

# Shariah Wage Principle within Industrial Relation

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**Abstract-** Wage protection was always being spoken by labor and was one normative demand that until today still left lots of problems for labor world thus give birth to several legal issues in industrial relation. Legal issues in wage area would include unfairness for labor concerning direction and wage policy in Indonesia. By accomodating shariah wage principle, it may give solution for lack of principles in wage in Indonesia, in which most of its labor were Moslem. In addition, shariah wage principle had several advantage which lies in fairness, appropriateness, punctuality, responsible, and humanity aspect which is framed in moral framework. This moral aspect concerning shariah wage, if being traced back, could be used as main philosophy of labor law in the world and also labor law in Indonesia. Therefore, shariah wage principle in industrial relation would consists of three aspects in which each aspect would hold seven principles such as follows: 1) theology principle as the representation of faith or ideological aspects, 2) fairness principle, 3) appropriateness principle, 4) punctuality principle, 5) nation responsibility principle, these four as the representation of shariah or normative aspect, and 6) kinship principle, 7) trust principle, these both as the representation of moral aspect of shariah.

**Index Terms**— principle, wage, shariah, industrial relation, Indonesia

## I. INTRODUCTION

In globalization era with advance of knowledge and technology has pushed industrialization to become the front line of development in Indonesia. This was meant to realize the goal of development which is to bring prosperity for all citizen, one of it would be labor prosperity. Labor prosperity as govern

in Undang-Undang Ketenagakerjaan No 13 Tahun 2003 was realized in wage component.<sup>1</sup> Iman Soepomo suggested that labor is always close with unfairness and discriminative treatment, thus they would need protection from the nation in the form of law.<sup>2</sup>

Wage protection was always being spoken by labor and was one normative demand that until today still left lots of problems for labor world thus give birth to several legal issues in industrial relation. Legal issues in wage area would include unfairness for labor concerning direction and wage policy in Indonesia. However, several efforts done by the government every year to accomodate minimum needs demand still causing dissatisfaction and never ending demands. This was not only in conceptual level, but also in implementatoin level over wage policies which has been governed as, for example, in Minimum Physical Need until Minimum Wage for Province and Regency.

Wage arrangement in Undang-Undang Ketenagakerjaan Nomor 13 Tahun 2003 didn't carry written clause concerning

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<sup>1</sup> Labor Law define wage as the received rights of labor and stated in the form of money as the reward from employer toward labor and regulated also paid in accord with work agreement, deals or law regulation include benefit for labor and his/her family on work and/or service already or will be done.

<sup>2</sup> Imam Soepomo, *Pengantar Hukum Perburuhan*, revision edition 13th printing, (Jakarta: Djambatan, 2003), page 8-9

wage principles in industrial relation.<sup>3</sup> Legal principle position as legal meta-norm is basically to give direction, purpose and fundamental assessment for the existence of a legal norm. Several legal expert suggested that legal principle is the heart of legal norm (legal rules).<sup>4</sup>

Lack of law in wage arrangement within the law could cause unfairness in the concerning wage system. This could brought risk in life essential fulfillment of labor individual and their family. If this was left untouched, labor could become radical and conducting massive-solidarity movement as they often do<sup>5</sup> and could carry significant effect toward the depressed national economy since investment climate would stall and nation's safety and order becoming non conducive.

Based on the above argument that current wage system was still yet finished to answer several serious problems in labor, it would need a concrete alternative solution to fulfill the lack of law that is wage principles in labor regulation in Indonesia.

Referred to the idyll and fundamental foundation of Negara Kesatuan Republik Indonesia that is Pancasila that implying the essence of the theology written in first sila "Ketuhanan Yang Maha Esa". This showed that Indonesia was based on theological values or in another word, concerning with religious values. Along with first sila, the same could be said to be written in constitutional mandate which based on religious values that is Article 29 clause (1) in fourth amendment UUD N RI Tahun 1945 which stated: "Negara berdasar atas Ketuhanan Yang Maha Esa",<sup>6</sup> this was strengthened the legal foundation concerning religious values in daily life.

This foundation was also strengthened in Islamic law system which is accrue in legal system in Indonesia other than western law and custom law. Islamic law system in Indonesia was given some room and legality<sup>7</sup> thus Islamic shariah

<sup>3</sup> There was only integrated principle in Chapter II UUK concerning foundation, principle and objective. See Article 3 Undang Undang Ketenagakerjaan No 13 Year 2003 which suggest: "Labor development was held on integrated principle by through functional coordination intersectoral of center and region"

<sup>4</sup> Dyah Octorina Susanti et al., *Asas Keadilan. Konsep dan Implementasinya dalam Perspektif Hukum Islam dan Hukum Barat*. (Malang: Bayumedia Publishing, 2011), page 4. Moreover, G.W Paton in Satjipto Rahardjo explain that: a) law principle is the vast "foundation" for the birth of legal norm. Therefore each legal norm would eventually could be traced back to its legal principle; b) legal principle is the "reason" for the birth of legal norm or is a "ratio legis" and legal norm. Legal principle would not be running out of power by giving birth of legal norm but it would still exist and keep generating new legal norms. Source: Satjipto Rahardjo. *Ilmu Hukum*. (Bandung: Citra Aditya Bakti, 2000), p. 45

