

THE MINIMUM WAGE FORMULATION FROM MAQASHID AL-SHARIA PERSPECTIVE: A CASE OF INDONESIA

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ABSTRACT - Minimum Wage (MW) is a policy set by the government as a basis reference at labor market for every company to pay their workers wages. Since workers always have a low bargaining position when dealing with employers in the determination of their wage rates, therefore the MW could become the safety net for workers to have "decent living" when he began to enter the world of work. In the case of Indonesia, the formulation of MW is referring to the parameters of Decent Living Needs (DLN) according to the Ministry of Manpower Decree No. 13, year 2012. There are at least seven components in order to formulate MW within the DLN Framework, namely: (1) food and beverages, (2) clothing/apparel (3) housing, (4) education, (5) health, (6) transportation and (7) recreation and savings. Meanwhile, in Islam every transaction made must be ensured preserve and achieve *maqashid al sharia* (sharia objectives): (1) religion/faith, (2) life, (3) intellect, (4) posterity, and (5) property. Using content analysis, the paper indicates that the regulation above is relevant to the conditions and objectives of *sharia*-based wage system (*maqashid sharia*). The Decent Living Needs (DLN)-based minimum wage setting which operated in the 60 components meet the basic needs components of the workers for their daily life which includes the needs of education, health, recreation and saving. Hence, another challenge in relation to the DLN is how to ensure that the purchasing power of labor for their shelter within the existing MW formulation. What kind of shelter that considered as *al dharuriyah* within the existing MW setting. Therefore, there is a call for synergy between the government and the housing industry that can offer shelter in accordance with the purchasing power of labor with the existing level of MW and feasible within the framework of DLN so that might be considered as social policy elements.

Keywords: Minimum Wage Setting, Decent Living Needs, Maqashid Sharia.

ABSTRAK – Formulasi Upah Minimum dalam Perspektif Maqashid Syariah di Indonesia. Upah Minimum (UM) merupakan kebijakan yang ditetapkan pemerintah sebagai dasar acuan di pasar tenaga kerja bagi setiap perusahaan. Pekerja dihadapkan pada posisi tawar yang rendah ketika berhadapan dengan pengusaha dalam penentuan tingkat upah mereka, oleh karena itu UM bisa menjadi jaring pengaman bagi pekerja untuk memiliki "kehidupan yang layak" ketika ia mulai memasuki dunia kerja. Dalam kasus Indonesia, perumusan UM mengacu pada parameter Kebutuhan Hidup Layak sesuai dengan Keputusan Menteri Tenaga Kerja Nomor 13, tahun 2012. Setidaknya, ada tujuh komponen perumusan MW dalam Kebutuhan Hidup Layak, yaitu: (1) makanan dan minuman, (2) pakaian / pakaian (3) perumahan, (4) pendidikan, (5) kesehatan, (6) transportasi dan (7) rekreasi dan tabungan. Sementara itu, dalam Islam setiap transaksi yang dilakukan harus dipastikan melestarikan dan mencapai *maqashid al syariah* (tujuan syariah): (1) agama / iman, (2) hidup, (3) kecerdasan, (4) anak cucu, dan (5) properti. Hasil analisa menunjukkan bahwa Keputusan Menteri Tenaga Kerja Nomor 13, tahun 2012 relevan dengan kondisi dan tujuan dari sistem upah berbasis syariah (*maqashid syariah*). Kebutuhan Hidup Layak berbasis penetapan upah minimum yang beroperasi di 60 komponen, memenuhi kebutuhan komponen dasar para pekerja untuk kehidupan mereka sehari-hari. Kebutuhan tersebut meliputi kebutuhan pendidikan, kesehatan, rekreasi dan tabungan. Tantangan yang harus dihadapi ialah bagaimana memastikan bahwa daya beli tenaga kerja dan jaminan tempat tinggal mereka dalam perumusan UM. Apa jenis hunian yang dianggap sebagai *al dharuriyah* dalam pengaturan UM yang ada. Oleh karena itu, diperlukan sinergisitas antara pemerintah dan industri perumahan dalam menawarkan perumahan sesuai dengan daya beli tenaga kerja dengan tingkat upah minimum sebagai elemen kebijakan sosial.

