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The Basis of Minimum Wages Determination for Worker in Indonesia Positive Law and Sharia

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17

Abstract

This study aims to analyze the basis of wages determination for workers in the perspective of positive law and Sharia. The Labor Act prohibits employers from paying wages below the minimum wage. The threat of criminal sanctions for small employers who cannot afford to pay and there is no sanction for large employers to pay wages to all workers without any differences in work tenure. This research is a normative juridical with statute approach. The results of this study showed that there were differences in parameters in the determination of workers' wages based on the Manpower Act, and sharia principles. The minimum wage parameter based on the Labor Law is the need for a decent living for single workers. While Sharia parameters are more flexible. Determination of wages based on agreement according to the conditions of the parties and provide benefits. In conclusion, the determination of wages based on sharia principles is closer to the sense of fairness for the parties. The recommendation is to revise the parameters for determining the minimum wage

Keywords: benefit; minimum wage; sharia; fairness.

Introduction



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Humans in life always try to meet all their needs (Losonczi 2012)(McHugh and Ma 2014). The necessities of life vary greatly, a little or a lot is relative depending on a person's ability or purchasing power (Autor 2019). The purchasing power of a person is certainly very much influenced by the income he earns within a certain period of time after he works (Grégoire 2018). For workers, especially those who work in private companies, there is a minimum wage requirement, either in the Regency, City or Province. The amount is determined by the government and the amount is not the same depending on the conditions of each region.

The question is whether the minimum wage is in accordance with the living needs of our workers? (Autor, Manning, and Smith 2016) Is the minimum wage adequate? (Budig and England 2001) The next thought is whether the amount of minimum wage received by the worker is fair in accordance with the workload? Is there an alternative solution? The dilemmas and challenges facing wages policy generally in a developing country setting. This is something that needs to be studied.

Wage is a worker/laborer right that is received and expressed in the form of money as a reward from the entrepreneur or employer to the worker/laborer which is determined and paid according to an employment agreement, agreement or statutory regulation including allowances for the worker/laborer and their family for a job, and services that have been or will be performed. (Article 1 number 30 Law No.13/2003). Every worker has the right to receive an income that is decent for humanity (article 88 paragraph (1)). Decent size is relative.

The question is whether the minimum wage of that size is sufficient to meet the needs of a decent life? (Goos and Manning 2007) Income is said to be able to fulfill a decent living if the amount of income or income of the worker/laborer is from the results of his work so that it is able to meet the basic needs of the worker/laborer and his family which includes food and drink, clothing, housing, education, health, recreation and old age security. (explanation of Article 88 paragraph (1) of Law No.13 / 2003).

The minimum wage in Indonesia was introduced in 1996, the role of the minimum wage has become increasingly important. Until 2000, the level of minimum wages was set by the Minister of Manpower for each province in Indonesia. With the implementation of regional autonomy, starting in 2000 the responsibility for setting minimum wages rests with the provincial and district governments.

In order to determine the minimum wage, a wage council was formed consisting of representatives from the local government, provincial offices of related units of trade unions, employers and academics. The function of the Council is to survey and calculate the cost of basic necessities of life. The survey examines the prices of a number of staples in the surrounding area, calculates the ability of companies to pay minimum wage increases and proposes figures for minimum wages taking into account the information obtained, the cost of inflation and other factors.

Proposals to adjust the minimum wage are submitted to the local governor or district head for authorization or approval. Minimum wages are usually set for a period of twelve months and are set based on the minimum living needs of a single worker. In addition, there are minimum wages for certain sectors of employment. Employers who feel unable to pay the minimum wage can ask for dispensation to then investigate the company's financial situation before making a decision.

The debate over the minimum wage process is likely to continue especially important in the absence of institutional capacity to support collective bargaining. Some argue that when trade union organizations gain strength and become more involved in negotiating wage rates at the company and industry levels, the role of government should no longer be necessary. The size of the minimum wage is very far from the cost of a decent living.

Wages are rewards/ results from the performance of the work (Neumark and Wascher 2007). Work can be done for other people or create their work (Neumark and Wascher 2013). Work for other people can be done to the government or the private sector. Working for the government can be an army officer/police or a state civil servant (= ASN / Aparatur Sipil Negara)). Working for the private sector can be done by an individual employer or a business entity. Law 25/1997 on Manpower once differentiated formal and informal workers. After the enactment of Law 13/2003, there was no longer any recognition of informal work.

Regarding wages, every employer should pay the minimum wage of workers the same as the minimum wage. Does this requirement also apply to all employers who are not entrepreneurs? This needs to be studied further. There are wide differences in understanding between employers and entrepreneurs. Entrepreneurs are part of the employer. Law 12/1948 on Employment refers to an Entrepreneur as an employer. The terms employer and laborer have been deemed degrading human dignity so that the two terms were removed from Law 13/2003.

The elimination of the terms employer and laborer harms the juridical interpretation of a narrower definition of an entrepreneur than an employer. Given that there are employers who are not entrepreneurs, for example, public officials or domestic work. Also, in the community, some people work who are based on a partnership relationship, not a working relationship, for example, online transport or resellers.