<sup>5</sup> In Lampung, hundreds of labor in whole Province demanding UMP Rp 3,7 million in Province Office of Lmapung. The same was occurring in all over Indonesia. Thousands of labor was demonstrating all day demanding UMP and UMK in 2014 would significantly increasing along with more expensive basic essentials needs. Source; www.okezone.com, November 2nd, 2013

<sup>6</sup> Thohir Luth et al., *Agama Islam* (Malang: Universitas Brawijaya Press, 2010)

<sup>7</sup> Mustofa et al., *Hukum Islam Kontemporer* (Jakarta: Sinar Grafika, 2009), p. 157

concept in Indonesia was highly welcome by the society nowadays. It is proven by the several law regulation that carry Islamic values. It is a legal fact that Islamic values has become part of positive law or contain material law of Islamic tenet from material core or legal contain.

Accommodating shariah wage principle could bring solution for the lack of principles within wage in Indonesia. Whereas there was many advantage of shariah wage principles that agree with the need and industrial relation condition lately. Important poin from shariah wage principle would lies in fairness, appropriateness, punctuality, responsibility and humanity aspect that accomodate within moral framework. This moral framework, if being traced back, was used as the main philosophy in the world labor law and also in labor law in Indonesia.<sup>8</sup>

Therefore, wage principle in Indonesia in which there were still some void in its labor regulation, should be reflecting shariah values concerning most people in Indonesia was Moslem thus most labor in Indonesia was Moslem. This would create legal opportunities to obtain solutive effort in placing shariah principle to accomodate wage area in Indonesia. Based on this, problem that could be framed in this study would be: what are shariah wage principles in industrial relation in Indonesia?.

## II. RESEARCH METHODS

This study use normative juridical method to found out legal regulation, legal principle and legal doctrine to answer legal issues<sup>9</sup> that is to found out shariah wage principle in industrial relation in Indonesia.

Focus of this study would be legal philosophy which is to review and analyze shariah wage principle in Islamic legal perspective to fulfill legal void in wage principle within labor law in Indonesia. Approach method in this study<sup>10</sup> would include :

### a. Legal philosophy approach

It is used to review shariah wage principle that is shariah principle in wage area which is traced back to Al-Quran and hadist.

### b. Conceptual approach

It is used to found the view or doctrine developed in legal knowledge within wage area to discover substance of shariah wage principle in industrial relation in Indonesia. Other than those two, this study also use prophetic approach with text instrument-based which is traced back to the vision received by prophet in order to help analyzing text that was coming from religion.<sup>11</sup>

Next, this legal study would be based on *normative-prescriptive legal material* which was rules from Islamic law which its binding power was classified as primary legal

<sup>8</sup> Alousius Uwiyono et al., *Asas-Asas Hukum Perburuhan, Djokosoetono Research Center (DRC Fakultas Hukum Universitas Indonesia, Rajawali Press, Jakarta, 2013, p. 12*

<sup>9</sup> Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), p. 35

<sup>10</sup> S. Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2001), p. 61

<sup>11</sup> M. Syamsudin, *Ilmu Hukum Profetik* (Yogyakarta: FH UII Press, 2013)

material, secondary legal material and tertiary legal material,<sup>12</sup> which consist of:

- a. *Primary legal material*, consist of provision in Islamic law which is traced back from Al Quran and hadist
- b. *Secondary legal material*, contain publication concerning Islamic law in wage area such as books, dictionary, and relevant journal in this matter
- c. *Tertiary legal material*, as the supporting material such as legal dictionary and Bahasa Indonesia dictionary<sup>13</sup>

Analysis technique used in this study was using prescriptive analysis method with interpretative approach to comprehend the text in primary legal material in order to obtain appropriate understanding concerning the problem. It is then being interpreted in legal manner using deduction method started from major premise proposal that is legal regulation and minor premise that is legal fact concerning shariah wage principle in industrial relation.

### III. RESULT AND DISCUSSION

Shariah basic concept is an entity from Islamic tenet that contain three general category which is: *aqidah* (belief), *shariah* and *moral*. *Aqidah* was related with main problem or the basic of faith that is ideology aspect. In which this aspect give strong effect toward one sould and in his life-work behavior, also in relating with other particularly in industrial relation. *Moral* was related with moral or ethical aspect. This ethical aspect has made one to gain humanity or humanis and responsible over his or her own behavior. *Shariah* was related with behavioral rules for mankind or normative aspect.<sup>14</sup> This normative aspect was functioned as the compass for someone in relating with the community.

Based on the argument above, excavation of shariah wage should refer to these three Islamic tenet that is shariah wage principle should contain ideological aspect, normative aspect and ethical aspect of wage. Therefore, there is the need to define shariah wage principle in industrial relation as mentioned above, that is :

#### A. Ideological Aspect

Shariah wage principle contain ideological or *aqidah* aspect that is theology principle.

##### 1). Theological Principle (Tauhid and Piety)

Theological principle which is called as *tauhid* is the main basic in each activity form in Islamic shariah. In another word, if someone has already have faith toward Allah SWT thus behavior would become good and it is called with piety. So in theology aspect there is two things that is *tauhid* and piety which should not being separated from one another. Thus, every form of human living activities should be based toward theological values (*tauhid* and piety), which means in each legal activity, it should reflected theological values.

