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The Concept of Minimum Wage for Workers in Law No. 11/2020 in the Perspective of Fiqh Muamalah

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Abstract

Law No. 11/2020 on Copyright of Works is a change from Law No. 13/2003 on Employment. The law was passed in 2020. In its ratification, many employees disagreed with some of the articles contained in the law, one of them is Article 89 Paragraph (1) which discusses the minimum wage. Employees do not agree with this article because of the change of the provincial minimum wage to the provincial minimum wage and the district/city minimum wage. It is feared that changes in the minimum wage will create injustice between workers and employers. The purpose of this research is to know and analyze the concept of minimum wage of employees working in Law No. 11/2020 which is guided by fiqh muamalah. The method used in this research is a kind of normative juridical study or literature by taking a statutory and conceptual approach in fiqh muamalah by examining documents through some data to analyze the concept of minimum wage of employees in Law No. 11/2020. The result is that in determining the size of the minimum wage based on employee welfare, Law No. 11/2020 does not correspond to what is described in fiqh muamalah. The researcher suggest that the data used in determining the minimum wage based only on economic growth and

inflation must be conditional. Because basically, not all employees can meet their basic needs by setting such a minimum wage.

Keywords: *Minimum Wage; Fiqh Muamalah; Decent Living Necessities*

Abstrak

UU No. 11/2020 tentang Cipta Kerja merupakan perubahan dari UU No. 13/2003 tentang Ketenagakerjaan. Undang-undang tersebut disahkan pada tahun 2020. Dalam pengesahannya, banyak tenaga kerja yang tidak setuju dengan beberapa pasal yang terdapat dalam undang-undang tersebut, salah satunya adalah Pasal 89 Ayat (1) yang membahas tentang upah minimum. Tenaga kerja tidak setuju dengan pasal ini karena adanya perubahan upah minimum provinsi menjadi upah minimum provinsi dan upah minimum kabupaten/kota. Perubahan upah minimum dikhawatirkan akan menimbulkan ketidakadilan antara tenaga kerja dan pengusaha. Tujuan penelitian ini adalah untuk mengetahui dan menganalisis konsep upah minimum tenaga kerja yang bekerja dalam UU No. 11/2020 yang berpedoman pada fiqh muamalah. Metode yang digunakan dalam penelitian ini adalah jenis studi yuridis normatif atau kepustakaan dengan mengambil pendekatan hukum dan konseptual dalam fiqh muamalah dengan menelaah dokumen melalui beberapa data untuk menganalisis konsep upah minimum tenaga kerja dalam UU No. 11/2020. Hasilnya adalah, dalam penentuan besaran upah minimum berdasarkan kesejahteraan tenaga kerja, UU No 11/2020 tidak sesuai dengan apa yang dijelaskan dalam fiqh muamalah. Peneliti menyarankan agar data yang digunakan dalam penentuan upah minimum hanya berdasarkan pertumbuhan ekonomi dan inflasi harus bersyarat. Karena pada dasarnya tidak semua tenaga kerja dapat memenuhi kebutuhan dasarnya dengan menetapkan upah minimum tersebut.

Kata Kunci: *Upah Minimum; Fiqh Muamalah; Kebutuhan Hidup Layak*

Introduction

Labor as an active source is one of the factors in the smooth running of a production process in a company or organization. The existence of manpower in carrying out their activities should be supported by facilities and infrastructure as well as good and humane forms of management, so that these employees can work well and according to company expectations without feeling frustrated, dissatisfied, and anxious. However, today Indonesia was shocked by the ratification of the Draft Law (RUU) on job creation into Law No. 11/2020, to be precise on Monday, 05 October 2020.

The ratification of the *Omnibus Law Cipta Kerja* was confirmed by the DPR after nine factions in the DPR expressed their approval. Only two factions in the DPR rejected the ratification of the *Omnibus Law Cipta Kerja*, namely the Democratic Party and the SME.¹

The incident immediately sparked controversy, because before the bill was passed, workers in various provinces rejected the job creation omnibus bill.² On the cause of the polemic, there are controversial articles that are considered detrimental to workers as well as beneficial to foreigners or foreign workers. There are a number of reasons workers reject omnibus laws, among them because they are worried about losing the minimum wage, and workers will be paid hourly wages. In Law No. 11/2020 Article 88 B reads, “Wages are determined based on: units of time; and/or revenue units”. Later in Article 88 C reads, “The governor may set the county/city minimum wage under certain conditions”. While in Law No. 13/2003 on Employment, Article 89 Paragraph 1 reads, “The minimum wage as referred to in Article 88 paragraph (3) letter a may consist of: a. minimum wage by region or county/city; b. minimum wage based on sector in region or district/city”.