The many interpretations regarding employers and entrepreneurs have a legal effect on the effectiveness of sanctions for entrepreneurs who do not pay the minimum wage equal to the minimum wage (Krueger and Mueller 2016) (Ottaviano and Peri 2012). The imposition of criminal sanctions for violating the minimum wage still depends on the personal/institutional independence of the employees of the labor inspectors/judges who examine and decide cases (Rogerson, Shimer, and Wright 2005) (Statman and Glushkov 2009) It is very conditional to see the circumstances and goodwill of entrepreneurs (Roediger 2017).

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Law 13/2003 in conjunction with PP 78/2015 concerning wages regulates sanctions for entrepreneurs who violate criminal and administrative acts as well as the stages of withholding wages for entrepreneurs who are unable to pay the minimum wage.

Employees always feel the provision of minimum wages is insufficient, on the other hand, entrepreneurs feel heavy (Anderson, Binder, and Krause 2003). Every May 1st, there will be labor demonstrations demanding an increase in the minimum wage (Wright 2015). On the other hand, entrepreneurs continue to violate the minimum wage, because of the collective agreement to pay wages whose value is below the minimum wage (Draca, Machin, and Van Reenen 2011). The basis for setting the minimum wage for entrepreneurs is not by following the framework of economic theory (Gorry 2013). Not realistic (Cengiz et al. 2019) (Dube, William Lester, and Reich 2016). Nothing can guarantee that a business will always increase. Always profit. Never suffered a loss. The basis for determining the minimum wage based on PP 78/2015 always increases every year.

A minimum wage setting requires a multidisciplinary study (International Labour Organization 2016). Economic laws should be applied to the basic formula for calculating the minimum wage (Blau and Kahn 2017). Studies on other legal systems are also very much needed to form the basis for calculating the determination of the minimum wage (Martins, Novo, and Portugal 2021).

Maqashid Sharia, as a legal principle in the Islamic legal system, (Nugraha et al. 2020) (Mifrahi and Fakhrunnas 2018) (Ikhsan Ramdhoni 2018) is urgently needed as an effort to make positive legal improvements in Indonesia regarding minimum wage regulation (A. S. Rusydiana and Firmansyah 2018). The urgency of this research is the problem of setting unfair wages can be overcome by applying the principles of maqashid sharia that have lived in society (Nurhadi 2019) (Armas Pailis, Burhan, and Ashar 2016)

From the description above, problems arise, namely first, what is the basis for setting the minimum wage in positive law in Indonesia? Second, what are the relevant Maqashid Sharia principles in determining the minimum wage?

Methods

The Methods section is usually the second-longest section in the Abstract. It should contain enough information to enable the reader to understand what was done and important questions to which the Methods section should provide brief answers.

Discussion and Result

1. The basis for setting the minimum wage in positive law in Indonesia

Wages are allowances for work/ services provided by an employer to workers/employees based on agreements, work agreements or regulations, including allowances for workers and their families. Income that can be used to meet

the basic needs of workers and their families includes food, clothing, housing, education, health, transportation, recreation, savings and social security.

The latest Decent Living Needs (KHL) based on the Minister of Manpower Regulation Number 18 of 2020 concerning Amendments to the Regulation of the Minister of Manpower Number 21 of 2016 concerning Decent Living Needs. The Minister of Manpower Ida Fauziyah conducts a review of the components and types of KHL within a period of 5 years by taking into account the results of the study by the National Wage Council. KHL 2020 will be the basis for calculating the Provincial Minimum Wage (UMP) and there are 7 parts in 64 components, namely:

First, there are 13 types of food and beverage components, including medium quality rice. Proteins include: - Medium quality meat - Good quality fresh fish - Quality chicken eggs. Peanuts such as tofu or tempeh. Medium quality powdered milk. Medium quality granulated sugar. Bulk quality cooking oil. Good quality vegetables. Good quality fruit (equivalent to banana or papaya). Other carbohydrates (equivalent to wheat flour) are of medium quality. Tea bag. Coffee sachets. Bulk or refill gallon drinking water. Seasoning values 1 to 10.

Second, clothing, consisting of medium quality cotton trousers or Muslim clothing. Cotton shorts, medium quality. Synthetic, plain, unbranded leather belt. Short sleeve cotton shirt. Polyester T-shirt. Polyester underwear. Medium quality cover. Synthetic leather shoes. Plain socks. Shoe cleaning supplies, such as: - Medium quality shoe polish - Medium quality shoe brush. Rubber flip flops. Bath towel 100 centimeter x 60 centimeter. Religious equipment, such as: - Prayer mats or other worship equipment of medium quality - Al-Qur'an or other holy books of moderate quality - Hats or other worship equipment of moderate quality.

Third, housing, there are 26 components in it which include: Rent or rent a room covering an area of 16 square meters. Daybed or bunk bed number 3, plain. Sleeping equipment, such as: - Foam mattresses - Foam pillows. Medium quality cotton bed linen and pillowcases. Tables and chairs, 1 table each, 4 chairs. Wooden wardrobe, medium quality. Broom fiber, medium quality. Cutlery, such as: - Plain dinner plates - Regular drinking glasses - Medium quality spoons and forks. Medium quality 1.5 liter aluminum kettle. 26cm aluminum pan, medium quality. 24 centimeter aluminum pan, medium quality. Aluminum cooking spoon. Half liter rice cooker, Indonesian National Standard (SNI), medium quality. Stove and its equipment: - Gas stove 1 medium quality SNI stove - Medium quality SNI hose and regulator - Medium quality SNI gas tube stove 3 kilograms. 3 kilograms of LPG gas cylinder melon. 20 liter plastic bucket. Medium quality plastic spoon. Electricity, State Electricity Company (PLN) 1,300 volt amperes (VA). 14 watt energy saving

full names of author (1), full names of author (2)

light bulb. Clean water, Standard of Regional Drinking Water Company, Laundry detergent powder. Refill (liquid) dish soap. Medium quality SNI iron. Plastic portable dish rack, small. Stainless kitchen knife. Mirror 30 centimeters x 50 centimeters.

