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LEGAL POLICY FOR WOMEN WORKERS IN INDONESIA: A REVIEW OF CONTEMPORARY ISLAMIC LAW

Abstract: : The Indonesian government issued Regulation in Lieu of Law (Perppu) Number 2 Year 2022 on Job Creation by amending several contents of the regulation. After the issuance of the regulation, attention has been focused on the regulation of the protection of women in law. Therefore, this study aimed to determine the effect of Government Regulation on Job Creation regarding the welfare of women workers in the review of contemporary Islamic law through *siyāsah dusturiyāh*. The analysis was conducted through library study, using data sources acquired from the literature pertaining to the Government Regulation in Lieu of Law on Job Creation. The results showed that in contemporary Islamic legal study, the concept of *siyāsah dusturiyāh* emphasized policy formation to achieve benefits measured through *Maqasid Shari'ah*. According to Perppu, every citizen was able to secure employment and receive fair as well as dignified compensation and treatment in labor relations, including the protection of women workers. However, several aspects did not work in accordance with the objectives and had a negative impact on women workers. These included the threat of low wages, the expansion of the outsourcing system, and the obligation of prolonged leave, which no longer persisted. In this context, Perppu was not consistent with the purpose of the benefit of women workers.

Keywords: Contemporary Islamic Law, Legal Policy, *Siyāsah Dusturiyāh*, Women Workers.

INTRODUCTION

The role of women in the fields of employment, education, health, and politics in Muslim countries experiences significant variation.¹In a widely recognized study by Peter Timmer, an interesting comparison is made regarding women's participation in the workforce of Muslim countries, Europe, and Asia.² According to Timmer, the percentage of women's participation in the workforce of Europe and Asia, including East Asia and the Pacific, is nearly on average with European Monetary Unit (EMU)/Organization for Economic Cooperation and Development (OECD) countries.³ However, Muslim women's participation is lower in the Middle East and North Africa, while the ratio in South Asia is better.⁴

Economic growth in all sectors has increased due to civilization within the era of industrialization and capitalization.⁵However, the variable does not guarantee the welfare of the people in a country.⁶ This can be influenced by various factors, including the gap between the availability of jobs with more unemployment, unbalanced wages, power domination, Corruption, Collusion, and Nepotism(KKN).⁷ There is considerable socioeconomic inequality where the amount of wealth in one family is almost equal to dozens of families. In increasingly urgent life needs, capitalization opens up equal

¹Haghighat Elhum, "Social Status and Change: The Question of Access to Resources and Women's Empowerment in the Middle East and North Africa," *Journal of International Women's Studies* 14, no. 1 (2013), <https://vc.bridgew.edu/jiws/vol14/iss1/17/>.

²Naila Kabeer dan Simeen Mahmud, "Globalization, Gender and Poverty: Bangladeshi Women Workers in Export and Local Markets," *Journal of International Development* 16, no. 1 (Januari 2004): 93-109, <https://doi.org/10.1002/jid.1065>.

³Al Jamal Mustafa Shindaini dkk., "Mental health condition among female workers during COVID-19 pandemic: insights from Dhaka city, Bangladesh," *International Journal of Public Health Science (IJPHS)* 13, no. 1 (1 Maret 2024): 219, <https://doi.org/10.11591/ijphs.v13i1.22821>.

⁴S.A Minam Jafri, "Trends, Protection and Economic Development in Muslim Countries," *Pakistan Horizon* Vol 60, no. No 4 (Oktober 2007): 6, <https://www.jstor.org/stable/41500090>.

⁵Asian Development Bank, "Asia's Journey to Prosperity: Policy, Market, and Technology Over 50 Years," 0 ed. (Manila, Philippines: Asian Development Bank, Januari 2020), <https://doi.org/10.22617/TCS190290>.

⁶Haris Setyawan dkk., "Personal and Environmental Risk Factors of Work-Related Stress: A Cross-Sectional Study among Female Workers of a Textile Industry in Indonesia," *The Open Public Health Journal* 15, no. 1 (23 November 2022): e187494452210190, <https://doi.org/10.2174/18749445-v15-e2210190>.

