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Review Of Islamic Maqashid On The Change From Wage Status To Debt Based On Constitutional Court Decision No. 72/PUU-XIII/2015

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ABSTRACT: *The Wages laws in Indonesia need to be ratified. Law No. 13 of 2003 concerning Indonesian labour law as fundamental. In article 90 (paragraph) 2 stated that regulates the suspension of minimum wages causing polemic until the submission of a judicial review to the Constitutional Court, with the outcome of decision No. 72/PUU/XIII/2015. This research analyze the epistemological foundation of the Constitutional Court Decision. The verdict states that the employer has a debt to the employer for the deferral of minimum wage. This type of research is Juridical Normative, using library materials as primary material. Using the Historical Approach an the Legislative Approach. Then using the Maqashid Shariah as his anaysis. It can be concluded that Constitutional Court Decision No 72/PUU/XIII/2015 is the best win-win solution. The most important epistemological foundation is jurisprudence, namely Constitutional Court Decision No. 61/PUU/XIII/2010. Based on the prefective Maqashid Shariah the ruling is appropriate, the Maslahah contained greater than the Mafsadah. And it is include in the level of Dhoruriyah and is a form of Hifdzu mall (protecting property) and Hifdzu nasfs (protecting the soul). So that this final decision both in social reason and Maqashid test is the right decision. With the interests of each party has been accommodated, the entherpreneur can still do deferral and worker / laborers srill get their rights pending, Currently its how to application expected to the maximum in the work world.*

KEYWORDS: *Wage Suspension, Jurisprudence, Maslahah, Maqashid Shariah*

I. INTRODUCTION

In the implementation of national development, labor is one of the important instruments of sangan because he plays an active role in it. In the juridical regulations on employment, regulated in the law No. 13 year 2003 about the employment and Permenaker No. 7 of the year 2013. Labour becomes the main actor in the production mechanism, so that the welfare of labour became topics always warm to keep discussed in the era of globalization, both in the national and international scale. The occurrence of a wide range of action of workers ' protests and labor strike lately indicates a problem that is interesting to be examined, particularly issues of economic inequality.

Article 90 paragraph (2) of law No. 13 Year 2003 expressly mention: *for employers who cannot afford to pay the minimum wage, as referred to in article 89 of the suspension can be made. While in the explanation of the article stated that: the suspension of the implementation of the minimum wages for companies that cannot afford intended to absolve the company concerned implement the minimum wage that applies in a certain time. When the suspension ends then the company in question is obligated to implement the minimum wage in force at the moment but it is not obliged to pay the fulfillment of the provisions of the minimum wage in effect at the time the postponement was given.* All phrase description article 90 paragraph (2) of law No. 13 Year 2003 very visible once the shows ambiquitas and unkonsisten with some other article, most among the judge and stated that this section is contrary to Article 28D paragraph (2) of the 1945 Constitution (Constitution, n.d.) Unkonsistensi article and the explanation is a disgrace for Indonesia as well as in the law of grammar is a form of positive law which cannot be viewed properly (at least in the perspective of the author) that could potentially provide a negative impact as well as detrimental to some in Indonesia.

Based on the legitimacy of the article on the shortage of nominal wages not paid to labour because it does the suspension by entrepreneurs become charred. Then in the next period of employers shall be obliged to pay only the minimum wage in effect at that time, then automatically lack of payment nominal wages not received by workers in the previous period be scorched. In this case of course is very beneficial for entrepreneurs and very detrimental to labour puhak. Therefore, on May 18, 2015 parties who feel aggrieved over the enactment of such laws filed a Judicial Review to the Constitutional Court. (Mahkamahkonstitusi, n.d.)



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The wage issue is closely associated with the workers' welfare. Income is wages or income to sustain the lives of workers and families. Indirect wages are closely related with social welfare. The regulations concerning social welfare must be in accordance with the norms of law culture excavated from Indonesia's own society as a subject of law. One of the sources of Community law of Indonesia is the norm. One of the norms of the religion is Islam, known in Islamic religion that one very important legal norms are Maqasid Sharia. Maqasid Shariah in Indonesia into one of the stone test are pretty much used as the blade's analysis of the Act, nor the regulations below to achieve the ideal rules clash and harmonious. Because social welfare in Islam came in a very important sphere.

Finally, in September 2016 the Constitutional Court issued an award i.e. Amar stated that the explanation to article 90 paragraph (2) contrary to Article 28D paragraph (2) of the 1945 Constitution. The intent of the ruling States that obliged employers to make payments over the nominal wages of the suspension has done in the previous year. The conclusion is the entrepreneur still allowed to do diperiode however, the front suspension is waging the entrepreneur is obliged to pay the wage shortage suspended earlier, i.e. nominal shortfall in wages deferred into debt payable by employers to workers (labour). The phenomenon of suspension of wages which are then turned into debt is nothing new. This research tries to dissect the new phenomenon of pending wage was then made as debt in perspective of the Maqasid Sharia as well as analyze the Foundation of epistemology from the ruling of the Constitutional Court. New phenomena that arise due to the turmoil of the modern economy in the midst of capitalist hegemony that continues to erode and eat each other. The capture of the market and free competition to make a more profitable only firm which have large capital.

