

# Legal Protection of Workers' Rights for Worship from the Perspective of Positive Criminal Law and Islamic Criminal Law

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## Abstract

*This study aims to determine how the provisions of the implementation of workers' rights to worship. Starting from several violations of workers' rights to worship that occurred in Indonesia. This study will also discuss the legal consequences if a person/entrepreneur obstructs the workers' right to worship, as well as factors that hinder the fulfillment of workers' rights to worship. This research uses a type of normative and library research, using a descriptive analytic type of research, which focuses on cases of violations of workers' rights to worship that have previously occurred in Indonesia, and then analyzed based on statutory regulations and Islamic law. The results of this study indicate that the rights of workers to worship have been regulated and guaranteed in various legal instruments in Indonesia, both according to Islamic law and statutory regulations. Every worker and employer is required to know the rights and obligations of workers and employers, as well as to know the factors that hinder the fulfillment of workers' rights to worship.*

## Keywords

worker rights, worship, criminal law, Islamic law



## I. Introduction

Since ancient times, humans have thought about their own position. Humans are of the opinion that independence and freedom for themselves are absolutely necessary. Therefore, there is an opinion that says that a human being is a mukhayyar, that is, he can carry out the work he chooses solely with irada and will, another opinion which says that a human being is only musayyar (following what is ordered). Whether humans are mukhayyar or musayyar, these humans must carry out what Allah has ordered, so that the action has the value of worship and gets the pleasure of Allah SWT.

Worship in general includes all forms of law, both those whose meaning can be understood (ma'qulat al-ma'na), namely laws relating to muamalah, such as: buying and selling or working, or those whose meaning cannot be understood (ghair ma'qulat al-ma'na), such as prayer, fasting and others. One form of worship that can be understood by its meaning is to work / get a job if it is intended to worship and solely because of Allah SWT.

In Indonesia, the state constitution, namely the 1945 Constitution, has regulated the freedom of the religious community in carrying out their worship. Indonesia is also a country with various ethnicities, races, languages and religions, prioritizing Bhineka Tunggal Ika in the life of the nation and state. Indonesia as a rule of law also provides life insurance and is free from discriminatory treatment, both workers / laborers as citizens have equal status in the law. Indonesian law is all positive law (be it the Constitution, laws or other regulations). Indonesia as a legal system that is currently in effect in Indonesia in outline (positive law as an object). A legal subject is someone who according to law can have rights and obligations that have the authority to act, such as a human / private or legal entity.

## II. Review of Literatures

### 2.1 Definition of Labor

Marbun (2020) stated that Humans to meet their needs must work both work in their own or in the property of others by receiving wages to meet their needs and family. According to Payaman Simanjuntak, workers are residents who are already or currently working, looking for work (labor force), and carrying out other activities, such as going to school and taking care of the household (non-working force), which are determined by age. According to article 68 da 69 the minimum age for child labor is 13-15 for light work, and 15-18 can already be employed normally, but no exploitation is permitted. Manpower includes anyone categorized as the labor force and not the labor force, who have not been or are already bound by a work relationship. UU no. 13 of 2003 concerning Manpower, the definition of labor is anyone who is able to do work in order to produce goods and / or services both to meet the needs of themselves and the community. According to Kuswati (2019) In the world of work, employees are required to have high work effectiveness. Ningsih (2018) stated that One indicator that can be used to measure organizational and individual achievement is performance through the influence of motivation. Motivation is a very important factor for the development of agencies, both now and in the future. Motivation is an impulse that is done so that a person can do a job or action in accordance with the desired to achieve the goals set.

The definition of labor according to Law no. 13 of 2003 improves the definition of labor according to Law no. 14 of 1969 concerning Basic Provisions of Employment, which provides the meaning of "Anyone who is capable of doing work both within and outside of a work relationship in order to produce goods or services to meet the needs of society". The definition of labor according to Law no. 13 of 2003, is in line with the concept of employment according to Payaman Simanjuntak which has been written. When looking at age boundaries, the importance of a census in Indonesia is a minimum of 15 years and a maximum of 55 years.