⁷Ollyyua Cantik Nur Annisa, "ANALISIS DAMPAK PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG CIPTA KERJA TERHADAP HAK PESANGON PEMUTUSAN HUBUNGAN KERJA," *Journal Equitable* Vol 8, no. No 1 (2023): 129.

opportunities for both men and women to work with applicable terms and conditions. Therefore, the participation of women in the world of career and work is inevitable.⁸

The urgent economic needs of the family include husband and wife working together as breadwinners. The Qur'an informs about the permissibility of wives working outside the home. Q.S at-Taubah:71 that *"The believers, both men and women, are guardians of one another. They encourage good and forbid evil, establish prayer and pay alms-tax, and obey Allah and His Messenger. It is they who will be shown Allah's mercy..."*⁹ and Q.s al-Qashash: 23 that *"When he arrived at the well of Midian, he found a group of people watering 'their herds'. Apart from them, he noticed two women holding back 'their herd'. He asked 'them', 'What is the matter?'"* They replied, *"We cannot water 'our animals' until the 'other' shepherds are done, for our father is a very old man. So he watered 'their herd' for them, then withdrew to the shade and prayed, 'My Lord! I am truly in 'desperate' need of whatever provision You may have in store for me'."*¹⁰

In verses 23 and 24 of Surah Al-Qasas, the term "khair" is referred to by most interpreters as a small amount of food.¹¹ Husbands and wives have equal rights and obligations. The husband has the responsibility to care for, lead, and guide the family in outward and inward matters, and is responsible for the safety and welfare of the family. In this context, family life will be successful when the obligation is carried out properly. Equal rights of men and women workers are also crucial in addition to the balance of rights and obligations in the household. In the Constitution of the Republic of Indonesia, 1945 (UUD 1945) Article 28D paragraph (2) emphasizes that everyone has the right to work and to receive fair as well as decent compensation and treatment in labor relations. In this case,

⁸Rose Chen Siew Kee dkk., "Factors Affecting Women's Participation in Career: A Systematic Review," *International Journal of Academic Research in Business and Social Sciences* 10, no. 9 (30 September 2020): Pages 509-521, <https://doi.org/10.6007/IJARBS/v10-i9/7829>.

⁹Diakses 9 Oktober 2023, <https://tafsirweb.com/3087-surat-at-taubah-ayat-71.html>.

¹⁰<https://tafsirweb.com/3087-surat-at-taubah-ayat-71.html>.

¹¹Masripah, Yufi Mohammad Nasrullah, dan Nurul Fatonah, "Kebolehan Wanita Berkarir Dalam Pandangan Al-Quran (The Permissibility of Women's Career in the View of the Al- Quran)," *Jurnal AlQuds*, Vol. 6, no. No. 2 (Tahun 2022): hlm 856, DOI: 10.29240/alquds.v6i2.4238.

the state guarantees fair treatment of workers in terms of the type of work, position placement, and wages.

Even though the rights of women and men workers are considered equal, the condition of women in the labor sector is far from expectation in terms of number and quality. Therefore, there is a gender imbalance in employment between women and men workers as reported by the Labor Force Participation Rate (TPAK). Based on data from the Central Bureau of Statistics in February 2022, there is a large gap between TPAK by gender. The men TPAK in 2021 reached 86.37% in 2022, while women TPAK only reached 57.49%. However, the percentage increased compared to the same period the previous year which reached 61.82%.¹² Even though women's TPAK has increased, the figures for both genders are still quite far apart.

All government policies regarding the formation of law in Islam are called *siyāsah dusturiyah*¹³ which includes the meaning of regulating, controlling, managing, and making decisions. Furthermore, *siyasah* is an effort to make decisions with certain intentions and objectives. The object of *siyāsah* study is the relationship between citizens and state institutions, which includes Law No. 6 of 2023 replaced by Perppu No. 2 of 2022 concerning Job Creation.

The establishment of Job Creation Law simplifies administrative processes in investment by simplifying business and permit requirements to reach MSMEs, cooperatives, centralization, and digitization of licensing.¹⁴ The next concern is related to the regulation of the protection of women in law. The question addresses the extent to which the substance of the various provisions has adequately addressed the needs and interests of women workers, who show distinct characteristics from the men counterparts.

¹²“Tingkat Partisipasi angkatan Kerja TPAK Menurut Jenis Kelamin,” diakses 29 Juli 2023, <https://rembangkab.bpsgo.id/indicator/6/570/1/tingkat-partisipasi-angkatan-kerja-tpak-menurut-jenis-kelamin.htm>.

