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“State’s Neutrality in Indonesia’s Labor Law: How Islamic Values Contribute”

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This paper examines industrial relation in Indonesia. It is highly vested-interests, particularly in this neo-capitalism setting. The current state’s policy in labor management relations is State’s neutrality which posits the government in a neutral position when it stipulates policy on minimum wages. Nevertheless, being (seemingly) neutral in unequal relations is considered a denial of justice, as in practice there is unequal bargaining position between labor and employer/company, and it is prone to discrimination. The government is foolishly acting as an umpire without giving some progressive supports to labors. This research argues that the legal problem of this industrial relation is not only in the sphere of implementation, but also conceptual and normative issues, because the Laws have failed to create a balanced and equal position between laborers and/or labor unions and company. This essay analyses the socio-legal dynamics of Indonesia’s labor law and scrutinizes how Islamic values fairly regulate justice in industrial affairs, particularly in minimum wage policy.

Keywords: Indonesia (Rep. of), Industrial Relations, Vested-Interest, Law and Development, Islamic Values

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1. Background

This paper examines the thesis statement that the adoption of Islamic values in legislation on labor management could significantly solve injustice and inequality. The adoption is useful particularly in regard to labor’s minimum wage policy, in which the State merely acts in a ‘neutral’ position in the industrial relation. It is noteworthy that Indonesia’s positive law is more secular than Islamic, despite being known as the largest Muslim population in the world. In the public sphere, secular law inherited from Dutch civil law dominates almost all social and economic aspects, even though Islamic influences are not entirely absent in public law.¹ Islamic Law has a prominent position in the realm of private law for Indonesian Muslims.

In the classical dichotomy of law, labor law was classified as a pure private law; it emerges when both interests of employer/company and labor meet on the paper of agreement. Nevertheless the dynamics of a welfare state and the need to settle industrial disputes require the government to interfere with the industrial relations.² The wall of separation between public and private laws can no longer be sustained.

Labor has a pivotal role in a country’s development, particularly in reaching the welfare state level. In 2017 - 2018, the number of Indonesian workers/labors has increased to 131, 55 million people. The largest numbers, 39, 68 million people were in the agricultural sector (31, 86%). The remaining sectors were the trading sector, with 29, 11 million people (29, 11 %) and the services sector with 20, 95 million people (16, 82 %).³ Unfortunately, most of these workers still live in poverty.⁴

Industrial relations are highly vested-interests, particularly in this neo-capitalism setting. Indonesian labor law has a long, dynamic history. It experienced a harsh and barbaric slavery in Dutch colonial era. It has socialist influences taken from Dutch ethical policy (*Ethische Politiek*),

¹ N. Hosen, *Religion and the Indonesian Constitution*, 36 *Journal of Southeast Asian Studies*, no. 3 (2005), 419-440.

² K.E. Klare, *The Public/Private Distinction in Labor Law*, 130 *University of Pennsylvania Law Review*, (1982), 1358-1422. See also, Gaabriel Tavits, *The Position of Labour Law in the Private Law System: The Past, Present and Future of Estonian Labour Law*, V *Juridica International*, (2000), 124-134.

³ BPS: *Jumlah Penduduk Bekerja Naik 6, 13 Juta, Pengangguran Turun 0, 28 Persen*, available at: <<https://setkab.go.id/bps-jumlah-penduduk-bekerja-naik-613-juta-pengangguran-turun-028-persen/>>, accessed in 12 April 2019.

⁴ K.Kis-Katos and R. Sparrow, *Poverty, Labor Market and Trade Liberalization in Indonesia*, available at: <https://crawford.anu.edu.au/files/uploads/crawford01_cap_anu_edu_au/2013-09/kiskatos-sparrow_povertylib.pdf>, accessed in 24 May 2019.

but also has capitalist influences, especially when Suharto’s developmentalist administration ruled.⁵ The current state’s policy in labor management relations is State’s neutrality which posits the government in a neutral position when it stipulates policy on minimum wages. Nevertheless, being (seemingly) neutral in unequal relations is considered a denial of justice, as in practice there is unequal bargaining position between laborers and employer/company, and it is prone to discrimination. The main issue of labor – company relations is unequal positions between them and the government is foolishly acting as an umpire without giving some progressive supports to labors. Ideally, in this kind of condition, the state should leverage labor’s bargaining position by supporting a decent or minimum wage for labors.

The positive law on labor management relation is the 2003 Manpower Law.⁶ With regards to the labor wages, the government stipulated the 2015 Wages Regulation.⁷ Both Laws imply that the government fully regulates and control labor management and industrial disputes. However, the government’s role in labor management is only as a regulator and facilitator. To make things even worse, labor salary is determined by external economic factors, meaning that the government cedes labor prosperity to the market mechanism.⁸ Moreover, there is insufficient supervisory of labor management implementation, this lack of legal protection marginalizes labor toward employer or company.

The legal provisions on positive laws may be sufficient in a black-letter law perspective, as the government has provided legal certainty by regulating the mechanism of determining wages,⁹ rights and obligation of labors and employer on work agreement,¹⁰ and dispute mechanism.¹¹ However, in critical socio-legal analysis,¹² the provisions are insufficient and fail to provide justice and legal protection for the disadvantaged and marginalized group: laborers. It can be evidenced when the industrial dispute arises as a result of disputes on rights (*rechtsgeschillen*) including breach of contract/legislation, and dispute on different interest (*belangen geschillen*) which means that both parties (labor and company) have disagreement in several aspects of

⁵ S. Tjandra, *Labour Law and Development in Indonesia*, (PhD Thesis, Leiden University, 2016).

⁶ Law No 13 of 2003 on Manpower.

⁷ Government Regulation No 78 of 2015 on Wage.

⁸ Government Regulation No 78 of 2015 on Wage, art 43 (8) and art 45 (4).

⁹ Law No 13 of 2003 on Manpower, art 88-98.

¹⁰ Law No 13 of 2003 on Manpower, art 50-62.

¹¹ Law No 13 of 2003 on Manpower, art 136

¹² R. Banakar and M. Travers, *Theory and Method in Socio-Legal Research*, (Oxford: Hart Publishing, 2005).

working environment or facilities,¹³ rarely laborers and/or labor unions win the disputes.¹⁴ This happens because the ineffectiveness of the dispute settlement, alongside the company has more resources and bargaining power (politically and economically) to win the cases. The disputes may formally be settled by law, but nuances of injustice create social unrest in disputed factories and companies.¹⁵

As the national law remedies failed to provide justice, the International Labor Organization (ILO) stipulated Recommendation No 3124 regarding the arbitrary dismissal of Panarub Dwikarya Benoa Company’s labors.¹⁶ The ILO assertively stated that the dismissal was the violation of freedom of association and collective bargain rights. Nonetheless, until recently the Indonesian Government has no response regarding the Recommendation, let alone provides remedies to labors rights. Another case can also be highlighted; for instance, the arbitrary dismissal of 103 laborers of the Coca Cola Indonesia Company,¹⁷ the discharged of labor union of *Pekerja Muslim Indonesia* (PPMI) by the Metindo Era Sakti Company,¹⁸ and 83 laborers of the Champ Resto Indonesia Company were fired because they demanded rights to receive health insurance.¹⁹

Due to the failure to effectively solve industrial dispute (despite the Laws regulating it), Indonesia is one of the worst countries in legally protecting its laborers/workers. Based on the International Trade Union Confederation (ITUC) Global Right Index, Indonesia is in the 139

¹³ I. Soepomo, *Hukum Perburuhan bidang Hubungan Kerja*, (Jakarta: Djambatan, 2003), pp. 131-132.

This theoretical dichotomy is problematic because the request of labors to enjoy humane working environment or facilities is also part of their rights protected by law/legislation. The two then can be inter-linked.

¹⁴ Tjandra (2016), *supra* note 5, p. 226.

¹⁵ C. Manning, *Indonesian Labor in Transition: An East Asian Success Story?* (Cambridge: Cambridge University Press, 1998), p. 215.

¹⁶ Kumparan, *Kasus Tidak Kunjung diselesaikan, Buruh pembuat sepatu Adidas lapor ke OECD*, available at: < <https://kumparan.com/buruh-sosial/kasus-tidak-kunjung-diselesaikan-buruh-pembuat-sepatu-adidas-akan-melapor-ke-oecd> >, accessed at 13 April 2019.

