

**Law Number 6 of 2023 concerning the Stipulation of Government
Regulation in Lieu of Law Number 2 of 2022 concerning Job
Creation becomes the Employment Cluster law in the Perspective
of Maqashid Syariah**

THESIS

Submitted to the Department of Islamic Economic Law
For the Master Degree



UNIDA
UNIVERSITAS DARUSSALAM
GONTOR

By:

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POSTGRADUATE PROGRAM

UNIVERSITY OF DARUSSALAM GONTOR

PONOROGO-INDONESIA

1446/2024

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THESIS

Presented to the Postgraduate Program of the University of Darussalam Gontor in
partial fulfillment of the requirements for completing a Master Program in
Department of Islamic Economic Law

By:

Hesti Maharani Dwi Rahayu

Reg. Number: 442023837002

Supervisor:

Assoc. Prof. Dr. Imam Kamaluddin, Lc., M.Hum

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ABSTRAK

Hesti Maharani Dwi Rahayu
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Salah satu tujuan utama Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang, pada klaster ketenagakerjaan adalah menciptakan lapangan kerja dan meningkatkan kesejahteraan pekerja. Namun, implementasinya justru menimbulkan masalah. Kebijakan terkait upah tidak memiliki kejelasan, banyak perusahaan membayar upah rendah, akses tenaga kerja asing dipermudah sehingga mengurangi peluang kerja lokal, dan aturan *outsourcing* dianggap sangat merugikan pekerja. Di sisi lain, undang-undang ini dianggap terlalu menguntungkan perusahaan. Hal ini memicu penolakan dari kalangan pekerja, akademisi, dan praktisi. Dalam pandangan Islam, pekerja berhak atas kebebasan dan kesejahteraan, negara bertanggung jawab menjamin kesejahteraan rakyat, dan perusahaan wajib memberikan upah yang adil. Kesejahteraan ini sejalan dengan tujuan Islam untuk mencapai kemaslahatan dunia dan akhirat (maqashid syariah).

Penelitian ini bertujuan menganalisis UU Cipta Kerja 2023 terkait tenaga kerja asing, *outsourcing*, dan upah minimum yang berdampak pada kesejahteraan pekerja, serta memberikan kritik dan rekomendasi berbasis maqashid syariah untuk regulasi ketenagakerjaan yang lebih adil dan sesuai dengan nilai Islam.

Penelitian ini menggunakan metode deskriptif kualitatif dengan pendekatan yuridis empiris untuk menilai penerapan perundang-undangan. Data primer diperoleh dari wawancara dan dokumentasi, sementara data sekunder berasal dari perundang-undangan, artikel jurnal, buku, dan sumber lainnya. Analisis data menggunakan teknik triangulasi yang dilakukan dengan bantuan software Atlas.ti versi 9.0.

Hasil penelitian menunjukkan bahwa: 1) UU No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang, pada klaster ketenagakerjaan menghadirkan berbagai permasalahan, terutama dalam kebijakan tenaga kerja asing, *outsourcing*, dan upah minimum, yang berpotensi merugikan kesejahteraan pekerja. Kebijakan baru mempermudah masuknya tenaga kerja asing tanpa transfer pengetahuan yang memadai, sehingga mengurangi peluang tenaga lokal. Selain itu, perluasan sektor *outsourcing* tanpa batasan semakin menyerupai sistem perbudakan modern, juga ketidakjelasan aturan upah minimum menimbulkan kesenjangan antarwilayah dan ketidakadilan bagi pekerja. 2) Dari perspektif maqashid syariah, kebijakan ini dinilai mengabaikan prinsip *hifdzul mal* (memelihara harta), *hifdzul nafs* (memelihara jiwa), *hifdzul aql* (memelihara akal), *musawah* (kesetaraan), dan *hurriyah* (kemerdekaan) yang seharusnya menjamin keadilan, kesejahteraan, dan perlindungan hak-hak dasar pekerja.

