

Realization of Shariah Wage Principle to Create Harmony Industrial Relation in Indonesia

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Abstract- Wage is crucial for working relationship between labor and employer and also an important part in industrial relationship. Realization of sharia wage principle could be made as foundation in the making of positive law in wage area that contain concrete value to become legal rule and norm in the form of statutes. There are general principle in labor policies in Indonesia that is integration principle, though it did not specifically reflect Moslem majority labor condition in Indonesia. This study used normative juridical with philosophical and statutes approach using discussion result with realization of sharia wage principle in legal rule in Indonesia that consist of divinity principle, justice principle, expediency principle, nation responsibility principle, punctuality principle and kinship principle. From this realization of sharia wage principle there were several substance similarity though not exactly the same with basic substance in sharia wage principle. However, if this sharia wage principle realization was developed from twelve legal rules in wage area in Indonesia, thus industrial relationship would be more harmony since it is accord with Moslem majority of labor condition in Indonesia.

Index Terms— realization, principle, wage, sharia, harmony industrial relationship, Indonesia.

I. INTRODUCTION

Wage is highly crucial for working relationship between labor and employer. Wage also one part of industrial relationship system, thus discussing and analyzing wage issue as labor constitutional rights is an important part in labor area that should be professional in handling it or it could become a huge and extending problem for labor life and its family and the firm development of employer.

The above statement emphasized in philosophical working relationship conception directed to labor assessment that should be valued with proper wage. Given wage is a monetary reward that needed by labor for his/her life. For labor legal

philosophy¹ to fulfill proper wage then it should be balanced with proper work in length of work day and the real work intensity in professional manner without breaking its capability boundary in day to day work.

The fact is, condition as in wage expediency and work expediency is hard to met in working relationship since employer as capital owner if he/she didn't approve with labor, he/she could rule in accord with rules that he/she created or even to fired the labor in unilateral part and conduct his/her venture without manpower from capital he own. Labor didn't have this capability. For labor, wage over his work is the only way he could live and thus he should accept work anytime, everywhere and with any requirement given by employer

Along with the above matters, government should conduct wage protection for labor. And employer oblige to obtain his rights in having labor work result and conduct his obligation to fulfill labor wage to create harmony industrial relationship. Appropriate wage protection through legal rules in wage area is so that there is legal certainty, creating justice and fulfillment of benefit for two party.

Considering that labor majority in Indonesia is Moslem thus wage protection should realized wage principle that reflects Moslem labor in Indonesia. Whereas a principle in statutes is the heart of legal rules². Realization of sharia wage principle is expected to become foundation in positive legal formation in wage area in which contain concrete values to become legal rules and norm in the form of statute rules.

¹ Alousius Uwiyo dkk, *Asas-Asas Hukum Perburuhan*, Jakarta : Djokosoetono Research Center DRC Fakultas Hukum Universitas Indonesia - Rajawali Pers, 2014, h. 12

² Satjipto Rahardjo, *Ilmu Hukum*, Bandung : Citra Aditya Bakti, 2000, h. 45

This is in accord with article 3 Law No 13 year 2003 that said labor legal principle with: "labor development held over integration principle through central and regional cross-sectoral functional coordination". This integration is as general principle over labor policy in Indonesia. In provision of UU No 13 year 2003 didn't explicitly written of wage principle in Indonesia as proper sharia wage principle with moslem majority labor condition in Indonesia. Based on the above, it could be formulated that: how is sharia wage principle realization in creating harmony industrial relationship in Indonesia?

II. STUDY METHOD

This study used juridical method to found legal rules, legal principle, or legal doctrine to answer legal issue³ that is to found sharia wage principle realization in wage protection to create harmony industrial relationship in Indonesia.

Focus of this study is to analyze sharia wage principle realization as legal harmonization of labor in wage in Indonesia. Approach method in this study⁴ would consist of:

- a. *Legal philosophy approach*. It is used to analyze sharia wage principle realization that sourced from Al-Qur'an and Al-Hadist in creating industrial relationship.
- b. *Statute approach*. It is executed by reviewing all statute and regulation related with legal issue⁵ through legal review that is highest rule as positive legal rules enacted that is Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, labor statute particularly wage area that contain in Labor Statute No 13 year 2003 or other implementation rules. This approach is used to view direction and objective of wage in Indonesia to be tested with substance from sharia wage principle thus it would resulting accomodative and contributive wage principle for labor and employer in realizing harmony of industrial relationship.