¹⁷ Business and Human Rights Resource Centre, *Indonesia: Report says Coca-Cola Amatil violates workers’ right to organize; company did not respond*, available at: < <https://www.business-humanrights.org/en/indonesia-report-says-coca-cola-amatil-violates-workers-right-to-organise-company-did-not-respond>>, accessed at 13 April 2019.

¹⁸ Republika, *Buruh Dua Perusahaan Demo di Kantor Walkot Bekasi*, available at: < <https://www.republika.co.id/berita/nasional/jabodetabek-nasional/15/09/10/nug7ip361-buruh-dua-perusahaan-demo-di-kantor-pemkot-bekasi> >, accessed at 13 April 2019.

¹⁹ Sindo News, *Karyawan PT CRI Tuntut Hak*, available at: < <https://daerah.sindonews.com/read/974475/151/karyawan-pt-cri-tuntut-hak-1425960298> >, accessed at 14 April 2019.

rank. On a scale of 1 to 5, Indonesia’s index was classified 4 (bad) in 2014 and 2015, and the country earned 5 (very bad) in 2016 and 2017.²⁰

This research argues that the legal problem of this industrial relation is not only in the sphere of implementation (empirical issues) but also conceptual and normative issues because the Laws have failed to create a balanced and equal position between laborers and/or labor unions and company. The government’s authorities are weak to fully supported labor rights for disadvantage people. This research also demonstrates that legislation is not only a legal product; it is political.²¹ In this regard, legislation should not be taken for granted, thus it should be understood in its political context.

This paper, using a qualitative approach, examines not only the ‘text’ of the legislation but also its ‘pre-text’. This critical socio-legal thinking approaches legal issues with an interdisciplinary approach.²² Legal scholarship is still at the core of this research but enriched by political information about the legislation. This essay analyses the dynamics of Indonesia’s labor law and scrutinizes how Islamic values fairly regulate justice in industrial affairs, particularly in minimum wage policy.

Part two of this article reviews the historical-political context of labor laws in Indonesia. The aim is to understand the ‘pre-text’ of legislation and political influences underlying the laws. This part also elaborates how the government posits itself in industrial relations whether the government supports or diminishes labor rights. By understanding the historical-political context of labor law, this paper can provide preliminary perspectives on labor management and its future legal reforms. Part three presents the ‘text’ which creates legal issues on the processes of determining the minimum labor wage. Both the 2003 Labor Law and regulations regarding minimum wages are succinctly presented in order to highlight contradictory and discriminatory provisions on industrial relations in Indonesia. This section concludes that the post-authoritarian governments, including the current administration is reluctant in supporting labor rights; the reason for this might be because the State’s development policy is political and economically-driven which extols investments while ignoring labors’ rights and their dignity.

²⁰ International Trade Union Confederation, *2018 UTAC Global Rights Index: The World’s Worst Countries for Workers*, available at: < <https://da.se/wp-content/uploads/2018/06/ITUC-Global-Rights-Index-2018-EN.pdf> >, accessed at 20 April 2019.

²¹ A.C. Hutchinson and P. J. Monahan, *Law, Politics and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 *Stanford Law Review*, (1984), 199-245.

²² Banakar and Travers (2005), *supra* note 12.

Part four more forcefully analyses the Islamic values by analyzing both classical and contemporary legal sources of Islamic Law: from the Qur’an, Hadith, *Fiqh* (Islamic jurisprudence) to Islamic doctrines from prominent scholars. It also discusses opportunities regarding Islamic values’ reception to labor law. The final section offers an argument that the government could play an active role in several strategic aspects of labor law and industrial relations if the relation is blatantly unbalanced and discriminatory.

2. ‘Pre-Text’ - Triangle Relations: Labor, Company and the Indonesian Government

The history of labor is inter-linked with the historical event of the Industrial Revolution in the 1750s when most European countries extolled the credo of productivity and economic growth while diminishing the role of government in private sectors.²³ European countries colonized the Asian continent, such as Dutch who were keen to maximize its income in *Nusantara* (the old name of Indonesia’s archipelago) through massive exploitation and slavery. In the 1830s, the Dutch colonial regime obliged Indonesian farmers to cultivate only economically expensive plants. Van den Bosch, the Governor General of the East Indies, proposed a policy namely, *cultuurstelsel*, which literally means ‘forced planting.’ The policy obliged that 1/5 or 1/3 of all village land must be planted with sugarcane, indigo and coffee.²⁴ This policy also included forced slavery (*kerja rodi*), which had been done in H. W. Daendels’s administration as the Governor General of East Indies (1807 – 1811). A monumental achievement was the making of road between Anyer to Panarukan (approximately 1, 183.2 km) which caused millions of slaves died.²⁵

A more humane colonial policy was under the British rule (1811 – 1816), Sir Thomas Stamford Raffles, the Governor General of East Indies, established The Java Benevolent Institution in 1816 aiming to gradually diminish slavery in the East Indies. However, the British

²³ J. Hoppit, *The Nation, The State, and The First Industrial Revolution*, 50 *Journal of British Studies* (2011), 307-331.

²⁴ J.S. Furnivall, *Netherland India, A Study in Plural Economy*, (Cambridge: Cambridge University Press, 1939), p. 353.

²⁵ Peter J.M.Nas and Pratiwo, *Java and De Groote Postweg, La Grande Road, The Great Mail Post, Jalan Raya Pos*, 158 *Bijdragen tot de Taal-, Land-en Volkenkunde, On the Road, The Social Impact of New Roads in Southeast Asia* (2002), no. 4, 707-725.

rule was a short life and the promotion of anti-slavery was not to too much avail.²⁶ The Dutch once again reclaimed the *Nusantara* territories. In 1880, the Dutch for the first time regulated Working Agreement in the Netherland Indies’ Civil Code, *Burgerlijk Wetboek* and *Kolie Ordonantie*.²⁷ The duration of the working contact was three years, and could be renewed. The Law regulated the obligation of the master and the rights of labor. Nevertheless, the position of labor was still marginalized and discriminatory.²⁸ The *Nusantara* returned to the era of slavery when Japan took over and exercised forced slavery, *Romusha*, to add capital for the Japanese’s Pacific War.²⁹ In 1945, Indonesia declared its independence, and it was the beginning of rivalry between socialism and capitalism in the third world which was provoked by the divided effect of the Cold War.

2.1 Early Independence Era – State’s Protective Policy

In the early independence era, the first President of Indonesia, Soekarno, strongly affiliated with socialist movements. Indonesia in that era had the third biggest communist party (PKI) in the world. Despite being closely related to socialism, Soekarno denied being a communist. He was considered as a pro-labor leader, as evidenced by stipulating many protective acts on labors’ rights, dispute settlement and supervisory of labors.

The main legislation on labor administration was the 1948 Work Law³⁰ which was very friendly to vulnerable groups including women and children. The Law prohibited kids to work, unless necessary and they work should be in a good conditions.³¹ Youngsters and women could work, but only in daytime,³² and they were not allowed to work in the mining and natural resources industries.³³ Both youngsters and women were not allowed to work in areas that could

²⁶ Isabel Tanaka-van Daalen, *Dutch Attitudes toward Slavery and the Tardy Road to Abolition*, in Hideaki Suzuki (ed), *Abolitions as A Global Experience*, (Singapore: NUS Press), p. 83.

²⁷ *Staatsblad* No 133 of 1880. See also, *Burgerlijke Wetboek* (BW) 1884, art 1601a on Working Agreement

²⁸ W.F. Wertheim, *Indonesian Society in Transition: A Study of Social Change* (2nd Edition, The Hague/Bandung, W.van Hoeve Ltd, 1959), p. 251.

²⁹ Republika, *Romusha dan Fujingkau, Bukti Kekejaman Jepang di Indonesia*, available at:<<https://www.republika.co.id/berita/selarung/nostalgia-abah-alwi/16/12/24/oio6nm282-romusha-dan-fujingkau-bukti-kekejaman-jepang-di-indonesia>>, accessed in 23 April 2019.

³⁰ Law No 12 of 1948 on Work.

³¹ Law No 12 of 1948 on Work, art 2.

³² Law No 12 of 1948 on Work, art 4 and 7.

