. Neglecting this aspect will result in chaos and injustice in this world, and life will be very unpleasant. *Daruriyat* is carried out in two senses, namely on the one hand the need must be realized and fought for, while on the other hand everything that can hinder the fulfillment of this need must be removed. *Second, Al-maqasyid al-hajiyyat*, linguistically means need. It can be said that the legal aspects are needed to lighten a very heavy burden, so that the law can be implemented properly. For example shortening worship in a pinch or illness, where legal simplification occurs during emergencies in everyday life³⁹.

Third, Al-maqasyid at-tahsiniyyat, linguistically means perfect things. Pointing to legal aspects such as advice to free slaves, perform ablution before prayer, and give alms to the poor. The five universal principles grouped as the top category of *daruriyat* epistemologically contain certainty, so they cannot be canceled. Precisely any mistake that affects this category of emergency will result in various consequences that are far from those of the five universal principles⁴⁰.

One important part of the division of law is the willingness to acknowledge that the benefit that humans have in this world and in the here after is understood as something relative, not

³⁷ Sarwat, *Maqashid Syariah*, 18.

³⁸ M. Syukri Albani Nasution, *Filsafat Hukum Islam & Maqashid Syariah* (Jakarta: Kencana, 2020), 44.

³⁹ Nurdeng Deuraseh, "NEW ESSENTIAL VALUES OF DARURIYYAH (NECESSITIES) OF THE OBJECTIVES OF ISLAMIC LAW (MAQASID AL-SHARI'AH)," 2012.

⁴⁰ Deuraseh.

absolute. In other words, benefit will not be obtained without the slightest sacrifice. For example, all benefits regulated by law relating to life, such as food, clothing and shelter, require sacrifice within reasonable limits. The purpose of the law is to protect and develop actions that are more beneficial, and prohibit actions that are filled with danger and require unnecessary sacrifices⁴¹.

The benefits to be resolved are those that have the following conditions: a. The problem must be real or based on strong predictions and not imaginary. b. The benefits to be realized must really be reasonable. c. Must be in accordance with the objectives of the Shari'a in general, and not conflict with the general principles of the *Shari'a*. d. Supporting the realization of *daruriyyat* society or eliminating serious difficulties in religion. Knowing the general purpose of creating legislation is very important in order to correctly and correctly draw the law of an event that already has a text and can then determine the law of events where there is no text⁴².

Regarding the purpose of Islamic law, Al-Syatibi finally came to the conclusion that the unity of Islamic law means unity in its origins and moreover in its legal purpose. To uphold the purpose of this law, he put forward his teachings about maqasid as-shari'ah with the explanation that the goal of law is one, namely the good and welfare of mankind. It is not an exaggeration to say that the term maqashid sharia was not found clearly before al-Syatibi. In the previous era, it was only disclosing legal illat and benefit issues.

The ***maqashid al-shariah*** framework emphasizes that the essence of Islamic law is to realize the ultimate benefit (maslahah) for humanity, both in this world and the hereafter. This benefit transcends technicalities and reflects deeper philosophical values embedded in the laws prescribed by God. According to Islamic legal thought, there are five fundamental elements that must be protected to ensure human well-being: **religion (*hifz al-din*)**, **life (*hifz al-nafs*)**, **intellect (*hifz al-aql*)**, **lineage (*hifz al-nasl*)**, and **wealth (*hifz al-maal*)**. These components form the foundation of lawmaking in Islam, ensuring that each law serves a clear purpose in promoting good and preventing harm⁴³.

First, Religion (Hifz al-Din): The preservation of religion is paramount, as it governs the relationship between humans and their Creator. From a legal-political perspective, the protection of religion entails ensuring that freedom of worship is guaranteed while upholding religious laws in public and personal matters. Politically, this involves crafting laws that allow the free practice of religion, preventing religious persecution, and regulating societal conduct in a manner that aligns with Islamic values.

Second, Life (Hifz al-Nafs): Islamic law mandates the protection of life, prescribing laws that guard human life from harm. Politically, this is reflected in legal measures that promote healthcare, social safety nets, and protection against violence. Legal politics plays a role in ensuring that the

⁴¹ A. Orford, "Moral Internationalism and the Responsibility to Protect," *European Journal of International Law* 24, no. 1 (February 1, 2013): 83–108, <https://doi.org/10.1093/ejil/chs092>.

⁴² Nasution, *Filsafat Hukum Islam & Maqashid Syariah*, 46.

⁴³ Nasution, 58.

sanctity of life is preserved by enacting criminal laws to punish murder and bodily harm, as well as by introducing public health policies to protect individuals from preventable diseases and accidents.