Kata Kunci: Pengaturan Upah Minimum, Kebutuhan Hidup Layakan, Maqashid Sharia.

INTRODUCTION

In the company managements' perspectives, particularly the relationship between employers and workers, wages hold a crucial part. Wages become one of major issue that often ruined a harmonious relationship between employers and their workers. In fact, workers always have a low bargaining position in the structure of work relationship. Employers believe that they have higher bargaining position, because they give an opportunity for them to work in their company. Hence, the lower bargaining position of workers becomes clearer as it associated with the law of supply and demand in the labor market.

With high and competitive supply level of workers, then the wages of workers will be relatively low. This jargon in the law of economy and business often become a "weapon" by the employers to determine the price of the workers (wages) in order to reduce producing cost of the company and to achieve maximum profit. What should be prevailed between the employers and workers is within the structure of need and serve, reciprocally. Those structure in turn will impacted to the conducive work relationship on the workers' productivity and profit maximization for the employers.

Many people advice that the principle and practice of wages setting should not fully be given to the market forces. Wages principle for the workers which not formulated such as goods price is often fully be given to the market forces. Service price given by the workers/labors should not reflected by the services itself. There are other considerations in formulating the wages principles, whereby the workers is a human being that have right to live and to have a family. Therefore, some rules and policies arise as the reference for wages principle which is considered to humanize workers/labors.

One of wages principle in Indonesia is the Decree No. 13, year 2013 that stated the need to formulate Minimum Wages (MW) which referring to the parameters of Decent Living Needs (DLN). This paper wants to analyze this MW formulation referred to the DLN parameters in line with the achievement of *maqashid Sharia* (*Sharia Objectives*). This paper begins with introduction to the problem, secondly on the concept of MW in Indonesia, thirdly concernig the islamic perspectives about wages and the relationship between employers and workers/labors, fourth on the discussion about the relevance between the existing MW based on DLN in Indonesia and the achievement of *maqashid al-syariah*, and finally will be summarize in a conclusion at the end of this paper.



LITERATURE REVIEW

The Concept of Minimum Wages in Indonesia

Wages are the rights of the workers/labourers that is received in the form of money as a remuneration from the entrepreneur or the employers to workers/labourers, whose amount is determined and paid according to a (formal and written) work agreement, a deal, or laws and regulations, including allowances for the workers/laboures and their family for a job and/or service that has been performed or will be performed (ILO, 2003).

ILO Convention No. 18 use the official term, namely remuneration which is all expenses that borne by the company to pay their workers in the form of wages, allowances, facility, incentives and etc. As for the company, wages are part of the production costs that should be optimized in their used in order to increase the productivity and profit of the company. By this reason of increasing productivity and maximizing profit, workers always have a low bargaining position in the view of the company. Employers believe that they have higher bargaining position, because they give an opportunity for them to work in their company. Hence, the lower bargaining position becomes clearer as it associated with the law of supply and demand in the manpower market. As a result, wages of the workers/labors is often not enough in order to fulfill their lives. Therefore, the Minimum Wage (MW) concept arise as the wages principle which is considered to humanize workers/labors in the framework of Decent Living Needs (DLN). Each workers/labors have the rights to obtain income to fulfill their decent lives for humanity. This is the basic concept, which cover the workers/labors over their income to fulfill their decent lives.

In the case of Indonesia, the formulation of WM is referring to the parameters of Decent Living Needs (DLN). In the history, components of living needs as the basis reference in determining minimum wage have changes for 4 times, the components of needs are as follow:

- a. Minimum Physical Needs (MPN); period of 1969 – 1995,
- b. Minimum Living Needs (MLN); period of 1996 – 2005,
- c. Decent Living Needs (DLN); period of 2006 – 2012,
- d. Decent Living Needs (DLN); period of 2012 – Now (Permenaker No. 13, Year 2012).



The current components of living needs is the Decent Living Needs which is called DLN. A decent living is part of government policy so that workers/labourers may obtain income to fulfill their decent lives for humanity. To create those income, government set a policy of wages to covers the workers/labors. On of the policy is the Minimum Wages (MW) policy whereby the DLN becomes the parameters to determine the minimum wages.