II. LITERATURE REVIEW

1. Review of Maqasid Sharia

Any legal means it follows the legal status and the maqasid, wasilah be good if its good maqshad, so did wasilah becomes bad if his bad maqshad as an explanation of Ibn Qayyim, meaning:

"Every goal can only be achieved with the means of achieving the goal of doing, then that means becoming part of the goal. the provisions of the law the means that lead to immoral and unlawful deeds that depending on the level of certainty the cause to which means unlawful. As well as legal reasons which led it to obedience it depending on the level of certainty the cause means to obedience".

In the linguistic etymology of the term (Maqasid means maslahah, objective, principle, purpose, objectives, intent and meaning of the sejenislainnya. As in the definition of terms (terminology) maqasid is the meanings of (understanding) the desired by *the legitimate* (God and his Apostle) to be realized through *tashri* ' and the determination of the in-laws istinbath (dug) by the mujtahid pass Islamic texts (Arfan, n.d.) To clarify the meaning of Maqasid Sharia, it needs to be explained also the terms in Usul Fiqh are often used in discussion of Maqasid Sharia, some related terminology is as follows:

- Wisdom: is the intent or purpose contained in the held or not held him a law
- Mashlahat: are any things that bring benefit or prevent kemudhoratan (damage).
- 'the reason: dzohir is (obviously), mundhobith (can be applied in any condition), which became the ubiquitous manath (reference) any law, such as safar became ' the reason disyariatkannya qhasr. (Ar-Risuni, n.d.)

According to Oni Sahrani and Adiwarmen a. Karim, maqasid Sharia is maslahah every human and menghidarkan mafsadah of them. Maqasid Sharia is maslahah and maqasid Sharia is maslahah. Najm al-Din al-Tufi maslahah to not limit must always be limited by syara'. Al-Tufi establish the concept of maslahah and mafsadat above four principles, namely:

- common sense can tell maf and maslahah sadat freely
- Maslahah as evidence shara ' regardless of the nas, on the understanding that the provisions of maslahah and mafsadat only related to indigenous peoples and the human experience.
- scope of maslahah and mafsadat are only limited in terms of muamalah and custom.
- Because maslahah and mafsadat can spontaneously by using common sense, then the maslahah sharee'ah is the most powerful.

Therefore, in case of contradiction between the nas and maslahah maslahah enforceable, then with takhsisi (take special meaning) or bayan (detailed description) over the meaning of the nas, not cancel it. (Yusdani, 2000)

2. Change the Status to become Wage debts.



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Changes the status of the wage debt becomes a normative basis is a new phenomenon that the author found in the ruling of the Constitutional Court No. 72/PUU/XIII/2015. Explicitly the verdict clearly stated changes to the businessman waging dependents of workers/labourers become debt. Waging in Islam entered into the realm of Akkadian *Tijarah* (wages of hired), so its nature is transactional and of course provide oriented while the debt-mengutang in Islam entered the realm of *Tabarru'* (please help) and of course this is not oriented as well as provide is the contract should be appreciated and certainly in the view of social seen more noble/good.

3. Waging In the perspective of Islam.

Wage in arab literature known as *al-ujrah* (Ahmad Munawir Warson, n.d.). *Al-ajru* al-means ' *iwad* (replace) and *al-sawab* (reward) also known as *al-ajru* or *al-ujrah* (wage) (Karim Helmi, 1997). Which means retaliation or rewards are accepted because the benefits of a job done. Wages in the perspective of islam came within the realm of *ijarah* (renting), mention means wages or replace or return. In Islamic terminology *ijarah* word meaning wages received due to the utilization of an object (rent) or because it performs a activities (Karim Helmi, 1997), by harnessing the power of others by giving change according to the certain conditions (Hendi Suhendi, 68AD). In the outline of the *ijarah* in Islamic terminology it contains two, the first is *ijarah* means granting wages because of the benefit of an ain, such as houses, vehicles, ground. This is leaning more towards renting contract. Second, *ijarah* in order for her to have done a job does a workers/labourers. The second sense is leaning more towards the wages of hired as in employment industrial relations sector.

III. RESEARCH METHODS

1. Types and Research Approaches

Type of this research is to study the juridical normative or also called normative legal research. This research was conducted by examining the references or secondary data include research in aspects of the principles of law, legal systematics, synchronization and horizontal level, comparative law and legal history (Soekanto Soejono, 1986). Because this study tries to analyze the ruling of the Constitutional Court which is positive law, then researchers will try to analyze the legal principles that are used in the determination of the verdict, as well as comparing it to Islamic law then analyzed from the Maqasid Sharia.