There are many differences between copyright law and labor law, and the most notable among workers is the comparison of the concept of wages. In work copyright law, labor wages are determined based on units of revenue and units of time. Unit of output means wages determined based on the agreed result of work, and unit of time means based on how many hours the employee works. This is not yet in the labor law. Then in the omnibus law, job creation is to eliminate the Regional/City Sector Minimum Wage (UMK), the Regional/City Sector Minimum Wage (UMSK), so that the determination of wages is only based on the Provincial Minimum Wage (UMP).³

Islam encourages its people to work and produce, even

¹Garjito Dani, “Benarkah Upah Dihitung Perjam Dalam Omnibus Law Cipta Kerja? Ini Faktanya,” 2020, <https://www.suara.com/news/2020/10/08/121408/benarkah-upah-dihitung-per-jam-dalam-omnibus-law-cipta-kerja-ini-faktanya?page=all>.

²Dipna Videlia Putsanra, “Dampak Omnibus Law UU Cipta Kerja: Rugikan Buruh Hingga Abaikan HAM,” 2020, <https://tirto.id/dampak-omnibus-law-uu-cipta-kerja-rugikan-buruh-hingga-abaikan-ham-f5Cs>.

³Wage Indicator Foundation, “Kebijakan Pengupahan Di Indonesia,” 2022, <https://gajimu.com/pekerjaan-yanglayak/pengupahan/pertanyaan-mengenai-gaji-atau-upah-kerja-1>.

obligating those who can afford it, more than that Allah Swt. will give a reward in accordance with deeds/work in accordance with the words of Allah Swt. in the Al-Quran surah An-Nahl verse 97 which means:

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مَنْ عَمِلَ صَالِحًا مِّنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

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“Whoever does good deeds, whether male or female, in state of faith, then surely We will give him a good life and surely We will reward them with a reward better than what they earned”.

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Based on the introduction above, the purpose of this research is to know and analyze the concept of minimum wage of employees working in Law No. 11/2020 which is guided by *fiqh muamalah*.

Methodology

This type of research is qualitative, descriptive, library research, which is research conducted by collecting data from various literature books, journals, website writings, magazines, laws, *fatwas*, or from various writings.¹⁸ The research method used in this research is to use normative legal research method. As a research of normative law, this research belongs to the category of descriptive law studies that aim to find solutions to problems. This research uses law material. The legal material collection techniques used in normative legal research are done through library review and document review. Documents taken based on laws in force in Indonesia such as Law No. 11/2020 on Job Creation, Law No. 13/2003 on Employment, and Government Regulation (PP) No. 36/2021 on Wages. According this methodology, collecting data used documentation method.⁵ The data obtained is then processed by editing and data organizing methods, then analyzed by

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⁴Devid Frastiawan Amir Sup, Selamat Hartanto, and Rokhmat Muttaqin, “Konsep Terminasi Akad Dalam Hukum Islam,” *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 14, no. 2 (2020): 139, <https://doi.org/10.21111/ijtihad.v14i2.4684>.

⁵Devid Frastiawan Amir Sup, “The State’s Efforts in Preserving the Environment Through Regulation,” *Sustainability: Theory, Practice and Policy* 1, no. 2 (2021): 203.

the inductive method to get a description as complete as possible.⁶ The analysis process includes data interpretation, translation, word editing, and arranging them in a logical systematic way, so that the resulting description can become a complete concept building that is easy to understand.^{7 8 9}

Results and Discussion

In Indonesia, the word “wage” is often used in the context of the relationship between employers and workers or laborers. Wages themselves have the meaning according to *Kamus Besar Bahasa Indonesia* (KBBI) as, “Money and so on that are paid as a reward for services or as payment for labor spent to do something”.¹⁰ Generally, wages are defined as wages given by employers to their employees paid by the hour, day or week, and sometimes by month.¹¹

The definition of wages has also been defined in Labor Law No. 13/2003 which reads, “Wages are the rights of workers/laborers received and expressed in money in return from the employer to workers/laborers stipulated and paid in accordance with employment agreements or legislation, including benefits of workers/laborers and their families or services that have been or will be performed”.

