

Transparency as a Principle of Employment Agreement in the Perspective of Islamic Law

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Abstract

Humans as social creatures cannot be separated from relationships with other humans. In social relations, it is inseparable from the existence of an agreement. The implementation of the agreement does not always run smoothly, there are obstacles in the form of default or there are parties who cannot fulfill their achievements. The object of this research is that the principle of openness is needed in implementing work agreements. Therefore, Muslims are required to carry out muamalah activities on the basis of Islamic law and study them in detail regarding the principles of cooperation. The purpose of this research is to analyze what are the principles in the agreement. The method used in the research with the study of laws and regulations and rules in Islamic law Al-Qur'an, Al-Hadith and relevant Islamic law rules. The results and important findings in this study found the existence of the principle of sekufu commensurate in the implementation of employment agreements between business actors.

Keyword : *Transparency; Employment Agreement; Islamic Perspective.*

1. Introduction

The state creates a society that is prospering evenly, fairly, and prosperously material and immaterial is the orientation of National development is one of the sectors of employment, the relationship between employment with development is related to aspects of ability Qualified workers will improve the process development in a country.¹ Existence of

¹ Maulidia Indriani, "Peran Tenaga Kerja Indonesia Dalam Pembangunan Ekonomi Gema Keadilan," *Gema Keadilan* Vol 3, no. 1 (2016): 67–77.

Law Number 13 of the Year 2003 concerning Employment (hereinafter referred to as Employment Law) as well as Law Number 6 of 2023 concerning Determination Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation becomes Law (hereinafter referred to as Law No. 6 2023) as a legal provision for implementation development in the employment sector, existence employment law as a part of positive law to regulate relations between workers with employers, employees with employees, etc workers or employers with the government.² Provisions or policies regarding workers is important because according to L. Husni, et al. stated that workers or laborers are the backbone of a company, if you look closely Philosophically, the existence of workers has a role essential because without its role a business activity the company cannot be run.³

The benchmark for a company's success is wrong The only thing that can be seen from the aspect of the workforce is that the relationship between the workforce and the company is interdependent or mutual relationships need, that the company needs workers to carrying out business activities and achieving targets, and workers need companies as a means of activity livelihood.⁴ When reviewed according to civil and employment law can relationship between employee and employer (performer business) shows the status of both parties determined based on the rights and obligations between workers with the entrepreneur which is realized in the agreement work, Subekti explained that the work agreement as agreement entered into by the employee with the perpetrator a business with the characteristic of providing a salary certain things that were previously promised and are available hierarchical relationship, that business actors have rights to order that his workers must obey.⁵

The strong foundation for the creation of a quality working relationship is an agreement. Agreements are a very important aspect in business activities, both relationships between individuals and relationships between companies that are within one country and across countries. These agreements are born with an agreement between at least two related parties. It is certain that the agreement is based on the freedom of contract of the parties involved. One of them is the principle of freedom of contract.

Given that business actors have a higher position than workers so that in conducting employment agreements there needs to be intervention from the government so that the rights and obligations of workers and business actors get protection. The purpose of labor law protection is to strive so that labor law can be implemented properly, supervise the implementation of labor so as not to cause violations, and if there is a violation of its

² Ishaq, *Pengantar Hukum Indonesia* (Jakarta, 2018).

³ Asikin and Zainal, *Dasar-Dasar Hukum Perburuhan* (Jakarta: Raja Grafindo Persada, 2016).

⁴ Asikin and Zainal.

⁵ Salim, *Hukum Kontrak : Teori Dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2008).

implementation, then against the violated law there will be other efforts to be restored and thereafter enforced again.⁶

According to Pasal 2 of Law No. 6 of 2023, the Employment Law is established as a legal umbrella in the field of industrial relations, mainly providing a basis for rights and obligations for business actors and workers, such as equal rights, legal certainty, ease of doing business, togetherness and independence.