According to the Ministry of Manpower Decree No. 13, year 2012 about components and implementation of achieving a Decent Living Needs (DLN) stages, it is stated that DLN as the basis reference to determine minimum wages consisting of 60 components which grouped into 7 types of needs:

- 1) Foods & Beverages (11 items)
- 2) Clothing (13 items)
- 3) Housing (26 items)
- 4) Education (2 item)
- 5) Health (5 items)
- 6) Transportation (1 item)
- 7) Recreation and Saving (2 item)

However, although there has been additional components from previous policy which only covers 40 components of DLN, the formulation of minimum wages still based on single living needs and not for the living needs of workers and family. Whereas in Article 3 of ILO Convention No. 131 required, one of them, that the party that authorize to determine the minimum wages must consider the needs of workers and their family.

With the existence of policy about DLN, it can be seen that the concept of wages in Indonesia is not adhere the market system that based on the law of supply and demand forces. Minimum wages could becomes the safety net for workers to have "decent living" when he begin to enter the world of work. It is expected that the minimum wages can be wisely formulated, and will encourage the workers/labors to be more productive and will led to a better performance of the company.

The Concept of Wages in Islamic Perspectives

In Islam, the issue of wages fall within the scope of Islamic jurisprudence (*fiqh al-muamalah*) studies as they relate to human relationships that result in the existence of the rights and obligations of both parties. *Fiqh Muamalah*



interpreted as laws relating to human actions and human relations in matters of property, rights of property as well as the completion of the possibility of disputes (Zarqa, 1976). The obligation of the employer to provide wages to the workers and the right for workers to get wages. In the same way, it is the obligation for the worker to issue their ability to the benefit of the employer and the right for employers to obtain the services of the workers.

Wages in the study of Islamic jurisprudence is within the study of *Ijarah*; *Ijarah* derived from *Al-Ajr*, that is '*iwadh*'. It is a contract of usufruct for compensation (Sabiq, 2009). It is the contract or agreement for transfer of ownership of usufruct for compensation ('*iwadh*'). *Ijarah* also conceived as well as buying and selling the benefits to the level wages or certain compensation. *Ijarah* is also called *tijarah* (trade) since there exist an exchange of property with property. The authentic legal consequences of *Ijarah* are the determination of ownership of usufruct for the tenants and determination of ownership of an agreed compensation for people who rent. It is because *Ijarah* is a *mu'awadhah* (exchange) contract that is selling the usufructs (Al-Zuhaili, 1989).

Since it is called as *tijarah*, therefore the elements of '*iwadh*' in this particular contract is should exist are risk (*ghorm*), work and effort (*kasb/ikhtiar*) and liability (*dhaman*). '*Iwadh*' is the basic trait or the *conditio sine quo non* of halal or lawful sale (*al-bay'*), because a sale is necessarily an exchange of value against an equitable return and compensation for the goods or services exchanged (Rosly, 2005).

Compensation/wages as being understood from the meaning of *ijarah* is called *ujrah*, which means wages given to the workers based on the particular usage of goods or services usufructs by the employers (Ibrahim & Kamri, 2013). Thus the contract that being used is *ijarah* contract (*aqd ijarah*), where the *Ijarah* objects is the usufruct of using goods and/or services. Wages or compensations are partly the price of work paid for his services in the production process (Rahman, 1995).

In the section on *Ijarah* employment, Al-Zuhaili (1989) explains that *Ijarah* on employment is a leasing that performed on certain jobs, such as building construction, sewing clothes, carrying goods to a particular place, dyeing clothes, repairing shoes, and so on. There are two kinds of people who are hired (*ajir*): specialized workers (*ajir khash*) and general workers (*ajir musytarak*). A specialized worker (*ajir khash/ajir wahad*) is a person who works for one



person for a certain time. It may not work for other than the person who hired him. While general worker (*ajir musytarak*) is a person who works for many people. It may work for many people and people who hired him should not be forbidden him to work for someone else. In the context of Indonesian regulations on labor, the division of the two kinds of workers can be attributed to the time or period of a worker to get a decent minimum wage.

