

CHAPTER I

INTRODUCTION

A. Background of Study

Indonesia has a huge population. Based on the 2023 population data, Indonesian citizens with a National Identity Number (NIK) reached 279,118,866 people.¹ Until now, Indonesia is still recorded as the fourth most populous country in the world.² In addition to its large population, Indonesia enjoys a demographic bonus that can boost the well-being of its people.³

To enhance public welfare, high-quality businesses that contribute to society are necessary.⁴ In addition, Indonesia is endowed with abundant natural resources, a fact that has been recognized globally for centuries. Nevertheless, businesses require ample natural resources and a skilled workforce. With its rich natural endowments and a large labor pool, Indonesia possesses the essential factors for economic development.⁵ However, Indonesia has not been able to develop as rapidly as desired.

Generally, the position of the workforce in Indonesia is still considered weak, thus requiring government policies and actions to protect labor and

¹ "Data Kependudukan," Direktorat Jendral Kependudukan Dan Pencatatan Sipil, 2023, <https://data.kemendagri.go.id/Pages/DetailDataKependudukan.aspx>, 2024, https://id.wikipedia.org/wiki/Daftar_negara_menurut_jumlah_penduduk.

³ Akhmad Nazar Virgiawan, Dian May Syifa, and Ergina Faralita, "Kebaruan Hukum Ketenagakerjaan Setelah Lahir Undang-Undang Cipta Kerja," *Journal of International Multidisciplinary Research* 1, no. 2 (2023): p.890.

⁴ Adika Reyhan Daffa and Eliada Herwiyanti, "Tinjauan Literatur Prinsip Good Corporate Governance (GCG) Pada Badan Usaha Milik Negara Indonesia," *Economics and Digital Business Review* 4, no. 2 (2023): p.226.

⁵ Ahmad Soleh, "Masalah Ketenagakerjaan Di Indonesia," *Jurnal Ilmiah Cano Ekonomos* 6, no. 2 (2017): p.22, <https://doi.org/10.32884/ideas.v5i1.173>.

workplace safety.⁶ Therefore, the existence of laws and regulations governing labor protection is of utmost importance. This is because it is also part of improving the overall welfare of the population. Moreover, as a nation governed by the rule of law, Indonesia has an obligation to protect all its citizens and promote their prosperity.⁷ This is the fundamental concept of a rule of law state. Therefore, government intervention in labor laws can realize equitable labor practices by granting workers their full human rights. Hence, protections concerning health, safety, fair wages, and the interests of employers must be considered.⁸

At the beginning of 2020, the government deemed it necessary to enact regulations capable of creating new job opportunities, given the high unemployment rate that year, reaching 7 million people. Consequently, the government drafted the Job Creation Bill, employing the omnibus law concept.⁹ During the drafting process of this bill, many members of the public have expressed their disagreement as various parties were not involved in its creation. Additionally, numerous provisions in the bill have been perceived

⁶ Virgiawan, Syifa, and Faralita, "Kebaruan Hukum Ketenagakerjaan Setelah Lahir Undang-Undang Cipta Kerja." p.890.

⁷ Triana Rejekiingsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)," *Yustisia* 5, No. 2 (2016): p.298. [Http://Dx.Doi.Org/10.1016/J.Ecoenv.2017.03.002%0ahttp://Www.Forda-Mof.Org/Files/Sistem_Agroforestri_Di_Kawasan_Karst_Kabupaten_Gunungkudul_Untuk_Pengelolaan_Telaga_Sebagai_Sumber_Air_Berkelanjutan.Pdf%0ahttps://Extension.Msstate.Edu/Sites/Default/Files/Pu](http://Dx.Doi.Org/10.1016/J.Ecoenv.2017.03.002%0ahttp://Www.Forda-Mof.Org/Files/Sistem_Agroforestri_Di_Kawasan_Karst_Kabupaten_Gunungkudul_Untuk_Pengelolaan_Telaga_Sebagai_Sumber_Air_Berkelanjutan.Pdf%0ahttps://Extension.Msstate.Edu/Sites/Default/Files/Pu).

⁸ Hendra Gunawan, "Analisis Perubahan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dengan Disahkannya Undang- Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Justice* 4, No. 2 (2022): p.63.