¹³Muhammad Faizur Ridha, “Tafsir Ayat-ayat Siyāsah dusturiyāh (Kajian Sistem Pemerintahan),” (UIN ar-Raniry, t.t.), <https://repository.ar-raniry.ac.id/id/eprint/2859/>.

¹⁴Teddy Asmara, Setia Untung Arimuladi, dan Yos Johan Utama, “Investment Dynamics in the Emerging Market: COVID-19 Influence,” *Journal of Governance and Regulation* 11, no. 4 (2022): 90-102, <https://doi.org/10.22495/jgrv11i4art9>.

To answer the question, this study aims to examine the regulation of the protection of the rights of women workers in law on labor and its implementing regulations.

Based on the search results, several previous studies discuss labor policy issues, including a paper written by Ollyvia Cantik Nur Annisa (2023) entitled "Analysis of the Impact of the Government Regulation in Lieu of Law on Job Termination Severance Pay Rights". The issuance of the Omnibus Law on severance pay rights for job termination is discussed using normative legal study with a theoretical approach. The Omnibus Law was issued to provide legal certainty for investors, fulfill citizens' rights to work, and form a national government. Even though this regulation is expected to absorb labor amid increasingly tight competition and the demands of the economic pandemic, there are issues in the development and implementation that must be addressed. Controversy arises because the concept does not include labor unions in the drafting process. Therefore, the government can resolve labor issues fairly and create better regulations to protect workers' rights.¹⁵

A study by Tazkia Tunnafsia Siregar (2023) entitled "Analysis of the Protection of Maternity Leave Rights for Women Workers in Indonesia" discusses the protection of maternity leave rights for women workers in labor law. The normative legal approach used focuses on analyzing rules related to maternity leave rights for women workers. This study also shows the issue where women workers are often fired or disadvantaged after taking maternity leave. This is contrary to legal provisions that prohibit discriminatory actions against pregnant workers.¹⁶ Moreover, a study by Achmad Dwi Prasetyo (2023) entitled "The Urgency in Enacting the Government Regulation in Lieu of Law Number 2 of 2022 Concerning Creation of Jobs from *siyāsah dusturiyāh* Perspective" examines the urgent necessity in the enactment of the Omnibus Law related to Job Creation Law from legal and political perspective. This study uses a normative legal method, combining conceptual

¹⁵Ollyvua Cantik Nur Annisa, "Analisis Dampak Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja Terhadap Hak Pesangon Pemutusan Hubungan Kerja," *Journal Equitable* Vol 8, no. No 1 (2022): 129, <https://doi.org/10.37859/jeq.v8i1.4494>.

¹⁶Tazkia Tunnafsia Siregar dan Laura Sharendova, "Analisis Perlindungan Hak Cuti Hamil dan Melahirkan Bagi Pekerja Perempuan di Indonesia," *Jurnal Pendidikan Tambusai* Vol 7, no. No 3 (t.t.): 21952, <https://doi.org/10.31004/jptam.v7i3.9813>.

approaches to interpret material. In addition, it analyzes the ability of legal system to accommodate the interests of the state and society, ensuring effective functioning without sacrificing the rule of law.¹⁷

A study by Amriyati et al. (2023) entitled "Protection of Women Workers in Family-Friendly Policies in the Workplace: Socialization to Labor Unions" discusses the protection of women workers through family-friendly policies in the workplace, emphasizing the role of labor unions in advocating for welfare. This shows the importance of knowledge and support from supervisors and managers in the successful implementation of policies. The study also mentions the benefits of family-friendly policies for workers and workers, such as maternity leave, on-site childcare, breastfeeding opportunities, and remote work options. Therefore, labor unions should play a significant role in the development and implementation of these policies. The preparation of materials includes literature studies, such as analyzing the main legal regulations related to the protection of women workers and expert investigation of policies.¹⁸

A study by Ledo Saputra (2021) entitled "Juridical Review of the Formation of Omnibus Law Model Legislation in the Indonesian Legal System from *Siyāṣah Dusturiyāh* Perspective" analyzes the process of drafting omnibus laws in Indonesia, showing the lack of public participation and transparency in formation. This analysis emphasizes the importance of aspirational and participatory approaches in lawmaking, ensuring democratic, responsive, and inclusive laws.¹⁹

Ollyvia Cantik Nur Annisa (2023), Tzakia Tunnafsia Siregar (2023), and Ledo Saputra (2021) used a normative approach, while Amriyati (2023) adopted a literature review approach. In terms of focus, Ollyvia Cantik Nur Annisa focuses on the Omnibus

¹⁷Achmad Dwi Prasetyo, "Hal Ihwal Kegentingan Yang Memaksa Dalam Penetapan Peraturan Pemerintah Pengganti Undang-undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Perspektif *Siyasah Dusturiyah*" (Malang, Univeristas Islam Negeri Maulana Malik Ibrahim, t.t.), <http://etheses.uin-malang.ac.id/58969/>.