Fourth, education has 2 components, consisting of a 21-inch LED television. Ballpoint or non refill pencil. Fifth, for health, there are 5 components, namely health facilities, including: - 80 grams of toothpaste - 80 grams of soap - local toothbrush, medium - local product shampoo, 100 milliliters - local cotton buds - local razors. 100 milliliters of deodorant per gram. Mosquito repellent, spray, 325 milliliters. Non salon haircut. Plastic comb Sixth, work transportation and others, namely public transportation. Seventh, communication of electric pulses and data packages equivalent to Telkomsel. Eighth, there are 3 components for recreation, savings and social security, namely: Recreation within the city or district. Nine, save 2 percent of total expenditure. Social security 2 percent of total expenditure.

The government provides wage protection through a wage policy consisting of minimum wages, overtime, wages that are stipulated as an exception to the principle of no work no pay, methods of payment, fines, deductions, structure and scale of wages, severance pay, and income tax (Article 1 figure 30 jo. Article 88 Law 13/2003).

Among the wage policies, there is a minimum wage, which is the wage received by workers whose working period is less than one year (article 42 Government Regulation 78/2015 = Article 42 Government Regulation 78/2015). Minimum wage is the lowest monthly wage determined by the Governor as a safety net, which can be: Wages without allowances or Basic wages include fixed allowances (Article 1 point 2, Article 1 point 2 the Minister of Manpower Regulation Number 21/2016).

The provision of minimum wages is based on region (province or district/ city) and sectoral. There are two elements in the definition of minimum wages, namely workers only (without "and their families") and having a work period of less than one year.

The limitations of Article 42 Government Regulation 78/2015 are the basis for determining the minimum wage in the province. In the region of East Java Province for 2020, the provisions of the minimum wage are based on Governor Decree Number 188/568/KPTS/013/2019 which regulates the minimum wage applies to workers whose work period is less than one year. Still without the word "and his family". There are 30 districts/ cities in the province of East Java. The amount of the minimum wage value in 2020, the lowest is in the Regency/City of

Sampang, Situbondo, Pamekasan, Madiun, Ngawi, Ponorogo, Pacitan, Trenggalek, Magetan, IDR 1,913,321.73. The highest score was in the city of Surabaya, IDR 4,200,479.19

The determination of the minimum wage must pay attention to the needs of a decent life, productivity, and economic growth. The minimum wage which will be determined is the same as the current year's minimum wage plus the multiplication of the current year's minimum wage and the sum of the current year's national inflation rate and the current year's gross domestic product growth rate. The minimum wage calculation formula is:

$$UM_n = UM_t + \{UM_t \times (\text{Inflasi} + \% \Delta \text{PDBt})\}$$
 Information:

- UM_n = Minimum wage to be determined.
- UM_t = Minimum wage for the current year.
- Inflasi = Inflation calculated from the September period last year to the September period of the current year.
- ΔPDBt = Gross domestic product growth calculated from the growth of gross domestic product covering the third and fourth quarter periods of the previous year and the first and second quarter periods of the current period

In 2020, the provincial minimum wage will increase by 8.51 %. This figure is based on the calculation of national inflation of 3.39 % and gross domestic product growth of 5.12% (Letter of the Head of Statistics Indonesia, Number B-246/BPS/1000/10/2019 dated 2 October 2019).

Entrepreneurs who are unable to pay their workers with the minimum wage can submit a postponement of the implementation of the minimum wage to the Governor. There are sanctions for employers who do not pay workers with a minimum wage equal to the minimum wage, namely the threat of criminal sanctions of 1-4 years in prison and/ or a fine of 100-400 million rupiahs (Article 90 paragraph (1) in conjunction with Article 185 of Law 13/2003).

2. The relevant Maqashid Sharia principles in determining the minimum wage

Wages in fiqh science are part of the study of ijarah, namely renting. The word ijarah is derived from the form of fi "il" ajara-ya'juru-ajran ". Ajran grows with the word al-iwad which means change and wages, and can also mean rent or wages. In terms of terms, the meaning of ijarah is a form of muamalah activity in fulfilling the needs of human life, such as renting, contracting, or selling hotel services and others.

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There are several definitions put forward by the scholars of fiqh. First, the Hanafiyah scholars define it as a transaction for a benefit in exchange. Second, the scholars of Shafi'iyah define it as a transaction for an intended, specific, mutable benefit and may be used with certain rewards. Third, the Malikiyah and Hanabilah scholars define it by having the benefits of something that is allowed for a certain period of time with a reward.

Based on some of the definitions above, the ijarah contract cannot be limited by conditions. The ijarah contract also does not apply to trees for which the fruit is taken, because the fruit itself is material, while the al-ijarah contract is only intended for benefits.

