

Implemenrasi Sharia

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Implementation of Sharia Industrial Relationship Concepts as Alternative Solutions of Non Litigation Legal Assistance in the Legal Pluralism in Indonesia

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ARTICLE INFO	ABSTRACT
Published Online: 06 September 2018	The state of industrial relations should be conducive, especially in legal pluralism in Indonesia. The rule of law should provide a legal certainty and should not contain vague norms. Law 13/2003 on employment has not maximally provided legal protection for workers. Some articles governing industrial relations contain a vague norm. There are multiple interpretations of the values of Pancasila and the 1945 Constitution as the basis for the application of the concept of industrial relations. TAP MPR No. II / MPR / 1978 concerning Guidance on the Practice and the Application of Pancasila (P4) , has been revoked by MPR Decree No. XVIII / MPR / 1998 jo. TAP MPR No. I / MPR / 2003. This study aims to provide an alternative solution for the development of the concept of industrial relations in the perspective of Islam, as an alternative solution of non litigation legal aid in Legal Pluralism in Indonesia. This is a normative juridical research uses statute and conceptual approach. The result of this study shows that there are principles of Islamic law that can be implemented in regulating the industrial relations that close to the sense of justice which covers the principles of justice, helpfulness and mutual benefit, clarity of the contract (agreement) and the transparency of wages, mutual responsibility, and contentment to each other. The implementation of the concept of sharia industrial relations can be used as a source of multi-interpretation of the regulation of Law 13/2003 on the values of Pancasila and the 1945 Constitution and as an alternative solution of non-litigation legal aid in Legal Pluralism in Indonesia.
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Introduction

Understanding the industrial relationship can not be separated from understanding the values of *Pancasila*. During the reign of President Soeharto, in general, the understanding of Pancasila values was based on guidelines on the appreciation and implementation of Pancasila (P4 / Ekaprasetia Pancakarsa).¹ At that time P4 must be studied at all levels of society. Both through formal and informal education. TAP MPR No. II / MPR / 1978 concerning Guidelines for the Appreciation and the Implementation of [Pancasila](#) has been revoked by MPR Decree No. XVIII / MPR / 1998 jo. TAP MPR No. I / MPR / 2003.

Pancasila as the moral basis in every legal relationship in the community as well as working or industrial relations. The condition of industrial relations

should be conducive. The rule of law must provide legal certainty and should not contain vague norms.

In the field of employment, labor relations or industrial relations are based on the provisions of Law 13/2003 on employment and has been valid for 15 years. There have been many analyzes on the formulation of the articles based on the decision of the Constitutional Court, it is proven that several articles in Law 13/2003 which regulate industrial relations contain vague norms. Several articles in Law 13/2003 are contradictory to the 1945 Constitution. It shows that the legal protection for workers is not maximal yet.

The law is layered and has three layers of dogmatic layers (rule of law), legal theory and legal philosophy. One to another must be correlated and can not be contradicted to each other. Legal dogmatics must be made on the basis of legal theory and embody the desires of value embodied in legal philosophy. If there is a dimness or vagueness in the

¹ [TAP MPR No. II/MPR/1978 tentang Pedoman Penghayatan dan Pengamalan Pancasila](#)

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rule of law, it can be sought the ratio in legal theory and / or legal philosophy.

Before the enactment of Law 13/2003, there has been Law 25/1997. However, its existence was never recognized because the rule was suspended since its inception. It is known that Pancasila industrial relations is an industrial relationship based on the manifestation values of the whole Pancasila principles and the 1945 Constitution which grow and develop over the personality of the nation and the national culture of Indonesia. What is meant by the manifestations values of the whole Pancasila precepts is P4. After being revoked by MPR Decree No. XVIII/MPR/1998 jo. TAP MPR No. I/MPR/2003, resulted in multiple interpretations of Pancasila values as the basis for the application of the concept of industrial relations.