A normative study certainly must use statutory approach (Ibrahim, 2012), because that will be scrutinized is the rule of positive law that has been legitimised by the authorized institution. In this case the ruling of the Constitutional Court which would researchers analysis is one form of positive law which of course obliged to abide by the entire community of Indonesia. According to a historical perspective there are two types of views in the view of the legal interpretation of the historical interpretation of law and namely the interpretation of historical designation regulations (Pudjosewojo: 1876) so researchers will also use the approach *sejarah* to analyze journey of formation of a previous regulations up to the discharge of this Constitutional Court ruling as well as how its political history.

According to the type of research, then this study uses two types of approach:

- a. Statutory Approach, an approach to the law, products (Nasution, 2008) in this research are used as the main ingredient was the verdict of the Constitutional Court No. 72/PUU/XIII/2015, then as the materials review additional researchers did on some regulations related to the verdict.
- b. Approach to history, is an assessment against the legal products based on sequences of historical fact or *periodesasi melatarbelakanginya*. (Nasution, 2008) In this research study against the background of regulation waging in Indonesia being the main ingredient, since the ruling of the Constitutional Court that researchers make the main research object contains about waging verdict.

2. Legal Materials Collection Techniques

The collection of legal materials in this study using the techniques of documentation which collect data in the form of literature-literature library. The collection of the library materials would have to be everything possible and special materials containing a major problem in this research, there are a few staples that has researchers collect i.e. Constitutional Court Verdict Number 72/PUU/XIII/2015, law No. 13 Year 2003 about the employment, government regulation Number 78 Years 2015 About Waging, Permenaker No. 7 Year 2013 About Upan Minimum. Methods of documentation or the study of librarianship is taking material from the literature were used to take the concepts, theories, opinions, as well as the discovery of the closely related to the problems examined. (Soekanto Soejono, 1986)



A study the juridical normative need references as basic materials research is referred to as secondary law materials. And secondary legal materials is divided into three aspects of materials including:

- a. The primary legal Materials in the study was the verdict of the Constitutional Court No. 72/PUU/XIII/2015 and Maqasid Sharia. Both of these are legal substances that are authoritative, i.e. have more authority in the process of research. (Almolthma Soejono, n.d.)
 - b. Secondary legal Materials in this research is to support and clarify the legal material primer, (Soejono Almolthma, n.d.) by sebab it in this study there are several regulations that deliberately document researchers to make as secondary materials because related with a primary law materials charge including:
 - 1) Decision the Minister of manpower and transmigration of the Republic of Indonesia Number Kep. 231/Download/2003 About the implementation of the suspension of the Minimum wage
 - 2) Presidential Decree of the Republic of Indonesia No. 107/2004 Of the Board of Waging
 - 3) Permenakertrans No. 7 Year 2013 About Minimum wage
 - 4) Regulation of the Minister of labor and trasnmigrasi of the Republic of Indonesia No. 13 Year 2012 About components and Implementation stages of Attainment worth living Needs
 - 5) Regulation of the Minister of the Republic of Indonesia No. 78 Years 2015 Of Waging.
 - 6) Law No. 13 Year 2003 Concerning Employment.
 - c. Legal Materials tertiary in this research is journals, dissertations, thesis, thesis and books that support and in accordance with the discussion of the topic researchers do.
3. Technical Data analysis

The first step in the analysis of data that has been collected through literature study in this research is systematic by downloading an and reconstruct the material to make it more easily in classifying the researchers will use in analyze the results. Compiling and sorting out the correlation between data systematically to reach conclusions as well as building the ideal in the presentation of the results of his research. In general the data analysis is the analysis by the method of connecting what had been retrieved from a work from the beginning, especially the relation between the elements covered in the focus of the research issues. (Mus, 2012) On the research of juridical normative legal materials analysis can be done using descriptive analysis method. (Abdul Muhammad, 2004) So in this case, researchers conduct analysis in advance of primary research materials against the ruling of the Constitutional Court No. 72/PUU/XIII/2015. Then also documenting and analyzing some of the regulations that have correlation with the Constitutional Court ruling, some of the regulation i.e. as researchers describe above.

After these materials the next step is to do the reviewers radically systematically. To achieve the best thing in this study, researchers using the systematic interpretation, is a form of interpretation to get an overview of the coefficient between one form of regulation with other regulations, found a correlation between both of them so that it can take a clear picture, because it is essentially between the interrelated and complementary regulations. Second, theological interpretation, interpretation of the form notice specifically the State of the msyarakat and its environment. To take the right conclusions about the suitability of the positive law, the interests and needs of the people. (Nasution, 2008)

Then felt the need to equalize the frame in one interpretation to interpret the Constitutional Court Verdict and put together a grouping of understanding about maqasid Shariah to be used as a knife the analysis in this study, because the theory of maqasid Sharia suffered several changes following his time. Maqasid Shariah researchers will use in this research is a form of contemporary maqasid, i.e. the maqasid has grown and experienced a variety of sfisiensi against the circumstances of the times in order to resolve the increasingly complex problems of the current . The last step i.e. the representation of the data in the system of interpretation, i.e. the juridical method uses in discussing an issue of law is required to do a presentation in accordance with the legal system in force in the legal concerned, in this case the presentation of the results of the analysis of the ruling of the Constitutional Court No. 72/PUU/XIII/2015 became the main topics, the analysis uses the maqasid Sharia as a test for the ruling becomes the most urgent. The research of maqasid Sharia against the Constitutional Court Ruling Amar is the final thing in this research.