In addition, as with other agreements, ijarah is a consensual agreement, this agreement has legal force, namely when the ijarah takes place, and if the contract is already in progress, the renting party (mu'jir) is obliged to deliver the goods (ma'jur) to the lessee. (musta'jir), and by handing over the benefits of the goods / objects, the lessee is also obliged to hand over the rent or wages (ujrah)

The legal basis or legal basis for ijarah is Al-Qur "an, Al-Hadith, and Ijma". The legal basis for ijarah from the Al-Qur "an is Surah At-Thalaq verse 6 and Al-Qhasash verse 26. As the word of Allah SWT:

الْأَمِينُ الْقَوِيُّ اسْتَأْجَرْتَ مَنْ خَيْرٍ إِنَّ اسْتَأْجَرَهُ يَأْتِ إِحْدَهُمَا قَالَتْ

20

One of the women said, "O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy." Or the meaning: One of the two women said: "Yes, my father, take him as a person who works (for us), because in fact the best person you take to work (for us) is a strong person who can be trusted".

Surah At-Thalaq verse 6: The above argument shows that "If you make a proper payment" shows the expression of services provided due to the obligation to pay fees properly

حَمَلٍ أَوْلَاتٍ كُنَّ وَإِنْ عَلِيهِنَّ لِتُضَيِّقُوا تُضَارُّوهُنَّ وَلَا وَجِدْكُمْ مِنْ سَكْنَتِكُمْ حَيْثُ مِنْ أَسْكِنُوهُنَّ
بِمَعْرُوفٍ بَيْنَكُمْ وَأَتَمَّرُوا أَجُورَهُنَّ فَاتُّوهُنَّ لَكُمْ أَرْضَعْنَ فَإِنْ حَمَلَهُنَّ يَضَعْنَ حَتَّى عَلِيهِنَّ فَأَنْفِقُوا
أُخْرَى لَهُ فَسْتَرْضِعْ تَعَاسَرْتُمْ وَإِنْ

Lodge them wheresoever ye lodge yourselves; according to your means; and hurt them not so as to straiten them. And if they are with burthen, expend on them until they lay down their burthen. Then, if they suckle their children for you, give them their hire, and take counsel together reputably.

Based on these texts it can be concluded that the labor agreement uses human labor to doing a job is justified in Islam. In other words implementation of wages (wages for work) which is an ijarah in Islamic law. Another legal basis for ijarah, namely: Give the hired person's wages before their sweat dries.

The legal basis for ijarah from ijma 'is that all scholars have agreed on the existence of this ijarah practice, even though they experience differences at the technical level. There are several terms and designations related to ijarah, namely mu'jir, musta'jir, ma'jur and ajr or ujah. Mu'jir is the owner of an object who receives money (rent) for a benefit. Musta'jir are people who give money or those who rent. Ma'jur is a job that has benefits. Meanwhile, ajr or ujah is money (rent) that is given and received as a reward for the benefits given.

According to Hanafiyah scholars, the pillars of ijarah only consist of consent and qabul. Therefore the ijarah contract is considered valid with the existence of the ijab-qabul, either with lafadh ijarah or lafadh that shows this meaning.

Meanwhile, according to the jumhur of scholars, there are four pillars of ijarah, namely: first, Aqid, namely mu'jir (people who rent) and musta'jir (people who rent); second, Shighat, namely consent and qabul; third, Ujah (rent or wages), and fourth, Benefits, both benefits from a leased item or service and the power of the working people.

There have been many discussions of disagreements regarding the pillars of this contract in other contracts, such as buying and selling, and so on. Therefore, the terms of the ijarah contract are as follows:

For the two people who act (al-muta 'aqidain), according to scholars. Shafi 'iyah and Hanabilah, are required to be mature and sensible. Therefore, if people are crazy, rent out their property or themselves (as laborers), according to them, their al-ijarah is invalid. However, the Hanafiyah and Malikiyah scholars argued that the two people who had the ceremony did not have to reach the age of maturity, but even children who were mummyz could do the al-ijarah contract. However, they said, if a child who is mummyz performs an al-ijarah contract on his or her property, then the contract is only considered valid if by the guardian.

Both parties to the agreement state their commitment to carry out the al-ijarah contract. If one of them is forced to do the contract, then the contract is invalid. This is based on the word of Allah in Sura Al-Nisaa '4:29 which reads;

7
وَلَا ۙ مِنْكُمْ تَرَاضٍ عَنْ تِجَارَةٍ تَكُونُ أَنْ إِلَّا بِالْبَاطِلِ بَيْنَكُمْ أَمْوَالِكُمْ تَأْكُلُوا لَا أَمْنُوا الَّذِينَ يَأْتِيهَا
رَجِيمًا بِكُمْ كَانَ اللَّهُ إِنَّ ۙ أَنْفُسَكُمْ تَقْتُلُوا

³ | names of author (1), full names of author (2)

you who believe (who are âmenû)! Do not eat up your property among yourselves falsely (unjustly) except that it be trading by your mutual consent. And do not (commit suicide) kill yourselves (one another). Surely Allah is Most Merciful to you.