Within the framework of legal theory, we can borrow the concept of industrial relations contained in the teachings of Islam. The norms of Islamic law can be one of the material legal sources that can form the basis of realizing conducive industrial relations. From the above description, the question that may raises whether Islamic law can be one of the material legal sources to create a conducive industrial relations. To answer the problem in this research, thereby, normative juridical research method with statute and conceptual approach is used. This study is normative juridical because it studies the lack of industrial relations concept and horizontal inconsistency in Law 13/2003 by applying conceptual approach in Islamic law as an alternative solution of non litigation legal aid in Legal Pluralism in Indonesia

Literature Review

Industrial relations are formulated as a system of relationships formed between actors in the production process of goods and / or services consisting of elements of employee workers / laborers and government based on the value of Pancasila and the 1945 Constitution of the Republic of Indonesia.² From the point of historical approach, this formula is a combination between Article 1 number 8 of Law 25/1997 jo. Article 1 point 9 of Law 25/1997. Article 1 number 8 of Law 25/1997, namely industrial relation is a system of relationships formed between actors in the process of producing goods or services which includes employers, workers, and the government.³ Article 1 point 9 of Law 25/1997, namely Pancasila Industrial Relation is an industrial relationship based on values that are the manifestation of the whole Pancasila principles and the 1945 Constitution, and which grows and develops on the personality of the nation and national culture of Indonesia.

What is meant by the manifestations values of the whole Pancasila precepts is P4. The Guidance of Implementation and Practice of Pancasila is the guide and

way of life in public and state for every Indonesian citizen, state organizer and state institution and social institution, both at the Center and in the Region and implemented comprehensively.⁴ The points of P4 are:

1. Belief in the One Supreme
 - 1) The nation of Indonesia expresses its trust and devotion to God Almighty.
 - 2) Indonesian people believe and piety towards God Almighty according to their respective religions and beliefs on the basis of a just and civilized humanity.
 - 3) Develop a mutual respectful attitude and collaboration between believers with different believers towards God Almighty.
 - 4) Fostering the harmony of life among fellow believers and belief in God Almighty.
 - 5) Religion and belief in God Almighty is a matter concerning the personal relationship of man with God Almighty
 - 6) Develop mutual respect for freedom of worship in accordance with their respective religions and beliefs.
 - 7) Not impose a religion and belief on God Almighty to others
2. Just and Civilized Humanity
 - 1) Recognize and treat people in line with their values and dignities as creatures of God Almighty.
 - 2) Recognize equality of levels, equality of rights and basic obligations of every human being, without distinction of ethnicity, offspring, religion, belief, gender, social status, color of skin and so on.
 - 3) Develop mutual loving attitude among human beings.
 - 4) Develop an attitude of mutual tolerance and respect.
 - 5) Develop a non-arbitrary attitude towards others.
 - 6) Uphold the values of humanity.
 - 7) Fond of doing humanitarian activities.
 - 8) Dare to defend truth and justice.
 - 9) The Indonesian people feel themselves as part of the whole human race.
 - 10) Develop a mutual respectful attitude and cooperation with other nations
3. Unity of Indonesia
 - 1) Able to place unity, coalition, and the interests and safety of the nation and state as a common interest over personal and group benefits.

² Pasal 1 angka 16 UU 13/2003 tentang Ketenagakerjaan.