Referring to Bahasa Indonesia dictionary, the term Theology would means: attribute of God or anything related with God.<sup>15</sup> While piety in ethimological aspect was taken

<sup>12</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986), p. 52

<sup>13</sup> View Soerjono Soekanto and Sri Mamudji, *Op.Cit*, p. 14-15

<sup>14</sup> Lajnah Pentashihan Mushaf Al-Quran Badan Litbang dan Diklat Kementrian Agama RI, *Hukum, Keadilan, dan Hak Asasi Manusia* (Jakarta: Penerbit Aku Bisa, 2012), p. 17

<sup>15</sup>

from the word piety which mean nurturing oneself from God wrath by following His order and keep away from His exclusion. It should not be interpreted as fear. Other meaning of piety would be 1) Executing all Allah order, 2) Keeping one self away from anything prohibited by Allah (haram), 3) *Ridho* (accepting and sincere) with the law and regulation of Allah.<sup>16</sup>

Shariah wage was executed over theological principle (piety and *tauhid*) by implementing Islamic law based on Al Quran and Al Hadits. Therefore, shariah wage was conduct based on piety toward Allah SWT by executing His order and keeping away from things He prohibited particularly in conducting industrial relation.

Theological aspect (piety or *tauhid*) would become the basic for hereafter dimension in which shariah emphasized on human relating with others that should always orientated toward God, thus in shariah wage there was also hereafter dimension through theological principle (piety or *tauhid*) in which this principle was based on QS Az Zukhruf verse 32.<sup>17</sup>

Therefore, shariah would give wage principle that is if labor executing their job with intention because of Allah, thus he would get good reward in the world (as wage) and in the hereafter (as merit). This is called that some human could use the other and obtain benefit over it. *Shariah* wage explained that when labor conduct their job, it should be based and have fait that Allah SWT is their creator and always oversee all activities in work relation either as labor or as employer. If this was implemented within labor in Indonesia, it would be highly relevant, since it is in accord with general principle of Indonesian people that contained in Undang-Undang Dasar 1945 and in first sila of Pancasila with “Ketuhanan Yang Maha Esa” and the soul of Indonesian people, in this matter would be labor and employer sould in Indonesia. Therefore, theological aspect in shariah wage would be playing role in the soul of laborer and employer since there is theological belief in those soul, in which shariah suggested if one employer did not fulfill their obligation to pay wages toward their laborer thus he would be one dislike by his God.<sup>18</sup> This showed that main

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<http://kamusbahasaIndonesia.org/ketuhanan#ixzz3DjMiSrru>, accessed on August 20th, 2014

<sup>16</sup> Piety from Arabic language was traced from the word *waqa-yaqi-wiqayah* which means to nurture. (Nurturing self in living life according to the word of God). If it is coming from quraish Arabic language, piety is closer with the word *waqa*. *Waq* means to protect something, nurturing and protect it from anything that endanger it. From this *waqa*, piety could be defined as trying to nurture oneself from provision of Allah and protecting self from sin or what is forbidden by Allah, while *tauhid* means the unity (oneness) of God.

<sup>17</sup> “Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they make use of one another for service. But the mercy of your Lord is better than whatever they accumulate”, in Muhammad Syakir Sula, *op.cit*, p. 723

<sup>18</sup> *Allah Subhanahu wa Ta'ala suggested: “There are three group that I would dislike them in the judgment day. First, those who swore on My behalf and then he/she betrayed it. Second, those who sold a free man (not a slave), and then he ate (took) his profit. Third, those who hired someone, and then he ask the worker to fulfill his obligation, while he did not pay his wage”, in Fatwa Dewan Syariah Nasional No: 76/DSN-*

principle in shariah wage would be one piety toward his God. If he did not conduct this theological principle then he would be dislike by his God. The statement of “disliked” by his God, for a human is a severe condition, thus theological principle would highly attached and becoming the main foundation in shariah wage.

Theological principle in shariah wage is the main foundation thus the manner in thinking, in behaving and executing normative and ethical aspect in shariah wage would be reflected through this principle, so that in each working relation there was responsibility over himself and toward his God. The existence of responsibility in executing a job would give impact toward human in which he would not act on his best interest either as in employer that give wages or the right of labor to obtain wages proportional to his work, since every act would gain response from his God.

### **B. Normative or Shariah Aspect**

Shariah wage principle consist of normative or shariah in regulating legal relationship between employer and laborer concerning wage to create harmonic industrial relationship that contained in wage fairness principle, wage appropriateness principle, punctuality principle and nation responsibility principle. Explanation over those principles were as follows:

#### **2). Fairness Principle**

Fairness is an important essence of shariah. Therefore fairness was always becoming main point in human conduct concerning relating with others (muamalah). This was suggested by Yusuf Qardhawi<sup>19</sup> explaining that “fairness is the balance between diverse individual potensial, either moral or material, between individual and community, between one with others that based on shariah”

Shariah stated that wage fairness principle was based on several principles<sup>20</sup> such as:

