



LAW COPYRIGHT EMPLOYEE RIGHTS JUSTICE PERSPECTIVE, IN MĀQAŞID AL-SYARĪ'AH

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Abstract: *This paper looks at Māqaşid not only looking at human maslahah personally and worldly, but also paying attention to the social scope and the problems of the hereafter. What if these human interests clash with religious interests, with their soul, mind, family and property. In its application, this is based on a priority scale, so that the mashlahah given by syara' is the mashlahah that is important, urgent and the highest from the others. In such detail, Māqaşid al-Syarī'ah provides solutions for the preservation of human rights. For example, when there is a tug of war against a thief in a crisis, whether his hand is cut off or not, then Māqaşid provides a solution to the problem with the priority scale as above. The pragmatic step is that the thief is not cut off with the consideration that protecting the soul (due to hunger) is higher than guarding property.*

Key Words: *Copyright, Justice, Worker Rights, Māqaşid Al-Syarī'ah.*

1. INTRODUCTION:

Talking about the law, of course, cannot be separated from the legislation. The number of regulations that Indonesia has makes overlapping laws and regulations at the central and regional levels so that they experience regulatory obesity. In fact, laws and regulations are made as an instrument to achieve common prosperity and the more laws and regulations, the more prosperous this beloved country should be. In fact, too many regulations actually make this country slow to move towards people's welfare. This country has too many rules which often lead to disharmony of rules and no synchronization which makes the speed of the government's attitude in making decisions to be slow so that national development runs slowly. Given that the production of legislation in the past was too partial to regulate, often the formation of regulations was driven by sectoral egos. The formation of such regulations occurred during the New Order government until the reforms were still in accordance with the wishes of each government in power at that time, resulting in many overlapping, out of sync and disharmony regulations and causing irregularities.(Gaudensius Suhardi, 2021).

In this discussion, in response to the legal problems in the job creation law, it is very necessary to pay attention to the protection of workers' civil rights as regulated in the law properly and implemented through regulations or laws that cover everything. The goal is to achieve the benefit of all people who uphold human values. (Al-Youbi,2008:44) Laws set by the government are the basis for implementing the civil rights of every citizen. Therefore, Sudarsono said "Rights are the authority to do something that has been justified by law".(Sudarsono,2007:154)

Analysis of Legal Certainty Perspective Theory, the Job Creation Act and Government Regulation Number 35 of 2021 have guaranteed the "right to rest and leave" in certain article points but omitted other points, namely point d regarding a long two-month break which was previously mentioned in the Act. -Labor Law. This means that certain rights are no longer given to workers, thereby reducing their sense of justice and legal certainty.

In the analysis of Māqaşid al-Syarī'ah, the settlement of workers' rights (including the right to rest and leave) can be resolved by looking at the basic level of benefit. In line with that, the provisions regarding the editorial changes in article 79 paragraph 2 letter b, and the abolition of point d presumably have reduced the true meaning of benefit as the goal of Māqaşid al-Syarī'ah, namely eliminating the long 2-month break room after the 7-month period of work. 8 years previously granted, giving rise to legal uncertainty. Legal certainty must uphold human values. Thus, according to the researcher, it will eliminate the potential for regulatory disharmony. The researcher analyzes the article that explains the "right to long rest" rule indicating the potential for "rule disharmony" in this regard, because there are norms that are not in accordance with the principle, namely the norm that binds everyone with the principle of equal justice.



As a result, it will create legal uncertainty and straddle the concept of Maslahah in Islam, which is actually a regulation that protects the soul of every worker.

2. LITERATURE REVIEW:

2.1 The Maqasid al-Shari'ah Legal Istinbat Method

The term Māqasid al-Syarī'ah consists of two words, namely maqasid and syarī'ah. Maqasid is the plural form of maqs}ad which comes from the verb. This word has several meanings, including towards a direction, goal, purpose, target, fairness, middle, straight path, and not exceeding limits. In the Qur'an, the word qas}ada with its various derivations is mentioned six times, namely in Surah Luqman (31): 19; al-Nahal (16): 9; al-Tawbah (9): 42; Luqman (31): 32; Fatir (35): 32; and al-Maidah (5): 66.

While the word Syar'ah etymologically means the road to water or springs. The word Syar'ah also means religion, way or way. In terms, Shari'ah is the laws set by Allah for His servants through the Prophet Muhammad SAW.