³ Pasal 1 angka 8 UU 25/1997

⁴ Pasal 4 TAP MPR No. II/MPR/1978

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- 1) Able and willing to sacrifice for the benefit of the state and nation if necessary.
 - 3) Develop a sense of love to the homeland and nation.
 - 4) Develop a sense of national pride and land in Indonesia.
 - 5) Maintaining a world order based on freedom, eternal peace and social justice.
 - 6) Developing Indonesian unity on the basis of *Bhinneka Tunggal Ika*.
 - 7) Advancing the association for the sake of national unity and coalition.
4. Democracy Led by Wisdom in Deliberation / Representation
- 1) As citizens and community members, every Indonesian person has the same position, rights and duties.
 - 2) Must not impose the will of others.
 - 3) Prioritize deliberation in making decisions for the common interests.
 - 4) Deliberations to reach consensus are overwhelmed by the spirit of kinship.
 - 5) Respect and uphold any decisions reached as a result of deliberation.
 - 6) With good intentions and a sense of responsibility of accepting and executing the results of deliberate decisions.
 - 7) In the deliberation of the priority of the common interest above the private and group interests.
 - 8) Deliberation is done with common sense and in accordance with a noble conscience.
 - 9) The decisions taken must be morally accountable to God Almighty, uphold the dignity of human beings, the values of truth and justice prioritize unity and coalition for the common interest.
 - 10) Giving trust to representatives believed to carry out deliberations.
5. Social Justice for All Indonesians
- 1) Develop noble deeds reflecting the attitude and atmosphere of kinship and mutual cooperation.
 - 2) Develop a fair attitude toward others.
 - 3) Maintain a balance between rights and obligations.
 - 4) Respect the rights of others.
 - 5) Likes to give help to others to stand on their own.
 - 6) Not using property rights for extortionary efforts against others.
 - 7) Do not use property for wastes and fancy lifestyles.

- 8) Not use property to conflict with or harm the public interest.
- 9) Likes to work hard.
- 10) Love to appreciate the work of others who are beneficial to progress and common prosperity.
- 11) Likes to do activities in order to realize the progress of equitable and social justice.

Legal assistance is legal services provided by legal aid providers free of charge to legal aid recipients (Article 1 of Law No. 16 Year 2011). Legal aid is provided to assist in the settlement of legal issues faced by legal aid recipients (Article 6 paragraph (1) of Law 16/2011). Forms of legal aid include exercising power, accompanying, representing, defending, and / or carrying out other legal actions for the legal benefit of the Legal Aid Beneficiary (Article 4 of Law 16/2011). There are two forms of legal aid, they are litigation and non-litigation. The provision of non-litigation legal aid includes: legal counseling, legal consultation, case investigation electronically and non-electronically, legal research, mediation, negotiation, community empowerment, outside court assistance and / or drafting legal documents.

As a basis for conducting non litigation legal aid, it is necessary to study the legal sources. Examined from legal sources, in fact there are still many legal norms that exist in the community that can be used as a basis or guidance in conducting just industrial relationship. Among them are the labor norms contained in Islamic law. Islamic law can be one of the material legal sources that can form the basis of realizing conducive industrial relationship.

Discussion

The will of lawmaker 25/1997 against P4 is to place P4 as the basis for understanding Pancasila industrial relations, so that the position of Pancasila points becomes very important in industrial relations. Unfortunately this will not be owned by the founders of Law 13/2003. P4 can not be used as the basis for industrial relations, considering that the provisions governing P4 have been revoked. TAP MPR No. II / MPR / 1978 concerning Guidance on the Practice and the Application of Pancasila has been revoked and declared no longer valid by TAP MPR No. XVIII/MPR/1998⁵ jo. TAP MPR No. I/MPR/2003.

The condition of industrial relations should be conducive. The rule of law must provide legal certainty. It should not contain vague norms. Law 13/2003 on employment has not maximally provided legal protection for workers. Some Articles governing industrial relations contain vague norms such as the provisions of Article 59,

⁵Pasal 2 TAP MPR No. XVIII/MPR/1998

65, 66 of Law 13/2003 have placed the workforce as the object of legal relations in an unfair outsourcing system.

Indeed, the application of Pancasila values in P4 can still be applied in setting up a just industrial relations framework. The revocation of MPR Decree No. II / MPR / 1978 became the reason for the reluctance to interpret the values of Pancasila. As a result there are multiple interpretations of Pancasila values as the basis for the application of the concept of industrial relations.

One of the sources of law is the legal and social norms. One of the forms of social norm is the norm of Islamic law. The norms of Islamic law can be one of the material legal sources that can form the basis of realizing conducive industrial relations which is essential in the provision of legal aid.