#### **(1). Equal Treatment (Al-Musawah) and Equal Rights (At-Taswiyah)**

First principle that should be obeyed in an effort to obtain fairness is al-musawah which means to treat all party in parallel or equal, that is by fulfilling obligation toward all party, in this matter either laborer/employee or employer. Next principle would at-taswiyah which means an effort to equalized the right of one person with another. According to shariah, this could be obtained by taking something from the hand of those who didn't have the right and returning it toward someone who have the right to obtain it. Therefore shariah suggested that there is no one, including laborer/employee, to be treated discriminatively on the behalf of anything, in hadist it is said “Rasullullah had given the right for Jewish in Khaibar to work and cultivate, and for them is half of the harvest produced” (Al Bukhari from Abdullah bin Umar).<sup>21</sup>

This hadist has clearly stated that anyone had the rights to obtain his rights in perfect manner, though he/she came from different religion. Therefore, equal rights principle suggesting that there is individual awareness concerning other people rights, as small and as weak as it can get including laborer wage rights. At this point Islam has pointed its existence as the

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<sup>19</sup> Gemala Dewi, in Lajnah Pentashihan Mushaf Al-Quran, Op.cit, p. 174

<sup>20</sup> Lajnah Pentashihan Mushaf Al-Quran, Op.cit, p. 176

<sup>21</sup> Ibid, p. 177

protector of marginal community especially laborer rights in wage either man labor or woman labor.

Fairness principle context in this term was also said in International Labor Organization (ILO) Convention No 100<sup>22</sup> stated *equal pay for equal job* which means same pay for same job. It means that if there is two labor working on the same job thus their pay should be the same. This principle also showed that shariah wage could be accomodated into community life in Indonesia or in International community.

#### **(2). Proportional**

Proportional means putting something into appropriate position in accord with its proportion or in another word, giving something to someone that had become his/her rights. Therefore, fairness principle that means proportional should be implemented to all party in accord to its own capacity either as laborer or as employer. This is reflected in Qarun story in Al Quran Surat Al-Qasas Juz 28 Verse 78-80.<sup>23</sup> The story of Qarun could be studied its meaning that is if one didn't remember his God in executing his economy life, it only give birth to a secular economy that didn't give space for the weak party, in this case laborer. Meanwhile, the stronger party that is employer would act authoritative and suppressive.

Therefore, shariah has giving sign and clue for employer to act fair in proportional manner. This was also explained in Al Quran: “Be fair because fair is closer to piety” (QS Al-Maidah:8). The meaning is organization that implement fairness principle in wage would reflecting an organization lead by people with piety. The concept of fairness is a feature of organization with piety. When this company was lead by those with piety, wage given toward laborer would be fair, that is proportional with effort used by laborer.

The measure of fairness which means proportional within shariah wage was also considering accuracy, clarity and perfection of a laborer as the following hadist: “Allah is loving one that if he do a job, it is done in itqan manner (exact, directed, clear and complete)” (HR Thabrani).<sup>24</sup>

In addition, shariah wage fairness was also suggested by several source in Al Quran that explains pay could be said as fair in proportional manner if the same pay was given for the same job. It is also explained that there is no job being unpaid, thus shariah clearly respecting the effort used by labor for the work they've done.<sup>25</sup>

Next, in His words: “And you would not be rewarded, except with what you have done” (QS Yaasin:54). And His

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<sup>22</sup> Ruky, Op.cit, p. 9

<sup>23</sup> He said, “I was only given it because of knowledge I have.” Did he not know that Allah had destroyed before him of generations those who were greater than him in power and greater in accumulation [of wealth]? But the criminals, about there sins, will not be asked. So he came out before his people in his adornments. Those who desired the worldly life said, “Oh, would that we had like what was given to Qarun. Indeed, he is one of great fortune.” But those who had been given knowledge said, “Woe to you! The reward of Allah is better for he who believes and does righteousness. And none are granted it except the patients” *ibid*, p. 183

<sup>24</sup> Mukhtar Ahadits, p. 34

<sup>25</sup> In His words: “And for all there are degrees [of reward and punishment] for what they have done, and [it is] so that He may fully compensate them for their deeds, and they will not be wronged” (QS Al-Ahqaf:19)

words also suggesting that: "A man cannot obtain other than what he has work for" (QS An-Najm:39).<sup>26</sup> This verse explains that labor work would be paid (given pay) according to the kind and intensity of their job. This was also explained by Al Farudi<sup>27</sup> and Maududi<sup>28</sup> that is Islam appreciate the skill and experience. Therefore, pay policy could be different for different job. This is in accord with Uzair<sup>29</sup> opinion that stated one most important Islamic philosophy regarding pay is fairness.

### (3). Fair Means Clear and Transparant

One important instrument in shariah wage to assure fairness is clarity and transparency contained in QS Al-Baqarah verse 282.<sup>30</sup> This source is giving directive in legal relation such as trading, commerce and job. Shariah suggesting requirement for transactional pay and its due time. It should also being written and strengthened with two witness also to act fair and trusted so that there wont be any cheating. Other than giving directive, shariah through Al-Quran would give solution for one that did not capable to be fair, in which he could ask for guardian or trusted person to replace him in writing his job.