Etymologically, maqashid al-sharia is a combined term of two words: maqâshid and shari'ah. Terminologically, ¹⁴ the meaning of maqashid al-sharia is the goal that becomes the target of text and particular laws to be realized in human life. Whether in the form of orders, prohibitions, and permissions, for individuals, families, congregations and people (Rahman et al. 2017).

Maqashid al-sharia is a definite general principle of shari'ah and is the basis and goal in every legal determination (Hartono and Sobari 2017). It is not only extracted from the elements of shari'ah laws or some of the arguments but more than that it is the deepest meaning, the essence of all laws, arguments, and contents of the Quran and Sunnah.

Al-Ghazali limited the maintenance of shari'ah to five elements, namely religion, soul, reason, honor, and property (Oppy and Trakakis 2010). The concept of maintenance can be implemented in two methods: first, constructive method (constructive) (McDermott, Drezga, and Broadwater 1999); and second, preventive methods (preventive). In the constructive method, the religious obligations (Lafont 2009) and various Sunnah activities that are well-practiced can be used as an example of this method. The mandatory law and Sunnah are of course intended to maintain and strengthen the maqashid al-sharia elements above. While the various prohibitions on all actions that are forbidden or insulted can be used as examples of preventive methods, namely to prevent various things that can threaten all elements of maqashid shari'ah.

Maqashid al-sharia which includes the five maintenance must be realized using the principle of priority, namely prioritizing maqashid al-sharia at the level of dharuriyah, hajiyah, and then tahsiniyah. The five elements of maintenance which are referred to as al-dharuriyah al-khamsah when combined with the dharuriyah, hajiyah, and tahsiniyah levels, (Sanrego 2017) can be explained in the following details:

First, Hifz al-Din (Maintaining Religion). Religion (Islam) must be preserved from threats and damage caused by human actions that want to destroy it, or who want to mix up the truth of religious teachings with various heresies, or which want to eliminate religious teachings by inviting as many people as possible to leave the commandments and carry out its prohibitions (El-Najar and Mohammed 2014) (Setiati and Azwar 2020) (March 2011). In the theory of maqashid al-sharia, maintaining religion can be divided into three levels. The first level is a maintaining

religion at the dharuriyah level, namely maintaining and carrying out religious obligations including the primary level, such as performing the five daily prayers (Barrett 2011) (A. Rusydiana and Sanrego 2018). If the obligation to pray is ignored, the existence of religion will be threatened. The second level is a maintaining religion in the hajiyah level, namely implementing religious provisions, to avoid difficulties, such as the provision of plural prayers and qasar for people who are traveling. If this provision is not implemented, it will not threaten the existence of religion, but will only make it difficult for those who do it. The third level is a maintaining religion in the tahsiniyah level, namely following religious guidelines to uphold human dignity while at the same time perfecting the implementation of its obligations to God.

Second, Hifz al-Nafs (Maintain life/soul). Caring for the soul based on the level of importance can be divided into three: The first level is a maintaining the soul at the level of dharuriyat such as the obligation to meet basic needs in the form of food to sustain life. If these basic needs are neglected, the existence of the human soul will be threatened. The second level is a maintaining the soul in the hajiyah level, that is, if this provision is ignored, it will not threaten the existence of life, but will only make life difficult. The third level is a maintaining the soul in the tahsiniyah level, if this level is ignored it will not threaten the existence of the soul or complicate life, but if it is fulfilled it will facilitate the maintenance of the two levels above it (Alavi 2007).

Third, Hifz al-Nasab (Caring for Offspring/ Family). To maintain nasab (lineage) or descent, sharia lowered its laws governing marriage and forbids fornication, to set who should and who should not be married, ordinances way, the requirements, and the pillars of the wedding so that the offspring of the marriage is considered valid and clear the lineage. In maintaining the descent or lineage, it is also divided into three parts, namely: the first level is a maintaining offspring at the level of dharuriyat, such as the law of marriage and the prohibition of committing adultery and the stipulation of had sentences. If this provision is ignored, the existence of the offspring will be threatened. The second level is a maintaining offspring at the hajiyah level, for example, the stipulation of the mention of dowry for the husband at the time of the marriage contract and giving him the right to divorce. If the dowry is not stated at the time of the contract, then the husband will experience difficulties, because he has to pay the missile dowry (mahar misil). Meanwhile, in the case of divorce, the husband will experience difficulties if he does not use his right to divorce, even though the situation and conditions in the household are no longer harmonious. The third level is a maintaining offspring in

full names of author (1), full names of author (2)

the tahsiniyah level, such as prescribed khitbah or walimah in marriage. This is done to improve marriage activities. If it is neglected, it will not threaten the existence of the offspring, nor will it make it difficult for the person to marry, it is only related to the ethics or dignity of a person (Griffel 2009).

Fourth, Hifz al-Aql (Maintaining reason). Intellect is an important element in humans that distinguishes it from other creatures. Therefore, among the main objectives of Islamic sharia is to maintain the existence and health of the intellect of its adherents. Among the forms of care for human reason are prohibiting the consumption of food that is bad and not good for health, prohibiting drinking intoxicating drinks, and ordering people to always think and learn (Hashim 2015). Caring for its importance can be divided into the following three levels: the first level is a maintain intellect in the level of dharuriyat, such as it is forbidden to consume intoxicating drinks (liquor). If this provision is not heeded, it will threaten the existence of reason. The second level is a maintaining reason at the level of the hajiyah, such as studying knowledge. If this activity is not carried out, it will not damage one's mind, but will make it difficult for a person, especially in relation to the development of science. The third level is a maintain intellect in the tahsiniyah level, such as avoiding daydreaming or listening to something useless. This is only related to ethics, will not threaten the existence of reason directly.