Kata Kunci: tenaga kerja asing, *outsourcing*, upah minimum, maqashid syariah

ABSTRACT

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One of the primary objectives of Law No. 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, in the labor cluster, is to create jobs and enhance the welfare of workers. However, its implementation has resulted in various issues. The wage regulations lack clarity, many companies pay low wages, the access of foreign workers has been facilitated, thereby reducing job opportunities for local workers, and the *outsourcing* regulations are deemed highly detrimental to workers. On the other hand, this law is perceived as overly beneficial to companies. Consequently, it has faced opposition from workers, academics, and practitioners. From an Islamic perspective, workers are entitled to freedom and prosperity, the state is responsible for ensuring the welfare of its citizens, and companies are obligated to provide fair wages. This welfare aligns with the Islamic objective of achieving worldly and otherworldly benefits (maqāsid al-shari'ah).

This research aims to analyze the Job Creation Law concerning foreign workers, *outsourcing*, and minimum wages, which impacts worker welfare. Additionally, this study provides critiques and recommendations based on maqāsid al-shari'ah to improve labor regulations to be more just and align with Islamic values.

This research uses a qualitative descriptive method with an empirical juridical approach to assess the law's implementation. Primary data was obtained from interviews and documentation, while secondary data was sourced from legislation, journal articles, books, and other sources. Data analysis employed the triangulation technique, facilitated by Atlas.ti version 9.0 software.

The results show that: 1) Law No. 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, in the labor cluster, creates various problems, especially in policies regarding foreign workers, *outsourcing*, and minimum wages, which have the potential to harm worker welfare. The new policy facilitates the entry of foreign workers without adequate knowledge transfer, reducing opportunities for local workers. In addition, the expansion of the *outsourcing* sector without limits increasingly resembles modern slavery, and the unclear minimum wage regulations create regional disparities and injustice for workers. 2) From the perspective of maqāsid al-shari'ah, this policy is considered to neglect the principles of *hifdzul mal* (protecting wealth), *hifdzul nafs* (protecting life), *hifdzul aql* (protecting intellect), *musawah* (equality), and *hurriyah* (freedom), which should guarantee justice, welfare, and protection of basic workers' rights.

Keywords: foreign worker, *outsourcing*, minimum wages, maqāsid al-shari'ah

OFFICE NOTE

Appendix : 4 Copies

Subject : Submission of Thesis

To Honorable:

Director of Postgraduate Program

University of Darussalam Gontor

Assalamu'alaikum warahmatullahi wa barakatuh

I have the honor to present this thesis written by:

Name : Hesti Maharani Dwi Rahayu

Reg.Number : 44.2023.837.002

Department : Master of Islamic Economics Law

The Title : **Law Number 6 of 2023 Concerning The Stipulation of Government Regulation In Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes The Employment Cluster Law In The Perspective of Maqashid Syariah**

It has been processed to fulfill the requirement for the Degree of Master of Islamic Economic Law, I request that the thesis could be examined soon.

Wassalamu'alaikum warahmatullahi wabarakatuh

Ponorogo, 13th of November 2024 AD

11th of Jumadil Awal 1446 AH

The Supervisors,



Assoc. Prof. Dr. Imam Kamaluddin, Lc., M.Hum

NIDN. 2113097101

CERTIFICATION

Bismillahirrahmanirrahim

Assalamualaikum Warahmatullahi Wabarakatuh

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Department : Master of Islamic Economics Law

The Title : **Law Number 6 of 2023 Concerning The Stipulation of Government Regulation In Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes The Employment Cluster Law In The Perspective of Maqashid Syariah**

To fulfill the partial requirement for the Master in Islamic Economics Law degree

in the academic year: 2023-2024.