⁹ Fajar Kurniawan, "Problematika Pembentukan Rru Cipta Kerja Dengan Konsep Omnibus Law Pada Klaster Ketenagakerjaan Pasal 89 Angka 45 Tentang Pemberian Pesangon Kepada Pekerja Yang Di Phk," *Jurnal Panorama Hukum* 5, No. 1 (2020): p.76.

as further oppressing workers, such as reducing severance pay for employees their companies have terminated.¹⁰

Over time, the Job Creation Bill was finally enacted into law as Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law). However, the Constitutional Court (MK), through Decision Number 91/PUU-XVIII/2020, declared the Job Creation Law conditionally unconstitutional, considering it to have formal defects or a failure to meet the formal requirements for enacting such a law.¹¹ Subsequently, the Constitutional Court granted a two-year grace period for the government to make the necessary amendments, stating that if the amendments were not made within the specified time frame, the Job Creation Law would be declared permanently unconstitutional. In response, the government issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation to follow up on the previous Constitutional Court ruling.¹²

In March 2023, the Indonesian House of Representatives followed up on the Job Creation Perppu which had been enacted into Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law.¹³ The ratification of the Perppu is expected to anticipate global crises, provide legal certainty for investment

¹⁰ Kurniawan. p.76

¹¹ Arief Dermawan Singhs et al., "Analisis Dampak Undang Undang Cipta Kerja Terhadap Hak Hak Pekerja," *JERUMI*1, No. 2 (2023): p.142.

¹² Yudi Pebriansyah et al., "Sejarah Politik Hukum Indonesia Dalam Penyusunan Peraturan Perundang-Undangan Pasca Pemberlakuan Undang-Undang Cipta Kerja" 15, No. 1 (2024): p.159.

¹³ Depdagri, "Undang-Undang Republik Indonesia Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang," *Departemen Dalam Negeri Republik Indonesia*, No. 176733 (2023): p.1-1127.

and businesses, create jobs and improve the welfare of the people, especially workers.¹⁴ The content of the Job Creation Perppu has not changed from the previous one. However, many workers have rejected the ratification of the Job Creation Perppu, arguing that its provisions are excessively favorable to companies and significantly detrimental to the rights of workers or laborers.¹⁵ However, the government did not respond adequately, ultimately ratifying the Job Creation Perppu into the Job Creation Law.

Various studies have proven that many articles in the Job Creation Law are detrimental to workers and prioritize the employers¹⁶¹⁷¹⁸ interests ultimately limiting workers' ability to fight for their rights.¹⁹ As stipulated in Articles 88C, 88D, and 88F regarding wages, the concept of "decent living wage" as the basis for determining minimum wages has been abolished. Consequently, workers are forced to accept lower wages than workers in other regions.²⁰ In Islam, there is no specific determination of wages for

¹⁴ Singhs et al., "Analisis Dampak Undang Undang Cipta Kerja Terhadap Hak Hak Pekerja." p.142

¹⁵ Muhammad Zubi, Marzuki, and Ibnu Affan, "Tinjauan Yuridis Perlindungan Hak-Hak Normatif Tenaga Kerja Setelah Berlakunya Undang-Undang Cipta Kerja (Omnibus Law)," *Jurnal Ilmiah Metadata* 3, no. 3 (2021): p.1171.

¹⁶ Kezia Rona Vinita et al., "Pengesahan PERPU Cipta Kerja Menjadi UU Dalam Prespektif Negara Demokrasi," *Jurnal Ilmiah Multidisiplin* 1, no. 4 (2023): p.253. <https://doi.org/10.5281/zenodo.7954293>.

¹⁷ Winda Fitri Et Al., "Problematika Terkait Undang-Undang Cipta Kerja Di Indonesia: Suatu Kajian Perspektif Pembentukan Perundang-Undangan," *Komunitas Yustisia Universitas Pendidikan Ganesha* 4, No. 2 (2021): p.725.

¹⁸ Ollyvia Cantik Nur Annisa, "Analisis Dampak Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja Terhadap Hak Pesangon Pemutusan Hubungan Kerja," *Journal Equitable* 8, No. 1 (2023): p.129, <https://ejournal.umri.ac.id/index.php/jeq/article/download/4554/2166>.