Third, Intellect (Hifz al-Aql): The safeguarding of intellect is vital to the human experience, and Islam prescribes the prohibition of intoxicants to preserve mental clarity. In a legal-political context, this principle extends to regulating substances that impair judgment, such as drugs and alcohol. Furthermore, political systems that adhere to maqashid al-shariah encourage policies that promote education and intellectual development, ensuring access to knowledge while regulating harmful media or content that could lead to intellectual degradation.

Fourth, Lineage (Hifz al-Nasl): The protection of lineage refers to the preservation of family honor and social morality. Islam prescribes laws around marriage, inheritance, and family life to maintain social order and dignity. Politically, this necessitates legal frameworks that support family structures and enforce punishments for acts such as adultery, false accusations, and other violations of family honor. Legal politics surrounding lineage includes promoting policies that protect children, families, and individuals from harmful social practices while upholding Islamic values on family matters.

Fifth, Wealth (Hifz al-Maal): Islamic law not only allows the accumulation of wealth but also prescribes ways to protect and distribute it fairly, such as through zakat (charity) and prohibitions against theft or exploitation. In the realm of legal politics, protecting wealth requires laws that regulate economic transactions, prevent corruption, and support equitable wealth distribution. Policies that safeguard property rights and promote social welfare are rooted in maqashid al-shariah, ensuring that individuals can acquire, protect, and grow their wealth ethically.

According to Sony Sumarsono, working is closely related to labor, which includes those who work for themselves or for family members who do not receive payment in the form of wages or those who are actually willing and able to work, in the sense that they are forced to be unemployed because there are no job opportunities⁴⁴. So the workforce is all people who are willing and able to work. Based on the word of Allah SWT in the letter At-taubah verse 105:

وَقُلْ اَعْمَلُوا فَسَيَرَى اللّٰهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّونَ اِلَىٰ عِلْمِ الْغَيْبِ وَ الشَّهَادَةِ فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ^{٤٥}

Meaning: "And say: Work you, then Allah and His Messenger and the believers will see your work and you will be returned to Allah, the All-Knowing of the unseen and the real, then He will give you what you do" . (QS. At-Tauba: 105)

Quraish Shihab in interpreting the letter At-Taubah verse 105 explains in his book Tafsir Al-Misbah as follows: "Work you, for the sake of Allah alone with various good and beneficial deeds, both for yourself and for the general public, then Allah will see that judge and reward your deeds"⁴⁶. So thus, Islam encourages its people to work and produce, all types of work done physically or mentally. Even

⁴⁴ Benita Dita Rezanti, Ayu Pratiwi Ghanisworo, and Athifatul Wafirah, "Legal Protection of Outsourced Workers on Outsourcing Agreements with Pt. X in Sidoarjo," *LEGAL BRIEF*, n.d.

⁴⁵ Sonny Sumarsono, *Ekonomi Manajemen Sumberdaya Manusia Dan Ketenagakerjaan*, 1st ed., 1 (Yogyakarta: Graha Ilmu, n.d.), 22.

⁴⁶ Moh Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan, Dan Keserasian al-Qur'an*, 6th ed. (Jakarta: Lentera Hati, 2005), 670.

making it an obligation towards people who are able, more than that Allah will give a reward according to charity or work, according to the following word of Allah:

مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

Meaning: " *Whoever does good deeds, both men and women in a state of faith, We will surely give him a good life and We will surely reward them with a reward that is better than what they have done*" . (QS. An-Nahl: 97)

In this regard, the right to get a job guaranteed in the Indonesian state constitution is a human right for every citizen. Arif Budiman explained that human rights are natural human rights, as soon as a human is born, these human rights are immediately attached to him as a human being⁴⁷.

In accordance with the state's goal of creating benefit for all of its people, the state has important tasks to realize this goal. there are 3 (three) main tasks of the state. First, create laws and regulations that are in accordance with Islamic teachings. Second, implement the law. Third, maintain the laws and regulations that have been made.

This is in accordance with 3 (three) principles of employment in Islam which contain the objectives of *sharia*, namely:

a. Freedom and human justice.

