

ANALYSIS OF EMPLOYMENT CONTRACTS IN ISLAMIC ECONOMIC PERSPECTIVE

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Abstract: *Contracts are often a problem for workers. Which usually often occurs friction between parties from employers and workers due to its subordinative nature. The weak position of workers in work agreements means that many workers do not get their rights as they should as stipulated in Law no. 13 of 2003 regarding employment. For this reason, it is necessary to analyze how the work contract is based on an Islamic view. This study uses library research methods using reference sources from books and various journals and other scientific works which are certainly relevant to the theme. The results of this study are work contracts (outsourcing) according to Islam are the same as ijarah. This means that the relationship between the outsourcing company and its workers is established in the form of an ijarah. Because, the four schools of thought, Hanafiah, Syafi'iyah, Malikiyah, and Hanafiyah define the concept of ijarah by making the property of something beneficial for a certain time with a replacement.*

Keywords: *Employment Contract, Law no. 13 of 2003, Employment Contracts in Islamic Law*

Introduction

Manpower is an important factor for a company to achieve its goals, so management needs to optimize the role of its workforce to produce the best performance so that the company can win the competition. One common corporate strategy that every company can easily implement is to reduce costs so that the company can operate efficiently and thereby increase or maximize company profits. Labor costs of various enterprises often rank first among enterprise costs, especially in labor-intensive or labor-intensive enterprises such as textile and textile product enterprises, or other types of enterprises where labor dominates the main activity of enterprises.¹

One strategy to reduce company costs, especially labor costs, is to use contract labor or work agreements. This strategy of using contract workers is very useful in situations where the supply of labor is greater than the demand for labor, such as the current high unemployment rate in Indonesia. According to data from the Central Bureau of Statistics, the number of unemployed people in Indonesia reached 9.4 million at the end of 2008. In addition, more companies will be laid off in 2009, and the number of unemployed people is expected to reach 10 people. millions of people. Based on the composition of education, the

¹ Maryono. (2009). Contract Labor: Benefits and Problems. *Journal of Business and Economics (JBE)*, 16 (1). p. 27

unemployment rate includes 547,000 people with elementary school education and below, 2.1 million people with elementary education, 1.973 million people with junior high school education and the equivalent, 3.81 million people with high school education and the equivalent, 362,000 people with a diploma and equivalent education, and 600,000 university and equivalent education.

Concerning the workforce, the progress of the current era requires workers or laborers to have high-performance quality standards. In addition, the supply of labor far exceeded demand, resulting in massive unemployment. The imbalance of supply and demand in turn allows the owners of capital to freely choose, sort, and even freely replace labor or workforce. Logically, this leads to a decrease in the value of labor, which gradually begins to forget its natural rights as a worker and only seeks money to make ends meet.

One of the efforts made by the company in employing a minimum workforce to be able to provide maximum contribution according to the company's goals is in the form of outsourcing or contract work or outsourcing. In this regard, legal norms have provided guidelines as a legal basis for outsourcing workers, as stipulated in the Manpower Law No. 13 of 2003 and the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Kep. 101/Men/VI/2004 of 2004 concerning Procedures for Employer/Labor Service Provider Company Agreements.²

Based on the problems above, this study aims to analyze how Islam views itself regarding work contracts (*outsourcing*).

Literature Review

Outsourcing

Outsourcing can be called a work contract. An employment contract is an agreement between an employee and an employer orally or in writing, either for a specified time or for an unspecified time, which contains working conditions, rights, and obligations (2). According to (3), outsourcing is the outsourcing of part or all of the work and or authority to other parties to support the strategy of outsourcing service users, whether personal, company, division, or a unit within the company.³

Law Number 13 of 2003 concerning employment as the legal basis for outsourcing in Indonesia divides outsourcing into two parts, namely: the employment contract and the provision of worker/labor services. Then in its development, Labor Law No. 13 of 2003 was amended to eliminate contract work because it prioritizes sub-contract work over work. To examine the legal relationship between outsourced employees and companies using outsourcing, outsourcing arrangements will be outlined in Law no. 13 of 2003 namely Articles 64, 65, and 66.⁴

Well-being

Welfare is an order of life and social life, material and spiritual followed by a sense of security, decency, and physical and spiritual well-being of self, family, and society that enables every citizen to achieve the best of the best both physically and spiritually. and social

² Mustaqim, Y., Purnomo, M., Firmansyah, NA, & Ningrum, NP (2021). Outsourcing in Islamic Economic Perspective. *Proceedings of The URECOL*, page 487

³ ibid

⁴ setioningtyas, widhayani puri. (2016). Analysis of Outsourcing Work Systems in Indonesia's Workforce. *Economic Magazine*, 21 (1). p.83

needs. Serving oneself, family, and society by upholding human rights (all material and spiritual needs of the family can be met following the standard of living).⁵

Employee

An employee is a human resource working in a company, or more generally a production assistant in a company. Employees or the workforce are all people who can carry out activities of producing goods or services to meet their own needs and the needs of society.⁶

Islamic economics

Islamic economics is a science that studies human effort to allocate and manage resources to achieve *falah* based on the principles and *Sunnah*. According to Umar Chapra, interpreting Islamic Economics is a branch of knowledge that helps realize human welfare through an allocation and distribution of scarce natural resources following *Maqashid*, without curbing individual freedom to create a sustainable balance, forming family solidarity, social and community moral networks.