While what is explained in the conventional economy is that there are conditions of wages. The difference between the two terms

⁶Devid Frastiawan Amir Sup, “Wakaf Kontemporer Di Indonesia Dalam Perspektif Hukum Dan Fatwa,” *Jurnal Hukum Ekonomi Syariah* 4, no. 2 (2021): 239, <https://doi.org/10.30595/jhes.v4i2.11093>.

⁷Devid Frastiawan Amir Sup, “Government Efforts to Prevent Potential Violence Against Women During the Covid-19 Pandemic in Indonesia,” *Syariah: Jurnal Hukum Dan Pemikiran* 21, no. 1 (2021): 105, <https://doi.org/10.18592/sjhp.v21i2.4146>.

⁸Devid Frastiawan Amir Sup, “Al-Qawa’id Al-Fiqhiyah: Tantangan Ilmiah Kemunculannya Dan Aplikasinya Dalam Bidang Ekonomi Shari’ah,” *Ann-Nuha: Jurnal Kajian Islam, Pendidikan, Budaya Dan Sosial* 8, no. 2 (2021): 330, <https://doi.org/10.36835/annuha.v8i2.457>.

⁹Devid Frastiawan Amir Sup, “Mengawal Nilai-Nilai Produksi Melalui Amdal: Perspektif Ekonomi Syariah,” in *Isu-Isu Kontemporer Dalam Pendidikan, Ekonomi, Dan Hukum* (Yogyakarta: Trussmedia Grafika, 2021), 320.

¹⁰Depdiknas, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2005), 1250.

¹¹Murtadho Ridwan, “Standar Upah Pekerja Menurut Sistem Ekonomi Islam,” *Equilibrium : Jurnal Ekonomi Syariah* 1, no. 1 (2013): 243, <https://doi.org/10.21043/equilibrium.v1i2.217>.

lies in who gives. The term salary is commonly used in government agencies while the term salary is commonly used by private companies.¹² Yet, in reality, most private companies use the term salary in providing compensation to employees.

The term salary in everyday life is the remuneration given to leaders, supervisors, administrative workers, office workers, and other managers.¹³ Then in terms of payment, the salary is usually given based on the time set by the company. Generally, the degree or level of pay itself is considered higher than the pay received by a hired or laborer, although in reality it is often not so.

Then the wage referred to in the conventional economy is the receipt as a reward from the employer to the recipient of the work including any benefits, both for the worker himself and his family.¹⁴ In this regard, wages are often categorized as remuneration for employees who tend to rely on physical strength in their jobs. Payments are usually set in relatively short units of time, either an hour, a day, or a week.

The minimum wage has been implemented in Indonesia since the 1970s. Beginning in 1990, the minimum wage policy in Indonesia continued to increase after pressure from the international community. Beginning from 1989 to 2000, the minimum wage in Indonesia increased faster than Gross Domestic Product (GDP) at current prices, so that the minimum wage became the wage level applied by most workers, especially in medium to low scale companies. All skilled and unskilled employees in the company receive approximately the same amount of salary which is the minimum wage. Even the minimum wage appears to have reduced incentives for employees to increase productivity.¹⁵ For more than fourty years since the implementation of the minimum wage in Indonesia, there have been three changes in living standards as the basis for the implementation of the minimum wage. The components of living necessities include the Minimum

¹²F. Winarni and G. Sugiyarso, *Administrasi Gaji & Upah* (Yogyakarta: Pustaka Widyatama, 2006), 6.

¹³*Ibid.*, 16.

¹⁴*Ibid.*, 17.

¹⁵Markus S. Adauruk, *Kebijakan Pengupahan Di Indonesia: Tinjauan Kritis Dan Panduan Menuju Upah Layak* (Jakarta: Bumi Intitama Sejahtera, 2013), 52.

Physical Requirement (KFM) which was in force in 1969-1995, the Minimum Subsistence Requirement (KHM) which was in force from 1996-2005, then the KHL which was in force from 2006 to now. In addition, the definition of the minimum wage and its terms have also undergone some changes in line with developments and changes in regulations.¹⁶ Practice in the 1970s to 1980s, the government did not intervene in determining wage rates. In addition, the government also strictly controlled trade unions by allowing only one officially recognized union.¹⁷

Setting a minimum wage is often a problem between employers and employees. On the one side, setting a minimum wage that is too high can burden entrepreneurs, in addition employers will also be more careful in choosing the workforce to be used, by looking at the productivity and efficiency of the workforce.