Since a discourse on this particular wages involve both parties who perform the contract (*'aqd*), as applicable to other forms of contract, it is necessary to ensure legal certainty within the framework of Islamic jurisprudence. What will be the underlying transaction that can be used as a reason for the wage paid to workers/laborers by the employers. To what extent wage (price) paid by the employer reflect fairness and *mashlahah* to both parties. Are the components, as has been described previously, which became the basis for setting wages for workers reflects *mashlahah*? For indeed any provision of law (including the wage determination) in the Islamic tradition that involves both sides in a transaction must be within the framework of services (*khidmah*) and ensure the achievement of *maslahah* or the sharia objectives (*maqashid sharia*). The purpose *Ijarah* transaction enactment is in order to provide a means for people to make ends meet each other in accordance with the law of Allah S.W.T.

Simply put *mashlahah* interpreted as *jalb al-manfa'ah aw daf'u al-madharrah* (keep the benefits or avoid harms/damages). In a broader context, *mashlahah* has been formulated within the framework of *maqashid sharia* concept (Hammad, 2008). Imam Abu Hamid al-Ghazali (d.505H or 1111M), classified *maqashid sharia* into five main points (*al-kulliyyah al-khamsah*). It was also reiterated by Imam Abu Ishaq al-Shatibi (d. 790H or 1388M) nearly three centuries later. Al-Ghazali in Chapra (2000) states that: "The objective of sharia is to promote the well-being of all mankind, which lies in safeguarding their faith (*dien*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*), and their wealth (*mal*). Whatever ensures the safeguard of these five serves public interest and is desirable."

In the context of minimum wage base setting, it should be ascertain the achievement of *maqashid sharia* both for the employer and the worker. This means *mashlahah* achievement for one party to be in line with the *mashlahah* achievement of the other party. In other words, the setting of wages as a result of the engagement (contract) between employers and workers should ensure sharia objectives (*maqashid sharia*).



Operationally wages for workers did not come up due to work activities/services that neglect or keep him away from religion or the wage considerations should involve components that could potentially keep him from religion (*hifdzu al-din*); wage setting must supports life safety or does not involve components that potentially threatening the life safety workers (*hifdzu al-nafs*); wage should not paid due to the underlying transaction that threaten worker offspring (ie prostitution), instead the components of wage setting should support workers to keep their offspring (*hifdzu al-nasl*); wage setting should involve components that support the intellectual improvement of workers (*hifdzu al-'aql*); and wages do not appear due to the underlying transaction that is prohibited in Islam and it should reflect a fair price for both parties (*hifdzu al-mal*).

In accordance to guarantee of sharia objectives achievement wages setting, Qaradawi (1997) stated that there are two points to be considered in wages setting; the value of work and life or basic needs. The value of the work should be as a basis of wage setting, since it is impossible to generalize wage for educated/skilled worker at the same price with that of unskilled worker. While the basic needs must be considered as well since it is related to the survival of the worker. In the same context Afzalurrahman (1997) stated that wages will be determined through negotiations between the workers, employers and the state. Interests of employers and workers will be offset by the fair-related wage. The task of the state is to ensure that wages are set at not too low so as to deny the needs of workers, but also not too high so as to deny the part of the employers from the product sale. It is understandable that in the wage setting, the principles of fair must be maintained for both parties under the supervision of the state.

Workers are not slaves that couldn't be equated with the goods. Therefore, by referring to the Al-Quran, 20; 118-119, Afzalurrahman (1997) added that the minimum wage might cover basic necessities of life, including food, clothing, shelter and other so that the workers would earn a decent living. The point is minimum wage shouldn't cover physical needs alone, but also includes non-physical matters (education, medical facilitations etc). Hence, it is expected that the relationship work between employers and workers should be in the brotherhood framework (Kamri, Ramlan, & Ibrahim, 2014) and serve each other accordingly as the hadith of the Prophet (pbuh) said:



“They (the slave and servant) is your brother, God put them under your direction; so whoever has a brother under him then it should be given to eat like what he ate (alone) and give clothes like what he/she wore (own); and not impose on them with a very heavy task, and if you charge it with such a task, let help them (do).” (Shahih Al-Bukhari, 6050)

RESULT

The wage issue has always been an interesting issue because it is a result of a transaction that involve two parties who each have an interest. When linked to the interests of each party, then it is always associated with the subjectivity of each. Because of the subjective considerations, there is often prolonged conflict. This conflict will be more open, if the wage system is left entirely to the market forces. Fortunately the Indonesian government is trying to anticipate possible conflicts by issuing labor regulations related to the some components as a basis for determining the minimum wage.