### 2.2 Worker's Rights and Obligations

In Adrian Sutendi's book on labor law, the rights of rights workers, there are several conditions that must be obeyed, namely:

- a. The workers / laborers have knowledge and understanding of their rights which have been expressly regulated in statutory regulations.
- b. This right is seen and felt by workers / laborers as something essential to protect their interests.
- c. The existence of adequate legal procedures necessary to demand that the rights of workers / laborers be respected and implemented.
- d. The workers / laborers have the skills to fight for and realize their rights.
- e. There are adequate political resources needed by workers / laborers to fight for the realization of their rights.

In addition to workers getting their rights, workers also have basic obligations that must be carried out. In Islam the most important duties of workers are:

- a. Teaching, namely teaching religion which is an obligatory basis for human development in Islam, so that workers are always in a state of being ready to carry out their assigned tasks, especially in the way of AllahSwt.
- b. Enforcing syi'ar religion, it is not enough to teach theory alone, but workers must apply it in the reality of their work. Therefore, the task of upholding the syi'ar of religion and enforcing rules such as carrying out what is commanded by Allah to obey Him, and

- staying away from what is forbidden by Allah from committing immorality and enforcing Allah's orders to people who are most difficult or distant.
- c. Tax collection and distribution, workers are responsible for local taxes and the authorities can punish workers for any negligence. This tax distribution is a basic task.
  - d. Avoiding the separation of wealth and arrogance, that is, workers are obliged to stay away from the attitude of showing wealth and pride, such as in the case of vehicles, food or clothing. This is to keep workers from having fun, because it can affect their morals and work.
  - e. Fulfilling the needs of work, namely by fulfilling the needs of the authorities, creating welfare, and not exaggerating in carrying out work.
  - f. Social protection, takes into account the protection of fellow workers or between workers and employers.
  - g. Do not close the door for people in need, hide without reason and can cause delays in granting rights or being wasted, as well as obligations to work when needed in terms of work.
  - h. Focus on work and not busy with things outside of work.
  - i. Trying to create security, to maintain security in the work area, where everyone feels safe and calm, namely by upholding sharia rules, and carrying out God's law.

### **III. Research Methods**

Based on the disciplines used, this research is classified as normative research, while seen from the type of data this research is a library research (Library Research). While the data analysis of this research is descriptive analytic, which is a study that aims to provide an objective description of the reality of the object under study. This research focuses on cases of violations of workers' rights to worship that have occurred previously in Indonesia, then analyzed based on the provisions of statutory regulations and Islamic law. From the data obtained, an assessment will be carried out and an analysis of what constitutes a violation of workers' rights to worship and factors that obstruct the fulfillment of workers' rights to carry out their worship.

### **IV. Discussion**

#### **4.1 Positive Legal Provisions Regarding Workers' Rights to Worship**

Since this state was founded, the Indonesian nation has realized that the human rights needs of citizens as stated in Article 27 paragraph 2 of the 1945 Constitution which states: Every citizen has the right to work and a decent living for humans. To be able to meet all the various needs, humans are required to work. Good, work that is done alone or working with other people.

Seotikno said that all legal regulations regarding work relations carried out under the orders/leadership of others and regarding conditions of life are directly related to work relations. The workers' rights can be realized effectively if the following points are considered:

- a. Workers as rights holders can enjoy their rights without any obstacles and interference from any party.
- b. Workers as rights holders can make claims through adressant legal procedures.

In Indonesia, the guarantee of the right of citizens to embrace and worship according to their religion and belief shows that the 1945 Constitution was created based on the divine philosophy that animates the Indonesian nation, the discussion on the concept of the right to

freedom of religion and worship has been presented in the first principle recognized by God Almighty that every humans must respect the religions and beliefs of others, and teach their teachings freely without being disturbed, and also without disturbing others. In the 1945 Constitution, the right to worship is regulated in article 28 E paragraphs (1) and (2), as well as article 29 paragraph (2).