And conversely, employee welfare must be taken into account. Because most of the country's population is workers. The minimum wage is also a source of political debate supporting or favoring the view of a higher minimum wage as a way to increase income. On the other side, opponents of a higher minimum wage claim it is not the best way because a minimum wage increase has the potential to increase unemployment.¹⁸

The main purpose of determining the minimum wage is to control the arbitrary attitude of employers in determining the wage.¹⁹ Therefore, an entrepreneur cannot pay the salary of his employees less than the money salary that has been determined by the minimum value. The minimum wage has been used to cover every point of an employee's sweat and the rules are moral and not economic revisions. The majority of people accept that everywhere and for whatever reason workers are in a vulnerable position, so it is morally desirable for the government to protect them by setting a minimum wage level.²⁰

¹⁶*Ibid.*

¹⁷*Ibid.*, 53.

¹⁸N. Gregory Mankiw, *Teori Makroekonomi*, 4th ed. (Jakarta: Erlangga, 2000), 158.

¹⁹Bambang Setiadji, *Upah Antar Industri Indonesia* (Surakarta: Muhammadiyah University Press, 2002), 30.

²⁰Mira Apriani, "Tinjauan Hukum Islam Tentang Penangguhan Kewajiban

City Minimum Wage (UMK) is the minimum wage that applies to all regions/cities in one province, while the Provincial Minimum Wage (UMP) is the minimum wage that applies in a province. Previously, UMP was known as the Level I provincial minimum wage. The legal basis for setting this minimum wage is in Government Regulation (PP) No. 36/2021 on Wages.²¹

According to Article 24 Government Regulation (PP) No. 36/2021 on Wages, the minimum wage is the lowest monthly wage which includes wages without allowances and basic wages with fixed allowances imposed on employees or laborers with a period of service of less than one year in the company. However, if the employee or laborer works for a period of a year or more, it is guided by the salary structure and scale that has been determined by the employer taking into account the ability and productivity of the company.

According to Law No. 11/2020 on Job Creation, it is explained that the minimum wage in force in Indonesia from February 2020 is the Provincial Minimum Wage (UMP) and the City Minimum Wage (UMK) determined based on economic and labor conditions in each region that includes purchasing power parity, labor absorption rate, and median salary.

The adjustment of the minimum wage value consisting of the above three variables is carried out annually and is set at a certain value range between the lower limit and the upper limit of the minimum wage in the area. The limit on the minimum wage as referred to in Government Regulation (PP) No. 36/2021 on Wages is a reference to the value of the highest minimum wage, while the lower limit of the minimum wage is a reference to the value of the lowest minimum wage.

According to Article 88 C (2) Law No. 11/2020 on Job Creation, the governor is obliged to set the provincial minimum wage each year and may set the district/city minimum wage with certain conditions that include regional economic growth or inflation of the district or city concerned obtained from the calculation of statistical data by the

Membayar Upah Sesuai Dengan Upah Minimum (Analisis Putusan Mahkamah Konstitusi Nomor 72/PUU-XII/2015)" (JIN Raden Intan Lampung, 2018), 43, http://repository.radenintan.ac.id/3462/1/SKRIPSI_FIX_MIRA.pdf.

²¹Foundation, "Kebijakan Pengupahan Di Indonesia."

provincial wage board.