¹⁹ Kurniawan, "Problematika Pembentukan R UU Cipta Kerja Dengan Konsep Omnibus Law Pada Klastr Ketenagakerjaan Pasal 89 Angka 45 Tentang Pemberian Pesangon Kepada Pekerja Yang Di Phk."p.76

²⁰ Gunawan, "Analisis Perubahan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dengan Disahkannya Undang- Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja."p.63

workers. However, there are guidelines that must be considered when setting wages, which must pay attention to the values of justice and fairness, so that no one feels disadvantaged.²¹²²

Furthermore, Article 81 paragraph 4 in conjunction with Article 42 discusses the requirements for Foreign Workers, where the removal of the obligation for foreign workers to speak Indonesian will make it increasingly difficult for Indonesian workers to compete in the job market.²³ Based on data from the Indonesian Ministry of Manpower, the total number of foreign workers in Indonesia reached 133,979 as of September 2024, a significant increase compared to 2023 with a total of 121,206, indicating an increase of approximately 10.54%.²⁴

In essence, Islam permits the employment of foreign workers as long as it does not harm the welfare of local workers. However, suppose the use of foreign workers deviates from the established mechanisms and results in the loss of employment opportunities for Indonesian workers, thereby endangering individual welfare, in that case such a business is prohibited in Islam due to the harm it causes to society.²⁵ Furthermore, a study by

²¹ Imam Kamaluddin, "Sistem Pengupahan Di Yogyakarta Dalam Pandangan Islam (Studi Ekonometrik Atas Perusahaan Sedang Dan Besar Di Yogyakarta Dengan Pendekatan Fungsi Produksi CES)," *UIN Sunan Kalijaga Yogyakarta* (2019). p.211

²² Novi Yanti Sandra Dewi, "Pengupahan Dan Kesejahteraan Dalam Pespektif Islam," *Jurnal Econetica* 1, no. 2 (2019): p.11.

²³ F F Alifianto, "Politik Hukum Peraturan Presiden Nomor 20 Tahun 2018 Perspektif Keadilan Sosial Sayyid Quthb," *Al-Balad: Journal of Constitutional Law* 2, no. 2 (2020): p.1, <http://urj.uin-malang.ac.id/index.php/albalad/article/view/583%0Ahttp://urj.uin-malang.ac.id/index.php/albalad/article/download/583/448>.

²⁴ "Pejabat Pengelolaan Informasi Dan Dokumentasi," Kementerian Ketenagakerjaan Republik Indonesia, n.d., <https://ppid.kemnaker.go.id/>.

²⁵ Fitriani Jamaluddin and Pramudita Cici Amiruddin, "Tinjauan Hukum Terhadap Penggunaan Jasa Tenaga Kerja Asing Dalam Peraturan Presiden No . 20 Tahun 2018 Tentang Penggunaan Tenaga Kerja Asing Perspektif Hukum Islam," no. 20 (2018): p.5.

Zainuddin et al. (2023)²⁶ reinforces this point by revealing that the deregulation of foreign worker policies has harmed local workers. This is manifested in a decrease in job opportunities for local workers, ultimately leading to increased unemployment rates. On the other hand, the policy has facilitated and even legitimized the entry of foreign workers into Indonesia.

Table 1. Unemployment Rate Southeast Asian Countries

Negara	2023	2024
Indonesia	5,3%	5,2%
Filipina	4,4%	5,1%
Malaysia	3,6%	3,5%
Vietnam	2,0%	2,1%
Thailand	1,2%	1,1%

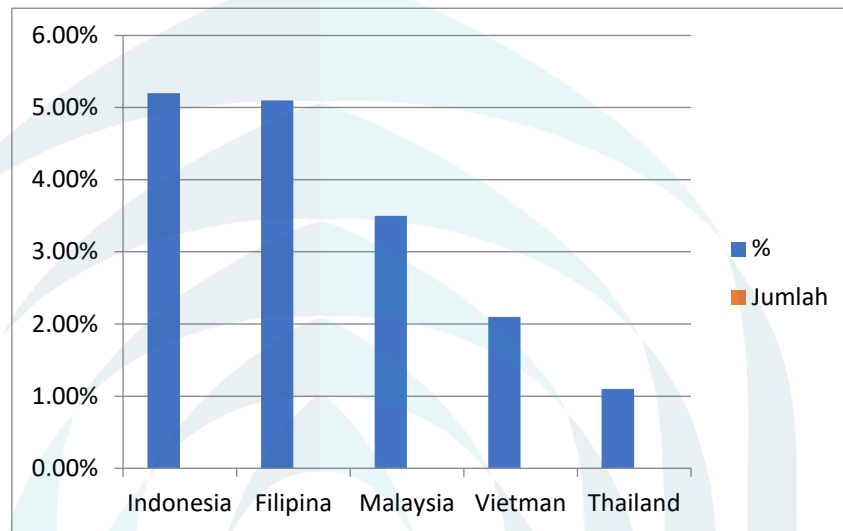
Source: World Economic Outlook IMF/October 2024²⁷