Other than the above approach, this study is using prophetic approach with text instrument basis that sourced from vision received by prophet to help in analyzing text resulted from religion⁶.

Next, this legal study was based on *normative-prescriptive nature of legal material* that is rules from Islamic law based on its binding power classified as primary legal material, secondary legal material and tertiary legal material⁷ consist of:

- a. *Primary legal material*, consist of provision in Islamic legal that resulted from Al-Qur'an and Al-Hadist.
- b. *Secondary legal material*, in publication concerning Islamic law in wage area concerning book, dictionary, relevant journal with this study.

³ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang : Bayumedia Publishing, 2006), h. 35

⁴ S. Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, (Jakarta : PT. Raja Grafindo Persada, 2001), p. 61

⁵ Peter Mahmud Marzuki, op cit. p. 17

⁶ M. Syamsudin, *Ilmu Hukum Profetik*, (Yogyakarta : FH UII Press, 2013)

⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : UI Press, 1986), h. 52

- c. *Tertiary legal material* as supporting material such as legal dictionary and Bahasa Indonesia dictionary⁸.

Analysis technique of this study used prescriptive analysis with interpretative approach to understand text in primary legal material to obtain the proper understanding concerning the studied issue. It would be interpreted lawfully using deduction method started from major premise proposal that is legal rules and minor premise such as legal fact concerning sharia wage principle realization in wage protection in creating harmony industry relationship in Indonesia.

III. RESULT AND DISCUSSION

Digging up sharia wage principle in its realization over labor statute rules as the legal core over direction and policy of wage policies in Indonesia. It is caused by principle existence is only limited in its explicit meaning however it is not realized in its articles.

Legal foundation of wage protection in positive law is 12 (twelve) rules that is consist of:

- a. Statute No 80 Year 1957 concerning *International Labour Organization* Convention Approval No 100 about Wage for Male and Female Labor for Equal Value of Work;
- b. Statute No 13 Year 2003 concerning Labor;
- c. Government Provision No 8 Year 1981 concerning Wage Protection;
- d. President Decision Number 107 Year 2004 concerning Wage Council;
- e. Labor Minister Regulation Number Per-01/Men/1999 concerning Minimum Wage jo Official Letter of Labor and Transmigration Minister Number Kep-226/Men/2000 concerning Alteration of Article 1, Article 3, Article 4, Article 8, Article 11, Article 20 and Article 21 of Labor Minister Regulation Number Per-01/Men/1999 concerning Minimum Wage ;
- f. Circulatory Letter of Labor and Transmigration Minister Number SE-01/Men/1982 concerning Executing Guide of Government Regulation Number 8 Year 1981;
- g. Labor and Transmigration Minister Decision Number Kep-231/Men/2003 concerning Postponement Procedures of Minimum Wage Implementation;
- h. Labor and Transmigration Minister Regulation Number Kep-233/Men/2003 concerning Type and Nature of Ongoing Work;
- i. Labor and Transmigration Minister Regulation Number Kep-234/Men/2003 concerning Working and Break Time in Energy and Mineral Resource Sector in Certain Region;
- j. Labor and Transmigration Minister Regulation Number Kep-102/Men/VI/2004 concerning Overtime Hours and Overtime Wage ;
- k. Labor and Transmigration Minister Regulation Number Per-15/Men/VII/2005 concerning Working Time and Break Time in General Mining Sector in Certain Operational Region;
- l. Labor and Transmigration Minister Regulation Number Per-17/Men/VIII/2005 concerning

⁸ Soerjono Soekanto dan Sri Mamudji. *Op.Cit.* h. 14-15

Implementation Component to Achieve Proper Life Requirement.