In its use, Māqasid al-Syarī'ah is often also used with the term maqasid al-shari 'or al-Maqasid al-Syarī'ah. These three terms are often used by maqasid scholars, although the most popular is Māqasid al-Syarī'ah. In terms of terminology, some contemporary scholars have defined Māqasid al-Syarī'ah. However, among classical scholars, a concrete definition of Maqasid al-Syarī'ah has not been found. In fact, the term Māqasid al-Syarī'ah has not been used as a standard term by classical scholars. This is understandable because indeed Māqasid al-Syarī'ah has not yet become an independent scientific discipline, but it is still a sub-section of the study of proposal science. (Muhammad Shahid, 2015:34)

Before being confirmed as an independent scientific discipline in the hands of Ibn 'Assyria, Māqasid al-Syarī'ah underwent a long evolution in its history of development. Even the development of Māqasid al-Syarī'ah had experienced a long static period after al-Syatibi Then Māqasid al-Syarī'ah found its revival in the hands of Ibn 'Ashur and continues to this day. In the early phases, the development of Māqasid al-Syarī'ah was slow and less dynamic. According to Mawardi, there are two reasons why Māqasid al-Syarī'ah does not become an integral part of fiqh and does not develop dynamically, as usul al-fiqh and qawa'id al-fiqh. (Ahmad Imam Mawardi, 2010:186)

In general, the historical map of the development of Māqasid al-Syarī'ah can be divided into 4 phases, namely the embryonic phase, the growth phase, the development phase, and the methodological development phase. Each of these phases contributes and plays a different role in the building of Māqasid al-Syarī'ah knowledge. Each of these phases is also marked by the emergence of figures who support the development of Māqasid al-Syarī'ah science. The embryonic phase is the beginning of the long history of maqasid syarī'ah. This phase starts from the time of the Companions until the pre 3rd century H. In this phase, the seeds of understanding maqasidi are not yet in the form of ideas or concepts contained in a writing. However, these seeds can be traced in a number of events that illustrate the initial concept of Māqasid al-Syarī'ah in the ijthihad of legal decision-making by the Companions. According to al-Raysuni, the companions were the first to say that sharia was for the benefit of the people. Sharia law will not be separated from the goal to realize good for mankind and avoid all damage and evil. 'Umar bin Khattab was the main character at the time of the Companions who several times argued and ijthihad with the approach maqasid.

2.2 Distribution of Maqasid al-Syarī'ah

Imam Al-Syatibī divides the benefit into two: first, Māqasid al-Syarī' or Māqasid al-Syarī'ah, secondly Māqasid Mukallaf. In Māqasid al-Syarī, Al-Syatibī divides it into four: first, the purpose of the second Māqasid al-Syarī'ah, how to understand the third Māqasid al-Syarī'ah, the imposition of Māqasid al-Syarī'ah for the mukallaf and fourth, the entry of the mukallaf. provisions in sharia law (Asafri Jaya, 1996:5)

Al-Syatibī before dividing the Māqasid al-Syarī'ah into three levels, according to him, the purpose of all taklif revealed by Allah can be seen from four aspects: first for the benefit of humans and this is the most important, second for understanding the mukallaf, third for doing by mukallaf, and fourthly so that humans submit to the law of Allah swt. He describes it relatively long, which by Muhyar Fanani summarized as follows:

- That Allah sent down the Shari'a to this world in order to maintain the benefit of humans both in this world and in the hereafter. There are no more than 3 (three) kinds of benefit, namely primary benefit (darūriyyah), secondary (hājjiyyah), and tertiary benefit (taḥsīniyyah). Therefore, all kinds of legal excavations must be carried out in order to achieve the truth which refers to the achievement of human benefit both in this world and in the hereafter.
- That Allah sent down the Shari'a to this world in order to be understood. The general rule that emerges is that when Allah revealed the Shari'a to this world in a language and format that made it possible for humans to understand it. This is the reason why the Quran was revealed in Arabic.
- That Allah sent down the Shari'a in this world to burden humans (to assign humans). The general rule that arises in this case is that the burden is only limited to human capacity to bear it. If you do not speak, it means that there is no



burden. Therefore, all efforts to seek the truth in the science of ushul fiqh must be in order to prepare oneself to take active taklif from God. Not just for knowledge, but after getting knowledge must be practiced.

- d. That Allah sent down the Shari'a to this world in order to make humans submit to God's law. The rule that emerges in this case is that the Shari'a came down to this world to prevent humans from being trapped by their desires and so that they submit to God's provisions. For this reason, the search for truth in the science of ushul fiqh is in order to make humans submit to Allah, not submit to their own desires. (Muhyar Fanani, 2008:40)

The most popular example in this regard is the opinion of Umar ibn al-Khattāb regarding the abolition of the distribution of zakat for the Mu'allafah Qulubuhum group. The Mu'allafah Qulubuhum group at the time of the Prophet received a share of zakat according to the affirmation of the text which aims to invite people to embrace Islam in a position that is still weak. When Islam is in a strong position, the implementation of zakat with the above objectives is temporarily not carried out. (Asafri Jaya bakri, 2011:7).