Wassalamu'alaikum warahmatullahi Wabarakatuh

Director of Postgraduate Program
University of Darussalam Gontor,



Assoc. Prof. Dr. M. Kholid Muslih, M.A

NIDN. 2119067301

LETTER OF LEGITIMATION

The committee of this examination impartial fulfillment of the requirement of the degree of Master in Islamic Economics Law, having held the thesis examination on:

Day and Date : Wednesday, 27 November 2024

Venue : Postgraduate Program Building Room

State the student below

Name : Hesti Maharani Dwi Rahayu

Reg.Number : 44.2023.837.002

Department : Master of Islamic Economics Law

The Title : **Law Number 6 of 2023 Concerning The Stipulation of Government Regulation In Lieu of Law Number 2 of 2022 Concerning Job Creation Becomes The Employment Cluster Law In The Perspective of Maqashid Syariah**


Has been successfully defended in front of the Board of Examination and accepted as part of the requirement for a degree of Master in Islamic Economics Law.

Board of Examiners

1. Assoc. Dr. Imam Kamaluddin, M.Hum (Chairman)


(.....)

2. Assoc. Dr. Setiawan Bin Lahuri, M.A (Examiner I)


(.....)

3. Assoc. Dr. Syamsuri, M.Sh (Examiner II)


(.....)

4. Dr. Meitria Cahyani, M.H (Examiner III)


(.....)

DECLARATION

I here by:

Name : Hesti Maharani Dwi Rahayu
Reg. Number : 44.2023.837. 002
Degree : Magister
Program of Study : Master of Islamic Economics Law

I declare sincerely that this thesis for a master's degree is original and purely my work and does not belong to other researchers for a different degree. Furthermore, this thesis is not a work published before, except for some parts with their original reference.

Ponorogo, 13th of November 2024 AD

11th of Jumadil Awal 1446 AH

The Researcher,



Hesti Maharani Dwi Rahayu

NIM. 442023837002

MOTTOES



قال الله تعالى:

إِنْ أَحْسَنْتُمْ أَحْسَنْتُمْ لِأَنْفُسِكُمْ ۖ وَإِنْ أَسَأْتُمْ فَلَهَا...

"If you do good, you have done good for yourself. If you do evil, the evil will return to yourself..." (al-Isra' [17]:7)

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DEDICATION

Millions and countless thanks to My Lord Almighty, Allah Subhanahu Wa Ta'ala.

Prayer and greetings for the prophet Muhammad SAW With the sincerity of my heart, I dedicate this thesis to

My beloved parents, "Hartono and Yunita Sa'adatul Ulla"

Who instilled in my conscience a love of effort and gratitude and filled me with a love of knowledge in life. Who taught me life, guided me with patience, loved me infinitely for a long time, cared for me with all affection, gave me the best upbringing, and nourished me with their pure advice.

Therefore, I pray that Allah forgives their sins, elevate them to the highest rank, grant them success in their work, and may He bestows His mercy upon them.

And for my beloved brothers and sister, "Muhammad Bayu Iswahyudi, Aulia Bestari Romadhoni, Zakiah Bestari Romadhoni"

Those who encourage me a lot to seek knowledge and accompany me and entertain me always, their presence is a big encouragement in my life to become a better person. May Allah reward and grant them success in their affairs and guide them to goodness in their every step.

And I say thank you from a sincere heart to my supervisor, "Assoc. Prof. Dr. Imam Kamaluddin, Lc., M.Hum" who has guided, taught, and directed me with patience and sacrifice. And to my beloved teachers and lectures of the University of Darussalam Gontor, who have motivated me to keep going and rise so that I can struggle and reach this stage.

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In the name of Allah, the beneficent, the merciful, praise be to Allah the Lord of the world, the Owner of the Day of Judgment. Prayers and peace be upon Prophet Muhammad, his families, his companions, and his entire followers.

With the mercy and blessing of Allah SWT, I could complete this thesis of Master. Therefore, I would like to extend my deep gratitude for my graduate study at the University of Darussalam Gontor. In addition, I wish to extend my appreciation due to:

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4. Head of the Master of Sharia Economic Law Study Program, Mr. Assoc. Syamsuri, M. Sh, and all lecturers and academicians of Darussalam Gontor University who have guided, directed, taught useful knowledge, and provided

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Mantingan, 27th of October 2024

The Researcher,

Hesti Maharani Dwi Rahayu

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