IV. RESULTS & DISCUSSION

1. The Foundation of Epistemology Constitution Court ruling No. 72/PUU/XIII/2015

Analysis of the groundwork this epistemology researchers are doing by analyzing the Constitutional Court Verdict sheet No. 72/PUU/XIII/2015 as well as rules relating to problems with *qua* for not allowing him to ask the Foundation pistemologinya is directly related to the judge because it obstructed the special code of ethics that exists within the institution of the Constitutional Court, where judges are barred from commenting on the award as long as he's still actively served as a judge of the Constitutional Court. The most powerful foundation of epistemology to be used in the implementation of the ruling of a *qua* is to answer the unkonsistensi that is contained in article 90 paragraph (1) and paragraph (2) as well as the explanation. Where in consideration of the laws contained in the ruling of the Constitutional Court States that the unkonsistensi of the law minimum wage is very prone to be misused.

Unkonsistensi question is can menimbulkannya interpretation of the elusive and may give rise to the interpretation and understanding of the existence of a multi that allows that these two articles unkonsisten. Because in article 90 para (1) explained that the employers are forbidden to pay wages below the minimum wage set by the Governor, while article 90 paragraph (2) States that employers can do to the suspension of the payment of the minimum wage. More surprising is the explanation to article 90 paragraph (2) States that *the suspension of the implementation of the minimum wages for companies that cannot afford intended to absolve the company concerned implement the applicable minimum wage in a certain period of time. When the suspension ends then the company in question is obligated to implement the minimum wage in force at the time but was not obliged to pay the fulfillment of the provisions of the minimum wage in effect at the time they provide suspension.*

To be able to parse problem with *qua* first step then the researcher was peeling from waging in Indonesia for the sake of *history* get a clearer picture.

a. Historical Analysis

In filofofis the minimum wage is a form of policy intended to prevent workers being treated as commodities in the condition of excess labour market availability of workforce. Regulation of the minimum wage in Indonesia and the rest of the world wrong satunyanya is referring to ILO Convention 131 Year 1970 concerning the determination of the minimum wage used nearly all over the world as a reference for the determination of the minimum wage in the country respectively. In the Convention stated in article 3 that: *The elements to be taken info consideration in determining the level of minimum wages shali, so far as possible and appropriate in relation to national practice and conditional, include :*

- 1) *The needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standarts of other social groups.*
- 2) *Economic factors, including the requirements of economic development, level of productivity and the desirability of attaining and maintaining a high level of employment.*

As one of the countries which apply a minimum wage policy, Indonesia has a long history of labor problems in his nation and State, the regulation concerning the minimum wage was originally coined since 40 years of submarine which country has enacted three times changes the standard of living as the Foundation of the determination of the minimum wage. Components of the necessities of life include:(Sinaga, 2008)

- a) Minimum physical needs (KFM) which applies on 1969-1995.
- b) The Minimum necessities of life (KHM) in effect at 1996-2005.
- c) Necessities of life Worth (KHL) applicable to the 2006 to the present..

The inception of the law No. 13 Year 2003 about the employment could not be removed from the Government's policy in requesting foreign capital or capitalist imposed through agencies such as the world capitalist Worls Trade Organization (WTO) and the international monetary fund (IMF) as a way of controlling for market liberalisation terselubungnya. (Sutedi, 2009) Early on the legitimacy of the law No. 13 year 2003 already gives rise to various criticism and turmoil. However with the various considerations and changes in Government remains ultimately affirms the law No. 13 Year 2003 which is then filed an appeal to the Constitutional Court Verdict came to Matter No. 012/PUU/I/2003. The Constitutional Court's verdict which brought the enactment of law No. 13 Year 2003 up to this point and it is also considered to be more ideal than a previous regulations that are more inclined to financiers.



Testing against law No. 13 Year 2003 had actually been appealed before the year 2010. Application of the test is also the same in the study i.e. the submission on article 90 paragraph (2) to compare with article 28D paragraph (1) of the 1945 Constitution. But in the petition the Constitutional Court rejected the application in its entirety with the verdict the number 61/PUU-VIII/2010. Foundation of epistemology that is used by the Court historically is to stick to the jurisprudence of the Constitutional Court's verdict is Number 61/PUU-VIII/2010. In the Court's verdict stated that the issue raised is rejected in its entirety. So in consideration of the legal ruling of the Constitutional Court No. 72/PUU/XIII/2015 stated "based on a consideration of the law in the jurisprudence (ruling of the Constitutional Court the number 61/PUU-VIII/2010) Although the basic testing filed the applicant different but in principle the Court has already given the consideration related to the suspension of the payment of the minimum wage by the verdict of the Number 61/PUU-VIII/2010, dated November 14, 2011 the *mutatis mutandis* apply also in the petition for a *quo*.