The discussion of the Māqasid al-Syarī'ah theory was not only popularized by Imam Ash-Syatibi, but also discussed by other ushul scholars. When compared to the previous uşūl scholars, Imam al Haramayn al-Juwaynī was the first scholar to discuss the Māqasid al-Syarī'ah theory. We can find evidence of that in the work of al-Burhān 'fi Uşūl al-Fiqh'. In the qiyas chapter, al-Juwayni explains illat (reasons) and ushul (fundamentals) which are embryos of the theory of benefit. Perhaps because of that al-Juwayni is called the founder of the theory of Māqasid al-Syarī'ah.

There are five divisions of illat and ushul in al-Burhān by al-Juwayni. First, aṣl or the basis of primary cases ('ām arūrī) involving the public interest, for example dealing with criminal behavior, the reason being to protect the honor of blood or the right to life of the community. Second, the basis of cases in the public interest that do not reach the primary level, for example improving the house rental system, the reason is to make it easier for people who cannot pay in cash. Third, the basis of cases that have nothing to do with primary or general interests, for example eliminating minor hadas. Fourth, the basis of the case is not based on general or primary needs, but if it is done it will produce things that are regulated. Fifth, the basis of cases that cannot be found, whether primary elements, community needs, or encouragement of good conditions, such as performing mahah worship. Al-Juwayni's division on the third and fourth points is essentially still in the same category, while point number five, as admitted by al-Juwayni himself, is out of the context of the discussion of illat and ul in question. (Muhyar Fanani, 2009:175)

3. METHOD:

The method is a way to reveal something in detail, while research is something to be investigated, so the research method is a way to reveal in detail the analysis process and the testing method/method used in the study/research, so that the true meaning of the title will be revealed. will be discussed, for that it is disclosed starting from the type of research to the technical guarantee of the validity of the data. Research methods The method that will be used in this research is the normative juridical method. The point is that in the research process, the author will look at the rules of law and related legislation. In this case, it is about the problem of the Job Creation Act.

4. DISCUSSION:

Article 79 paragraph 2 letter b concerning time off and leave in the perspective of Māqasid al-Syarī'ah The issue of a two-month long break is not clearly stated in the provisions of the Job Creation Act. Provisions of Law no. 13 of 2003 concerning Manpower: Article 79 paragraph 2 of the Manpower Law states:

Letter b:

"Weekly rest 1 (one) day for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) working days in 1 (one) week".

Letter d: "A long break of at least 2 (two) months and is carried out in the seventh and eighth year for 1 (one) month each for workers/laborers who have worked continuously for 6 (six) years at the same company. provided that the worker/labourer is no longer entitled to his annual rest within 2 (two) current years and thereafter applies to every multiple of 6 (six) years of service.

Provisions of the Job Creation Law: Article 79 paragraph 2 letter b of the Job Creation Law states:

"b. 1 (one) day weekly rest for 6 (six) working days in 1 (one) week". Paragraph 5: In addition to rest and leave as referred to in paragraph (1), paragraph (2), and paragraph (3), certain companies may provide long breaks as stipulated in the work agreement, company regulations, or collective work agreement.

PP No. 35 of 2021: Article 22 of PP No. 35 of 2021, it is stated: "Entrepreneurs who employ Workers/Labourers during working hours as referred to in Article 21 paragraph (2) are obligated to give Workers/Labourers weekly rest periods including: a. 1 (one) day weekly break for 6 (six) working days in 1 (one) week; or b. 2 (two) days weekly rest for 5 (five) working days in 1 (one) week".



Theoretical analysis of the Jasser Auda System: The Job Creation Act and Government Regulation Number 35 of 2021 have guaranteed "rest and leave rights" in certain articles but omitted other points, namely point d regarding a long two-month break which was previously mentioned in the Act. -Labor Law. That means that there are certain rights that are no longer given to workers, so the Maqashid Al Shariah Perspective In the perspective of the "System" concept, Jasser Auda an "efficient" system must maintain a goal-orientation feature. the wholeness of Auda Māqashid ash-shari'ah from the individual dimension to the universal dimension so that it can be accepted by the general public; that is what he calls Māqashid alamiyah, such as justice, freedom, and so on.