³³ Law No 12 of 1948 on Work, art 3, 5 and 8.

potentially jeopardize their safety and health.³⁴ Women were entitled two days of menstruation leave,³⁵ a month and half leave prior to delivering baby and a month and half leave post give birth. The leave could be extended based on doctor’s suggestion.³⁶ And, working mother enjoyed a freedom to breastfeeding in an appropriate working environment.³⁷

Laborers’ working hours were limited to a maximum 7 hours per day or 40 hours per week.³⁸ They were entitled a half an hour rest during four hours of non-stop work.³⁹ Furthermore, housing for laborers was a company’s responsibility which was strictly written into a work agreement.⁴⁰ This Law favored laborers’ interests over the company by stressing more obligations and responsibilities for the company while giving many rights and dispensations for laborers.

These human right-driven policies were revolutionary in the context of 1940s.⁴¹ Nevertheless, it is important to note that this Law used the modern concept of work which is done by laborers, in return they earn wages. At that time, waged laborers were considered as a beacon of modernity and contributors to social and economic policy-making.⁴² This modern concept implies that labors unavoidably need and depend on the company more than the company needs them. This concept is the genesis of inequality in the industrial relation.

Soekarno’s administration not only regulated industrial relations, but also supervised both labors and company to obey the regulation. The 1948 Labor Supervisory⁴³ was a State’s preventive policy to hinder industrial dispute. Supervisors were state officials who have strong authority in investigate both laborers and company to follow up with reports and to collect evidence and proof.⁴⁴ The Law stressed that the supervisors in doing their jobs must respect, consult and coordinate with labor unions.⁴⁵ In a human rights perspective, this Law can be considered as a good practice of State’s positive obligation to ensure the fulfillment of the

³⁴ Law No 12 of 1948 on Work, art 6 and 9.

³⁵ Law No 12 of 1948 on Work, art 13 (1).

³⁶ Law No 12 of 1948 on Work, art 13 (2).

³⁷ Law No 12 of 1948 on Work, art 13 (4).

³⁸ Law No 12 of 1948 on Work, art 10 (1).

³⁹ Law No 12 of 1948 on Work, art 10 (2).

⁴⁰ Law No 12 of 1948 on Work, art 16 (1).

⁴¹ A.B Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-Legal Study of the Indonesian Konstituente 1956-1959*, (Jakarta: Pustaka Sinar Harapan, 1996), p. 33.

⁴² M. Ford, *A Victor’s History: A Comparative Analysis of the Labour Historiography of Indonesia’s New Order*, 51 *Labor History*, no. 4 (2010), 523-541.

⁴³ Law No 23 Of 1948 on Labor Supervisory.

⁴⁴ Law No 23 Of 1948 on Labor Supervisory, art 2 and 3.

⁴⁵ Law No 23 of 1948 on Labor Supervisory, art 3 (3).

Western concept of liberal rights in industrial sectors.⁴⁶ Nevertheless, in political optics, these populist policies could mobilize organized labor as a participant in the revolutionary struggle against the Dutch, who wanted to reclaim Indonesia when Alliance Forces won World War II. Organized labor could also be used as a counterpart in nation-building process to build an ‘imagined community.’⁴⁷

Strong support for laborers and labor unions were strengthened when Indonesia ratified the ILO Convention No. 98 on Rights to Organize and Collective Bargaining through the 1956 Ratification Law.⁴⁸ This ratification provided a foundational reasoning for stipulating the 1957 Industrial Dispute Settlement Law.⁴⁹ The Law regulated both regional and national mechanism of industrial disputes. The latter was designed as an appeal mechanism. For the first step of dispute resolution, the Law encouraged both parties to settle their interests amicably and if a consensus was reached, agreed clauses are transferred to amended work agreement.⁵⁰

However, if negotiation fails, state officials whose have two main authorities, mediator and investigator, can interfere with the dispute.⁵¹ If mediation fails, state officials can hand over fact finding materials to the Regional Committee for further consideration and settlement.⁵² The Regional and National Committee consist of representatives from the Ministry of Manpower, and four other ministries. There were five labor representatives, and five Company representatives.⁵³ The Regional Committee hosted the conference attended by both parties. Like arbitration, the settlement was binding, and its settlement authorized by the District Court.

Despite that the mechanism is bureaucratic and mostly driven by executive and administrative officials, the mechanism looks simple and applicable to perform. Moreover, the executive’s full involvement in industrial dispute settlement mechanism implies that the government has good intention to execute its positive obligation to fulfil human rights aspirations, particularly for laborers who have inferior bargaining positions to company.

⁴⁶ I. Tedjasukmana, *The Development of Labor Policy and Legislation in the Republic of Indonesia* (PhD Thesis, Cornell University, 1961), p. 10.

⁴⁷ Ford (2010), *supra* note 42, 526.

⁴⁸ Law No 18 of 1956 on Ratification of the ILO Convention No 98 concerning Rights to Organize and Collective Bargaining.

⁴⁹ Law No 22 of 1957 on Industrial Dispute Settlement.

⁵⁰ Law No 22 of 1957 on Industrial Dispute Settlement, art 2 (1) and (2).

⁵¹ Law No 22 of 1957 on Industrial Dispute Settlement, art 2 (3) and art 4.

⁵² Law No 22 of 1957 on Industrial Dispute Settlement, art 4.

⁵³ Law No 22 of 1957 on Industrial Dispute Settlement, art 5.

It is true that the legal system and characteristic are determined by political context.⁵⁴ Soekarno’s administration sentiment toward labor was slightly changed due to the shifting of government’s political paradigm into ‘Guided Democracy.’ Despised by liberal democracy that created unstable parliament, Soekarno abolished the parliament, and declared himself as a sole and long-life President of Indonesia (1959 – 1966). For the sake of political stability, Soekarno, in amidst of harsh conflict between the army and communist groups,⁵⁵ protected 23 vital companies from lock-out and restrict labor strikes which also meant limiting civil rights.⁵⁶ Additionally, to soothe the tension, Soekarno delegated a strong authority for the military to interfere in company’s internal affairs, a legacy that was capitalized by the next authoritarian regime. The reason for rights limitation was a warfare or emergency condition (*staatsnoodrecht*) which was reasonable. Soekarno himself called 1965 ‘a year of living dangerously’ (*vivere pericoloso*).⁵⁷ The 1965 political debacle lessened several vital Soekarno authorities. He was replaced by Soeharto, ‘the Smiling General,’ marking the beginning of authoritarian-developmental era.

2.2 Soeharto’s Authoritarian Era: Investment-Driven Government

The labor’s affair radically changed when Soeharto took over the presidential seat in 1966. Soeharto ceased the 1 May Day as a public holiday, and provoked that it was communist propaganda. To diminish the historical-revolutionary aim of the labor movement, he changed the concept of ‘labor’ into ‘worker’ or ‘employee’ in several formal documents, events and regulations.⁵⁸ Stigmatization of pro-communism was used to domesticate resistance labor movements. As a result, labors barely had rights for negotiation and significantly lost their bargaining position over companies.

Soeharto’s administration was economic-driven which made it pro-market and pro-investment. The shifting paradigm created a huge gap between labor and company while

⁵⁴ L. Alexander, *Law and Politics: What Is Their Relation?*, 41 Harvard Journal of Law & Public Policy, no.1, (2017), 355-363.

⁵⁵ H. Feith, *President Soekarno, the Army and the Communists: The Triangle Changes Shape*, 4 Asian Survey, (1964), 969-980, at 979.

⁵⁶ Law of the Highest Commander Chief No. 4 of 1960 on Preventing Labor Strikes and Lock-Out in Vital Companies. See also, Instruction of Deputy the Highest Commander Chief No. 1/D/02/Peperti/1960.

⁵⁷ Widjaja, *supra* note 5, p.46.

⁵⁸ Law No 14 of 1969 on Basic Labor Law, art 16.

discriminating against labor.⁵⁹ Indonesia was a capitalist state whose agents have sought to endorse particular group interests while trying to maintain legitimacy with citizens through an ‘active and continuous role’ in soothing the tensions and contradictions associated with capitalist development.⁶⁰ The government stipulated the 1969 Basic Manpower Law. The provisions, however, were overly-general, thus open to multi-interpretation from both by state officials and company. For instance, provision on the supervision of labor by state officials was not specific,⁶¹ as a result, it failed to protect laborers. In fact, laborers and their unions were suppressed. Laborer’s right of bargain was interfered by repressive responds from military. The repressive roles of military were so massive, it could even surveillance laborer’s activities, activists and critical labor union.⁶²

In contrast to Soekarno who encouraged labor to participate in the political sphere, Soeharto, on the other hand, abolished the biggest labor union in Indonesia, *Sentra Organisasi Buruh se Indonesia* (SOBSI), and created a government-based labor union, *Serikat Pekerja Seluruh Indonesia* (SPSI) on 20 February. To replace May Day, the government appointed 20 February as National Worker Day. The right of association and peaceful assembly (including a strike) was strongly intimidated by the military.