From those twelve wage protection law above, there were only two legl rules that become the realization of sharia wage principle inventory as follows:

No	SHARIAH WAGE PRINCIPLE	REALIZATION IN UNDANG-UNDANG NUMBER 13 YEARS 2003	STATEMENT
1	Divinity principle	Employer oblige to pay wage if: labor cannot work in order to do religious service for his/her religion (Artc 93 clause 2 letter e UUK)	In shariah, all legal product related with wage should not be contradiction with religion
2	Justice principle meaning equal treatment and equal rights	Every labor had rights to gain income (Artc 88: 1 UUK jo UU no. 80 year 1957 concerning organization approval of international labor no. 100 concerning wage for male and female labor with equal values jo Artc. 3 PP no. 8 year 1981 concerning wage protection)	<ul style="list-style-type: none"> - Within sharia wage did not discriminate sexes, ethnicity, races, religion and labor's background, thus justice principle was viewed from labor stand point as legal subject (<i>persoon</i>) - This wage principle was known as "equal pay for equal job" which become foundation for international wage
3	Justice principle meaning proportional	Wage did not paid if labor did not conduct work (Artc 93 clause 1 UUK)	This principle is known as "no work no pay" which become international wage principle
4	Justice principle meaning proportional	Infraction done by labor intentionally or indifferently could be sanctioned (Artc. 95 clause 1 UUK)	Proportional justice in sharia wage facilitate labor and employer interest. This is explained in <i>majmu fatawa syaikh al islam</i> vol. 30 p. 9 which suggest that if labor conduct violation in negligent/intentional manner, it could be sanctioned and otherwise if mistakes was done by firm thus employer must pay any damages experienced by worker. This was said by tabakoglu (1993)
5	Justice principle meaning clear and transparent	Wage set and paid according to working agreement, deal or statutes (Artc 1 : 30 UUK)	Working agreement as wage determination stated the procedures,

			<p>requirement and deadline of wage payment. However, sharia wage requires to use 2 witnesses.</p>
6	<p>Justice principle meaning clear and transparent</p>	<ul style="list-style-type: none"> - Wage regulation determined over agreement between employer and worker/labor or union labor should not be lower than wage provision based on statute (Artc. 91 clause 1 UUK) - In agreement as meant in clause (1) in lower amount or contradict with valid statute, this agreement would be nullified for legal purpose and employer must paid worker/labor wage according to valid statute (Artc. 91 clause 2 UUK) 	<p>In QS Al-Baqarah (2) : 282 it is explained “O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate, and let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses – so that if one of the women errs, then the other can remind her. And let not the witnessess refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified term]. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you. Except when it is an immediate transaction which you conduct among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in</p>

			you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things.”
7	Expedience principle	To obtain properly meeting life-needs income for humanity (Artc 88 : 1 UUK) with explanation article: income to properly meet the need is labor’s income amount from his/her work so that he/she could meet his/her need and his/her family needs in appropriate manner such as food, drinks, clothes, shelter, education, health, leisure, and old age benefits (Explanation Artc 88 : 1 UUK)	In sharia, expedience could be measured with 4 aspects, that are: expedience from parties who conduct work agreement, wage expedience could be seen from benefit magnitude of labor work and wage expedience carry the meaning adequate food, clothes and shelter and wage expedience according to market.
8	Expedience principle	Employer is forbidden to pay lower than minimum wage (Artc 90 : 1 UUK)	To maintain this, sharia wage is familiar with highest wage by considering labor work toward production.
9	Expedience principle	Employer could determine structure and wage scale by considering category, position, tenure, education level and competence (Artc 92 : 1 UUK)	In accord with sharia wage justice principle meaning proportional and expedience principle of sharia wage meaning benefit magnitude of labor work.
10	<i>Punctuality Principle</i>	Employer who deliberately or by its negligence conducting late payment of wage could be sanctioned in accord with certain percentage of worker/labor wage (Article 95 clause 2 UUK)	In sharia, lateness in wage payment can be categorized as zalim or in legal term, contempt of court. According to sharia, for employer that did not pay labor wage were those who would be hated by His prophet in judgement day (for man to be hated by His prophet is a severe loss and a heavy punishment). This proved that sharia wage principle is giving high appreciation over time and labor work.
11	Punctuality Principle	When firm was bankrupt or liquidated based on valid statute, wage and other rights of labor is considered as debt and should be prioritized in its payment (Artc 95 clause 4 UUK)	If employer cannot afford to pay wage in time, thus employer was considered in debt toward labor and oblige to pay it in accord with common agreement.
12	Nation Responsibility Principle	Wage policy that protect labor, consist of: a. Minimum pay; b. Overtime pay; c. Absence pay; d. Absence pay for other activity out of	Sharia wage consist of 3 pay level; minimum pay, highest pay and real pay