Given that Indonesia's population, consisting of both the labor force and those outside the labor force, reaches 279.9 million people, the IMF estimates that the number of unemployed in Indonesia is around 14.6 million. Data shows that Indonesia ranks first with the highest unemployment rate in Southeast Asia, while on a global scale, Indonesia is ranked 57th. The researcher conducted a data conversion on Table 1, resulting in a ranking based on the percentage of data in 2024, as follows.

²⁶ Muhammad Zainuddin, Saartje Sarah Alfons, and Ronny Soplantila, "Implikasi Pengaturan Tenaga Kerja Asing Dalam Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja Terhadap Eksistensi Tenaga Kerja Lokal," *Pattimura Law Study Review* 1, no. 2 (2023): 98–109, <https://www.cnbcindonesia.com/news/20180501173310-4-13187/ada-157000-buruh-kasar-asing-yang-bekerja-di-indonesia>. p.98

²⁷ International Monetary Fund, *World Economic Outlook (International Monetary Fund)*, October, 2024.

Figure 1. Unemployment Rate Percentage in Southeast Asia in 2024



Source: Research Illustration

Moreover, the revised Article 81 paragraph 20 regarding outsourcing demonstrates that the rights of outsourced workers have been strictly regulated, encompassing worker protection, wages and welfare, job requirements, and the financial, moral, and legal responsibilities of outsourcing companies in the event of disputes.²⁸ Despite strict regulations, outsourcing cannot be considered good or fair, as many companies use this concept with a modern slavery system. This system is a gross violation of human rights and is detrimental to outsourced workers, as companies discriminate against outsourced workers compared to other employees. In contrast, permanent employees receive benefits, severance pay, and leave, and outsourced workers receive none.²⁹ Therefore, concrete steps are needed

²⁸ Tundjung Herning Sitabuana Evelyn Septiana, "Tinjauan Yuridis Terhadap Perlindungan Hak Pekerja *Outsourcing* Di Indonesia Pasca Pengesahan Perppu Nomor 2 Tahun 20221," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 10, No. 5 (2023): p.2406.

²⁹ Zaimah Husin, "*Outsourcing* Sebagai Pelanggaran Terhadap Hak Para Pekerja Di Indonesia," *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (2021): p.1, <https://doi.org/10.19184/jkph.v1i1.23396>.

to end discriminatory practices and ensure that all workers receive fair treatment from their employers, regardless of their employment contract status.

The Job Creation Law has failed to achieve its initial objective of improving the welfare of the people. That contradicts to the fifth principle of Pancasila, which states, "Social justice for all Indonesian people", implying that justice and prosperity should be distributed evenly among all Indonesian people, including workers.³⁰³¹ This is in line with Islamic law and its objectives (maqashid al-shari'ah), which prioritize the well-being and peace of individuals and communities to achieve a perfect life in this world and the hereafter.³²³³ A Syatibi's book *al-Muwafaqat* states, "It is known that Islamic law is legislated to realize the absolute welfare of all creatures".³⁴ This illustrates the intimate relationship between Islamic law and public interest.

Therefore, it is unjust for workers who dedicate their time and effort to earn a living to be oppressed. This is especially true when regulations increasingly favor employers at the expense of workers. This clearly undermines the concept of social justice as enshrined in the fifth principle of Pancasila. The Prophet Muhammad also emphasized an anti-slavery stance to

³⁰ Syamsuri Syamsuri and Ainun Amalia Zuhroh, "Strategi Pengentasan Kemiskinan Melalui Pekerjaan Dan Distribusi Menurut As-Syaibani Dan Relevansinya Di Indonesia," *El-Barka: Journal of Islamic Economics and Business* 3, no. 2 (2020): p.232, <https://doi.org/10.21154/elbarka.v3i2.2309>.