Agreement in an Islamic perspective is an act to reach an agreement between one person and another in terms of doing a certain job. In an agreement to perform certain services, one party wants the other party to do some work to achieve a certain goal, and the party who wants it is willing to pay.⁷ The Islamic perspective justifies that the agreement is made in writing and does not make it difficult for the parties to carry out their rights and obligations so that the agreement is made to avoid disputes in the future.

Agreements in the Islamic perspective have principles in making them, such as the principle of freedom, the principle of equality and equality, the principle of justice, the principle of willingness, the principle of honesty, the principle of usefulness and the principle of writing.⁸ These principles can be used as guidelines in making an agreement.

Previous research only examined the settlement of compensation due to wanprestation of online sale and purchase agreements relating to article 19 of law number 8 of 1999 concerning consumer protection which was researched by Edi Suhendi and friends, focusing on compensation in agreements. whereas in this research the focus is more on the principle of openness in the implementation of work agreements for both workers and employers.

2. Research Methods

The research used is normative juridical research (legal research) because it examines legal principles, and examines written regulations.⁹ The data sources used are secondary data sources in the form of legal materials consisting of primary legal materials such as laws and regulations and secondary legal materials such as books and journals related to the theme.

This research was conducted using a statute approach and

⁶ Sadi, Muhamad dan Sobandi, *Hukum Ketenagakerjaan Di Indonesia*, (Edisi 1), (Jakarta: Kencana, 2020)

⁷ Pasaribu, H. Chairuman dan Suhrawardi K. Lubis, *Hukum Perjanjian dalam Islam*, (Jakarta: Sinar Grafika, 2004) :154

⁸ Djamil, Fathurrahman, *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*. (Jakarta : Sinar Grafika, 2012): 15.

⁹ Amiruddin, dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persada, 2003)

conceptual approach.¹⁰ The statute approach is an approach used by the author by examining the laws and regulations relating to the issue under study. The conceptual approach is an approach that departs from the views and doctrines that develop in legal science. By studying views in legal science, researchers will find ideas that give birth to legal notions, legal concepts and legal principles that are relevant to the issues at hand.¹¹

3. Results And Discussion

Human resource development is an important part of a nation's development. According to Pancasila and the 1945 Constitution, it is organized with reference to increasing self-esteem, dignity and justice as well as material and spiritual well-being. By improving the quality of human resources and the function of labor as an agent of national development, workers get job productivity and welfare in global economic life, one of which is in the field of technology and science. Improving the quality of workers can be done before workers start their work organized by the business itself or following training provided by the government. As a development goal, workers must have full access to the protection of basic labor rights.

An agreement is an event where one person promises to another, or where two or more people promise each other to do something.¹² An agreement is a legal relationship which means that the rights concerned are guaranteed and protected by law.¹³

The work agreement contains rights, obligations, work protection rules, wages, worker welfare, working conditions, implementation of working hours, and regulation of disputes arising at least in accordance with statutory regulations. In an agreement there are two conditions, namely subjective conditions and objective conditions. If the subjective conditions cannot be met, the agreement is null and void. If the subjective conditions are met, the law of the agreement is legally binding. The subjective requirements include the parties that are bound, the objective requirements include something that binds the parties.

According to Pasal 56 ayat (1) of the Employment Law No. 6 of 2023, there are two types of work agreements, namely for a certain time or what we often know as Certain Time Work Agreement and for an indefinite time which we often know as Indefinite Time Work Agreement.¹⁴ The difference between the two is in the period of time, nature and type of work. Indefinite

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Penerbit Kencana, 2007): 35

¹¹ Peter Mahmud Marzuki, *Ibid.*: 135

¹² Kosidin, Koko, *Perjanjian Kerja, Perjanjian Perburuhan dan Peraturan Perusahaan*, (Bandung: Mandar Maju, 1999): 2

¹³ G.Rai Widjaya, *Merancang Suatu Kontrak*, (Jakarta: Megapoin, 2008): 23

¹⁴ Undang-undang Nomor. 6 Tahun 2023 tentang Cipta Kerja, BAB IV Ketenagakerjaan Pasal 56 ayat (1), , <https://peraturan.go.id/>, accessed 20 Sept 2023

Time Work Agreement has a short period of time with a type of work that is seasonal or not permanent, unlike the case with Indefinite Time Work Agreement which has been regulated for how long to do a job.