Prioritizing the settlement of workers' rights (including the right to rest and leave) can be resolved by looking at the basic level of benefit with the aim of realizing social balance in the community. In line with that, the provisions regarding changes to the editorial in article 79 paragraph 2 letter b, and the abolition of point d presumably have reduced the true meaning of maslahat as the goal of maqsid ash-Syariah, namely eliminating the long break room 2 months after the 7-8 years of work previously assigned.

Cognitive culture means the mental framework and awareness of the reality with which a person interacts with the outside world. Changing the cognitive culture means changing the point of view, frame of mind or worldview. urf considerations to get the universal purpose of the law, he said that the regulation should take Uruf into account.

Interrelated. The fourth characteristic of the system is that it has a hierarchical structure, hierarchical-interrelated features (al-harakīriyyah al-mu'tamadah tabaduliyyan; interrelated hierarchy), at least providing improvements to the two dimensions of Māqashid Syariah. First, range improvement.

Māqashid. Jasser tries to divide the Māqashid hierarchy into 3 categories, namely: First; Māqashid al-'Ammah (General Māqashid) is a Māqashid that includes all maslahah contained in universal tasyri' behavior such as justice, equality, tolerance, convenience, including aspects of Dharuriyyat in Classical Māqashid. Second; Māqashid Khassah (Specific Māqashid) is a Māqashid related to maslahah in certain issues, for example, it is not permissible to hurt women in the family sphere, and it is not permissible to cheat in trade in any way. Third; Māqashid Juz'iyyah (Parcial Māqashid) is the Māqashid that is the most core in a legal event. Māqashid reaches out to society, nation and even mankind. Furthermore, it is the public Māqashid that is prioritized when facing a dilemma with the individual Māqashid. Auda calls it Hifdz al-huquq al-Insan Protection of human rights or in Classical Māqashid it is called Hifzun Nafz

Purposefulness. Every system has an output. This output is called the goal generated from the system network. In systems theory, goals are divided into goals and objectives. Jasser Auda places Māqashid Sharia as the fundamental principle and fundamental methodology in the reform of contemporary Islamic law that he advocates. Considering that the effectiveness of a system is measured based on the level of achievement of its objectives, the effectiveness of the Islamic legal system is assessed based on the level of achievement of its Māqashid Syariah. In other words, how far is the level of problem solving for certain problems: is it more effective, more efficient, and brings greater benefits to the people and humanity. The purpose of establishing Islamic law must be returned to the benefit of the surrounding community. Auda represents the core of the system analysis methodology, which is the "meaning" (Māqashid) feature.

John Rawls' Theory of Justice diminishes the sense of justice. John Rawls's principle of justice has explained about everyone's rights and equal benefits. "The principle divides aspects of the social system, and aspects that guarantee the freedom of citizens", meaning that technically the rule regarding the two-month long break should still be given as a form of protection for the rights and social aspects that were previously granted. Then, the Legal Certainty of the Basic Law for the Formation of the Law Formation of the Law, which only takes 3 (three) months from November 2, 2020 - February 1, 2021. between the DPR and the Government, is a formality and hastily violates Law Number 12 In 2011 in conjunction with Law Number 15 of 2019 Article 5 Letter c "the principle of conformity between types, hierarchies, and content material" is that in the Formation of Legislations must really pay attention to the right content material in accordance with the type and hierarchy of the Laws and Regulations -invitation. The problem is that the Omnibuslaw contains several types of laws. seems rushed Violating Article 5 Letter g "principle of openness" is that in the formation of laws and regulations starting from planning, preparation, discussion, ratification or determination, and promulgation are transparent and open. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations. the abolition of Article 91 in the Human Rights Manpower Law (Komnas HAM) criticized the omnibus law drafting process which was deemed unaccountable and participatory. there is a violation of the constitution.

5. CONCLUSION:

Islam does not easily allow its people to take other people's rights by vanity, because Islam highly upholds the values of justice in society. At least in the concept of Māqashid al-Syari'ah there are five points that must be met in protecting the rights of workers. The religion of every worker who works in a company must be guaranteed the right to worship, of course the working time given by the company must not restrict the rights of worship of its workers. Second, protection of the soul Maqashid al-Shari'ah strongly demands a legal product that is obliged to protect every soul of all



living creatures on earth, not bound by religion, even animals and plants must be guaranteed the protection of their souls, therefore regulations must not threaten health, happiness, and threatens physically and physically its employees. Third, protection of the mind. This can be included in the realm of ifzhu al-'Aqli with reason, humans will undoubtedly get comfort, peace and tranquility both as individuals and groups (society). Fourth, protection of offspring. In this case, fifth, protection of property. The contents of this law also contradict ifzu al-Māl. Preventing actions that take work have implications for wealth, which means something that must be protected from harm to benefit.

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