Shariah suggest that this should be written to emphasize the clarity and transparency in conducting a job concerning legal relation between human, in this matter working relationship between employer with laborer. Fairness principle that means clarity and transparent in legal area was known as contract or agreement. The importance of agreement or contract in shariah was suggested in His words within Al Quran so that we fulfill

<sup>26</sup> Didin Hafiduddin, Op.cit, p. 35

<sup>27</sup> Al Faruqi, Ismail R, *Islam and Labor in Islam and a new international economic order: a social dimension*, 1980

<sup>28</sup> Maududi, Sayyid Abdul A'la, *Ma'ashiyat e-islam (economics of islam)*, Lahore: Islamic Publication, 1969 in Didin Hafiduddin, Op.cit, p. 35

<sup>29</sup> Uzair, "Islamic Economic System: An Overview" *al Balagh* (October: 1990), p. 17

<sup>30</sup> This was said in His words: "O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe writ [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men (available), then a man and two women from those whom you accept as witnesses – so that if one of the women errs, then the other can remind her. And let not the witnessess refuse when they are called upon. And do not be [too] weavy to write it, whether it is small or large, for its [specified term]. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For [them] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah Knowing of all things" (QS Al-Baqarah (2):282). Didin Hafiduddin, Op.cit, p. 31

the agreement or contract that we made since we would responsible over it.<sup>31</sup>

Openness or transparency in wage according to shariah could give benefit for some party to conduct financial planning. For employer, they could arrange financial budget which should be available in due time for wages payment. And laborer could predict the amount of pay he/she was going to receive by reflecting to the job he was doing. Laborer could also arranging his/her expenditure budget in explicit manner.

Clarity in wages payment was also traced back to Al Quran that is QS Al-Maidah verse 1.<sup>32</sup> From the Al Quran verse and Baihaqi hadist above, it is known that main principle of fairness was in clarity through agreement in pay and commitment in executing it. Akad in industrial relation would occur between laborer and employer. It means that before labor was hired, it should be clear how is the pay he/she is going to receive. This agreement would contain the amount of pay and its payment method as in the following hadist: "From Abdillah bin Umar, Rasullullah SAW said: "Give to him his pay before his sweat dried" (HR Ibnu Majah and Imam Thabrani).<sup>33</sup>

Fairness principle that means clarity and openness in this shariah wage arrangement has suggested to finished or to pay the wages as soon as possible after his work is done either in gradual or all of it.<sup>34</sup> This would give several benefit, such as: first, it could give satisfaction for laborer because they were obtaining the result of their work in real manner. Second, it could maintain harmonic industrial relationship between employer and employee. Third, it could avoid or minimize denial or neglectful in employer over labor pay. Fourth, it could motivate laborer to be more professional in working.

### 3). Appropriateness Principle

Shariah has explained that wage could be said appropriate with several principles as follows:

#### (1). Pay appropriateness from party that conduct working agreement

Pay appropriateness principle from party that conduct working agreement within shariah would consist of: 1) good will (willingness) from both side that conduct working agreement, 2) have reason and able to differentiate between good and bad or capable (*mumayyiz*), 3) clear in pay and benefit being obtained.<sup>35</sup> From these three aspect of pay appropriateness for those side, if hiring laborer that incapable in working, thus his pay would be considered as inappropriate, since he was thought to unable in meeting the requirement according to shariah as His words in QS An-Nisa:5.<sup>36</sup>

Pay appropriateness could be fulfilled if party that meeting those three requirement could show clear nominal to laborer with the purpose to eliminate pay in clarity. Since in shariah,

<sup>31</sup> QS 17:34

<sup>32</sup> "O you who have believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Quran] – hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends."

<sup>33</sup> Didin Hafiduddin, Op.cit, p. 33

<sup>34</sup> Tafsir Lajnah Al-Quran, Op.cit, p. 185

<sup>35</sup> <http://www.angelfire.com/id/dialogis/perlakuan/html>

<sup>36</sup> "And do not give the weak minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness" (QS An-Nisa:5)

pay appropriateness was done by both side with good intention, have reason or capable.<sup>37</sup> Pay appropriateness could be given in cash or in gradual manner in which according to pay shariah it could take form as wealth (money) or service (which previously has been done through working agreement between both side). Anything that could be priced can be used as payment either in material or service with clarity requirement.

Shariah measure pay appropriateness by first seeing its laborer capability. Shariah has given clear criteria to conduct laborer selection so that employer would gain satisfied working result and employer must pay appropriate wages toward these laborer. Therefore, the main criteria in laborer capability based on shariah would be labor capability. Labor capability is the effort put by labor to work in industrial sector, his skill and ability. According to shariah as written by Afzalur Rahman that shariah had given clear limitation that labor should capable because labor would be able in improving capital within industry.<sup>38</sup>

Pay appropriateness according to shariah by looking at labor's capability is moral and physical health as His words in QS Al-Qashash:26.<sup>39</sup> This verse suggested that physical strength that is health and honesty as in good attitude would be necessary for a capable labor as the requirement to obtain appropriate pay according to shariah. To measure pay appropriateness according to shariah based on labor capability is by looking at labor's mind. Obtain a labor with healthy mind as labor to work with as wise as possible, as said in His words: Said Joseph: "Appoint me over the storehouses of the land. Indeed I will be a knowing guardian" (QS Yusuf:55).<sup>40</sup> This explained that shariah has given clear measurement for appropriate pay for knowledgeable employee.