The World Federation Trade Union (WFTU) on October 1967 reported the governance for an allegation violation of human rights to ILO. Based on WFTU’s report, approximately 55.000 members of SOBSI were detained without trial. The Chairman and Secretary General of SOBSI were executed without proper investigation and trial. The government, however, refused to provide information or comments regarding the report. The report was closed without further investigations in 1971.⁶³

In this era, the government blatantly took the side of industrial development by encouraging capital intensive projects and foreign investment. Accumulation and productivity remained a dominant motive for government policies. For this, foreign investment is so crucial, and it will

⁵⁹ Ford (2010), *supra* note 42, 521.

⁶⁰ M. Ford and G.M. Sirait, *The State, Democratic Transition and Employment Relations in Indonesia*, 58 *Journal of Industrial Relation*, no. 2 (2016), 229-242.

⁶¹ Law No 14 of 1969 on Basic Labor Law.

⁶² H. Crouch, *The Army and Politics in Indonesia*, (Ithaca: Cornell University Press, 1988), p. 47.

⁶³ Interim Report – Report No. 114, 1970, Case No. 537 (Indonesia), complaint date: 21 September 1967, available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2899130>, accessed in 23 May 2019.

only come in if a state can guarantee political stability.⁶⁴ To enhance industrial pace, labor wages should be fully based on ‘negotiation’ between the government and companies, while legitimizing military strong involvement in labor dispute and ignoring labor aspirations.⁶⁵ The industrial dispute settlement was ineffective, because of several reasons: overly bureaucratic and complicated procedures, a high frequency of corrupt officials and the situation worsened by a strong bias toward companies and investors.⁶⁶

The wage policy was determined without public scrutiny or public knowledge.⁶⁷ This policy is known as ‘wage repression’ aiming to repress wages and cost to escalate economic gains, through the absence of proper minimum wage policy.⁶⁸ The government’s legitimation was pursued through promise of prosperity brought by the GDP economic development and the stability of political order; wage policy was an effective instrument to enable the developmentalist-authoritarian government to control labor, in the perceived interests of economic development. In this setting, the government was not in a neutral position, but it dominated almost all of the process of wage policy. Unfortunately, the activity of the government was detrimental for labor and unions, as it strongly privileged capital and investment flows.

2.3 Post-Authoritarian: Toward Neo-Developmentalism

Despite Soeharto’s rule ending in 1998, the remnants of authoritarian-developmental policies are still manifested today. The capitalist influences have been strongly protracted in Indonesia’s soil, making the industrial relation very hard to be reformed. However, there were significant progresses: the third president of Indonesia, B.J. Habibie ratified the ILO Convention No. 87 Year 1945 into national law through a ‘Presidential Decree (Law No. 83 of 1998) which bypassed the legislative procedure through the legislature. The government issued the 2000 Labor Union Act which guaranteed freedom of association for labor unions.⁶⁹ Despite laborers

⁶⁴ D. Collier, *The New Authoritarianism in Latin America*, (Princeton: Princeton University Press, 1979) p. 400.

⁶⁵ V. R. Hadiz, *Buruh dalam Penataan Politik Awal Orde Baru*, 7 Prisma (1996), 3-15 at p. 7.

⁶⁶ Manning (1998), *supra* note 15, p. 215.

⁶⁷ I. Fehring and T. Lindsey, *Indonesian Labour Law Under the New Order: The Military and Prospects for Change*, 7 Working Paper (Melbourne: Melbourne University, Centre for Employment and Labour Relations Law, 1995), p. 6.

⁶⁸ Widjaja, *supra* note 5, p.162.

⁶⁹ Law No. 21 of 2000 on Labor Union.

having the right to establish their independent union, the prosperity of laborers is still undermined through an unequal deliberation processes in the Wage Council. As a post-authoritarian state, Indonesia was pressured by the ‘twin pressures’: democratization and neo-liberal economic reform.⁷⁰ The strongest effect of these pressures are the neutrality of state in labor policy which leads to ‘flexibilization’ or ‘deregulation’ of labor law by implementing low minimum wage policy.

The fourth president was Abdurrahman Wahid (Gus Dur), a civil-society activist and Islamic philosopher. He established a strong fundamental of democratization processes, particularly in labor issues. The government through the Ministry of Manpower issued the 1999 Ministry of Manpower Regulation on Minimum Wages which stressed an obligation to companies to uphold the minimum standard and wages for labor.⁷¹ The government also re-established the spirit of labor activism by stipulating the 2000 Law on Labor Union.⁷² However, the Gus Dur administration was short-lived, because of his harsh conflict with the parliament. Megawati Soekarnoputri replaced his position as the fifth and the first woman president of Indonesia.

Megawati significantly contributed to labor policy. The current positive laws of labor were stipulated in her era. The 2003 Worker/Labor Law⁷³ and the 2004 Industrial Dispute Settlement Law provide norms for labor affairs.⁷⁴ Despite the reform, Megawati’s Labor Law initiatives were strongly imposed by ILO which has a market liberalization agenda.⁷⁵ In the Susilo Bambang Yudoyono (SBY) administration, particularly in his first presidential period (2004 – 2009) there were insignificant efforts for labor’s prosperity. The government even strengthened the policy of outsourcing workers. Only in 2013, a year prior to his retirement as a president, SBY reestablished the 1st May Day as a public holiday nationally, a rather symbolic policy from the Executive.

The current president, Joko Widodo (Jokowi) is relatively responsive to laborers’ demands. However, the characteristic of labor laws are still pragmatic and reluctant to support labor’s aspirations. Unlike in the Old Order regime of Soekarno who strongly supported labor’s rights, the current acts set down the government policy in a ‘neutral,’ mediating between labor and

⁷⁰ Widjaja (2016), *supra* note 5, p.73.

⁷¹ Regulation of Ministry of Manpower No 1 of 1999 on Minimum Wages.

⁷² Law No 21 of 2000 on Labor Union.

⁷³ Law No 13 of 2003 on Manpower.

⁷⁴ Law No 2 of 2004 on Industrial Dispute Settlement.

⁷⁵ Widjaja (2016), *supra* note 5, p.74

company. This ‘neutrality’ policy is pragmatic, as justice or equilibrium between the two cannot be reached when the condition is unbalance. The neutrality policy is intertwined with the policy of minimum wages policy which benefit companies while discriminating laborers.

Moreover, in 2018, several civil society organizations challenged the constitutionality of the 2003 Manpower Law to the Constitutional Court, but the Court rejected all the judicial reviews.⁷⁶ As a result, several articles on outsourcing (contracted worker), labor supervisory and salary threshold are still constitutional. These vested-interest articles are claimed as the sources of injustice and discrimination for labor. Additionally, Jokowi, when delivering a victory speech on his success in winning the 2019 Presidential Election, stressed the government’s development focus in investment by soothing the mechanism of investment permits in Indonesia.⁷⁷ This is a strong indicator that companies would remain superior in industrial relation while the rights of labor would be more suppressed. The next section discusses the legal texts and their underlying issues.

3. ‘Legal Text’ Issues: ‘State Neutrality’ in Wage Policy

As a result of transplanting international norms on labor management, the spirit of market liberalization and investment-based development have both strongly influenced Indonesia’s labor laws. Those international norms require the state to limit its interference on economic affairs, including industrial relation between labor and company. In a narrow sense, minimum wage policy has been determined by tripartite discussion in the Wage Councils which has a diverse range of national and regional level social, economic, political and ideological factors. It may be concluded that minimum wage policy is the product of economic, political and ideological conflict and compromise which emerge between diverse interest groups in the pluralistic society.⁷⁸ The National Wage Council, as a tripartite based-institution, made up of 23 constituent members, including ten government officials, five labor unions representatives, five company representatives, and three academics and economic experts. The ration of the Council is of 2: 1: 1

⁷⁶ The Indonesian Constitutional Court Decision No. 012/PUU-I/2003 on Manpower.