¹⁸Amriyati dkk., "Perlindungan Pekerja Perempuan Dalam Kebijakan Ramah Keluarga Di Tempat Kerja: Sosialisasi Pada Serikat Pekerja" *Jurnal Abdimas Bina Bangsa* Vol 4, no. No 2 (t.t.): 1312, <https://doi.org/10.46306/jabb.v4i2.633>.

¹⁹Ledo Saputra, "Tinjauan Yuridis Pembentukan Undang-undang Model Omnibus Law Dalam Sistem Hukum Indonesia Perspektif *Siyasah Dusturiyah*" (Bengkulu, Institut Agama Islam Negeri (IAIN), 2021), <http://repository.iainbengkulu.ac.id/7048/1/SKRIPSIKU-BAB-1-5%20FINAL.pdf>.

Law to understand the impact of severance pay termination. Tzakia Tunnafsia Siregar analyzes maternity leave rights for women workers. Achmad Prasetyo's investigation examines the urgency and political implications of the enactment of the Omnibus Law using *siyāṣah dusturiyāh* analysis. Furthermore, Amriyati investigates the protection of women workers through family-friendly policies in the workplace and the role of labor unions in advocacy. Ledo Saputra shows public participation and transparency in the formation of omnibus laws from *siyāṣah dusturiyāh* perspective to understand legal and political aspects.

In principle, these studies are different from the main focus, which shows the adequacy of the Omnibus Law in providing welfare for women workers. The theme has not been discussed directly related to testing the substance of the Omnibus Law, Contemporary Islamic Law, and the relation to the welfare of women workers. The statutory approach and *siyāṣah dusturiyāh* are used as indicators of the adequacy for the interests of women workers.

STUDY METHODOLOGY

This library study uses documents as the object of study and a legislative approach (*statute approach*) is adopted to examine the articles in the Omnibus Law No. 2 of 2022. In addition, the theory of *siyāṣah dusturiyāh* is used as an indicator to measure the balance between the objectives of the articles and legal implications on the welfare of women workers. The sources used are secondary data, including articles, theses, recent news, and other documents related to the theme. Meanwhile, data collection is carried out through library search and online retrieval. To obtain comprehensive data, three techniques are used, namely editing or filtering, organizing or management, and finding or advanced analysis. This study aims to provide an overview of the structure and discussion of the articles in the Omnibus Law and assess the extent of balance to impact the welfare of women workers.

RESULTS AND DISCUSSION

1. **The Substance of Perppu Cipta Kerja and Legal Protection for Women Workers**
Substance of Labor Rules

The government recently issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 on Job Creation which was announced on Friday (30/12). The 1117-page Perppu on Job Creation contained several substantial changes in employment,²⁰ including labor transfers, minimum wage adjustments, terminology related to disability, improvements regarding rest periods, job loss guarantee program benefits, and several other aspects.²¹ The following is a description of each chapter:

Table 1. Chapter Structure of Perppu No 2 year 2022

Chapter	Discussion
I	General Conditions
II	Principles, Objectives, and Scope
III	Improvement of Investment Ecosystem and Business Activities
IV	Employment
V	Ease, and Empowerment of Cooperatives, Micro, Small and Medium Enterprises
VI	Ease of Doing Business
VII	Study and Innovation Support
VIII	Land Acquisition
IX	Economic Zone
X	Central Government Investment and Ease of National Strategic Projects
XI	Implementation of Government Administration to support Job Creation
XII	Supervision and Guidance
XIII	Other Provisions
XIV	Transitional Provisions
XV	Closing Provisions

Source: Author's interpretation

²⁰Susilowardani Susilowardani, "GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION IN PERSPECTIVE," *International Journal of Social Science* 3, no. 1 (2 Juni 2023): 41-44, <https://doi.org/10.53625/ijss.v3i1.5754>.