### **(2). Pay appropriateness viewed from benefit size over labor**

Shariah explains concerning pay appropriateness determination could also being viewed from the amount of working service or the amount or usefulness of labor's effort. The more useful of a labor, the bigger amount of pay he would be receiving. It means that work professionalism, work loyalty, work quality, work experience and labor contribution toward employer and organization would be highly appreciated in shariah wage as His words in interpretation as follows: "Are those who know equal to these who do not know?" (QS Az-Zumar:9).<sup>41</sup>

Qardhawi explained that according to the spirit of Az-Zumar verse 9, it is impossible that labor pay would be equalized between smart labor with less smart labor, intellect labor with less intellect labor, diligent labor with less diligent labor, an expert employee with less expert employee. Therefore, according to Qardhawi equalizing two different labor is an act incompatible with shariah, which separate two

<sup>37</sup> This is in accord with the prophet words: "If there is one of you hired an 'Ajiir' (labor) then he should tell his pay (wage) to the related person" (HR Imam Ad-Daruquthni of Ibnu Mas'ud).

<sup>38</sup> Afzalur Rahman, *Doktrin Ekonomi Islam: Jilid 1*, PT Dana Bhakti Wakaf, Yogyakarta, 1995, p. 262

<sup>39</sup> One of the women said: "O my father, hire him (Moses). Indeed, the best one you can hire is the strong and the trustworthy." (QS Al Qashash:26), Ibid, p. 263

<sup>40</sup> Ibid, p. 264

<sup>41</sup> Qardhawi, p. 34

similar labor. Good and high labor productivity would give positive impact toward the development of a company and its direct impact could be felt by employer with indication for profit in organization. Therefore pay appropriateness for labor was based on how far is the benefit he gave toward employer to become measurement tool in shariah. In another verse God said: "And for all are degrees from what they have done. And your Lord is not unaware of what they do" (QS Al An'am 6:132).

In a hadist relating benefit amount could also been showed by hadist of Al Bukhori and Muslim.<sup>42</sup> This was also stated by a clergy Al Syairazi that is: "It is permitted to do akad ijarah (renting to one another) over benefit ... since the need over benefit is the same as the need over item. Since akad jual beli (commerce) is permitted, thus akad ijarah over benefit should also be permitted."<sup>43</sup> Thus, labor pay would become logic when it is based on skill and benefit that the labor provide.

Therefore, labor pay should be based on skill, diligence, and benefit that could be given by this labor. In another word, shariah did not know about pay limitation over labor. Appropriateness principle in shariah pay was not only seen for party that conduct working agreement, but also appropriateness principle in shariah pay should be comprehend as "sufficient food, clothes and shelter".

### **(3). Pay appropriateness which means sufficient food, clothes and shelter**

Shariah pay appropriateness could be seen in, first, sufficient food that is able in fulfilling life need or not insufficient in food, sufficient in clothes, meaning able to fulfill life need in clothes, also sufficient in shelter that is able to fulfill the need of shelter thus the benefit is quite large for labor since they would be able to fulfill three aspect in sufficient or not lacking. Pay appropriateness aspect has given understanding for employer to take responsibility over labor thus there were no starving labor (because cannot eat), no naked labor (because did not own clothes) and there were no labor in distress because he did not place to live as explained in QS At Thoha verse 118-119.<sup>44</sup>

In another hadist, it is explained that pay appropriateness could be seen in fulfilment of primary, secondary and tertiary needs of labor with measurement used by employer, not based on the lowest possible number. This was mention in hadist Muslim.<sup>45</sup> Therefore, according to shariah, labor condition in

<sup>42</sup> From Anas Rasulullah SAW said: "Not one Moslem would cultivate plant or tree, and then some of it eaten by bird, other human, livestock animal or wild animal unless his effort would be alms for him regarding greater things". Ibid, p. 260

<sup>43</sup> Al-Syairazi, *al-Muhadzdzab*, juz 1, Kitab al-Ijarah, p. 394

<sup>44</sup> "Indeed, it is [promised] for you not to be hungry therein or be unclothed. And indeed, you will not be thirsty therein or be hot from the sun." In Didin Hafiduddin, Op.cit, p. 66. Shariah wage that assess appropriateness principle could be seen from these 3 aspects, this is relevant with Islamic law objective viewed from first aspect that is making islamic law to fulfill the primary needs of human or *daruriyyat* (food), secondary or *hajjiyyat* (clothes) and tertiary or *tahsiniyyat* (shelter).

<sup>45</sup> "They (slaves and servants) are your brother, Allah put them under your care; thus anyone had brother under his care then he should give him food as his own food; and did not burdened them with a heavy duty, and if you give him a heavy burden, you should help them in completing it" (HR Muslim)

its role as whatever it is, such as a cleaning service personnel, should still be considered over its pay appropriateness in order to determine how much pay should be given in order he/she would sufficient in food, clothes and shelter.

#### (4). Pay appropriateness meaning in accord with market

Pay appropriateness that meaning in accord with market was stated in His words as follows: "And do not deprive people of their due and do not commit abuse on earth, spreading corruption" (QS Ash-Shuara 26:183).<sup>46</sup> This verse carry the meaning to prohibit someone in inflicting loss over someone else by lessened his rights. In general speaking, it is prohibited to hired labor by giving wages under normal circumstances according to market.