The importance of the legal aspects of employment has been the subject of study in the National Congress of *Majelis Tarjih Muhammadiyah*. Based on the decision of the 13th National Congress of *Majelis Tarjih Muhammadiyah* in Banda Aceh from 5 to 6 July 1995 on labor relations and employment in Islamic perspective⁶, several working principles were formulated as follows:

1. Principle of justice

The principle of justice is very important for human life to create respect for the rights that are appropriate in accordance with their actions. The argument against the principle of justice is Holy Quran surah *Al-Hadid* (57) verse 25 which means: *“Indeed We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Mizan that mankind may keep up justice. And We brought forth iron wherein is mighty power, as well as many benefits for mankind, that Allah may test who it is that will help Him (His religion) and His Messengers in the unseen. Verily, Allah is Powerful, Almighty.”*

The meaning of justice includes the process of organizing the means of livelihood. Justice in the field of manpower includes ways to obtain production, distribution and in the utilization. Justice must be established on the basis of a balance between the power/rich who are willing to help the weak and poor and support the establishment of justice in a good manner since the poor do not undermine the power/rich.

2. Principles of help and mutual benefit

Mutual help is done in terms of virtue. It also reflects the implementation of principles of togetherness and partnership / deliberation. The argument against this principle is Holy Quran Surah *Al-Maidah* (5) verse 2 which means: “Help

you one another in *Al-Birr* and *At-Taqwa*, but do not help one another in sin and transgression.” The meaning of mutual helps must be positive, not harmful to each other, self and others.”

Facts within the structure of society there are differences in natural talent / work ability. Therefore, it is required a specialization of employment in accordance with its competence. There is a hadith from Abu Hurairah who said that Rasulullah SAW says, “ If the mandate is abused then wait for the time of destruction. Abu Hurairah asked to Rasulullah, “How amanah was wasted? Rasulullah said, “When a matter is left to the non-experts then wait for the time of rack and ruin.”

3. Clarity principle of *aqad* (contract) and wage transparency

Aqad is very important in carrying out legal relations. The rights and obligations of the parties are regulated in the contract. The contract must be made overtly or open. The contract must contain the value of administration and uphold moral values relating to *halal*. *Al-Baqoroh* (2) verse 282 which means, “O you who believe, if you do not trust in cash for a prescribed time, write it down.”; and the words of the Prophet SAW which means “The Muslims are bound by the terms - the terms of the treaty, except for the conditions that prohibit the lawful or justify the haram.” (Hadith of Tirmidhi History of Abu Amir *Al-Aqdi*)

4. The principle of mutual responsibility

Implementation of employment relations required responsibility. The principle of this principle has been stated in HQ Surah *Al-Qasas* (28) verse 26 which means “Verily, the best of men for you to hire is the strong, the trustworthy.”

Allah Almighty implies to take a strong and honest person as a worker meaning that the employer has hope for his worker in order to carry out his obligations as his commitment to justice. Islam protects the interests of the employer by assigning certain moral obligations to the workers, including hiring honest, meticulous, diligent, careful and trustworthy workers. The argument is stated in HQ Surah *Al-Muddastir* (74) verse 38 which means that “Every person is a pledge for what he has earned.” The main employer's responsibility is the provision of wages, health insurance, security, shelter and rest room, freedom of worship etc.

5. The principle of sincerity.

This principle is important in every legal relationship, including the employment relationship. There is sincerity and honest that is permanent when the agreement takes place as well as receiving legal consequences of the contract. The

⁶<http://www.smuha-yog.sch.id/?pujek=mimbar&aksi=lihat&id=139>

argument is Holy Quran surah An-Nisa (4) verses 28 to 29 which means “Allah wishes to lighten (the burden) for you, and man was created weak. O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you.”

The five principles of Islamic labor law adopted in the 18th Majelis Tarjih Muhammadiyah National Congress in Banda Aceh from 5 to 6 July 1995 can be used as a material legal resource in implementing industrial relations based on Law 13/2003 especially in the terms of rules that contain vague norms in the provisions of Article 59, 65, 66 of Law 13/2003.

One form of norms that is often violated by the entrepreneur is the provision of conditions to be able to do work relations on the basis of PKWT. Based on the provisions of Article 59 paragraph (1) and paragraph (2) of Law 13/2003, the Working Agreement for a certain period of time can only be made for certain tasks which by type and nature or activity shall be completed within a certain time, namely:

- a. an instant work that is completed in time or temporary;
- b. expected work that should be completed quickly for a maximum of three years;
- c. conditional work; or
- d. work related to new products, activities, or additional products that are still in trial or exploration.
- e. a contract for a certain period of time can not be held for a fixed work.