⁷⁷ *Jokowi’s March of Progress*, The Jakarta Post, 16 July 2019, available at: <<https://www.thejakartapost.com/academia/2019/07/16/jokowis-march-of-progress.html>>, accessed in 18 July 2019.

⁷⁸ Widjaja (2016), *supra* note 5, p.162.

respectively.⁷⁹ In practice, however, labor’s aspirations on minimum wages, have often been suppressed by the company and investment interests.

Legally speaking, the post-authoritarian governments have created legal improvements in the empowerment of labor unions to be involved in strategic discussions on the minimum wage policy through the Wage Councils established in the regions. However, the bargaining position of labors and their unions have remained weak, due to the weakness in the government’s political willingness to leverage labor position in industrial relation. One piece of evidence is the 2015 Government Regulation on Wage,⁸⁰ which creates injustice and discriminatory policies through the several restrictions and contradictory norm are imposed, as follows:

First, employers or companies have no obligation to pay labor’s wages if labor exercises their labor union activities (including strike).⁸¹ This provision is clearly a violation of labor’s right for freedom of association and peaceful assembly by negating the role of labor unions to express their opinions through strike.⁸² It is also in conflict with the Labor Law which guarantees the right to strike for labor. In other words, wages are still paid while laborers exercise their right to strike. Additionally, the Government Regulation on Wage only stipulates administrative sanctions to companies who have not fulfilled their financial obligations towards employees. This provision also contradicts the 2003 Labor Law that regulates the criminal sanction for companies who refuse to pay labor’s wages.⁸³

Thirdly, the review of *Kehidupan Hidup Layak* or KHL figure, Decent Living Needs figures as a parameter to increase labor’s wages by the Regional Wage Council is only reviewed once in five years,⁸⁴ which is insufficient to sustain labor’s daily needs and basic costs of living. This low wage is not sufficient to provide effective protection for labors. The labor’s wage remains at a level at which 40% - 50% of average salaries are used to meet minimum food requirements.⁸⁵ The previous regulation was more logical by reviewing KHL figure through market survey every month for a period of ten months.

⁷⁹ Ministry of Manpower and Transmigration Regulation Number 3/Men/1/2015 on the Requirements for the establishment, operation and membership of the National Wage Council.

⁸⁰ Government Regulation No 78 of 2015.

⁸¹ Government Regulation No 78 of 2015, art 24.

⁸² Law Number 13 of 2003 on Labor, art 101 (2).

⁸³ Law Number 13 of 2003 on Labor, art 89 (3).

⁸⁴ Government Regulation No 78 of 2015, art 43 (5).

⁸⁵ J. Merk, *Stitching a Decent Wage Across Borders: The Asian Floor Wage Proposal*, (Amsterdam: Clean Clothes Campaign, 2009).

The most fatal provision is, that the government increases labor wage by considering the trend of inflation and national economic growth.⁸⁶ Consequently, labor’s minimum wage would only increased by 8% - 10 % per year. This government regulation not only disregards and fails to fulfil basic labor’s needs, but also contradicts the Labor Law. The 2003 Labor Law states that the sole parameter to increase labor’s wage is the KHL figure which is based on a survey conducted by the Regional Wage Council. The trend of inflation and national economic growth are macro-economic variables that could not be easily implemented in several regionals.

These legal issues are worsened by the inactivity of government’s supervision in industrial relations. The supervisors are state officials and they have the authority to mediate and settle dispute among labor and the company. However, their roles are in preventive mode, making supervisory ineffective. The government officials are reluctant to respond and investigate reports of violation from labor unions, because they fear a withdrawal of investment. A lack of compliance by companies and a lack of assertive enforcement by the government have diminished the positive impact of tripartite discussions in the Wage Council. As a result, the labors and their unions fight alone while the government pretends to remain ‘neutral’ in a discriminatory condition, let alone provide social security scheme for vulnerable groups.

This discussion shows that minimum wage policy, including its legal norms and implementation are promoted by neo-liberal economic paradigm which extols rapid development and attracts investment while imposing strong limitations of the state’s role in industrial relation. In other words, the government is reluctant to empower labor unions and afraid to place wage setting fully in the hands of collective bargaining.

4. Islamic Values on Industrial Relations

This section is an examination of several Islamic values stipulated in Islamic Law sources: The Quran (it is believed to be the word of God and the primary source of Islamic Law) and Hadith (which contains three aspects: sayings, deeds and approval or disapproval of other’s acts by the Prophet Muhammad). Nevertheless, it is also noteworthy that the Quran and Hadith do not discuss explicitly modern labor management issues which were nonexistent in the early stages of Islam (approximately 1,500 years ago). Therefore, Islamic scholars’ arguments (*fiqh*) which

⁸⁶ Government Regulation No 78 of 2015, art 43 (8) and art 45 (4).

derive from several methods such as *ijma* (consensus of Muslim jurists) and *qiyas* (analogical method) enrich this study.

This section provides arguments to adopt Islamic values into the ‘context’ of Indonesia, as a Muslim population country. However, it is noteworthy that the legal transplantation is still in a framework of secularity, without trying to formally Islamize the legal system.

4.1 Private Relations between Labor and Employer in Islam

This section consists of two parts or arguments. Both sections have different theoretical standings. The first section is the elaboration of ‘private sphere’ between labor/employee and employer from the Islamic perspective. In this regard, the perspective of egalitarianism is stressed.⁸⁷ The notion derives from the oneness and equality of both parties. Thus, this section will elaborate on the ethical concepts of work and non-discriminatory principles in Islam. The second part is the exploration of ‘public sphere’ that can be opened for State’s interventions in labor affairs. This section uses a pro-justice perspective that requires the empowerment of labor union by the government in order to create justice.⁸⁸ This paper argues that public interests are more superior than private matters, thus the government can strategically interfere with strategic aspects of industrial relations: minimum wage and labor’s social welfare.

4.1.1 Ethical Concepts of Work

Conceptually, in Islam, the noble aim of work defines its definition. The aim of work is not merely about materialized aims: obtaining the wealth, pleasure and all the physical pleasure as the goal of human effort and productivity consideration, but more on an ethical understanding of the role of the divine in human existence, not only in the sense of spirituality, but also socially. Work is an imperative necessity and it is equated to spiritual fulfillment, which consists not only duty but also obligation. The Quran asserts: “And say: ‘Work (righteousness): soon Allah will

⁸⁷ Al-Faruqi’s arguments on I. Al-Faruqi and G. Al-Banna, *Toward Islamic Labour and Unionism*, (Geneva: Le Caire, The International Islamic Confederation of Labour, 1985), pp. 12-14.

⁸⁸ *Ibid*, p. 67.

observe your work, and His Messenger and the believers ...”⁸⁹ In Islamic literature, the most proper concept of work is *amal* meaning work or labor and act or deed.⁹⁰

It is important to note that work in Islam should be in a lawful manner (*halal*) and laborers are advised to perform their duties to the best of their abilities, then it would be considered a religious observance and leads to diminishing of sins. The Quran stresses work as a source of honor, “And there is nothing for a reason except what he strives for.”⁹¹ The Prophet Muhammad said: “Allah (God) loves those believers who labor to earn a living through lawful means.”⁹² Furthermore, the Prophet said: “The worker, if employed, and takes what is right and gives what is right, is like a *mujahid* (struggler in the cause of Allah or *jihad*) until he or she returns home.”⁹³ There are many ideal examples of labor in the Quran, for instance the Prophet Dawood (David) who was a blacksmith,⁹⁴ Prophet Nuh (Noah) who constructed a boat and Prophet Musa (Moses) who tended sheep,⁹⁵ and constructed a wall.⁹⁶ Those Prophets are narrated by the Holy Qur’an as honest and trustworthy (*amin*) and strong and competent (*qawi*) workers.

4.1.2 Balanced and Non-Discrimination Relation Between Labor and Employer

Work as a bilateral or private relation between labors and employer has many normative orders in Islam, as the relationship has pivotal roles in the functioning of society.⁹⁷ Despite the fact that social divisions (poor and rich, and labor and employer) are unavoidable in any community, these divisions should not be the instrument to exploit others. Islam has elevated the status of humans (both male and female) as *khalifah* on earth.

“ Mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that you may know each other (not that you may despise each other).

⁸⁹ Quran Surah At-Tawbah, verse 105.