#### 4). Punctuality Principle

Shariah wage also had other specific feature that is contain punctuality principle. In which shariah highly understand that due time in wages payment was always become controversial issue in the world of labor, particularly in wage area. Therefore, there were hadist that explained about wage payment.<sup>47</sup> Rasulullah reminds employer to pay labor wages in time or when his work is done and faster would be better. One hadist of Rasulullah by Baihaqi was as follows: "Give the pay to the labor before his sweat dried, and tell him his pay requirement over what he do" (HR Baihaqi).

The above hadist suggested regarding pay time to be paid attention. Employer should pay labor wages in time and or before the sweat dried or their energy dried out, since wage payment delay would carry the risk and impact not toward labor, but also toward the employer with the risk ruining expenditure budget arrangement of the company.

In contrast, shariah is highly strict toward employer that did not pay their wages in time, in which this employer was considered in-debt toward labor and this debt should be paid though employer was late in paying this debt due to lower income or even in bankruptcy. Shariah was also highly strick in wages pay time and labor's pay rights in which when employer cannot pay the debt over labor then this employer was referred as a thief, such as in hadist said by Abu Daud, Rasulullah said: "Abu Bakar stated: *It is said to me that Prophet Muhammad said: Who took an attitude other than that, than he/she is one far too much or a thief*".<sup>48</sup> Shariah suggested regarding wages payment to be on time. Delay in wages payment would be categorized as thief. Thus shariah is highly appreciate time and effort of labor.

#### 5). Nation Responsibility Principle

Nation responsibility principle in shariah wage is a reflection over citizen obligation including labor and employer to follow the regulation as long as it is not incompatible with

<sup>46</sup> Didin Hafiduddin, Op.cit

<sup>47</sup> "To be told from Abu Hurairah RA from Prophet Muhammad SAW that he said: "Allah had said: "There were three kind of men where I would become their enemy in the judgment day. First, are those who commit to give on My behalf (swore on My name) but he did not fulfill it. Second, are those who sold a free man (not slave), and consume his money. Third, are those who hire a labor and hire it full but did not pay his wage" (HR. Bukhori) in Imam Az-Zubaidi, *Ringkasan Shahih Bukhari*, Penerbit Insan Kamil, Solo, 2014, p. 434

<sup>48</sup> Saleh, Op.cit, p. 1443

shariah law, in which nation responsibility principle was contain in QS An-Nisa (4) verse 59.<sup>49</sup> Therefore, referring to the spirit of QS An Nisa verse 59 thus nation responsibility would create nation obligation to protect labor pay rights dna developing fair and appropriate pay in accord with shariah. Based on the above explanation, it could be said that nation responsibility principle carry the meaning that government had the obligation to fulfill labor pay rights and develop fair, appropriate and punctual pay in accord with pay determination based on objectivity recorded in fairness principle and pay determination based on subjectivity recorded in appropriateness principle as mentioned in previous sub-chapter.

Nation responsibility principle in shariah pay had the obligation to create fair, appropriate and punctual pay toward labor based on its skill and abilities. Not only that, nation responsibility principle in shariah pay would also responsible over labor capability to recover or to return their pay rights over loss conduct by employer, this was also mention by Tabakoqlu.<sup>50</sup> Therefore, in shariah, nation carry the responsibility and oversee labor pay loss as employer or company error and nation had the responsibility to arrange this matter into wage regulation so that it is effectively implemented. This showed that nation responsibility on shariah wage was not only concern with nation responsibility based on law but also in nation responsibility based on moral.

Nadvi suggested that shariah provide a complete law for all labor interest, particularly in wage. Nation could do intervention within labor market to oversee the implementation of agreement.<sup>51</sup> And Abu Sulaiman recommend to found wage assuring organization to stabilize wage fluctuation.<sup>52</sup> At this moment, nation could execute its obligation through the making of wage law in order to oversee labor pay rights, however at the same time they could encourage employer to develop.

#### C. Ethical Aspect

This ethical aspect is an aspect that made a labor or an employer to have sense of humanity and responsible over its attitude in fulfilling labor pay rights and employer obligation to pay wages in order to develop harmonic industrial relationship. Ethical aspect in shariah wage contain in kinship principle and trust principle analyze below.

#### 6). Kinship Principle

Kinship principle is Islamic civil relationship principle leaned on respect, love and helpful toward one another to gain

<sup>49</sup> "Do you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result" in Tafsir, Keadilan, Op.cit, p. 390

<sup>50</sup> "Although labor did not work as in cause by employer or company mistake, such as lacking in raw material, no power, and others, thus labor should obtain their wage because they did not make agreemen before. Employer was oblige to pay for labor loss if they should terminate their work before the agreement term was over", in Didin Hafiduddin, Op.cit

<sup>51</sup> Nadvi, *Islam qanun e-ujrat ka ek bab*, a chapter of the islamic law of wages, Ma'arif 77, no 6, June 1956, p. 405-21

<sup>52</sup> Abu Sulaiman, *The Theory of the economics of islam in contemporary aspects of economic thinking in Islam*, Indianapolis, IN: American Trust Publication, nd, p. 41-2

virtue.<sup>53</sup> Kinship principle is the real body of shariah concept in concrete legal relationship between labor and employer as brother or family. It acts as a real appreciation over humanity development in one another regarding good relationship in particular within industrial relation.