Fifth, Hifz al-Mal (Preserving Property). Even though in essence all property belongs to Allah, Islam also recognizes individual ownership. Therefore, to maintain property both individually and collectively, Islamic sharia warns that both in obtaining and maintaining it do not harm other parties. Regulations regarding transaction activities such as leasing, buying and selling, receivables, pawning, economic cooperation, etc. are regulated by clear sharia principles such as not harming either party, no tyrannical elements, the prohibition of gharar (unclear goods in the transaction), maysir (gambling), usury/riba (additionally accompanied by extortion), and ikrah (coercion), as well as requiring compensation, keeping promises, recording all transactions, transparency, and so on (Razak 2015). In terms of importance, maintaining a property can be divided into three levels: the first level is a maintain the property in such prescribed dharuriyat levels of property ownership rules and the ban illegally taking the property of others. Another example is the stipulation of penalties for thieves and robbers, so that using this punishment no one dares to commit crimes that harm other people's property. If this rule is violated, the existence of assets will be threatened. The second level is a maintaining a property in the level of hajiyah as stipulated in buying and selling through greetings. If this method is not used, it will not threaten the existence of

assets, but will only make it difficult for someone who needs capital. The third level is a maintain assets at the tahsiniyah level, such as provisions to avoid fraud. Because it is related to morals or ethics in muamalah (human relations in social interaction according to the Shari'a) or business ethics. It also will affect the validity of the sale and purchase, because on the third level is also a requirement of the level of the second and first.

The relevant Maqashid Sharia principles in determining the minimum wage can be seen in the application of its five principles in the process of determining minimum wages (Amanullah 2015). First, the application of the principle of *hifz al-din* (maintaining religion), in the form of not imposing interest on errors/late payments. Late payment of wages, either in whole or in part, must be subject to fines and interest (Schmitt 2019) (Stolper and Samuelson 1941) (Krygier 2018). The penalty for late payment of wages is the addition of late fees, namely: From the fourth to the eighth day = 5% for each day; after the eighth day plus 1% for each day of delay provided that 1 (one) month does not exceed 50% (fifty percent) of the Wages that should be paid; After one month, interest is added at the rate appropriate for government banks (Article 18 jo. 55 Gouvernment Regulation 78/2015. Gouvernment Regulation 78/2005 still applies interest and fines. The application of interest is *riba'*. The term interest can be changed to the concept of administrative costs. The application of fines, if the basis of consideration is to provide compensation to workers, is still allowed. So the implementation of the principle of *hifz al-din* in determining a better minimum wage is by changing the legal concept of "interest" to "administrative costs".

The second of application of the *hifz al-nafs* principle from the maqashid sharia are to be implemented either component. In the form of wages that can meet the needs of workers, which includes the cost of food and drink, clothing, and housing, not only limited to house rent. The determination of a better minimum wage by applying the *hifz al-nafs* principle is to include the element of owning a house, not just the rent of the house in the calculation of the wage component.

The third of application of the *hifz al-nasab* (descent), principle from the maqashid sharia are to be implemented added either component for their family, wich includes of employment guarantees that can ensure the survival, health and education of workers' children. Until now, the component of the miminum wage is still limited to the needs of a worker's decent life, not including the needs of his family (children and wife). This will be a challenge in improving wage regulations.

The fourth of application of the *hifz al- aql* (maintaining reason), principle from the maqashid sharia are to be implemented added either component for their

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family, which includes of employment guarantees that can ensure the survival, health for wife and children. Until now, the component of the minimum wage is still limited to the needs of a worker's decent life, not including the needs of his family (children and wife). This will be a challenge in improving wage regulations too.

The fifth of application of the *hifz al- al-mal* (maintaining the property), principle from the *maqashid sharia* are to be implemented added either component for their family, which includes of employment guarantees that can ensure the survival, health for wife and children. The delay of employers in paying contributions of security insurance cannot be the cause of the loss of facilities for providing health services to workers and their families. It is necessary to think about taking over the state's responsibility for the loss of social security services because of the entrepreneur's fault. The threat of criminal sanctions can be an alternative solution for entrepreneurs who eliminate the provision of services for guaranteeing the right of life.

The results of this study indicate that there are differences in parameters in determining workers' wages based on the Manpower Law and Islamic principles. The parameter of the minimum wage based on the Manpower Law is the need for a decent life for single workers. Meanwhile, *Sharia* parameters based on the *maqashid Sharia* principle are more flexible (Wijayanti 2020). The determination of wages based on the agreement in accordance with the conditions of the parties and provides benefits.