Regulations regarding religious freedom in the Republic of Indonesia also require regulation of the relationship between the state and religious communities in carrying out their beliefs, because as stated by Oemar Seno Adji and Muhammad Tahir Azhary, in the Indonesian rule of law, there is a harmonious and close relationship between religion and the State.

Labor rights to worship according to Law no. 13 of 2003 concerning manpower explained that Basically, every employer is obliged to provide sufficient opportunities for workers to carry out the worship required by the religion and belief of the workers. This is regulated in the Manpower Law in article 80. The explanation of this article is to provide adequate opportunities, namely providing a place to perform worship that allows workers to carry out their worship properly, according to the conditions and abilities of the authorities.

Law No. 39 of 1999 concerning Human Rights, it is clear that everyone has the right to have the freedom and freedom to practice their religion and belief, this is guaranteed by human rights instruments. Religious development also enters the dimension of increasing the harmony of life for religious people, which supports increased trust and harmony between community groups. Often it means the importance of religion in national life, religion has a special place in society.

In Law no. 39 of 1999 the right to freedom of religion is regulated in article 4 and article 22. In addition, Article 28I paragraph (1) of the Constitution states that freedom of religion and belief is part of human rights which cannot be reduced under any circumstances ", in that article also affirm the prohibition of discrimination based on religion.

#### **4.2 Islamic Law Provisions Regarding the Worker's Right to Worship**

Fuqaha does not stipulate laws on fiqh issues based on general theory, or explain partial problems in accordance with the concept of modern law. However, they explore all the laws of various problems that are *furu* (partial) and will find out the basic laws and theories contained in fiqh.

In Arabic, rights have a different meaning that cannot be separated from the meaning of *tsabut* (fixed or solid) and obligatory, as in the word of Allah SWT. "*So that Allah determines the right (Islam) and cancels the vanity (shirk) ...*" (Surah Al-Anfal [8]: 8).

In the book of *Islamic Fiqh Wa Adillatuhu*, according to the scholars of the group of *muta'ending* rights, namely as a strong law according to sharia. However, the definition includes the entire use of *lafadz* rights, among *fuqoha* *lafadz* rights sometimes used in the sense of property owned and this is not legal because it is used also in the sense of ownership itself, the nature of leadership rights, management, and *khiyar*, *marifat al-'aqar*. Rights in sharia contain two obligations. *First*, the obligation is general and equitable for all human beings to respect every individual right and not interfere with it at all. *Second*, special obligations for the owner of the right to exercise their rights in matters that are not detrimental to others.

The commentators say that in fact loving and possessing property is the strongest true human instinct. Since they are both the secret of the movement which takes place in life and the tremendous force that has spurred activity and progress, it is impossible for man to escape from this *substantial* fact. Humans since exist on this earth tend to love themselves and prefer having fun.

However, keep people from loving matter only by pure spiritual control. Islam requires each individual to respect the property of others and not cause harm to him. By working a Muslim can get wealth, because one of the goals of working is to get money (*property*).

Good work is not seen in terms of abundant possessions, nor is it due to the immediate passing away of pleasure, but is actually based on piety and good deeds. And make every fatigue felt by the warriors and every work they do as good deeds. As in the word of Allah SWT, namely:

Meaning: "*This is because they are not stricken with thirst, exhaustion, and hunger in the way of Allah and do not (also) tread a place that arouses the anger of the disbelievers, and does not bring disaster to the enemy, but is written (by the angel in charity book) for them with it a good deed. Indeed, Allah does not waste the reward of the muhsin (people who always do better).*" (Surah At-Taubah [9]: 120).

In fact, every act by which humans become noble and holy is classified as a religion, which can raise its status in the world and the hereafter and can burden righteous deeds in the hereafter. The way of doing worship differs from one religion to another. In Islam, it begins with an order to worship Allah and the prohibition of associating partners with him. If a human being does not understand what to do and be exalted, then how do they perform obedience which they themselves do not know the definition.