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In fact, often repeated, the government has not been able to control the minimum wage especially for the workers. Wages received by the workers are not always able to meet the basic needs that are potentially increased. Though, government shouldn't look at this wage issue partially; not only touch the wage setting issue, supervision of workers and employers, but also including a control of macro market in order to maintaine the DLN components price within the good level of stability. Therefore, the real core of the problem is actually rooted on macroeconomic stability.



Using content analysis technic (Muhadjir, 2000) it is found that in a normative sense, the regulation above is relevant to the conditions and objectives of *sharia*-based wage system (*maqashid sharia*). The Decent Living Needs (DLN)-based minimum wage setting which operated in the 60 components meet the basic needs components of the workers for their daily life which includes the needs of education, health, recreation and saving. However, the regulation still limits the component of wage setting only for single workers (Article 1). It is expected that wage setting should take into account the workers that has already marriage. Whereas in common, workers are having married status or will getting married at the time of entering their labour market.

The needs of workers who are married will be greater than the single workers. The marriage workers as a basis of minimum wage setting can be attributed to the attainment of *sharia* objectives (*maqashid sharia*), namely the preservation of offspring (*hifdzu al-nasl*). With reasonable needs of the family, the minimum wage will become a means for workers to have a decent living includes keeping their offspring. The emphasis of the family as one of the preamble in the minimum wage even stated in Article 3 of ILO Convention No. 131 which requires that the authorities in determining the minimum wage should take into consideration the needs of workers and their families.

On top of that, the role of the government become more crucial in formulating further how to create and meet the basic needs (food, clothing and shelter, including education services, health services, etc.) which are achievable by the minimum wage; how government (to be working with the developer) able to provide decent housing for the workers with their minimum wages. At least the house is worth and comfortable to be occupied by workers with minimum wage they receive. This is where the need for synergy between the government and the housing industry that can offer shelter in accordance with the purchasing power of labor with the existing level of MW and feasible within the framework of DLN so that might be considered as social policy elements; how the government able to provide educational facilities (preferably free) that can accommodate families of workers with their minimum wages. More importantly, as has been previously stated, is that the macro market control so that the above DLN components can be well maintained at the stable price.



CONCLUSIONS

In a normative sense, the regulation above is relevant to the conditions and objectives of sharia-based wage system (*maqashid sharia*). The Decent Living Needs (DLN)-based minimum wage setting which operated in the 60 components meet the basic needs components of the workers for their daily life which includes the needs of education, health, recreation and saving. However, the regulation still limits the component of wage setting only for single workers (Article 1). It is expected that wage setting should take into account the workers that has already marriage. The marriage workers as a basis of minimum wage setting can be attributed to the attainment of sharia objectives (*maqashid sharia*), namely the preservation of offspring (*hifdzu al-nasl*). With reasonable needs of the family, the minimum wage will become a means for workers to have a decent living includes keeping their offspring. The emphasis of the family as one of the preamble in the minimum wage even stated in Article 3 of ILO Convention No. 131 which requires that the authorities in determining the minimum wage should take into consideration the needs of workers and their families.

RECOMMENDATIONS

1. It is urged for government to come up with further policy and formulation how to create and meet the basic needs (food, clothing and shelter, including education services, health services, etc.) which are achievable by the minimum wage; how government (to be working with the developer) able to provide decent housing for the workers with their minimum wages. At least the house is worth and comfortable to be occupied by workers with minimum wage they receive. Hence for the workers interest, as well as workers, there should be a clear parameter regarding the three elements of *'iwadh* so that will harmonise with that of minimum wage setting.
2. This is where the need for synergy between the government and the housing industry that can offer shelter in accordance with the purchasing power of labor with the existing level of MW and feasible within the framework of DLN so that might be considered as social policy elements; how the government able to provide educational facilities (preferably free) that can accommodate families of workers with their minimum wages. More importantly is that the macro market



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