The provisions in Pasal 58 ayat(1) of the Employment Law and Law Number 6 of 2023 both stipulate that "A work agreement for a certain period of time cannot require a probationary period". If there is a work agreement for a certain period of time that requires a probationary period, then the probationary period is declared null and void based on the provisions of Pasal 58 ayat(2) of the Manpower Law, but this arrangement is then further emphasized in Law Number 6 of 2023 which states that if a work agreement for a certain period of time requires a probationary period, then the probationary period required is null and void and the work period is still counted.¹⁵

The work agreement shall at least contain the name, address of the company, and type of business, name, gender, age and address of the worker, position or type of work, place of work, amount and method of payment of wages, rights and obligations of business actors and workers in accordance with laws and regulations or working conditions stipulated in company regulations or collective labor agreements, starting and validity period of the work agreement, place and date of the work agreement, signatures of the parties (business actors and workers).

In Pasal 59 ayat(1) of Law No. 6 of 2023, it is explained that, specific time work agreements are only made for certain jobs which according to the type and nature or activities of the work will be completed within a certain time, namely as follows:¹⁶ work that is one-time or temporary in nature; work that is expected to be completed within a short period of time; work that is seasonal in nature; work related to new products, new activities, or additional products that are still being tested or explored; or work that is irregular in type and nature or activity.

In the Civil Code, there are 5 principles of employment agreements: The principle of consensualism, the birth of an agreement is when an agreement is reached and that is when the rights and obligations of the parties exist (Pasal 1320 ayat(1) of the Civil Code). The principle of Pacta Sunt Servanda or the principle of legal certainty, the principle relating to the consequences of the parties' agreement (Pasal 1338 ayat (1) of the Civil Code); The principle of Freedom of Contract, the principle that gives the parties the freedom to enter into an agreement in accordance with its legal requirements. Principle of Good Faith, the Agreement must be carried out in good faith (pasal 1338 ayat (3) of the Civil Code) Personality Principle, this

¹⁵ Undang-Undang Nomor 6 Tahun 2023 BAB IV Ketenagakerjaan Pasal 81 angka 14 tentang perubahan Pasal 58 ayat (2) UU Ketenagakerjaan

¹⁶ Undang-undang Nomor. 6 Tahun 2023 tentang Cipta Kerja, BAB IV Ketenagakerjaan Pasal 59 ayat (1), , <https://peraturan.go.id/>, diakses 20 September 2023

principle binds personally to the parties.

One of the things regulated in the Labor Law is the determination of working time. Business actors are obliged to regulate working time as a condition for a worker. Working time is regulated in Law No. 6 of 2023, chapter IV Employment, Pasal 77 ayat (2), which reads: 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week; or (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week.

In addition to working time, rest time and overtime working time must also be determined by business actors. In Law No. 6 of 2023, CHAPTER IV Employment, Article 77 that business actors are obliged to provide rest and leave time. Rest time includes rest between working hours, a minimum of 4 (four) hours after work and not included in working hours, and a weekly rest of 1 (one) day after 6 (six) working days in 1 (one) week. Leave includes annual leave of at least 12 (twelve) working days after the worker has worked for 12 consecutive months.¹⁷ Overtime work is only 4 (four) hours a day and 18 hours a week. Overtime work is not counted if the work is done during weekly breaks or official holidays (Article 26 of Government Regulation No. 35 of 2021).

The calculation of wage payments to workers for the first overtime hour is 1.5 times the hourly wage, for the next hour it is 2 times the hourly wage. During overtime work time, the business or company is obliged to pay overtime work wages, provide adequate rest time, provide food and drink of 1400 calories if the overtime work time is more than 4 hours and cannot be replaced in the form of money (Article 29 of Government Regulation No. 35 of 2021).