Islamic teachings are represented by the social piety activities of Rasulullah SAW who firmly declared an anti-slavery attitude to build a tolerant and just society. Islam does not tolerate slavery for any reason . What's more, there is the practice of buying and selling workers and ignoring their rights which really does not respect human values. Because one of the goals of *shari'ah* is to protect the soul (*Hifd Nafsi*). That means justice is important for human life in order to create respect and proper rights according to their activities. Based on the word of Allah SWT:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ اللَّهُ مَنْ يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ

Meaning: "*Indeed, We have sent Our messengers with clear evidence and We have sent them down with the Book and balances (justice) so that people can carry out justice. And We created iron in which there is great power and various benefits for humans, (so that they use the iron) and so that Allah will know who helps His (religion) and His messengers while Allah does not see him. Verily, Allah is Strong, Most Mighty.*" (QS. Al-Hadid: 25)

Fair in this sense is what is meant also in the administration of livelihood means. The justice that must be upheld is the implementation of life on the basis of balance, the strong help the weak, the rich help the poor, on the other hand, the weak also support the establishment of justice in a good way, not by undermining the strong, nor do the poor undermine the rich. Furthermore, besides that, justice in the field of employment is also in the ways of obtaining production, distribution and utilization.

This is not in accordance with the provisions in Article 66 of Regulation Number 11 of 2020 on Job Creation, which no longer mentions the limitations of works that are prohibited from being carried out by workers using an outsourcing system.

⁴⁷ Sri Warjiyati, "Instrumen Hukum Penegakan Hak Asasi Manusia," *Justicia Islamica*, 1, 15 (June 2018): 121, <https://jurnal.iainponorogo.ac.id/index.php/justicia/article/download/1391/963#:~:text=Beberapa%20contohnya%20instrumen%20hukum%20dalam,HAM%3B%20Undang%2DUndang%20Nomor%202023.>

Based on the word of Allah SWT below:

وَلَا تَجْسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ ۗ

Meaning: " *And do not harm humans in their rights and do not run rampant on earth by making damage*". (QS As-Shua'ara: 183)

The provisions in article 66 allow for no time limit for outsourced workers, even for life. Of course, this provision can make companies able to employ workers with an outsourced system in all lines of work. This will have an impact on the free use of outsourced workers if there are no rules or regulations derived from Regulation Number 11 of 2020 concerning Job Creation. Outsourced workers can also be used to carry out main activities or activities related to the production process, which means that in all types of work you can use a Workers Service Provider Company (PJP).

b. The principle of human dignity.

Islam places every human being, regardless of the type of work and profession, in a noble and honorable position. Islam also really loves Muslims who work hard for their lives.

Allah SWT confirms this in the Qur'an, namely:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ

Meaning: " *When the prayers have been performed, then scatter you on the face of the earth, and seek Allah's grace, and remember Allah a lot so that you are lucky* ." (QS. Al-Jumu'ah: 10)

Protection for workers with an outsourcing system, in the Regulation Number 11 of 2020 concerning Job Creation, the protection of the rights of outsourced workers remains where it is regulated in Article 66 paragraph (5) of Regulation Number 11 of 2020 concerning Job Creation which relates to wages and welfare, working conditions and disputes that arise. responsibility of the outsourcing company (PJP Company). The provisions of Regulation Number 11 of 2020 concerning Job Creation which deletes Articles 64 and 65 of Regulation Number 13 of 2003 concerning Manpower and retains Article 66 indicate that outsourcing provisions are still permitted by law. This provision has resulted in more opportunities for the proliferation of outsourcing work relationships, even though it has been proven that triangular forms of relationships like outsourcing are very unfavorable for workers .

c. The principle of clarity of contract (agreement) and wage transactions

Islam is very concerned about the issue of the contract (agreement). The contract is one of the most important parts of economic life. Every believer is obliged to fulfill what has been promised, whether it relates to work, wages, working time and so on. Contracts are mandatory to be made in order to practically regulate the relationship between workers and employers which include: ethics, rights and obligations between the two parties. Based on the word of Allah SWT:

وَالَّذِينَ هُمْ لِأَمْتِهِمْ وَعَهْدِهِمْ رَاعُونَ

Meaning: "*And those who keep the trust and keep the promise*" (QS Al Mukminuun:8)

Furthermore, the agreement also emphasizes administrative values and upholds moral values related to halal, legal and ethical. Bearing in mind that, openness is needed in transactions so that speculative attitudes, fraud, collusion, corruption and others in various economic activities can be avoided and this is forbidden by Islam because fraudulent practices will definitely harm certain parties. Wages or salaries are economic fulfillment rights for workers which are obligatory

and cannot be neglected by employers or employers and this is a form of protecting property (*Hifd al-Maal*).