Method

This type of research is a qualitative research which describes data using a series of sentences. The method used in this research is the descriptive method. The descriptive method is a method whose data sources are words, pictures, and data from books, journals, and other scientific works. In addition, everything that is collected is likely to be the key to what has been researched. So the use of this method does not produce data in the form of numbers, but data that is descriptive. This study uses written data sourced from books and scientific journals.

Result and Discussion

Employment Contract According to Islamic Law

1. Definition of work contract

contracts in Islamic law are commonly known as *ijarah* which means wages, rent, services, or rewards. One form of human activity in *muamalah* is leasing, selling services, and others.⁷

According to the understanding of *syara' Al-Ijarah* is a type of contract to take benefits by way of replacement. Benefits sometimes take the form of goods benefits, such as a house to live in, or a car to ride (drive). sometimes also in the form of work, such as the work of an engineer, construction worker, weaver, tailor, and others. Sometimes the benefits are in the form of someone's work that devotes energy. The owner who provides benefits is called *mu'ajjir* (the person who rents out), the other party who gives the lease is called *musta'jir* (the person who rents/tenants), and something that is held for benefits is called *ma'jur* (rent), while the services provided in return for benefits is called *ajran/ujrah* (wages). When the leasing contract has taken place, the lessee has the right to benefit, and the person who rents out has the right to take wages because this contract is *mu'awadah* (compensation).⁸

⁵Moch. Nurachmad, Questions, and Answers Regarding Labor Rights (Outsourcing) (Jakarta: Visimedia, 2009), p.1

⁶Understanding Employees in Law number 13 of 2003 concerning employment, article 1 paragraph (2)

⁷M. Ali Hasan, *Fiqh Muamalah* (Various Kinds of Transactions in Islam), (Jakarta: PT. Raja Grafindo Persada, 2003), p.228.

⁸ Sayyid Sabiq, *Fiqh sunnah juz 13*, Trans. Kamaludin A. Marzuki (Bandung: PT. Al-Ma'arif, 1988), p.30.

2. *Ijarah* pillar

- a. Mu'jir and musta'jir, are people who do rent-hire or hire-hire contracts. Mu'jir is the person who gives wages and rent. Whereas *musta'jir* is a person who receives wages for doing something or renting something. It is required for *mu'jir* and *musta'jir* to be of age, intelligent, able to do *tasharruf* (handling property) and mutually agreeable.

Allah SWT says in: QS. An-nisa: 29

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً

عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

Meaning: "O you who believe, do not eat each other's wealth your fellow man in false ways, except in the way of business that happens between you willingly. and don't kill yourself. Verily, God is Merciful to you." (QS An-Nisa': 29).⁹

People who have a contract with *ijarah*, it is also required to know about the item that is contracted perfectly so that it can prevent disputes.

- b. *Sighat* (ijab qabul) Ijab is the first party's statement regarding the contents of the desired engagement, while qabul is the second party's statement to accept it. Ijab and qabul were held to show voluntary reciprocity of the engagement carried out by the two parties concerned. From this understanding, the consent qabul occurs between the two parties voluntarily and creates obligations for each of them reciprocally.¹⁰
- c. Ujarah (wages) indicates that the amount is known by both parties, both in terms of rent and wages. ¹¹The concept of wages appears in *ijarah* contracts, namely the ownership of the services of an *ajir* (a person who is contracted for labor) by a *musta'jir* (a person who is contracted for labor). *Ijarah* is a transaction for certain services accompanied by compensation. Compensation for these rewards is in the form of *al-ujrah* (wages). Which concept of wages itself is found in surah At-Thalaq: 65: 6.¹²

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمَلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأَتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُم فَسْتَزِضِعْ لَهُنَّ أُخْرَىٰ ﴿٦٥﴾

It means: " Place them (wives) where you live according to your ability and do not trouble them to narrow (their hearts). and if they (divorced wives) are pregnant, then give them their maintenance until they give birth, then if they nurse your (children) for you, give them their

⁹ merdeka.com (2023). *Al-Qur'an Surah An-Nisa Verse 29* | merdeka.com . [online] merdeka.com. Available at: <https://www.merdeka.com/quran/an-nisa/ayat-29> [Accessed 22 Jan. 2023].