According to Government Regulation (PP) No. 36/2021 on Wages, the provincial minimum wage that has been designed and approved by the governor should be announced to the public through various media no later than November 21 each year. And if that date coincides with a national or official holiday, the announcement of the provincial minimum wage must be distributed the day before November 21 each year and take effect from January 1 each year. The calculation of the value of the district/city minimum wage is done by the district/city wage council. Then the results of the minimum wage calculation are submitted to the regent/mayor to be proposed to the governor through the department that organizes government affairs in the provincial labor sector. However, if the result of calculating the district/city minimum wage is lower than the provincial minimum wage, the regent/mayor cannot recommend the value for approval by the governor. The mechanism for determining UMP or UMK is: (1) The head of the provincial or district/city payroll council forms a survey team whose members consist of three party elements, trade union representatives, employers, the government, and non partisans from academia; (2) Eligible Living Standard (KHL) is stated in Ministerial Decree No. 13/2015, based on these standards, the payroll council survey team conducted a price survey to determine the eligible subsistence value which was then submitted to the respective provincial governors; (3) Surveys are conducted once a month from January to September, while for October to December forecasts are made using the last square method. The average survey results will be taken each month to obtain the KHL value; (4) The value of this KHL will later be used as one of the considerations in determining the minimum wage that applies to employees or laborers with a working time of less than one year. While the salaries of employees with a working period of one year and above are negotiated bipartit between employees or trade unions and employers from the company; (5) Based on the survey value, the pay council also considers other factors such as productivity, economic growth, least affluent businesses, labor market conditions, and recommendations or considerations from the provincial or district/city pay council; (6) The governor

will determine the value of the minimum wage. The setting of this minimum wage is carried out 60 days before the effective date of 1 January and must be distributed at least on 21 November.

According to Article 23 (1) Government Regulation (PP) No. 36/2021, the minimum wage is the wage without allowance or basic wage and fixed allowance. Then ³⁵ in Article 81 Number 32 of Law No. 11/2020 on Job Creation which amends Article 94 of Law No. 13/2003 on Employment, it is explained that the minimum wage component consists of basic wage and fixed allowance so that non fixed allowance is not included in the wage portion minimum. The total basic salary must also be at least 75% of the minimum wage and the remaining 25% is a fixed allowance.

For example, the minimum wage from the province of East Java is Rp 1.868.777,-. If a person works in the province of East Java, the company is prohibited from giving wages to that person with a wage lower than the minimum wage of the province of East Java or Rp 1.868.777,-. The company must also provide a basic salary of at least 75% of Rp 1.868.777,-, which is Rp 1.401.583,-. So if a company gives a salary of Rp 2.000.000,- which is actually greater than the minimum wage for the province of East Java, but the basic salary is only Rp 900.000,-, then this company has paid its employees below the minimum wage for the province of East Java. In practice, benefits are often greater than the basic salary received by the employee. Because the benefits provided are large, the total salary is deemed to have exceeded the minimum wage, even though the minimum wage consists only of basic salary and fixed allowances.

² Based on provincial minimum wage data obtained from CNN Indonesia, the average increase in provincial minimum wage in 2022 is only 1,09% due to economic conditions and inflation that form the basis of the minimum wage calculation.²²

According to *fiqh muamalah*, *ijarah* is a form of *muamalah* in meeting the needs of human life, such as renting, contracting, or marketing hospitality services, etc. Based on the sharia opinion, *ijarah*

²²Safyra Primadhyta, "Daftar Lengkup UMP 2022 Di 34 Provinsi," CNN Indonesia, 2021, <https://www.cnnindonesia.com/ekonomi/20211203073357-92-729299/daftar-lengkup-ump-2022-di-34-provinsi>.

has the meaning of contract activities to take advantage of something received from others by paying something in accordance with the agreement that has been determined with certain conditions.²³

While the definition of *ijarah* based on *fiqh* scholars is as follows. Based on the opinion of Imam Hanafi, "A contract for advantage with a successor". Based on the opinion of Imam Syafi'i, "A contract for a benefit that serves a specific and permissible purpose, and receives a replacement or consent with a specific successor".²⁴ Based on the opinion of Malikiyah and Hanabilah, "To make the ownership of the benefits allowed in a certain time with the successor".²⁵ From some of the definitions mentioned above, it can be understood that wages are a form of workers right to receive compensation in the form of something of value and paid for services to workers, which has been determined by agreement and on the basis employment agreement between the company and the employee.

The basis of the law of *ijarah* is stated as the word of Allah Swt. in the Al-Qur'an surah At-Talaq verse 6 as follows:

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أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بِبَيْنِكُمْ بِالْمَعْرُوفِ وَإِنْ تَعَاسَرْتُمْ فَسَتْرُوعٌ لَهُنَّ آخَرَىٰ

3
...odge them (in a section) of where you dwell out of your means and do not harm them in order to oppress them. And if they should be pregnant, then spend on them until they give birth. And if they breastfeed for you, then give them their payment and confer among yourselves in the acceptable way, but if you are in discord, then there may breastfeed for the father another woman".