Beginning with the passage of Kepmen No. 231 the year 2003 on the postponement of the implementation of the Ordinance the minimum wage then Waging Board establishment on 2004 with Kepres No. 107 Year 2004 about waging Board. To achieve a decent standard of waging applied in seriap region then passed also Permennakertrans No 13 Year 2012 about components and implementation stages of attainment worth living needs. Then followed by Government Regulation No. 78 the year 2015 about Waging.

b. Statutory Approach (Statute Approach)

Approach to the regulations relating to permasalahan this will researchers describe the understanding against the ruling of the Constitutional Court on the same matter before the Verdict the number 61/PUU-VIII/2010 as well as some the regulations pertaining to this issue. As researchers describe above that the Constitutional Court rejected a petition against the testing against article 90 paragraph (2) of law No. 13 year 2003, the cornerstone of his refusal in epistemology that is used by the Constitutional Court declared that:

"According to the Court, the power of capital and the production of entrepreneurs can not be disamaratakan. For companies with strong capital and modern technologies as well as management, suspension of the minimum wage is not fair, but many companies with a small capital, with a small profit margin, while its production remains to be compete in a free market, so the entrepreneurs still need legal protection. They have not been able to give minimum wage, because the company so new it still stands with a small capital. They still need help in the form of capital, marketing experts, increased the ability of mamajemen, tax relief, etc."

That the inability to pay the minimum wage should not be interpreted as a death knell for the company, which did not get protection due to the next roll the mat, if it does not get protection due to the next roll mat that means a loss of jobs for laborers. However for granting wages below the minimum wage, should have been approved and are known along the previous existence of a work contract between workers and employers/workers based on the real condition of the company, so it is based and anticipated by both sides without coercion. Nevertheless, the existence of a certain time lag limits or suspension of the minimum wage, should not be misused to deny the real conditions that the company has been able to pay the minimum wage. (Constitution, n.d.)

As a foundation for strengthening eligibility wages that need to be set so the Government also formed the Council in particular waging. Regulation of Board of Waging arranged in Kepres No. 107 of the year 2004. Waging Board divided into three kinds, namely: Depenas (National Board of waging), Depeprov (House of waging the province, Depekab/Depeko (Board of waging District/Board of waging town) (107, 2004). Decent living standard becomes the most important consideration for the Board in carrying out its task, waging Board of waging refers to Permenakertrans No. 13 year 2012 about the necessities of life. After doing a survey and in-depth observations by the Board of waging with his team then results from these analyses are then submitted and agreed upon and passed by the Governor. Provincial minimum wage set by the Governor was based on the value of the KHL Kabupaten/Kota is lowest in the provinces concerned taking into account the productivity growth of the economy, labor market conditions and the efforts of the least capable (margin). (Permenakertrans, 2012)

Foundation of epistemology used in the ruling of the Constitutional Court No. 72/PUU/XIII/2015 is a concrete runway and reality based on a previous regulations regulation taken from the field directly. The core of the Constitutional Court Verdict amar 72/PUU/XIII/2015 was granted the prosecution application for most. The petition was granted by dicabutnya explanation on



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article 90 paragraph (2): "the suspension of the implementation of the minimum wages for companies that cannot afford intended to absolve the company concerned implement the minimum wage applies a specific period, when the suspension ends then the company in question is obligated to implement the minimum wage in force at the time but was not obliged to pay the fulfillment of the provisions of the minimum wage in effect at the time given the postponement ", it does not have the force of law.

In the award of the Court took a very precise steps i.e. still allows employers to do but with the suspension of the obligation to pay a fixed nominal wages deferred deficiencies in the period afterwards. Using the Foundation of epistemology of regulation-paraturan related to waging such as: Ministry Regulation No. 231 of the year 2003, Kepres No. 107 Years 2004, Permenakertrans No. 7 Year 2013, Permenakertrans No. 12 Year 2012, PP No. 78 Years 2015, ACT employment no. 13 Year 2003. Based on the regulations where the problems of waging the current is enough to improve because almost all aspects there has been the rule, so it is expected to accommodate all the interests of the parties in cooperation in the world of employment.