Conclusion

The basis for determining the minimum wage in positive law in Indonesia, based on a worker's decent living needs, does not include his family. There are 7 groups with 60 components of proper living needs, namely 11 components of food and drink; 12 components of clothing; 26 housing components in the form of house rent, do not own a house; 2 education components, not including guarantee for children's education; 5 health components, limited to personal hygiene needs; minimal transportation components and recreational components and very little savings. Entrepreneurs who are unable to pay their workers the minimum wage can apply for a postponement of the minimum payment to the Governor. There are sanctions for employers who do not pay workers with a minimum wage equal to the minimum wage, namely the threat of criminal sanctions 1-4 years in prison and / or a fine of 100-400 million rupiah (Article 90 paragraph (1)) in conjunction with Article 185 of Law 13/2003.

The principles of *Maqashid Sharia* that are relevant in determining the minimum wage consist of, 1) applying the principle of the *hifz al-din*, (religious reporting), in the form of changing the concept of applying interest and fines for late

payment of wages, with administrative costs; 2) applying the principle of the *hifz al-nafs*, which includes the element of owning a house, not only the rent of the house in the calculation of the wage component; 3) applying the principle of the *hifz al-nasab* by adding the value of the wage component which is sufficient to meet the needs of a working family's life properly; 4) applying the principle of the *hifz al-aql* by adding the value of the wage component which is sufficient to meet the needs of a healthy life of a working family properly; 5) applying the principle of the *hifz al-mal* by guaranteeing workers' savings. So, the wage determination based on sharia principles is closer to a sense of justice for the parties.

The recommendation is to revise the parameters for setting the minimum wage, by adding the value of the minimum wage component that is sufficient to meet the needs of family life properly and replacing the concept of fines and wages in administrative costs.

Bibliography

- Alavi, Hamid Reza. 2007. "Al-Ghazali on Moral Education." *Journal of Moral Education* 36(3).
- Amanullah, Muhammad. 2015. "Islamic Ethics and Guidelines for Using Facebook: A Maqasidic Analysis." In *Kuala Lumpur International Business, Economics and Law Conference 8 (KLIBEL8)*.
- Anderson, Deborah J., Melissa Binder, and Kate Krause. 2003. "The Motherhood Wage Penalty Revisited: Experience, Heterogeneity, Work Effort, and Work-Schedule Flexibility." *ILR Review* 56(2).
- Armas Pailis, E, Umar Burhan, and Khusnul Ashar. 2016. "The Influence of Maqashid Syariah toward Mustahik's Empowerment and Welfare (Study of Productive Zakat Recipients on Baznas Riau)." *American Journal of Economics* 6(2).
- Autor, David H. 2019. "Work of the Past, Work of the Future." *AEA Papers and Proceedings* 109.
- Autor, David H., Alan Manning, and Christopher L. Smith. 2016. "The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment." *American Economic Journal: Applied Economics* 8(1).
- Barrett, Justin L. 2011. "Cognitive Science of Religion: Looking Back, Looking Forward." *Journal for the Scientific Study of Religion* 50(2).
- Blau, Francine D., and Lawrence M. Kahn. 2017. "The Gender Wage Gap: Extent, Trends, & Explanations." *Journal of Economic Literature* 55(3).
- Budig, M. J., and P. England. 2001. "The Wage Penalty for Motherhood." *American Sociological Review* 66(2).
- Cengiz, Doruk, Arindrajit Dube, Attila Lindner, and Ben Zipperer. 2019. "The Effect of Minimum Wages on Low-Wage Jobs*." *The Quarterly Journal of Economics* 134(3).
- Draca, Mirko, Stephen Machin, and John Van Reenen. 2011. "Minimum Wages and
- Justitia Jurnal Hukum**, Vol, No, Years, Page

full names of author (1), full names of author (2)

- Firm Profitability." *American Economic Journal: Applied Economics* 3(1).
- Dube, Arindrajit, T. William Lester, and Michael Reich. 2016. "Minimum Wage Shocks, Employment Flows, and Labor Market Frictions." *Journal of Labor Economics* 34(3).
- El-Najar, Noura, and Hamdan Bin Mohammed. 2014. "The Application of Maqasid Al Sharia'h in Islamic Banking & Finance." *Leading Transformation to Sustainable Excellence*.
- Goos, Maarten, and Alan Manning. 2007. "Lousy and Lovely Jobs: The Rising Polarization of Work in Britain." *Review of Economics and Statistics* 89(1).
- Gorry, Aspen. 2013. "Minimum Wages and Youth Unemployment." *European Economic Review* 64.
- Grégoire, Philippe. 2018. "Psychology at Work." *International Review of Economics* 65(2): 119-35. <https://doi.org/10.1007/s12232-017-0286-3>.
- Griffel, Frank. 2009. Al-Ghazali's Philosophical Theology *Al-Ghazali's Philosophical Theology*.
- Hartono, Sri, and Agus Sobari. 2017. "Sharia Maqashid Index as a Measuring Performance of Islamic Banking: A More Holistic Approach." *Corporate Ownership and Control* 14(2).
- Hashim, Azmil. 2015. "Correlation between Strategy of Tahfiz Learning Styles and Students Performance in Al-Qur'an Memorization (Hifz)." *Mediterranean Journal of Social Sciences* 6(2S5).
- Ikhsan Ramdhoni, Mokhamad. 2018. "Assessing Bank Performance Measurement in Islamic Banking Industry." In *MATEC Web of Conferences*.
- International Labour Organization. 2016. Just Labour: A Canadian Journal of Work and Society *Global Wage Report 2016/17: Wage Inequality in the Workplace*.
- Krueger, Alan B., and Andreas I. Mueller. 2016. "A Contribution to the Empirics of Reservation Wages." *American Economic Journal: Economic Policy* 8(1).
- Krygier, Martin. 2018. "Why the Rule of Law Matters." *Jurisprudence* 9(1).
- Lafont, Cristina. 2009. "Religion and the Public Sphere: What Are the Deliberative Obligations of Democratic Citizenship?" *Philosophy and Social Criticism* 35(1-2).
- Losonczi, Péter. 2012. "The Power of Religion in the Public Sphere." *Political Theology* 13(6).
- March, Andrew F. 2011. "Islamic Legal Theory, Secularism and Religious Pluralism: Is Modern Religious Freedom Sufficient for the Shari'a 'Purpose [Maqsid]' of 'Preserving Religion [Hifz Al-Din]?" *SSRN Electronic Journal*.
- Martins, Pedro S., Alvaro A. Novo, and Pedro Portugal. 2021. "Increasing the Legal Retirement Age: The Impact on Wages, Worker Flows and Firm Performance." *SSRN Electronic Journal*.
- McDermott, T. E., I. Drezga, and R. P. Broadwater. 1999. "A Heuristic Nonlinear Constructive Method for Distribution System Reconfiguration." *IEEE Transactions on Power Systems* 14(2).
- McHugh, Matthew D., and Chenjuan Ma. 2014. "Wage, Work Environment, and Staffing: Effects on Nurse Outcomes." *Policy, Politics, and Nursing Practice* 15.