Sadeq explained that according to shariah there were two factors that should be paid attention in determining amount of pay that is primary and secondary factors. Primary factor is basic needs, working load and working condition. While secondary factor would treat labor as brothers.<sup>54</sup> This was strengthened by Shafi that recommend market mechanism to determine wage based on sympathy and brotherhood and not based on personal egoism.<sup>55</sup>

Those expert argument was strengthened in two hadist as follow: "They (slaves and servant) is your brother, Allah has put them under your care"<sup>56</sup> (HR Muslim). In another hadist said by Mustawrid bin Syadad, Rasulullah SAW said:

*"I heard Prophet Muhammad SAW said: "Those who become labor for us, we should find a wife for him and even if an assistance that did not have it, he should find it for him. If he did not have a place to stay, he should find him a place to stay"* (HR Abu Daud).<sup>57</sup>

From two hadist above, it is known that shariah wage regarding labor as a family and not only as partner of employer in industrial relationship, thus it is said that kinship principle is a highly humane principle and give high consideration of others, particularly labor, so that harmonic industrial relation would be realized. For unmarried labor, according to shariah, it is the duty of employer that hire him to look for a wife for him. It means, relationship between employer and labor should not only limited into formal working relationship, but labor should be considered as their own family. This concept is an Islamic concept which was born over 14 centuries ago.<sup>58</sup>

Suggested again by Khan (1975) that in community life, Islam had the principle for pay determination that is not based on demand and supply. Contract or agreement should be able to fulfill the basic need of labor. This is a directive that should be executed. Company would receive high responsibility in giving food and clothes to labor or to give sufficient amount of pay to fulfill the basic needs of labor. This was proven in Arabic countries in which there were scarce employer to decrease his labor pay. Thus, shariah wage was highly related with ethical or moral aspect. It is considered immoral if there were employer reduce his labor's pay in a condition excluded from the agreement. Therefore it could be concluded that shariah wage is highly emphasize on moral aspect that is implementation of kinship principle that took important role in labor pay.

### 7). Trust Principle

Trust (kepercayaan) according to Bahasa Indonesia dictionary in etymology was taken from the word percaya

<sup>53</sup> Zainuddin Ali, *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia*, Sinar Grafika, Jakarta 2008, p. 48

<sup>54</sup> Sadeq, *factor pricing and income distribution*, Journal of Islamic Economics 2, No 1, January 1989, p. 45-5

<sup>55</sup> Shafi, *Distribution of wealth in Islam*, Krachi: Begum Aisha Bawani Publications, 1970, p. 36

<sup>56</sup> Saleh, Op.cit, p. 969

<sup>57</sup> Shaleh, *Mausuh Al-Hadits asy-Syarif Kutubus Sittah Sunan Abu Daud Kitab al-Kharaj chapter 9 No 2940*, p. 1443

<sup>58</sup> Ibid, p. 37

which means: 1) admitted or believe that one is truly is or real; 2) considering or believe that something is really exist; 3) assuming or believe that someone is truly honest; 4) highly certain or assuring the ability or strength of one or something (that it would fulfil his hope).<sup>59</sup>

Labor and employer should trust each other so that harmonic industrial relationship could be achieved. Both side should give right and honest information concerning a lot of things that being agree to in working agreement so that the purpose of the work is achieved. Trust principle that contain honesty and trust was based on QS Al-Anfaal:27 which means "Those who have faith, don't you betrayed the trust given to you while you know".

In hadist of prophet it is suggested that breaking trust (amanah) was destruction of nifaq that attached to him. After amanah was completed, then it left legal role to be done in justice. If amanah was suggested as the first legal principle, thus justice is the second legal principle. Justice become power principle and it is needed to build civilization and becoming the core of Islamic law. All religion would agreed that justice over human should be done.

From the above explanation, shariah showed that trust principle was made as an important competency in inter-human relationship, particularly in wage, because it related with justice. When labor is honest and trusted then it would be fair for employer to give high pay for this labor. Since in shariah, honest and trusted labor had related with moral or ethic sacrifice implemented by labor and this moral sacrifice is highly important and should be appreciated because it would give good wishes and hope for the employer and company. Thus, trust principle could be indicated by the completeness of a job on time, in which its purpose and result were also up to expectation. Therefore, wage would admit individual ownership based on trust, honest, and not authoritative.

## IV. CONCLUSION

It might be concluded that shariah wage principle in industrial relationship consist of three aspect in which contain seven principles as follows : 1) Theology principle as representation of aqidah or ideology aspect, 2) Fairness principle, 3) Appropriateness principle, 4) Punctuality principle, 5) Nation responsible principle, in which these four act as representation of shariah aspect or normative aspect, and 6) Kinship principle and 7) Trust principle, both principle act as representation of moral aspect of shariah.

## V. RECOMMENDATION

For the government to accomodate shariah wage principle considering majority labor in Indonesia were Moslem. By accomodating shariah wage principle, it would give solution for lack of principle in wage area in Indonesia, whereas there were advantage in this shariah wage principle which is in accord with the need and condition of industrial relation nowadays.

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