Based on the opinion of the majority of scholars, there are four pillars of *ijarah* as follows: (1) Committed people. There are two people who perform the *ijarah* contract, namely *mu'jir* and *musta'jir*.³⁴ *Mu'jir* is the one who gives wages and *musta'jir* is the one who receives wages.

²³Syaifulallah Aziz, *Fiqh Islam Lengkap* (Surabaya: Asy-Syifa, 2005), 377.

²⁴Sohari Sahrani and Ru'fah Abdullah, *Fikih Muamalah* (Bogor: Ghalia Indonesia, 2011), 168.

²⁵M. Ali Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalat)* (Jakarta: PT Raja Grafindo Persada, 2004), 227.

For *mu'jir* and *musta'jir*, they must know the object of the covenant in order to avoid disputes;²⁶ (2) Contract *sighat*. That is, doing *ijab qabul* in the form of expressions, statements, and explanations that come out of a person who has a contract as a reflection of his will in holding an *ijarah* contract.²⁷ In Islamic engagement law, *ijab* is defined as a statement of promise or offer from the first party to do or not do something, while *qobul* is a statement from the party who has a contract (*musta'jir*) on the acceptance of a will the first party, i.e. after consent. The conditions are the same as the conditions of *ijab qabul ba'i* only *ijab qobul ijarah* must mention the specified period or time;²⁸ (3) Wages, are given to the *musta'jir* for services rendered or utilized by the *mu'jir*. With the following conditions: (a) The amount is known clearly and in detail; (b) Civil servants such as judges are not allowed to take money from their colleagues, as they have already received the salary set by the government; (c) Money must be submitted together with the receipt of the rented goods. If the item to be rented is complete, the rent must also be complete;²⁹ (4) Benefits. Everything related to property and services can be sealed in the *ijarah* contract as long as it meets the conditions related to benefits as follows: (a) The property may be used directly and without any defects affecting its functional impediment. Similarly, recruitment services must be usable after signing an employment contract; (b) The owner explains transparently about the quality, quantity, and benefits of the goods without hiding anything about the condition of the goods; (c) Assets that are the object of *ijarah* must be used repeatedly without causing damage to the substance and its properties. For example, food cannot be an object of *ijarah* because it cannot be used repeatedly without causing it to diminish as it is used; (d) The benefits of the object of *ijarah* do not conflict with Islamic law such as not being allowed to rent a place to commit immorality; (e) The object to be rented is the direct benefit of an object, such as renting a shop for business, a bicycle to ride, etc., and it is not allowed to rent an indirect object such as

²⁶Sayyid Sabiq, *Fiqh Sunnah Jilid 4* (Jakarta: Pena Ilmu dan Amal, 2006), 205.

²⁷Akhmad Farroq Hasan, *Fiqh Muamalah Dari Klasik Hingga Kontemporer* (Malang: UIN Malik Press, 2018), 54.

²⁸Aziz, *Fiqh Islam Lengkap*, 378.

²⁹Hasan, *Fiqh Muamalah Dari Klasik Hingga Kontemporer*, 55.

renting a tree to pick its fruit when it is harvesting.³⁰

Ijarah is divided into two types as follows: (1) *Ijarah* for interest is also known as rent. In this first *ijarah*, the object of the covenant is the benefit of an object; (2) *Ijarah* for work or commonly referred to as wages. In the second part of the *ijarah*, the object of the contract is alms or one's work.³¹ Beneficial *ijarah*, for example such as renting a house, vehicle, etc. If the interest of a lease is allowed in sharia, the scholars of fiqh agree that it can be used as the object of the lease.

Ijarah for work is by employing someone to do a job and the object taken from this contract is service. *Ijarah* like this is allowed if the type of job is clear, such as factory workers, company workers, and others. *Ijarah* like this is usually personal in nature such as giving wages to domestic helpers, as well as unions, such as a group of people who sell their services for the benefit of the people.³²

Referring to the existing basic principles of Islam, wages or salaries are determined to meet one's basic needs. Thus wages do not depend on supply and demand factors for labor as in modern economic systems. Then, how is the standardization of the minimum wage according to Islam and is it in accordance with the provisions contained in Law No. 11/2020?

In general, Islam does not allow wages to be below the minimum level set based on the basic needs of the employee, but Islam also does not allow any salary increase above a certain level determined based on the contribution to production.