2. Review of Maqasid Sharia Against the ruling of the Constitutional Court No. 72/PUU/XIII/2015

Based on the facts then it can be drawn the conclusion that there is a new phenomenon changes the status of wages into debt. Seyogianya wages paid businessmen according to agreement in the contract, be a debt that has to be borne by employers to workers/labourers due to the ketukmampuan company to pay the minimum wage at a time when he did the suspension. The phenomenon of the status change of the wage debt is what will becoming a researcher the analysis using the Maqasid Sharia. Maqasid Sharia becomes one of the stones which researchers test the taste is very important in the problems faced by Muslims today.

a. Change the Status of Wages into Debt

Indeed in the study of Islamic epistemology is very interesting, in a variety of literature the development of Islamic thought which is done by the scholars of post death of Prophet Muhammad SAW growing so rapidly. In the subject line to preserve the religion scholars to provide solutions that can solve the problems of the people that continue to evolve. One branch of the science results of the thinking of scholars is the science of Fiqh, a science that deals with the Foundation he set up a basic foundation-legal. Because of the demands of the community with a variety of problems that are increasingly getting complex solutions are then continued to study the science of Fiqh unearthed from it will continue to be needed. As long as humans live studies such as these should continue to find scientific branches well coherent with the problems of the people so as not to get lost in solving.

Study of Usul Fiqh concerning Muamalah (relationship between human to human) which was based on the qoidah that have been mentioned above. The core of the problem done muamalah man should be based on the qoidah. Allowed any form of such muamalah muamalah for there has been no evidence that forbid it. If drawn in this study it can be easily understood. In a ruling of the Constitutional Court No. 72/PUU/XIII/2015 describes a very important substance that entrepreneur stated retains the responsibility for paying off the wage payment deferred deficiencies. In the sense of a brief businessmen have debt to workers where it should be based on the Court ruling which has deleted the explanation to article 90 paragraph (2). Where in previous times with the introduction of the article with the explanation can give rise to abuse of authority by not paying off the wage shortage at the time he did the suspension of wages with the legitimacy of the explanation to article 90 paragraph (2) as has been mentioned above in the above.

Probe in normative that the debt (qard) in studies of the science of Fiqh entered into the realm of Akkadian Tabarru. While the wages of hired aqad (Ijarah) enter into the realm of Tijarah (the buying and selling of course Foundation is Provite Oriented) so in that its change of status to become wage debt is not a problem and can be justified. Because in this Hi employers cannot afford to pay wages in accordance with the Regional Minimum Wage (UMR) then on the other hand he did a deal to give workers leeway with the suspend wage. Filing of suspension of wages made by the entrepreneur must also labor agreement, the approval of diakomodir in the implementation of the deal contract of work with the labor unions that exist within the company. Trade unions as workers ' container to obtain rights and obligations became a bridge between companies with labor. The benefits of mutual sepatatnya the contracts of both parties, then so has a legitimate juridical normative basis, but in the real mengaplikasikan both parties should still respect the values and principles of muamalah in Islam i.e. the value of fairness, Honesty and please help.

1) Value of Justice



Justice in this realm is concerned about giving the job to labour have to be professional and berkemampuan. Especially it refers to the time and type of work. Employers should regard all his servants equivalent does not provide a particular job because of ethnic types or specific groups. Similarly with labour also must complete its work in accordance with its fullest capability.

2) Value of Honesty

The value of honesty is very rare now, so need more efforts to cultivate an awareness of this. The awareness of the employers to provide honest wages according to its ability, did not apply for a suspension of the diving entrepreneurs still able to pay the minimum wage. So does the awareness of honest labor for not doing a truancy for reasons specific to the actual workers remain able to carry out his job.

3) Value Please Help

Value please help this is actually the value base of the economy of Indonesia, or better known as the people's economy. So it is no wonder if setiapmuamalah should we do not just provide oriented but there is also human values contained

b. The substance of Maqasid Sharia in the Change Status of Wages into Debt

The urgency of the sharia is to realize the benefit of the world and the hereafter for mankind. (Al-Syatibi, 2010) According to Al-Syatibi the purpose of holding utam Sharia is to achieve greater benefit to mankind. None of the Shariah of God that has no purpose, because it imposes Sharia without any purpose is tantamount to imposing something on to things that are unlikely to be able to be implemented. (Al-Syatibi, 2010) Based on the ruling of the Constitutional Court of amar No. 72/PUU/XIII/2015 contains clearly that there is a benefit that is contained in it, the greater the benefit of (the Group's) defeat the benefit of the individual. In accordance with the focus problem, then the problem is in the Sharia maqasid Dhoruriat. The problem of the wages become a basic requirement for the workers and entrepreneurs, where both parties mutually feel right against the assignment (entrepreneurs) and demand (workers/labour) against nominal wages. Maqasid Sharia studies the main thing being the focus is the Court ruling contain amar intent which corresponds to the maqasid Sharia as one of the ujia stone used in this research.