⁹⁰ I. Ahmad, *Religion and Labor: Perspective in Islam*, 14 *The Journal of Labor and Society*, (2011), 589-620, p.595.

⁹¹ Quran, Surah An-Najm, verse 39.

⁹² Hadith, Al-Tabarani.

⁹³ A. Bayat, *Work Ethics in Islam: A Comparison with Protestantism*, 36 *The Islamic Quarterly*, no. 1, (1992), 5-27, p. 22.

⁹⁴ Quran Surah Saba’, verse 10-11.

⁹⁵ Quran Al-Qasas, verse 26-27.

⁹⁶ Quran, Surah Al-Kahf, verse 77.

⁹⁷ C.M. Umer, *Islam and the Economic Challenge*, *Journal of Islamic Economy* (1992), p. 253.

Verily the most honored of you, in the sight of God, is (he who is) the most righteous of you. And God has full knowledge and is well acquainted (with all things).”⁹⁸

This verse stresses that humans are equal. Thus discrimination on the basis of race, sex, religion, etc is unaccepted in Islam. This equality and non-discriminatory values were also expressed in the last sermon of Prophet Muhammad, saying “No Arab has any supremacy over non-Arab, nor does a non-Arab have any supremacy over an Arab. Nor does a white man have any supremacy over a black man, and *vice versa* ... You are all the children of Adam, and Adam was created from clay.”⁹⁹

As a *khalifah*, human has an obligation to exercise ethical ordering in industrial relation aiming to create a balanced position between labor and employer. Islam condemns social classification of people based on occupation and rejects a materialistic dichotomy of people into working and ruling classes. Thus the employee and the employer are supposed to be equal.¹⁰⁰ The Quran uses two concepts to depict justice. First is *adl* which means the balanced way, and the second one is *qist*, which means to acknowledge people’s rights and to prove people with their rights.¹⁰¹

Islam teaching stresses that employers should be kind-hearted, generous and honest with their labors in particular and with every members of society in general. “God loveth those who are kind.”¹⁰² There is no room for fraud and cheating in business dealing. An employer is ethically bound to not mistreat his or her subordinate (laborers) in awful ways. Allah orders:

“O You who believe! Eat not up your property, among yourself in vanities. But let there be amongst you traffic and trade, by mutual goodwill. Nor kill (destroy) yourself; for verily God hath been to you. Allah is the most Merciful.”¹⁰³

Moreover, The Prophet said: “One who mistreats those under him/her will not enter paradise.”¹⁰⁴ The record of the Messenger of Allah said: “A true and honest employer will be with the prophets, the truthful and the martyrs on the Day of Judgement.”¹⁰⁵ A Muslim scholar

⁹⁸ Quran, Surah Al Hujurat, verse 13.

⁹⁹ *The Last Sermon of Prophet Muhammad*, available at: <https://www.huffpost.com/entry/the-last-sermon-of-proph_b_1252185>, accessed in 23 June 2019.

¹⁰⁰ J. Syed, *An Islamic Perspective of Industrial Relations: The Case of Pakistan*, 5 Journal of Management, Spirituality and Religion, no.4 (2008), 417-440, p. 422.

¹⁰¹ Ahmad (2011), *supra* note 90, p.602.

¹⁰² Quran, Surah Al-Ma’idah, verse 13.

¹⁰³ Quran, Surah An Nisaa, verse 29.

¹⁰⁴ Hadith, Al-Tirmidhi.

¹⁰⁵ *Ibid*.

asserts that the basic necessities of an employer and employee should be the same, thus the number of working hours should be fixed according to the capacity of workers. If the workload is too much, then they should work together to lessen the burden.¹⁰⁶

Despite the fact that Islam considers rights of laborers and employers equally, the duties of employers are more crucial because they are the provider of work who should protect their labor’s human dignity, as the Prophet said: “... the duty of employers to take only such work from their labors which they can do with ease.”¹⁰⁷ Another report for Hadith says “don’t (overly) burden your labors with work that he or she cannot cope with.”¹⁰⁸ Moreover, employers should also seriously consider labor’s right to rest and leisure,¹⁰⁹ Islam regards them as the core rights of laborers. Umar bin Abu Thalib, the second Caliph demonstrated these rights by giving paid leave of absence to the soldiers stationed in far-off areas. He ordered that no troops should be compelled to stay away from their family for more than four months.¹¹⁰

Furthermore, the Qur'an also urges its believers to abide by all types of contracts and agreements in order to uphold the principle of justice. This rule is equally applicable to collective or individual agreements between employers and laborers.

“When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing ... whether it is be small or big; it is juster in the sight of God, more suitable as evidence, and more convenient to prevent doubts among yourselves.”¹¹¹

The Quran obligates people to keep their commitment after they agree and sign the agreement.¹¹² The contract itself should preferably be written to secure legal certainty for both parties and to reduce doubt. The Quran says “do not try to avoid writing the contract whether it is small or large, along with its due date and contract term ...”¹¹³ The parties must fulfil the obligations, because Allah despises a person who is contracted to do something but does not

¹⁰⁶ Hadith, Al-Bukhari. *See also*, Maulana Manazir Ahsan Gilani’s statement in Khalil-ur-Rahman, (Islamabad: Xlibris, 2010), p. 76.

¹⁰⁷ Al-Tirmidhi, *supra* note 104.

¹⁰⁸ Hadith, Al-Muwatta, Muslim.

¹⁰⁹ Quran, Surah Al-‘Ankabut, verse 73, Surah Al-Ahzab, verse 35.

¹¹⁰ M. S. Numani, *Omar The Great (The Second Caliph of Islam*, translated by M. Saleem (Lahore: Sh.M. Ashraf, 1962), p.74.

¹¹¹ Quran, Surah Al-Baqaroh, verse 282.

¹¹² Quran, Surah Al-Baqaroh, 177, Surah Al-Mu’minun, verse 8, Surah Al-Ma’arij, verse 32.

¹¹³ Quran, Surah Al-Baqaroh, verse 282.

fulfil the obligation.¹¹⁴ In contracts, there are many terms discussed including rights and contractual obligations which both parties should uphold. They should abide by their agreement unless there are conditions written in the agreement which are unlawful and detrimental for one of the parties. Islam does not permit any agreement which brings detrimental effects on any party. In a positive tone, Islam supports fixed term contracts, not contracts of an indefinite duration or lifetime employment, as the contract should be renewed based on context and performance.¹¹⁵

In this private relation between labor and employer, egalitarian theorists claim that Islam stands for both laborers and employer rights. They both have equal rights, and entitled to live in dignity. As a consequence of this notion, laborers are obligated to fulfil what their employers have hired them to do.¹¹⁶ This paper, however, considers that this egalitarian argument is a normative theory meaning it can only work in an ideal condition. Surrendering laborer’s rights in the good intentions of employers is rather naïve. This paper acknowledges that there are some pure private rooms in industrial relations, but when there is a signal of unbalanced position in the relations, the government could strategically interfere, particularly in several strategic areas: wage policy and empowerment of labor union.

4.2 ‘Public Sphere’ in Labor Affair – Room for State Empowerment

Theoretically, Islam does not allow intervention by the government in private or bilateral affairs between laborers and employers, particularly regarding the discussion of minimum wage policy. However, similarly to the Western tradition that strives to welfare state to protect labor’s rights, the State intervention is allowed, particularly when market imperfections are creating injustice in labor’s wages, unbalanced and discriminatory industrial relation.¹¹⁷

The welfare state visions have been practiced by the second Caliph, Umar bin Khattab, who stressed that everyone has an equal right in the wealth of the society, and no one enjoys a greater

¹¹⁴ Quran, Surah An-Nahl, verse 2-3.

¹¹⁵ Ahmad (2011), *supra* note 90, pp. 602-603.

¹¹⁶ Al-Faruqi and Al-Banna (1985), *supra* note 87, p. 16.