The provisions of Article 59 paragraph (1) and paragraph (2) of Law 13/2003 practically are often used as the legal basis for the occurrence of labor disputes. Labor disputes related to non-enforcement of the rule of law are disputes of rights. The cause of the provisions of Article 59 paragraph (1) and paragraph (2) of Law 13/2003 as the basis of rights disputes indicates that the contents of Article 59 paragraph (1) and paragraph (2) of Law 13/2003 contains vague norms. A vague norms provides an open space for different interpretations.

Article 59 paragraph (1) and paragraph (2) of Law 13/2003 contains conditions of contract which is done in a certain working time. Seeing that the name of contract should be based on time then logically its parameter must be the division of time, i.e. second, minute, hour, day, week, month, and year. The following time parameters can not be based on other classifications, they are:

- a. temporary
- b. The formula has already been appropriate;
- c. conditional; or

- d. relating to new products, activities, or additional that are still in trial or error;
- e. in time.

The word temporary, conditional, new and still is a word that can not be measured. Giving a multi-interpretation space over those words. This is why the Employee of Labor Inspector is less brave to enforce the provisions of Article 59 paragraph (7) of Law 13/2003. As a result there is uncertainty over the vague provisions. It becomes the root cause of any labor disputes.

Article 65 paragraph (2) of Law 13/2003 regulates the job contract which must meet the following conditions:

- a. done separately from the main activities;
- b. carried out by direct or indirect orders from the employer;
- c. is a supporting activity of the company as a whole; and
- d. not hampering the production process directly.

The word major, supporting, inhibiting are words that have no specific parameters / limits, so they do not provide legal certainty. The one who entitles to determine the type of major or supporting activities of a production process is the one who creates the job, i.e. employer not others (government or workers). As well as direct or indirect orders which must be interpreted the element of responsibility for the one who gives an order. This is why the Employment Supervisor is reluctant to enforce the provisions of Article 65 paragraph (8) of Law 13/2003. As a result, there is a legal uncertainty over such a vague condition.

The provision of Article 66 paragraph (1) and (2) of Law 13/2003 is a vague norm. Criteria of main activities or activities directly related to the production process also led to multiple interpretations. There is no legal certainty. The entitled person to determine the part of the principal or supporting production process is the business owner.

If the provision of Article 59 paragraph (1) jo Article 65 paragraph (2) jo. Article 66 Paragraphs (1) and (2) of Law 13/2003 are vague norms, such provisions can not be implemented by the Employee of Labor Inspector as the basis for determining the violation in the form of a notice of inspection or a written determination note.

Unfulfilled requirements of Article 59 paragraph (1) and paragraph (2) jo. Article 65 paragraph (2) jo. Article 66 paragraphs (1) and (2), are:

- a. by law into an indefinite time of working agreement (Article 59 paragraph (7) of Law 13/2003)
- b. by law the status of worker / laborer's employment relations with the contracting recipient company turns into a worker / laborer's working relations with the employer (Article 65 paragraph (8) of Law 13/2003)

- c. **by law** the status of the employment relations between the worker/laborer and the company of the provider of the worker/laborer services is shifted to the working relations between the worker/laborer and the employer company (Article 66 paragraph (4) of Law 13/2003)

Phrase **by law** requires further definition or interpretation. This becomes the jurisdiction of the judge. The supervisory officer has the authority to provide an examination note or a written stipulation note. In order to have a legal certainty, an examination note or a written stipulation note require the role of judge in the District Court.

Practically, violations of the provisions of Articles 59, 65 and 66 of Law 13/2003 by employers do not result in any law. There is no sanction for the offender if the PKWT is not changed into PKWTT. In other words, workers are at a disadvantage.