Based on the Court ruling substandi which contains about waging, it is in the substance of this issue is maqasid entered into the realm of *Khifdzhul Mall* (protection of property). Protection against wage becomes very important in view of the maqasid Sharia. Because wages in such material into the main needs for workers/labourers to remain with his family can survive. And about keeping this property then the maqasid Shariah considers this very important and enter into the realm of *Hajjiat* (a basic requirement that must be fulfilled) In the Qur'an Surah Al Cave: 46 "*wealth and children are the jewelry of the life world*". Apart from the usefulness of the treasures as world treasures, jewelry can also be one of the factors essential to the survival of a worker/workers and their families. Needs in the form of clothing, food, and the Board became the *Dhoruriah* needs of course strongly influenced in the process to perform worship to God Almighty. In Islam, a muslim is required to find *Ma'isyah* (livelihood) for himself and his family. So an man who went looking for work rewarded with the rewards are very noble and included in the worship. Especially for a husband which she has had a dependent wife and children.

c. The perspective of Maqasid Sharia in the ruling of the Constitutional Court No. 72/PUU/XIII/2015

See the development of the concept of *maslahah* or *maqasid* in this century continue to get enlightenment by presenting some of the progressive ideas that incorporate Human Rights elements into *Dharuri* needs (primary). Indeed, along with strengthened global awareness will be the significance of Human Rights, the question of the universality of human rights and its relationship with different value systems or traditions of religion continues to be the center of attention in the discussions of contemporary Human Rights discourse. (Arfan, n.d.) The resolution of the problem with that has been terminated by qua Constitutional Court contains some positive impact which researchers had enough sense of *Maqasid Shariah* in accordance with. With a court ruling that at least there are aspects that could be minimised the possibility of bad:

1) Monopoly

His Tercegah the possibility of exploitation of wealth by employers to workers. Based on the verdict of the juridical Normative businessmen have an obligation to meet the dependents payment against the workers/labourers. Shortage of nominal wages have not been paid by employers, is now a debt to workers and employers must be paid at the expiration of the period of suspension. So the



possibility of entrepreneurs to monopolize the workers/labourers become increasingly narrow. If it is not the existence of the Court ruling, based on article 90 paragraph (2) with the explanation there is a big gap for entrepreneurs to do the suspension with a path that is not justified, then using the money for adjournment do bigger business expansion by absorbing labor. Continue ongoing like it then it will certainly impact negatively to Indonesia's economy.

The Prophet said, which means: *"he who monopolize the food the Muslims, Allah will punish them by bankrupt and leprosy"*.

Based on the above Hadith stating how the ban of monopoly, if we want to think in a rational, what can be caused by system monopoly against wage workers/labourers are certainly very worrying. Historically Islam has banned excessive exploitation and monopoly, as with monopoly, wealth of property will only be centered to an individual alone, where he found the regulation of what lies beneath with its throw over economy Sharia as well as populist.

2) Hoarding Wealth Karta

Give the right of labor income in full compliance with the Regional Minimum wage allows to minimize the occurrence of hoarding of property for the rich, in the Indonesia case mostly the rich were entrepreneurs and the Labour Party is the opposite. Then based on the Court ruling allowing it to prevent the hoarding of wealth for entrepreneurs because the money that should have been paid to workers not being paid with the argumentation of the suspension.

In the Qur'an, Surat Al-Hashr (59): 7) which means: *"so that the treasures were never circulated among the wealthy among you."*

Based on the text explained how important distribution of wealth evenly for the people. It will be very dangerous if possessions were simply overwhelmed by a handful of rich people, because doing so would inhibit the human being to change, just make a man poor continue to deplete her energy to find the magnitude of the money not how While Yes continue to neglect to worship to God ALMIGHTY. So the balance between the material and spiritual needs must be balanced. Satisfy the needs of material that can bring calmness for the spiritual is the main goal of the maqasid Sharia, especially that intended in terms of the material makes the man for calmer and not kept himself busy managing the property just because the maqasid from the creation of Shariah is to protect all human needs.

In the Qur'an, Surat Nuh (71): 21) meaning: *"Noah said: O my Lord, verily they have mendurhakaiku and have been paying the people who treasure and his sons do not add him but rather the sheer loss"*.

Islam sets and make a samperl about this issue complete with advice and lessons about the human experience throughout its history. Starting from the story of the qorun, abu jahl, as well as the shops of smart people who have wealth that control the economy at the time. Therefore the wealth should be distributed according to the needs, so that the wealth of the rich people does not settles and treasure not to be bullies for them, where they always surround it. (Jauhar, n.d.)

3) Occurrence of the practice of Usury

RIBA in Islamic studies is a very important discussion and never missed in any books of Fiqh in the chapter about muamalah. RIBA can be interpreted as a form of taking advantage of the way that is not justified, can change the addition or subtraction of the scales, the addition of the principal debt. The urgency of this usury is the practice of one party that adversely affected either by the base or not.

In the Qur'an, Sura An-Nisa (4): 29) which means: *o believers, ye shall not eat of your neighbour's property with each other the way wrong, except by way of Commerce in force with like the same love of you "*.

If we pull in the phenomenon of wage cases we are discussed at this time then an assumption that employers may not pay wages appropriate UMR where entrepreneurs as a strong party may not pay a nominal wages are deferred because of based on the explanation of article 90 paragraph (2) of law No. 13 year 2003. While on the other hand laborers should receive the policy because if not then labor would lose his job, and easily replaced by other workers because of the conditions of employment is currently abundant labor supply.