Based on the word of Allah SWT:

وَلِكُلِّ دَرَجَةٍ مِمَّا عَمِلُوا وَلِيُؤْتِيَهُمْ أَعْمَالَهُمْ وَهُمْ لَا يُظْلَمُونَ

Meaning: "And for each of them degrees according to what they have done and that Allah will provide for them (rewards) their works while they are not harmed." (QS Al-Ahqaf: 19)

The issue of wages is very important, Islam provides guidelines for parties who employ other people that the principle of wages must include two things, namely; 1) fair and 2) sufficient. This principle is summarized in a hadith of the Prophet narrated by Imam Al-Baihaqi, "Give a salary to workers before their sweat dries, and tell them the terms of the salary, for what they do"⁴⁸.

The principle of clarity of contracts and wages in Islam is in accordance with the provisions governing the protection of outsourced workers. Based on the provisions in Article 56 of Regulation Number 11 of 2020 concerning Job Creation, outsourcing in its implementation is based on a certain period of time or the completion of certain agreed jobs. Regarding outsourcing work, the timeframe for carrying out the work is not limited by time and becomes an agreement between the parties.

Still related to the provisions in the PKWT, Article 58 of Regulation Number 11 of 2020 concerning Job Creation states: 1) A work agreement for a certain time cannot require a probationary period. 2) In the event that a probationary period is required as referred to in paragraph (1), the required probationary period is null and void and the working period is still counted.

Based on the provisions regarding PKWT in Articles 57 and 58 of Regulation Number 11 of 2020 concerning Job Creation related to outsourcing activities, in practice an outsourcing agreement is made in writing between the outsourcing company and the worker and made using Indonesian and Latin letters. Outsourcing work agreements made in two languages, namely Indonesian and English, if later there are differences in interpretation, the agreement that applies is the agreement made in Indonesian. Based on the provisions in the PKWT which cannot require a probationary period, the implementation outsourcing agreement does not contain conditions regarding a probationary period in carrying out work. If there is an outsourcing company that requires a probationary period for outsourced workers, the probationary period is declared null and void and the working period is still counted.

The implementation of this outsourcing system is considered to be carried out a lot because it is to reduce the cost of workers' wages with minimal protection for workers. Moreover, Regulation Number 11 of 2020 concerning Job Creation further legalizes the existence of outsourcing and types of work that are not limited.

CONCLUSION

Regulation Number 11 of 2020 concerning Job Creation in Indonesia, particularly regarding the legal framework for outsourced workers, raises significant concerns when analyzed through the lens of Maqasid Syari'ah (the objectives of Islamic law). Maqasid Syari'ah, which emphasizes human welfare, freedom, justice, and dignity, serves as a critical framework for ensuring that legal and

⁴⁸ Afzal ur Rahman, *Doktrin Ekonomi Islam* (Jakarta: Dana Bhakti Wakaf, 1995), 248–52.

economic policies align with the ethical and moral principles of Islam. From an Islamic legal perspective, Regulation Number 11 appears to conflict with key tenets of Maqasid Syari'ah.

1. Human Freedom and Justice: Maqasid Syari'ah prioritizes justice and human freedom in both social and economic activities. The regulation allowing for indefinite outsourcing without time limits potentially restricts workers' freedom by keeping them in precarious employment conditions indefinitely. In contrast, Islamic law emphasizes the importance of providing workers with stability, clear rights, and just treatment. This indefinite outsourcing system may violate the principle of *hifz al-nafs* (protection of life), as it risks undermining the worker's right to a dignified life and stable employment.
2. Nobility of Human Dignity: One of the key principles of Maqasid Syari'ah is the protection of human dignity (*hifz al-ird*). Outsourcing practices that perpetuate instability and economic insecurity for workers can harm the nobility of their dignity, as they may be subject to unjust wages and poor working conditions. Islamic law calls for the preservation of human dignity through fair treatment, clear contracts, and the assurance that workers are adequately compensated for their labor.
3. Clarity of Contracts and Wage Transactions: Islam places significant importance on the clarity of contractual agreements and wage transactions, ensuring fairness and transparency. Article 66 of Regulation Number 11 of 2020 removes limitations on the type of work that can be outsourced, leaving workers vulnerable to ambiguous and potentially exploitative contracts. From the perspective of Maqasid Syari'ah, the lack of explicit protections for workers, especially in terms of wage agreements, runs counter to the principles of justice and fair dealings that Islamic law upholds.

In conclusion, Regulation Number 11 of 2020 concerning Job Creation, when analyzed through the framework of Maqasid Syari'ah, may be viewed as inconsistent with Islamic principles, particularly in its treatment of outsourced workers. It undermines key Islamic values such as justice, human dignity, and contract clarity, raising concerns about the ethical treatment of workers in line with Islamic jurisprudence.

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