¹⁰Hendi Suhendi, *Fiqh Muamalah*, ..., p.117.

¹¹Rozalinda, *Sharia Economic Fiqh (Principles of Its Implementation in the Islamic Finance Sector)*, (Jakarta: PT. Raja Grafindo, 2016), p.131.

¹² merdeka.com (2023). *Al-Qur'an Surah At-Talaq Verse 6* | merdeka.com . [online] merdeka.com. Available at: [https://www.merdeka.com/quran/at-talaq/ayat-6#:~:text=QS.%20At%2DTalaq%20Ayat%20&text=6.%20Place%20them%20\(para%20wives,to%20narrow%20\(heart\)%20.](https://www.merdeka.com/quran/at-talaq/ayat-6#:~:text=QS.%20At%2DTalaq%20Ayat%20&text=6.%20Place%20them%20(para%20wives,to%20narrow%20(heart)%20.) [Accessed Jan. 22, 2023]

wages, and discuss between you (everything) well; and if you find it difficult then another woman can breastfeed (the child) for him".

In the verse above, it can be explained that wages can be in the form of money, valuables, or benefits. In practice, breastfeeding mothers are sometimes paid for food, clothes, or other things.

In terms of wages for service transactions such as outsourcing as applicable ijarah contracts are more emphasizing partnership relations between service owners (workers, employees, laborers, employees, labor, and others) and service users (company employers). The principle of this partnership is based on the assumption that each party has something that is not owned by the other party where they need each other. So that in this case there is no upper-class paradigm that seems to be needed and the lower class because they need it more.

With this principle, the paradigm that is built is the principle of equality and justice, meaning that each has the same rights and obligations to carry out his mandate. For example, the right of a worker is to get a decent wage and know the level of wages before he does a job, he is also obliged to work as well as possible as a mandate from the service user. On the other hand, the service user has the right to receive service benefits as stated in the contract and is obliged to notify the level of wages to be given (transparent).

Following the concept of ijarah, workers' wages are determined based on the benefits of labor, the extent to which one's labor contributes to benefits for service users (mustajir), and not based on the labor itself. The benefits of labor in an outsourcing agreement are like a commodity that has a market, in which a supply and demand mechanism takes place. The price of a worker in outsourcing is also determined based on the price in the market, and therefore the price of benefits may not be set by force as commodity prices are not permitted. Therefore, it must allow the determination of the price of labor benefits, namely the wages of a worker (ajir) according to what is determined by the market for the benefits (services) of workers.¹³

Welfare according to Islamic law

According to Islamic economics, well-being is being free from fear of oppression, hunger, thirst, disease, ignorance, the future of oneself, and even the environment. This with heavenly well-being can be illustrated, among other things, in the warning of Allah SWT to Prophet Adam, which reads in the Qur'an, Surah Thaha: 20: 117-119 :

" Then We said: "O Adam, Verily this (devil) is an enemy to you and to your wife, so never let him take you both out of Paradise, which causes you to be miserable. Verily, you will not starve in it and will not be naked, And surely you will not feel thirsty and will not (also) be affected by the heat of the sun in it."¹⁴

The verse explains that clothing, food, and boards which are termed not hunger, thirst, nakedness, and heat have all been filled there. Fulfilling this need is the first element of community welfare.

Prosperity in Islamic economics is overall well-being, namely spiritual well-being. The concept of welfare in Islamic economics is not only measured based on economic value, but also includes moral, spiritual, and social values. So that welfare based on Islam has a deeper concept.

¹³ Mustaqim, Y., Purnomo, M., Firmansyah, NA, & Ningrum, NP (2021). Outsourcing in Islamic Economic Perspective. *Proceedings of The URECOL*, page 492

¹⁴ Amelia, W. (2021). *Surah Thaha Verses 117-119: Fulfillment of Food, Clothing & Shelters ...* [online] Tafsir Al Quran | Reference Interpretation in Indonesia. Available at: <https://tafsiralquran.id/surat-thaha-ayat-117-119/> [Accessed 23 Jan. 2023].

Welfare according to Islam refers to Qs Quraish: 106: 3-4 where the verse explains that there are three indicators of welfare in the Qur'an, namely:¹⁵

1. Worship the Lord of the Kaaba

The most important indicator is "worship God (the owner) of the Kaaba". This means that the effort to make the society prosperous is preceded by the development of monotheism so that before the society is physically prosperous, the society must first truly make Allah SWT as a protector, and protector and submit themselves completely to the creator.

2. Eliminates hunger

It means feeding the hungry. Then this verse mentions that it is the sustenance that comes from Allah SWT to get rid of hunger.