Justitia Jurnal Hukum, Vol, No, Years, Page

- Mifrahi, Mustika Noor, and Faaza Fakhrunnas. 2018. "Islamic Bank Performance Based on Maqasid Based Performance Evaluation Model (MPEM)." *Jurnal Ekonomi & Keuangan Islam* 4(2).
- Neumark, David, and William L. Wascher. 2007. "Minimum Wages and Employment." *Foundations and Trends in Microeconomics* 3(1).
- — —. 2013. "The Effects of Minimum Wages on Employment." In *Minimum Wages*,.
- Nugraha, Erik, Lucky Nugroho, Citra Lindra, and Wiwin Sukiati. 2020. "Maqashid Sharia Implementation in Indonesia and Bahrain." *ETIKONOMI* 19(1).
- Nurhadi, Nurhadi. 2019. "The Importance of Maqashid Sharia as a Theory In Islamic Economic Business Operations." *International Journal of Islamic Business and Economics (IJIBEC)* 3(2).
- Oppy, Graham, and Nick Trakakis. 2010. The History of Western Philosophy of Religion: Volume 4 Nineteenth-Century Philosophy of Religion *The History of Western Philosophy of Religion*.
- Ottaviano, Gianmarco I.P., and Giovanni Peri. 2012. "Rethinking the Effect of Immigration on Wages." *Journal of the European Economic Association* 10(1).
- Rahman, Faried Kurnia, Mohammad Ali Tareq, Rochania Ayu Yunanda, and Akbariah Mahdzir. 2017. "Maqashid Al-Shari'ah-Based Performance Measurement for the Halal Industry." *Humanomics* 33(3).
- Razak, Nurul Ain Nadiyah binti Abd. 2015. "Konsep Hifz Mal Dalam Pengurusan Harta Pusaka Di As-Salihin Trustee Berhad." *Prosiding Seminar Antarabangsa Pengurusan & Kepimpinan Islam : Isu dan Cabaran* 7.
- Roediger, David R. 2017. "The Wages of Whiteness." In *Class*,.
- Rogerson, Richard, Robert Shimer, and Randall Wright. 2005. "Search-Theoretic Models of the Labor Market: A Survey." *Journal of Economic Literature* 43(4).
- Rusydia, Aam S., and Irman Firmansyah. 2018. "Efficiency versus Maqashid Sharia Index: An Application on Indonesian Islamic Bank." *Shirkah: Journal of Economics and Business* 2(2).
- Rusydia, Aam, and Yulizar Djameluddin Sanrego. 2018. "MEASURING THE PERFORMANCE OF ISLAMIC BANKING IN INDONESIA: AN APPLICATION OF MASLAHAH-EFFICIENCY QUADRANT (MEQ)." *Journal of Islamic Monetary Economics and Finance* 3.
- Sanrego, Yulizar D. 2017. "The Minimum Wage Formulation From Maqashid Al-Sharia Perspective: A Case of Indonesia." *Share: Jurnal Ekonomi dan Keuangan Islam* 6(2).
- Schmitt, Peter A. 2019. "Translation 4.0-Evolution, Revolution, Innovation or Disruption?" *Lebende Sprachen* 64(2).
- Setiati, Siti, and Muhammad Khifzhon Azwar. 2020. "COVID-19 and Indonesia." *Acta medica Indonesiana* 52(1).
- Statman, Meir, and Denys Glushkov. 2009. "The Wages of Social Responsibility." *Financial Analysts Journal* 65(4).
- Stolper, Wolfgang F., and Paul A. Samuelson. 1941. "Protection and Real Wages." *Review of Economic Studies* 9(1).

full names of author (1), full names of author (2)

Wijayanti, Asri. 2020. "Al Ujroh as an Alternative of a Fair Wage Setting Solution."

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