The right to leave for women workers needs to be differentiated because it involves biological differences and socio-cultural differences, as for the rights of leave for women, including the following:¹⁸ The right to menstrual leave, based on Article 81 of the Manpower Law, regulates that female workers are not required to carry out their work activities on the first and second days of menstruation. The right to maternity leave, based on Article 82 of the Labor Law determines that female workers get the right to rest for 1.5 months before it is time to give birth and rest for 1.5 months after it is time to give birth to their children based on the calculation of health workers.

The rights of workers with their fulfillment must be guaranteed fundamentally although the implementation depends on the economic,

¹⁷ Undang-undang Nomor. 6 Tahun 2023 tentang Cipta Kerja, BAB IV Ketenagakerjaan Pasal 77, <https://peraturan.go.id/>, diakses 20 September 2023

¹⁸ Arifuddin Muda, Harahap, *Pengantar Hukum Ketenagakerjaan*, edited by B. S. Panjaitan, (Malang: CV Literasi Nusantara Abadi, 2020)

social, cultural conditions of a country, these rights are:¹⁹ The right to work as part of a person's human right to obtain employment in line with Article 27 Paragraph (2) of the 1945 Constitution. The right to a fair wage as a right that should be obtained since the start of the work agreement in line with Article 88 of the Labor Law, that wages are a reward for their activities to carry out work, the meaning of a fair wage is that the reward must be proportional to their work activities. The right to organize and assemble is understood as the right of workers to form unions and assemble which has an orientation to be more considered in fighting for various rights and interests of workers. The right to protection of safety and health, that this right is part of the right to life that needs to be guaranteed by the company from the beginning of the worker joining and becomes an integral part of company policy.

Wages are the main purpose of employees working for other people or companies. Protection of wages and workers' social security, wages have an important role, namely the main feature of a work agreement, the State has an important role in wage issues through policies and legislation that are determined based on a decent life based on mutual agreement.²⁰ So that in the work agreement, business actors are obliged to explain the wages of workers as an effort to realize the rights of workers and the obligations of business actors for performance and a decent life. Wages consist of wages without benefits, basic wages and fixed benefits, basic wages, fixed benefits, and non-permanent benefits in accordance with what is regulated in Government Regulation Number 36 of 2021 concerning Wages.²¹

There are also non-wage incomes provided by business actors to workers, namely holiday allowances given 7 (days) before religious holidays, incentives, bonuses, compensation for work facilities, and / or service money in certain businesses provided in accordance with company regulations.

Occupational Health and Safety Protection, Occupational health helps protect workers in order to achieve maximum productivity in the workplace. Improving health and protecting workers from the threat of injury will provide peace of mind for workers' families.²² Business actors are obliged to carry out regulations in accordance with regulations so that the protection of workers can be fundamentally guaranteed. The protection is regulated in

¹⁹ Sinaga, Niru Anita; Zaluchu, Tiberius, "Perlindungan Hukum Hak-Hak Pekerja Dalam Hubungan Ketenagakerjaan Di Indonesia." *Jurnal Teknologi Industri* Vol. 6 (2017)

²⁰ Pangestika, Elza Qorina. "Perlindungan Hak Kerja Pekerja Kontrak Dengan Perusahaan Saat Pandemi Covid19." *Juris Humanity: Jurnal Riset dan Kajian Hukum Hak Asasi Manusia*, Vol 1, No 2, 2022, 158-170

²¹ Peraturan Pemerintah No. 36 Tahun 2021 tentang Pengupahan Pasal 7, <https://peraturan.go.id/>, accessed 20 Sept 2023

²² Azis, Abdul, Aan Handriani, and Herlina Basri. "Perlindungan Hukum Hak Pekerja Pada Perjanjian Kerja Waktu Tertentu

Article 18 of Law Number 6 of 2023, the types of protection programs that are also guaranteed by the government are: Health insurance, to give people insurance of health from the company or employee; Work accident insurance; Old-age security; Pension insurance; Death benefits; and Job loss guarantee.