3. Eliminate fear

Making the atmosphere comfortable and safe and serene is part of well-being. The Qur'an defines welfare, welfare starts from the welfare of individuals who have strong monotheism, then their basic needs are fulfilled and not excessive so that the atmosphere becomes safe and peaceful.

The legal basis of the employment agreement

Based on Law Number 13 of 2003 in article 67 it is explained that *firstly*, employers who employ workers with disabilities are required to protect them according to the type and degree of their disability. *Second*, the provision of protection as referred to in paragraph (1) is carried out following the applicable laws and regulations.¹⁶

The fiqh scholars are of the opinion that the basis for the permissibility of ijarah is based on the word of Allah SWT in Qs At-taubah: 9: 105:¹⁷

وَقُلْ أَعْمَلُوا فَسَيَرَى اللَّهُ عَمَلَكُمْ وَرَسُولُهُ وَالْمُؤْمِنُونَ وَسَتُرَدُّونَ إِلَىٰ عِلْمِ الْغَيْبِ وَالشَّهَادَةِ
فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ تَعْمَلُونَ

Meaning: "Work you, then Allah will see your work, so will His Messenger and the believers, and you will be returned to (Allah) Who Knows the unseen and the real, then He will inform you of what you have done"

To examine the legal relationship between outsourced employees and the employer company, an outline of outsourcing arrangements will be described in Law Number 13 of

¹⁵ Indi Dwi Astuti, A. (2020). *ANALYSIS OF EMPLOYMENT CONTRACTS IN INCREASING EMPLOYEE WELFARE ACCORDING TO ISLAMIC ECONOMIC PERSPECTIVE (Study on Miniplan Fijar Desa Jati Wangi Kec. Tanjung Bintang)* (Doctoral dissertation, UIN Raden Intan Lampung). p.41

¹⁶The Republic of Indonesia, Law Number 13 of 2003 concerning Manpower

¹⁷ merdeka.com (2023). *Al-Qur'an Surah At-Taubah Verse 105* | merdeka.com . [online] merdeka.com. Available at: <https://www.merdeka.com/quran/at-taubah/ayat-105> [Accessed 22 Jan. 2023].

2003. In Law Number 13 of 2003, what concerns outsourcing are Articles 64, Article 65, and Article 66.

Article 64 of the Manpower Act, a company can hand over part of the execution of work to another company through a work charter agreement or worker/labor service provider made in writing.

Labor/employee service providers are a form of business that is a legal entity and has a permit from the agency responsible for manpower affairs. If the above conditions are not fulfilled (except regarding welfare protection provisions), then by law the status of the employment relationship between the workforce/employee and the company providing labor services/employee is changed to a working relationship between the workforce/employee and the company providing the job. The work agreement for outsourced employees is to use a contract system which, according to Article 56 of the Manpower Act, is divided into 2, namely a Fixed Time Work Agreement or PKWT and an Unspecified Time Work Agreement or PKWTT. The following reads Article 56 of the Labor Law :

1. The work agreement for outsourced employees is to use a contract system which, according to Article 56 of the Manpower Act, is divided into 2, namely a Fixed Time Work Agreement or PKWT and an Unspecified Time Work Agreement or PKWTT. The following reads Article 56 of the Labor Law.
2. The work agreement for outsourced employees is to use a contract system which, according to Article 56 of the Manpower Act, is divided into 2, namely a Fixed Time Work Agreement or PKWT and an Unspecified Time Work Agreement or PKWTT. The following reads Article 56 of the Labor Law.

The fact is that the practice of contract work (outsourcing) has so far been recognized as causing more harm to workers/laborers, because the employment relationship is always in the form of non-permanent/contractual (PKWT), lower wages, even if there is social security, it is only minimal, there is no job security.) as well as no guarantee of career development and others.

Conclusion

Based on the explanation above, it can be concluded that an employment contract (outsourcing) according to Islam is the same as *ijarah*. This means that the relationship between the outsourcing company and its workers is established in the form of *an ijarah*. Because, the four schools of thought, Hanafiah, Syafi'iyah, Malikiyah, and Hanafiyah define the concept of *ijarah* by making the property of something beneficial for a certain time with a replacement. This shows that the *ijarah* contract is always based on benefits in the form of wages between the worker and the owner of the company after the ownership of the goods takes place. Thus, it is hoped that in principle, the partnership relationship between workers and service users in the Islamic economy is a relationship that is built based on the values of the trust that must be fulfilled by each party, when someone has fulfilled his mandate well, then he is a good partner and must also be given their rights properly.

According to Islamic economics, welfare is overall well-being, both spiritually, and includes moral and spiritual values, which are not measured based on economic values alone, so welfare has a deeper concept. Work contract arrangements are contained in Law no. 13 of 2003 which states that employers who employ workers with disabilities are obliged to protect according to the type and degree of disability, then this protection is carried out following applicable laws.

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