Therefore, worship in Islam departs from objectivity, not subjectivity. This objectivity is greatest in divinity. From here, the concept of worship in Islam was then formed. Allah SWT said:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

Meaning: and I did not create jinn and humans but so that they can serve Me.

The verse explains the importance of worship, as well as the obligation to carry it out, so that a servant does not keep himself busy and not merely regulate worldly affairs apart from matters of worship, except in matters of worship and knowledge. In the holy book *Mi'atu Su' al-Islam*, even though the position of knowledge is higher than worship, a servant is still obliged to worship. If that is not the case, it is feared that knowledge is useless or useless. So a servant must have knowledge and worship, which always go hand in hand.

Islam describes working with honorable character and character, and considers it as worship and obedience to Allah SWT. The goal is that Muslims are competing to fill jobs. Islam also does not teach us to be *zuhud* in the world and ignore the happiness of life, and to exaggerate prayer and fasting. Islam invites us to treat the world and the hereafter well. Because Islam does not teach the world as the ideals and goals of life. Islam also does not teach taking the afterlife and waste the world.

Regarding this, the Prophet gave a signal, "*Work for your world as if you live forever and work for your afterlife as if you were going to die tomorrow*". That a Muslim must work for the world and the hereafter, and must not distance himself from the world and only accept the afterlife and vice versa, must not accept the world and distance himself from the hereafter.

### 4.3 Factors Inhibiting the Rights of Workers to Worship

From the results of the author's analysis, the authors conclude that the violation of labor rights to worship occurs due to two factors, namely external factors, namely the worker, and internal factors, namely the employer:



### **a. External Factors**

The author captures that the main factor in prohibiting worship is because workers do not understand their rights to worship, and they do not know that their rights are regulated by law and if employers violate them, they will receive sanctions in accordance with article 185 of the Manpower Act.

Here the role of workers is important when it is important to learn more about workers' rights, so that they feel these rights and that no one is harmed between the employer and the worker. Workers do not enforce religious statements, because in the first case example, if the worker already knows the importance of covering one's genitals, the worker should prioritize the order, compared to his job.

Lack of courage of workers to oppose policies that can harm workers, because here workers always feel themselves weak compared to employers. And the threat of terminating the work relationship has always been a powerful weapon for the development of workers.

### **b. Internal Factors**

Employers make work regulations where these regulations are one-sided, and do not burden the workers. Miscommunication between the authorities is also a factor in observing workers' rights to worship. Here the rulers should pay more attention to the workers, with superiority. So that there is no miscommunication between the authorities and workers.

From the external and internal factors that the author has described here, the role of labor inspection institutions is necessary. According to article 1 of Law No. 23 of 1948 concerning Labor Inspection, it reads "Labor inspection institutions are held to:

- a. Overseeing the enforcement of labor laws and regulations in particular.
- b. Gather information materials on matters of employment relations and labor conditions in the broadest sense in order to make laws and labor regulations.
- c. Carrying out other work assigned to him by law or other regulations. "

## **V. Conclusion**

In the 1945 Constitution, the right to worship is regulated in article 28 E paragraphs (1) and (2), as well as article 29 paragraph (2). in the Manpower Law in article 80. In Law no. 39 of 1999 the right to freedom of religion is regulated in article 4 and article 22. The regulation is made so that there is no discriminatory treatment against religion, and workers who are considered weak by employers have guarantees to protect their rights. In Islam the command to carry out worship is indeed a form of obligation that must be carried out by Muslims. But Islam also does not close its people to work, because the advice between carrying out work and fulfilling obligations according to the Sharia must be balanced.

The prohibition of wearing the headscarf according to Islamic law the command to use the headscarf is mandatory for every Muslim woman, the second example is the prohibition of prayer breaks, and Friday prayer istiharat, when seen from Article 80 of the Law. In this article, it is clear that the command to perform worship is very protected, but in reality the work regulations for removing the veil seem to have become a natural thing when work.

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