4) Occurrence of rights and obligations

Based on the ruling of the Constitutional Court, the indication for more terjaganya rights and obligations between employers and workers is getting better. Employers still have a chance to do the suspension of wage and labour remains the lack of nominal wage gain deferred. So the juridical normative has fulfilled the interests of every party to realize a good employment conditions.

3. The Maqom Al-Dharuriyah and needs Hifdzhu Mall



Basic necessities or basic needs in terminologi there are five maqasid Sharia studies: religion, soul, intellect, lineage and property. The five basic needs are known by the name *al-dharuriyah al-khamsah* (the five basic needs). (Syarifuddin, 2008) The Constitutional Court ruling of the subject then it is included in levels of *al-dharuriyah al-khamsah*, where the need for property is a primary requirement for the existence of every human being. Enter in Dharuriyah levels due to material possessions is the underpinning of human life to get food and drinks that are used to meet the needs of *al-dharuriyah al-khamsah* others. Such as the need to be able to worship with the peace and quiet then the Affairs of the stomach to a person and his family should be fulfilled first. (Nur, Agus Salim, & Muchamad, 2010)

The practice of panangguhan wages turned into debt in this phenomenon became a major Foundation for labour to meet its rights, as well as relief for entrepreneurs to remain can do suspension. As the cornerstone of An-nisa above symbolizes that amar's ruling of the Constitutional Court the maqasid Sharia is in compliance with. The evidence for the legality of purpose *hifdzil-mal* that must be applied in any business practices. Suspension filing wage requires employers to obtain the agreement of the Trade Union at the company.

When the suspension was going to do then it should have been the existence of the memorandum of understanding between the company and the workers. The core of this practice on the maqasid muamalah is implemented *hifdzul mal* with *tausig* (binding) in Akkadian *muamalah maliah*, such conditions that any deal should be recorded (b), seen (isyad). (Hasani, n.d.)

The Maqasid Maqasid Syariaj as well as in accordance with the principle in contracts should be made on the basis of rather equal love (volition). This principle has a dignifikan and a very wide implications because the agreement between labour and the work concerning the intention of living people, and of course also concerned his life for workers ' families respectively. Where in the case of Indonesia's most workers ' families (primarily factory) depend their lives on the results of the labor sweat.

V. CONCLUSION & SUGGESTION

1. Conclusion.

Based on the results of the analysis and the research that has been done, there are some important things that can be present in the sump cover researcher:

- a. The main foundation of epistemology that is used by the ruling of the Constitutional Court is the jurisprudence of the Constitutional Court's verdict, i.e. the number 61/PUU-VIII/2010. The verdict on the proposed problems with same but different qua stone test. If the Constitutional Court's verdict on the number 61/PUU-VIII/2010 test stone used is article 28D paragraph (1) of the 1945 CONSTITUTION. Then on the ruling of the Constitutional Court the number 72/PUU/XIII/2015 used as test is the article 28D paragraph (2) of the 1945 CONSTITUTION. Based on an analysis using the method of historical and statutory Approaches researchers may conclude that the travel regulations governing about manpower from time to time as long as it continues to experience a upheaval and repair. Diperketatnya filing procedures ranging from suspension of wages, the establishment of the Board of waging, until he gave up the wages of labor rights pending that is contained in the ruling of the Constitutional Court 72/PUU/XIII/2015 '
- b. change of status to become wage debts in view of Islamic Sharia and Maqasid Sharia in this case is the best solution to achieve benefit together. Because of the benefits contained in them is greater than *madhorotnya*. Maqasid Sharia against the view of the ruling of the *dharuriyah* levels where the role of the State is indispensable to be able to reduce this dispute. Later it was also entered into the realm of *hifdzil-mal*, where manjaga possessions is a compulsion that needs to be done to keep the calmness for the sake of maintaining higher levels such as the *hifdzhu ad-din*. The thing that made the ruling in accordance with Shariah Maqasid is the willingness of each other in the employment contract. Because employers cannot propose the suspension of wages without the consent of workers, so that this very appropriate with the main principle in Shariah Muamalah. Other than that with the award for the masalah also contains protection against the soul (*nafs Hifdzu*). The protection of this soul is included because the wage factor is *Dhoruriyah* needs for workers and their families. If the needs and rights of the wage is not met then automatically it also threatens the survival for the workers and their



families. Therefore a win-win solution presented in the verdict of the Constitutional Court is the best way for the settlement of the problem of wages in Indonesia at the moment.

2. Suggestions

Based on this study the researchers can describe how Indonesia's disrupted enough employment conditions within the circle of history. Countries should further take into consideration the impact of the legitimacy of the regulations for work Indonesia tanaga. Don't just focus on how to attract investors into the country but ignored the potential of Human Resources in our own country.

Potential-potential workforce is still labile this be more empowered in massive. Empowerment will certainly be very beneficial especially in the sector regulations and policies taken by the ruler for small businesses and workers/labourers. Workers/labourers should not look at any existing policy as a form of persecution. Let both monitor and control existing regulations in order to achieve the employment and economic conditions that are conducive.

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