We can apply the principles of Islamic employment, the principles of justice, the principle of help and mutual benefit, the principle of clarity of the *aqad* (contract) and the transparency of wages, the principle of mutual responsibility, and the principle of sincerity toward the provisions of Articles 59, 65 and 66 of Law 13/2003. Implementation of Islamic employment principles into the provisions of Articles 59, 65 and 66 of Law 13/2003 which contain vague norms through the interpretation.

One model of interpretation is the principle of Contextualism by Ian Mcleod in his book *Legal Method* which state three principles in contextualism:

1. The Principle of *Noscitur a Sociis*
2. The Principle of *Ejusdem Generis*
3. The principle of *Expressio Unius Exclusio Alterius*⁷

In the first principle of contextualism, *Noscitur a Sociis*; a thing is known from its association. It means that a word must be interpreted in its sequence. The emphasis in this case is in the sequence or context. The meaning of interpretation must be in accordance with its meaning (from its context/ sequence). In interpreting the outsourcing work system should be based on the theory.

Functional labor law has private and public characteristics. In the second principle of contextualism, *Ejusdem Generis* which means a genus; means that one word is limited specifically into its group. In a working relations, a private *aqad* / contract theory can not be applied literally. Working relations have minimal three elements of workers, jobs and wages. In the third principle *Expressio Unius*

Exclusio Alterius means that if one concept is used for one thing, it can not be applied automatically to anything else. In this study, PKWT becomes PKWTT is a time-based review, then other parameters could not be used except time. The three principles in contextualism in practice should be done sequentially preferably using the principle of *Noscitur a Sociis* at the beginning then continued by using the principle of *Ejusdem Generis* and then the last principle of *Expressio Unius Exclusio Alterius*.

Furthermore, the use of Contextualism interpretation model by Ian Mc Leod by applying the Islamic principles of manpower the provision of Article 59, 65, 66 of Law 13/2003 should issue a word or a phrase containing vague norm. If the time is used as the basis or parameter it shall issue the word "temporary, conditional, new, additional, and in time" in Article 59 of Law 13/2003. The only eligible limitation of PKWT is only Article 59 paragraph (2) b only which is the work that is expected to be completed in the not too long period of time and maximum of three years.

The provisions of Article 65 paragraph (2) sub-paragraph b of Law 13/2003 are not in accordance with the principle of responsibility. The theory of command is related to responsibility. The one who gives an order will automatically become the one who is responsible to. The responsibility lies not in the form / manner in which the order is performed whether directly or indirectly. The word "main, supporting and inhibiting" is not in accordance with the principle of justice, mutual help and benefit, and sincerity. The state has negatively intervened in the business freedom of the employer. Likewise with Article 66 of Law 13/2003 which is entitled to determine the principal or supporting part of production process is the business owner.

Therefore, the use of the principle of contract clarity (agreement) becomes the basis for the implementation of a working relationship with the system of outsourcing or job contracting more fair. Employers and workers can jointly formulate their rights and obligations openly/transparently and how much wages can be earned from their work later. Right and obligations that can be the parameters have or not dilaksankannya responsibility respectively. If the parties showsincerity and good work, does not contain the value of immorality then automatically the principle of justice will be felt by both parties.

Conclusion

The results of this study showed that there are principles of Islamic law that can be applied in regulating the industrial relations that close to the sense of justice, the principles of justice, the principle of help and mutual benefit, the principle of clarity of the *aqad* (agreement) and the transparency of wages, the principle of mutual responsibility, and principle of mutual benefit. These principles of Islamic law can be used as a solution to the

⁷GJ Wiarda, *Drie Typen von Rechtsvinding*, WEJ Tjeenik Willink, Zwolle, 1980, hal. 11,13,15, seperti dikutip oleh Philipus M Hadjon, dan Tatiek Sri Djatmiati, *Argumentasi Hukum*, UGM Press, Surabaya, 2005, hal. 25

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existence of multiple interpretations of Pancasila values as the basis for the application of the concept of industrial relations particularly in the arrangements of Articles 59, 65 and 66 of Law 13/2003. The implementation of *Shariah* Industrial Relations Principle can be used as an alternative solution of non litigation legal aid in Legal Pluralism in Indonesia

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