³¹ Mamur Rizki, "Konsepsi Negara Kesejahteraan Dalam Pancasila Dan Undang-Undang Dasar 1945" (UIN Syarif Hidayatullah, 2017). p.8

³² Imam Kamaluddin, Ahmad Havid Jakiyudin, and Isma Aulia Roslan, "Studi Fenomenologi Mandatory Sertifikasi Halal Di Papua: Pendekatan Maqasid Syariah Imam Abu Zahrah," *Indonesia Journal of Halal* 6, no. 2 (2023): p.81, <https://doi.org/10.14710/halal.v6i2.19322>.

³³ Didi Suardi, "Makna Kesejahteraan Dalam Sudut Pandang Ekonomi Islam," *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah* 6, no. 2 (2021): p.321 <https://doi.org/10.36908/isbank.v6i2.180>.

³⁴ Al-Syatibi, *Al-Muwafaqat Fi Usul Al-Ahkam*, Juz 2 (Beirut: Dar al-Fikr, n.d.), p.19.

build a tolerant and just society. Hence, workers deserve their rights.³⁵ Both the employer and the employee are human beings with equal rights and obligations. Justice, therefore, should be realized through a balanced life where the strong help the weak, the rich assist the poor, and conversely, the weak support justice through righteous means, rather than otherwise.³⁶

Based on the aforementioned exposition, it can be concluded that the 2023 Job Creation Law has a significant negative impact on worker welfare. This is due to the numerous provisions in the law that tend to favor companies while oppressing workers. Therefore, the researcher is interested in critiquing the 2023 Job Creation Law, particularly in the labor cluster that discusses foreign workers, outsourcing, and minimum wages, using the perspective of *maqāṣid al-shari'ah*.

B. Research Problems

Based on the background presented above, the researcher wants to formulate problems related to the criticism of the 2023 Job Creation Law, specifically on the labor cluster, which aligns with the *maqāṣid al-shari'ah*. Therefore, the author can formulate the following research problems as the foundation of this study:

1. What are the problems in the 2023 Job Creation Law regarding foreign workers, outsourcing, and minimum wage?
2. What are the principles of *maqāṣid al-shari'ah* related to foreign workers, outsourcing, and wages?

³⁵ Abu A'la Mawdudi, *Human Rights in Islam* (Kenya: The Islamic Foundation, 1976). p.17

³⁶ Idwal B, "Upah Tenaga Kerja Dalam Islam," *Mizani* 1, no. 2 (2014). p.5

C. Research Objectives

Based on the research problems stated above, the objectives of this research are as follows:

1. To identify the provisions in the 2023 Job Creation Law related to foreign workers, outsourcing, and minimum wages in the labor cluster that have created problems for worker welfare.
2. To identify and analyze the principles of maqāṣid al-shari'ah that are relevant to the issues of foreign workers, outsourcing, and wages to create a fair labor system following Islamic values.

D. Benefits of the Research

In general, the benefits of this research can be divided into two aspects: theoretical and practical;

1. Theoretical Benefits
 - a. The results of this research can contribute to the design of labor regulations that follow maqāṣid al-shari'ah.
 - b. This research can serve as a reference and literature for researchers and students to conduct further research on the critique of labor regulations following maqāṣid al-shari'ah.

2. Practical Benefits

The results of this research are intended to be a reference for institutions or agencies as input or solutions to address the challenges the relevant institutions face. Also, this research provides guidance for policymakers and business actors in creating a fair, sustainable, and Islamic-based labor system.

E. Writings Systematic

CHAPTER I Introduction. This chapter serves as an introduction containing the background of the problem, problem formulation, research objectives, benefits of the research, and the writing system.

CHAPTER II Literature Review and Theoretical Framework. Identifying problems aims to narrow down the issues to be discussed as a reference for the research. Starting from previous studies related to this research, then there are theoretical foundations from Gustav Radbruch's Theory of Law, and Maqāṣid al-shari'ah.

CHAPTER III Research Methodology. This chapter discusses the research method used, in this case, a qualitative study with an empirical-judicial approach. In more detail, this chapter describes the research design, research data (data sources and data collection techniques), and data analysis techniques using Atlas.ti software.

CHAPTER IV Results and Analysis. This chapter presents the results of the data analysis, descriptive analysis, and discussion.

CHAPTER V Conclusion. This chapter contains the conclusions and recommendations regarding relevant matters in this study.