According to muamalah fiqh, agreements are commonly referred to as *ijarah*. The agreement is classified as a lease agreement. In the implementation agreement is based on the principles, namely: ²³ Freedom Principle (*Al-Hurriyah*) This principle gives freedom to the parties to make agreements both in terms of what is promised and free to determine with whom they will make agreements and determine other requirements including determining ways of resolving disputes in the future.²⁴ This principle will then be agreed upon by business actors and workers.

Principle of Equality and Equity (*Al-Musawah*) In making a contract, the parties determine their respective rights and obligations based on the principles of equality and equity. That the parties to the agreement have the same position, namely having equality or equal position in determining the terms of condition of a contract.²⁵

Principle of Justice (*Al-Adalah*) Agreements made must always bring fair and balanced benefits and must not cause harm to either party.²⁶ And then, Principle of Willingness (*Al-Ridhuyyah*) This principle states that all transactions carried out must be based on the willingness of each party to be based on the free agreement of the parties and there must be no elements of coercion, pressure, and fraud. If this is not fulfilled then the transaction is carried out invalidly.²⁷ The Principle of Honesty (*Ash – Shidq*) If honesty is not applied in the agreement, it will damage the legality and greatly affect the validity of the agreement itself. Agreements that contain elements of fraud give the other party the right to stop the process of implementing the agreement.²⁸

Principle of Benefit (*Al-Manfa'ah*) This means that the contract entered into by the parties aims to realize benefits for them and must not cause harm (*mudharrat*) or burdensome conditions (*musyaqqah*)²⁹ Written Principle (*Al-Kitabah*) Based on the Word of Allah SWT Surat *Al-Baqarah*

²³ Djamil, Fathurrahman. *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*, (Jakarta : Sinar Grafika, 2012): 15.

²⁴ Syamsul, Anwar, *Hukum Perjanjian Syariah*, (Jakarta: Rajawali Pers, 2010): 125

²⁵ Syamsul, Anwar, *Ibid.*: 126.

²⁶ Anshori, Abdul Ghofur, *Hukum Perjanjian Islam*, (Yogyakarta: Universitas Gajah Mada Pers, 2018): 221.

²⁷ Pasaribu, H. Chairuman dan Suhrawardi K. Lubis, *Hukum Perjanjian dalam Islam*, (Jakarta: Sinar Grafika, 2004): 138

²⁸ Pasaribu, H. Chairuman dan Suhrawardi K. Lubis, *Ibid.* :140.

²⁹ Anshori, Abdul Ghofur, *Hukum Perjanjian Islam*, (Yogyakarta: Universitas Gajah Mada Pers, 2018): 225.

verses 282 - 283, it is stated that Allah SWT recommends that humans should make an agreement in writing, as well as an object as collateral for the sake of proof if in the future a dispute occurs.³⁰

Based on these matters, the written work agreement agreed by both parties (business actors and workers) is open and there is nothing to hide or lies in the agreement in accordance with the laws and regulations. This is useful to avoid disputes (default) if one of the parties, both the business actor and the worker, breaks the work agreement, then the other party can terminate the work agreement.

4. Conclusion

In implementing the agreement, the principle of openness between the employer and the employee is needed. This is needed to make each party feel comfortable and there is no element of deceiving or lying in the implementation of the work agreement. The regulation of Islamic law is clear that human relations require the principle of good faith in the form of an element of honesty. This element of honesty is a fundamental thing that is the basis of human life, namely muamalah. Human relations with humans are inseparable from conflict, to avoid this conflict, an agreement is needed, an agreement that is known to the rights and obligations of each party in order to avoid conflict in the future, especially in the context of implementing the principle of openness in work agreements according to the perspective of Islamic law. Every person or legal entity entering into a work agreement is obliged to make an agreement by implementing the principle of openness. In this research focuses on the principle of openness in the implementation of the agreement, it is hoped that the next research can examine more focus on other matters.

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³⁰ Syamsul, Anwar, *Hukum Perjanjian Syariah*, (Jakarta: Rajawali Pers, 2010): 130

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