¹¹⁷ S. Tahir, Economic Teaching of Prophet Muhammad in M.A. Choudhury, M.Z. Abdad and Muhammad S. Salleh (eds), *Islamic Political Economy in Capitalist Globalization*, (Kuala Lumpur: Utusan Publication, 1997), pp. 335-377.

right than anyone else.¹¹⁸ The fourth Caliph Ali is also reported to have stressed that “God has made it mandatory for the rich to provide the poor; if the poor are hungry or naked or troubled it is because the rich have deprived them (of their right), and it will be proper for God to hold them accountable for this and to punish them.”¹¹⁹

In the context of industrial relation, the noble purpose of a welfare state is the duty of the government in general and employer in particular to take care of the basic needs of the labors. If the employer does not fulfil this duty despite the fact they have ability to do so, then the government can and should compel them. This social-oriented policy is corresponded to the values of Prophet Muhammad who said: “He is not a true Muslim, he who eats his fill when his next door neighbour is hungry.”¹²⁰

Moreover, in the discourse of *maqasid al-shari’ah* as a philosophical purpose of Islamic ruling, the purposes are mostly public interests (*al-masalih al-ammah*),¹²¹ including to preserve faith, soul, wealth, mind, and offspring.¹²² Those five purposes have overlapped each other,¹²³ the over-arching purpose is to protect human honor.¹²⁴ Under *maqasid al-shari’ah*, the government intervention for the sake to the fulfilment of some good (*maslahah*) or to avoid some mischief (*mafsadah*) is legitimate.¹²⁵ The Prophet described “blood, money and honor of every Muslim’ as a sanctuary that is not to be breached.”¹²⁶ Clearly, Islam’s standing is to empower the poor, the have-nots and disadvantaged people. One of the mechanisms to empower labors is determined by the minimum wage policy. This section will elaborate on inter-linked areas of interest that State could penetrate.

4.2.1 Managing Just Wage in Islamic Perspective

¹¹⁸ Numani (1962), *supra* note 110, p. 103.

¹¹⁹ A.'Ubayd, *Kitab al-Amwal*, (Cairo: 1909), p. 595.

¹²⁰ Hadith, Al-Bukhari.

¹²¹ A.M. Al-Juwayni, *Ghiath al-Umam fi Iltiyath al-Zulam*, ed. Abdul-Azim al-Deeb (Qatar: Wazarah al-Shu'un al-Dīniyyah, 1400), p.253.

¹²² J. Auda, *Maqasid al-Shariah as Philosophy of Islamic Law, A System Approach* (London, Washington: The International Institute of Islamic Thought, 2007), p.3.

¹²³ G. Attia, *Nahwa Taf'il Maqasid al-Shariah*, (Amman: al-Ma'had al-Alami li al-Fikr al-Islami, 2001), p.45.

¹²⁴ Al-Ghazali, *al-Mustafsa*, vol. 1, p.172.

¹²⁵ S. Al-Qarafi, *al-Dhakhirah*, (Beirut: Dar al-Arab, vol. 5, 1994), p.478.

¹²⁶ Hadith, Al-Bukhari.

In reference to Islamic civilization, when the equilibrium in the market is at a low level and laborers are suppressed by vested-interests, the government can compel employers to provide *ujra mithl* or a prevailing wage.¹²⁷ The government sets a minimum wage for industries so that laborers are not exploited by free-market mechanism. The considerations correspond to *maqasid* which are public matters and utilities. The government, as a duty bearer, has an obligation to review and change a minimum rate of wage for labor, aiming to prevent laborers from being oppressed by the employer.

As narrated by Iman Abu Ya’la, the duty of the government is to be protective, not only of human dignity (similar concept to honor which is stressed by *maqasid*), but also of animals. When the animals (camels or buffalos) work beyond their capacity, even the government should stop the owners from mistreating their working animal.¹²⁸ Using analogical deduction or *qiyas*, laborers who are human with a higher level of dignity than animals, should be protected by the government when they are in unbalanced working conditions.

The *ratio* why the government should interfere minimum wage policy which is discussed between parties is because wages are rights, as in the following verse, “those who believe and perform honorable deeds (good and finished work) ... their earning will never be withheld from them.”¹²⁹ Wages, according to Islamic principles, should be determined prior to work (fixation of wages) and laborers should be explicitly informed about the wages that he/she will obtain after finishing his/her work.

Wages should also be immediately paid after work is finished. The Prophet said: “Give the laborer his wages before his sweat dries.”¹³⁰ This suggests that payment should be made as soon as possible after the work is done, and not to be delayed. The Prophet also said: “Allah says, there are three people whom I shall be opposed to ... [One of them is] a man who hires a laborer, makes use of his service and then does not give him his wages.”¹³¹ In the practice of industrial relation in Indonesia, this Islamic value is not implemented. Companies have often delayed the payment with several excuses, one of the reasons being that the laborers exercise their labor union activities, including strikes. Disobedience of companies happens because a weak

¹²⁷ J. S. Islam, M.R. Islam, M. Islam and M.A.H. Mughal, *Economics of Sustainable Energy: The Islamic Track of Economical Analysis*, (New Jersey: John Wiley & Son), p. 372.

¹²⁸ A. Ya’ala and A. Al-Farra’, *Al-ahkam al-sultaniyya*, (Cairo: Mustafa al-Babi al-Halabi, 1966), p. 91.

¹²⁹ Quran, Surah At-Tin, verse 6.

¹³⁰ Hadith, Ibn Majah.

¹³¹ Hadith, Al-Bukhari.

punishment for them. The Government Regulation on Wage only stipulates administrative sanctions to companies who have not paid due wages to their employees.¹³² Clearly, the government favors companies’ interest rather than labors’ rights.

Islam commands that labor should be paid through reasonable monetary compensation, which should be sufficient enough to afford the basic necessities of life. Islam is not only concerned about a minimum level of wage, but also a just or ‘living wage.’ Anas who served the Prophet Muhammad, specifically stated that “The Prophet never paid a low wage to any person.”¹³³ The payment should be at least at a level that would enable laborers to fulfill all their and their families’ essential or basic necessities in a humane manner. The Quran says: “family head (mostly father) should support women and their children and clothe them in *ma’aruf* (properly).”¹³⁴ The *ma’aruf* word can be interpreted as “in accordance with the norm of time and space.”¹³⁵ Contextually, the definition of proper wage should meet basic necessities at the present time, which should be in accordance with the economic condition and needs.

Furthermore on the interpretation, what is 'basic' can be fitted in with Abu Ishaq al-Shatibi's useful division of goods into ‘necessities’ (*darurat*), ‘wants’ (*hajiyyat*), and ‘luxuries’ (*tahsiniyyat*).¹³⁶ The division suggests that necessities are what are needed for subsistence and are ‘indispensable’ for human survival.¹³⁷ Wants are items that upgrade one's ‘quality of life’ while removing ‘bearable hardship and difficulty.’ Finally, luxuries are products that ‘add beauty” to one's life.’

The Quran and Hadith provisions (and their interpretation) have stressed both to the minimum and just wage, and specifies that the minimum wage aims to elevate laborer’s right of welfare (to meet basic needs) by giving a capacity to evolve.¹³⁸ These provisions are in line with the Human Rights Principles for “just and favorable remuneration,”¹³⁹ and also with the criterion set out by the International Labor Organization (ILO) which specifically defines basic needs to include “minimum requirements of a family for private consumption, notably food, shelter and

¹³² Government Regulation No. 78 of 2005 on Wage, art 59.

¹³³ Hadith, Al-Bukhari.

¹³⁴ Quran, Surah Al-Baqaroh, verse 233.

¹³⁵ Ahmad (2011), *supra* note 90, p. 598.

¹³⁶ M. Kahf, *The Islamic State And The Welfare State: Similarities And Differences*, in Readings In Public Finance In Islam, M.A. Gulaid and M.A Abdullah (eds), (Jeddah: IDB, 1995), p.57.

¹³⁷ *Ibid.*

¹³⁸ Auda (2007), *supra* note 122, p. 4.

¹³⁹ General Comment No 23 of 2016 on the Right to just and favorable conditions of work. It interpreted art 7 of the International Covent on Economic, Social and Cultural Rights.

clothing, and essential services provided by and for the community at large, such as safe drinking water, sanitation, public transportation, and health and education facilities.”¹⁴⁰

In the practice of early Islamic civilization, the government has an active role in surveying market prices to fairly determine labors’ minimum wage. It was the practice of Prophet Muhammad to inspect markets and check the price, conditions and quality of products.¹⁴¹ The inspection activity conducted by the government aims to determine fixation of wages which should be set considering the prevailing conditions such as regional price differences and needs.¹⁴² The second Caliph, Umar bin Khattab, was reported to determine minimum wages taking into consideration the real price or condition prevalent in the city and the laborers’ personal needs.¹⁴³

This mediaeval practice emphasizes the good governance principles, which is lacking in today context. The Indonesian government would only increase labor wages by considering the trend of inflation and national economic growth.¹⁴⁴ In other word, the government surrenders labor’s economic prosperity under the realm of neo-liberal paradigm. The income of labors would only be only increased around 8% - 10 % per year which is economically insufficient to provide labors’ needs.