		<p>work;</p> <p>e. Payment for carrying out his rights during his break time;</p> <p>f. Type and payment procedure;</p> <p>g. Fine and pay cut;</p> <p>h. Things to consider with pay;</p> <p>i. Proportional pay scale and structure;</p> <p>j. Separation payment; and</p> <p>k. Pay for income tax calculation. (Artc 88: 3 UUK)</p>	
1 3	Nation Responsibility Principle	To realize expedient income (pay), government contend payment policies to protect labor (Artc 88 : 2 UUK)	
1 4	Nation Responsibility Principle	Government issues policies for certain firm to conduct postponement procedures (Artc 90: 3 UUK)	
1 5	Nation Responsibility Principle	Government regulate fine provision for employer and/or labor in wage payment (Artc 95: 3 UUK)	According to nation responsibility principle concerning sharia pay that emphasized in nation responsibility toward recovery or labor' right restitution over damages he/she experienced, and nation has the obligation to provide standard and formal rules toward pay agreement between employer and labor.
1 6	Nation Responsibility Principle	Provision concerning expedient income, wage policies, suitable life needs and wage protection was regulated by Government Provision (Artc 97 UUK)	Article's clause is in accord to nation responsibility principle in sharia wage , however to date this Government Regulation still haven't been issued, government only issued Permenakertrans No 17 year 2005 concerning Component and Implementation of Suitable Life Needs Stages, revised with Permenakertrans No 13 year 2012 with indicator for single labor and not family labor thus create dissatisfaction from labor as family man
1 7	Nation Responsibility Principle	To give suggestions, consideration and to formulate wage policies set by government and for the development of national wage system, National, Provincial and Regency/Municipal Wage Board was established (Artc 98 UUK)	In accord with nation responsibility principle over sharia pay that emphasized in Nation had the obligation to create standard and formal rules over wage agreement or rules.
1 8	Kinship Principle	Employer has the obligation to pay wage if: a. worker/labor is ill so that he/she	Kinship principle with closer means to harmonic relationship

		<p>cannot work;</p> <p>b. female worker/labor that became ill in her first and second day of her period thus cannot work;</p> <p>c. worker/labor that didn't showed up at work because getting married or involved in marriage; circumscribe, baptizing his children, having wife in labour or miscarriage, husband/wife/child/in laws/family member passed away;</p> <p>d. worker/labor cannot do the work due to his/her obligation for the country;</p> <p>e. worker/labor cannot work due to ibadah/pray according to his/her belief ;</p> <p>f. worker/labor willing to do the work but employer did not using him/her, either because own mistakes or obstacles that should be able to be avoided by employer;</p> <p>g. worker/labor conduct his/her break time;</p> <p>h. worker/labor conduct the task of worker/labor union with approval from employer; and</p> <p>i. worker/labor conduct education task from firm (Article 93 clause 2 UUK)</p>	<p>between employer and labor. However, it did not touch overall meaning of kinship, in which related with labor as brother, in positive pay still emphasized in employer-labor relationship as partner and not as family. As stated by Abu Dzar to tell that Rasulullah SAW said:</p> <p><i>“Those (slaves and servant) is your brother, Allah has put them under your care; thus anyone who had brother under his care thus he should give him food as what he eat, and give him clothes as what he wears; and did not burdened them with highly difficult tasks, and if you do burdened him such a task, then you should help them in completing it.</i></p>
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Source: Writer Creativity (2014)

This analysis results showed that sharia wage principle realization in positive legal is still minimized. The fact is majority labor in Indonesia is moslem labor. Wage principle in Indonesia should realized sharia wage principle in facilitating labor needs, thus there should be legal harmonization in wage principle as direction and guidance of wage in Indonesia.

IV. CONCLUDING REMARK

Conclusion

Sharia wage principle realization in 12 (twelve) positive law in wage protection area in Indonesia there were only two rules that reflect sharia wage principle. Regarding legal fact of moslem labor majority in Indonesia, there should be wage principle in Indonesia that reflect part or at least 6 legal rules in Indonesia so that there is rules conformity and wage needs in accord with labor condition in Indonesia.

Suggestions

1. There should be legal harmonization in wage area that facilitate sharia wage principle in accord with Moslem labor condition in Indonesia.
2. There should be Wage Law in Indonesia as the form of legal protection in wage area in Indonesia.

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