Employees are generally classified into two, namely government employees and non government employees. For government employees, the majority of scientists are of the opinion that the government must pay attention to the level of living adequacy of its employees, in the sense that the standard of salary fixing does not depend solely on their job benefits alone based on the adequacy of workers in the form of basic needs in the form of clothing, food, and shelter, as well as treatment and others. In fact, Rasulullah Saw. wives as a necessity for those who do not have wives, as well as as

³⁰*Ibid.*

³¹Hasan, *Berbagai Macam Transaksi Dalam Islam (Fiqh Muamalah)*, 329.

³²Hasan, *Fiqh Muamalah Dari Klasik Hingga Kontemporer*, 56.

a helper for workers who cannot serve themselves. In *hadis riwayat* Abu Dawud (2945), Rasulullah Saw. said, “Whoever is an employee to us, then he should find a wife, if he does not have a helper then he should find a maid and if he does not have a place to live he should find a place to live”.

The above *hadis* is a benchmark for the companions and his heirs. In the narration of Abu Ubaidah, in his dialogue with the Caliph Umar bin Khattab on the wages of government workers, it is mentioned that Abu Ubaidah asked that the minimum wage limit be a wage that can meet the needs of workers in terms of food, clothing, and shelter, and prevent them from betraying them given to him. History records that after the territory of Islam was very large, Caliph Umar bin Khattab sent many prominent companions to the regions, both within the Arab region and outside the Arabian peninsula to carry out state duties. Abu Ubaidah feared that the busyness of the leading companions would make them slip with worldly affairs, rather than with *da'wah* and religion, so it was better for them not to be busy with such affairs. Abu Ubaidah said to Caliph Umar, “You have defiled the companions of Rasulullah”, then Caliph Umar replied, “If I do not ask for help from a clergyman for the safety of my religion, then to whom do I ask for help?”, then Abu Ubaidah replied, “If you do so, then enough of them from the work of betrayal”. By means of salary they must meet the requirements.³³

During his caliphate, Umar bin Khattab determined the salaries of his government officials based on the conditions of a city and their personal needs. Umar’s action can be taken as an example to determine the standard of salary according to the basic needs of the society because nowadays there are additional needs such as transportation, education, health, and other requirements so that the salary or wages should be in accordance with the relevant factors, such as inflation, health costs, unemployment, and others.

Although non governmental employees or commonly referred to as private employees, classical scholars do not explicitly endorse this provision. History stating the obligation to pay salaries according to the needs of the above employees applies to state employees

³³Ahmad Al-Khusary, *Al-Siyasah Al-Iqtishadiyah Wa an-Nuzhum Al-Maaliyah Fi Fiqhi Al-Islam* (Beirut: Dar Al-Kitab Al-Arabi, 1960), 99–100.

working in public and government spaces. However, many scholars tend to make it a standardization of the minimum wage for every employee who works fully for his or her employer, both state and private employees.³⁴ This opinion is reinforced by the *hadis* of the Prophet Muhammad Saw. on the obligation to meet the needs of a servant. In *hadis riwayat* Bukhari (2407), Rasulullah Saw. said, “If someone has his brother under his authority, he should feed him from what he eats and clothe him”.³⁵

From the history and opinion of the above scholars, it can be concluded that Islam gives rights to workers with some humanitarian guarantees such as willingness, justice, ability, and feasibility of life. Islam prohibits coercion in employment, giving wages unjustly or disproportionate to the work done, and prohibits deferment of payment of wages. Islam regards people who employ unpaid workers as enslaving them. Some scholars consider the person who consumes the work of an employee (does not give him wages) as the person who sells the person and then consumes the proceeds of the sale. This is based on the *hadis* of Kudsi narrated by Abu Hurairah (2227) that Rasulullah Saw. said, “I am the opponent of three on the day of resurrection, and if I am someone’s opponent I will defeat him. A man who makes promises in my name, then proves treacherous, a man who sells a free man and consumes his price, and a man who hires a worker, makes use to him, then does not give him his wages”.

In the concept of Islamic politics and economics, one of the responsibilities of the state is to provide social security to maintain the standard of living of all individuals in society. However, it does not mean that the fulfillment of the needs of every citizen lies in the hands of the government because the responsibility of the government is to ensure that every citizen meets their needs, not the obligation to meet their needs.