Historically speaking, the market inspector (*hisbah* or *muhtasib*) who had a similar role with ombudsman which roles were to enforce what is ordained by Islam (*ma’aruf*) and to forbid and prevent what is improper (*munkar*). The more specific institution dealing with market inspection was first introduced during the time of Umayyad Caliph, Hisham ibn Abd al Malik (743 A.D).¹⁴⁵ *Hisbah* has a pivotal role to ensure that labors are not exploited by employers through work overload while giving them less than due wages. At the same time, *hisbah* also has to protect employers when laborer demands a higher (or unrealistic) payment.¹⁴⁶ This institution also has a role as a mediation forum when both parties lodge a complaint, and the duty is to provide justice to both parties.¹⁴⁷

¹⁴⁰ *The World Employment Programme at ILO*, available at: < https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_193047.pdf>, accessed in 23 July 2019.

¹⁴¹ Ahmad (2011), *supra* note 90, p.594.

¹⁴² *Ibid*, 598.

¹⁴³ *Ibid*.

¹⁴⁴ Government Regulation No 78 of 2015, art 43 (8) and art 45 (4).

¹⁴⁵ Ahmad (2011), *supra* note 90, p.594

¹⁴⁶ Ya’ala (1966), *supra* note 128, p.91.

¹⁴⁷ *Ibid*.

The Islamic values and practices discussed above are not implemented in Indonesia’s wage policies. The Indonesian government is inactive in supervising industrial relation. Despite the fact that the supervisors are state officials and they have the authority to mediate and settle industrial disputes, they are reluctant to respond and investigate reports of violation from labor unions, because they are concerned to lose investment. Thus, the supervisory is ineffective.

Furthermore, KHL (*Kehidupan Hidup Layak*) figure or a Decent Living Needs figure, as a parameter to increase labor’s wage by the Regional Wage Council, is only reviewed once in five years.¹⁴⁸ This long period of review is clearly insufficient to depict labor’s daily needs and basic costs of living. This low wage is insufficient to provide effective protection for labors. The government has strategic and overarching roles and responsibilities to conceptualize fair wages for labors in the provision of collective/public goods, such as establishing labor standards, inspection and enforcement system.

4.2.2 Protecting Labor Union and its Collective Bargaining

One of the areas where the government can passively protect labor’s rights is through a responsive and democratic facilitation of labor unions. The establishment of labor unions is part of freedom of association and peaceful assembly which is guaranteed by the Human Rights Principles.¹⁴⁹ In this regard, the government has negative obligation to guarantee the exercise of freedom. However, negative obligation does not mean that the government can not empower labor unions. Labor association has crucial roles; it can be a tool of ‘unjust’ legitimization of the status quo, or to be used a spearhead of reform.¹⁵⁰ The pro-labor theorist says: “ ... labors are still exploited, and the condition of work is inhumane, labor unions were established to prevent these gross violations and elevate labors to live a decent life.”¹⁵¹ In this regards, the government’s pro-active role relates to the purpose of Islamic ruling by giving labor unions a capacity to evolve.¹⁵²

¹⁴⁸ Government Regulation No 78 of 2015, art 43 (5).

¹⁴⁹ *See generally*, The International Declaration of Human Rights, art 20 and 23. *See also*, The International Covenant on Civil and Political Rights, art 22. *See specifically*, The ILO Convention on Freedom of Association and Protection of the Rights to Organise No. 87 of 1948.

¹⁵⁰ N.N. Ayubi, *Political Islam, Religion and Politics in the Arab World*, (New York, 1991), p.61.

¹⁵¹ Al-Faruqi and Al-Banna (1986), *supra* note 87, p. 67.

¹⁵² Auda (2007), *supra* note 122, p. 4.

Islam encourages the collective association, including labor unions, as long as the legitimate aim is to against injustice and discrimination, and for the propagation of virtue and righteousness.¹⁵³ The Quran compels formation of a group, if not the whole community, to do good deeds, command what is proper and forbid what is improper.¹⁵⁴ The aims of both Islam and labor unions are justice, and so the government should to promote and protect. Islam allows labor to exercise strike, as an instrument to undo injustice, but with some limitation and derogation to prevent disruption in society.¹⁵⁵ Clearly, this Islamic value is contradictory to the current labor policy in Indonesia, where labors will not be paid by the employer if they are exercising their labor union activities, including strike.¹⁵⁶ In other word, the government of Indonesia does not wholeheartedly embrace the protection of freedom of association and peaceful assembly for labors.

The main reason why empowerment of labor unions by government is so pivotal is because it is inter-linked with an effective collective bargaining in industrial relations. The more powerful the labor unions, the more likely they can protect their own rights. Collective bargaining is so pivotal to contracts between parties. The contracting parties should be free from intimidation and fears. The contract should be done by popular participation. Both parties are obligated to have equal consultation prior to writing a working contract. Islam encourages consultation in following verses: “their affairs (businesses) are conducted through consultation among themselves”¹⁵⁷ and “let each of you accept the advice of the other in a just way.”¹⁵⁸ Consultation has a positive outcome for both laborers and employer as it allows the increase of mutual cooperation between both parties.

In practice most of the time both parties are not on equal footing, let alone have a mutual respect in consultation, because employer, as the provider of work, surely has greater bargaining power and position. Labor who needs work is in an inferior position, thus most working contracts are merely ‘submission contracts.’ In the view of the Islamic pro-labor perspective, this is not a legitimate contract.¹⁵⁹ In this unbalanced situation, both labor and unions are not strong enough to protect their rights. The government should act progressively as a guardian of labor’s

¹⁵³ Quran, Surah At-Tawbah, verse 71.

¹⁵⁴ Quran, Surah Ali Imran, verse 104.

¹⁵⁵ Quran, Surah Al-Mai’dah, verse 64 and Quran, Surah Ash-Shu’ara, verse 152.

¹⁵⁶ Government Regulation No 78 of 2015, art 24.

¹⁵⁷ Quran, Surah Ash Shura, verse 38.

¹⁵⁸ Quran, Surah At-Talaq, verse 6.

¹⁵⁹ Al-Faruqi and Al-Banna (1986), *supra* note 87, p. 67.

rights, because only the government can face employer on an equal footing. This progressive policy corresponds to Islamic values which call for a guardian to help the marginalized or vulnerable people in a contract who are under pressure due to economic, physical and political advantages.¹⁶⁰

5. Conclusion

The current Indonesian government has only slight differences with previous governments, particularly the New Order Regime under Soeharto. The current government is a developmentalist, pro-market and investment, while still acting ‘neutral’ in unbalanced industrial relation. The practice of the Old Order (before the ‘Guided Democracy’) could be preferable to today’s reform agendas on labor law. However, judging from existing policies and laws on labor, the fate of labor is still under threat of excessive investments flow and hegemony.

This article argues that the government can penetrate and influence strategic aspects in labor law, particularly in a mechanism of determining minimum wage of labor. Minimum wage becomes an entry point for the improvement of labor living standards. Not only that, the government should also actively promote the development of dynamic labor unions, in order to be an instrument of labor to fight for their rights. With inspiration from Islamic values and practices, the government should abandon state’s neutrality policy in wage discussion. It should be more active and assertive in defending marginalized and poor people, as mandated by the Constitution.

The government should work together with labor unions. The aim is to stipulate responsive and participatory-based policies on labor management. Labor unions and employers could potentially collaborate in regulating the production of goods to maintain a professional code of ethics, and survey prices in the market. Ultimately, the government has duties to regulate the condition of labor and to supervise industrial relations between parties.

¹⁶⁰ Quran, Surah Al-Baqorah, verse 282.

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An Nisaa.

Al-‘Ankabut

Al-Ahzab

Al-Baqaroh.

Al-Mu’minun.

Al-Ma’arij.

An-Nahl.

Ali Imran.

Ash-Shu’ara.

At-Talaq.

At-Tin.

G. Hadits

Al-Tabarani.

Al-Tirmidhi.

Al-Bukhari.

Al-Muwatta.

Muslim.

Ibn Majah.