The fulfillment of the basic needs of the individual in the concept of social security is essentially an obligation in question, so finding income and working is mandatory. A person should work

³⁴Ahmad Alaludun, *Al-Siyasah Al-Iqtisadiyah Fi Daw’ Al-Maslahah Al-Shar’iyah* (Malang: UIN Malang Press, 2008), 418.

³⁵Al-Bukhari, *Sahih Al-Bukhari Juz 2* (Beirut: Dar Al-Kutub Al-‘Ilmiyah, 2012), 899.

to keep himself from begging, to support himself and his family with the property derived from his employment, and of course that employment is a lawful occupation. Meanwhile, the community is obliged to help provide suitable employment for them and train them to carry out their work.

Basically Islam obliges everyone to find a job, by working he can support himself and his family, while Islam does not encourage every individual to be lazy and beg. Therefore, Rasulullah Saw. on various occasions always encouraged his people to work and earn a living. In other cases, Rasulullah Saw. also forbade his people to be unemployed, begging, and dependent on others.

This obligation to earn a living carries the meaning of the understanding that basically everyone has an obligation to meet his or her own needs, except in certain circumstances that cause them to be unable to meet the needs of themselves and their families. Meeting the necessities of life is an obligation so that everyone will strive to find a job that can at least meet the necessities of his life. Therefore, if an employee is already working in a company, it is appropriate for the company or the person who employs him to provide wages that can meet the needs of himself and his family. This situation is a phenomenon of the industrial economy nowadays, where the majority of the population works for companies or individuals who have working hours which renders them unable to earn extra livelihood. This situation is different from the agrarian economy, especially in the time of Rasulullah Saw. and classical times, where the majority of the people worked in the agricultural and trade sectors. Thus, in today's industrial economy, a minimum wage policy based on the average basic needs of employees is much needed and means it does not transfer state obligations to employers. As long as the life of the employee depends on the salary of the entrepreneur, it is the duty of the employer to be able to provide wages that can cover his daily needs, just as Rasulullah Saw. obliged the employer to feed and clothe his employees.

In addition, several narrations of classical scholars and companions on the fulfillment of the needs of government officials and those working in public spaces also prove that the state is not

obliged to meet all the needs and wants of the people.

If the state is obliged to meet all the needs of its people, of course paying state workers with adequate limits is unfair and disrespectful of their jobs. It's just like they're not being paid. Because everyone will get a gift from the state according to their needs.

Therefore, the task of the state in general in implementing social security for its people is divided into two levels. For the first stage, the state provides various facilities and employment opportunities, as well as opportunities to participate in productive economic activities for each individual so that each can live based on their efforts and work. However, if the individual is unable to work or earn a living properly due to physical disability or the state in certain circumstances so as not to be able to provide employment opportunities, then there will be a second stage that the state implements this directly the concept of social security. The government provides adequate allocations to meet the basic needs of individuals.

Conclusion

The minimum wage in *fiqh muamalah* does not use a formula taken from various sources as in Law No. 11/2020 but uses evidence based on the Al-Quran and *hadis* so that the minimum wage in Islam is more able to adapt to the conditions of the people employees and employers who employ workers. In a *hadis* narrated by Ibn Umar that the Rasulullah Saw. ²⁸ said that wages should be paid before the sweat of workers dries. Meaning in Islam, wages must be paid on time and according to the hard work of the employee. During the caliphate of Umar bin Khattab, he determined the wages of workers based on the conditions of a city and their personal needs. This action may be used as an example to determine the level of wages according to the basic needs of society. Then Rasulullah Saw. also said in a *hadis* narrated by Bukhari that whoever employs someone should be given food and clothes as they eat and wear. This means that the level of standardization of the minimum wage according to Islam is equivalent to what is consumed by the employer. Viewed from the point of view of the mechanism of calculating wages based on the pattern of meeting the needs of decent living, in Law No. 11/2020,

the determination of the minimum wage is done by calculation from various sources through the existing formula. This is not in accordance with the rules of *fiqh muamalah* because the minimum wage calculated is not fully sufficient to meet the needs of workers who work from food, clothing, and even shelter because the value of the minimum wage is taken from the average the value of living necessities in an area. While the value of living necessities for some workers is higher and even lower than the average minimum wage. Then in *fiqh muamalah*, the minimum wage is what is paid to the employee according to the amount of what the employer eats from the employee.

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