²¹Dwi Prastiyo Hadi dkk., "The Impact of the Omnibus Law Cipta Kerja on the Sustainability of MSMEs and Economic Growth by Applying the Canvas Model Business Method and the Use of Financial Technology, Especially Crowdfunding and Microfinance," *International Journal of Sustainable Development and Planning* 18, no. 2 (28 Februari 2023): 505-13, <https://doi.org/10.18280/ijstdp.180219>.

As a consequence of the implementation of Perppu, Job Creation Law is revoked and invalid. The substantial contents of Perppu No.2 of 2022 include:

a. Outsourcing Policy

In Job Creation Law, there are no provisions that set limits on the types of work outsourced except Perppu. This Government Regulation in Lieu of Law (Perppu) limits the use of outsourcing to only a portion of the work execution, and further details are regulated in a Government Regulation (PP).²² The change provides more opportunities to have permanent or fixed-term contract worker (PKWTT) status. However, the restriction does not hinder companies' efforts to continue expanding businesses. In this context, Job Creation Perppu aims to create a balance between providing opportunities for workers to have more stable jobs and allowing companies to develop businesses.²³

b. Minimum Wage Provisions

Articles regarding minimum wage provisions can be found in Articles 88C, 88D, and 88F of Job Creation Law which have been subjected to several changes. These changes include confirmation of the requirements for determining minimum wages at the district/city level, which considers three variables namely economic growth, inflation, and certain indices, as well as the government's authority to determine a different formula.

Several other changes are implemented such as the use of terminology "disability" in Article 67, affirmation of the obligation to use wage structures and scales in Article 92, improvements to paragraph references in Article 84 related to the use of rest time rights, as well as Article 45D dealing with the benefits of job loss

²²Susilowardani, "GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION IN PERSPECTIVE."

²³Albertus Hadi Pramono dkk., "Mitigating Social-Ecological Risks from the Surge in China's Overseas Investment: An Indonesian Profile," *Discover Sustainability* 2, no. 1 (31 Desember 2021): 59, <https://doi.org/10.1007/s43621-021-00069-0>.

guarantee program. Furthermore, Job Creation Perppu also covers several substances related to employment regulated in the previous law.

Before the current Perppu No. 2 of 2022 on Job Creation, the 2020 law was initially divided into clusters, starting from simplification of business licensing, investment requirements, employment, ease of empowerment and protection of MSMEs, imposition of sanctions, investment and government projects, to economic zones.²⁴ However, the omnibus law has received a lot of opposition from various groups, specifically labor. Law is considered not pro-people's interests where each article is only an effort to promote capitalists in reaping large profits.²⁵ In addition, a politician reported several shortcomings and limitations of the omnibus Cipta Kerja.²⁶ Firstly, law might not be in line with the Indonesian legal system based on civil law since the concept is more often used in countries with a common law system. Secondly, through the rapid deliberation process and many sectors, law may ignore the guidelines for the formation of democratic laws and regulations. This leads to a reduction in openness and public participation in lawmaking. Thirdly, politicians are concerned that law reduces the role of the House of Representatives (DPR) as law-forming body based on democratic principles. The discussions are also at risk of facing judicial review because the formation process does not pay attention to the principle of prudence and takes place very briefly.

Legal Protection For Women Workers

In the past few decades, significant changes have occurred within the Muslim community. Women have become active in the public sphere, and some have taken on

²⁴W Muhammad Zainuddin B Wan Abdullah dkk., "The Impact of Microfinance Services on Malaysian B40 Households' Socioeconomic Performance: A Moderated Mediation Analysis," *International Journal of Sustainable Development and Planning* 17, no. 6 (21 Oktober 2022): 1983-96, <https://doi.org/10.18280/ijstdp.170634>.

²⁵Susilowardani, "GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION IN PERSPECTIVE."

²⁶Rofiq Hidayat, "Mengintip Substansi RUU Cipta Kerja," diakses 29 Juli 2023, ukum Online.com, <https://www.hukumonline.com/berita/a/mengintip-substansi-ruu-cipta-kerja-lt5e418cbdd1a46/?page=4>.

significant roles in society.²⁷ For example, in Saudi Arabia, where women were previously restricted from accessing education, equal opportunities are now provided in the field. In countries such as Indonesia, Malaysia, and Turkey, women have become more determined in advocating for roles in public life.²⁸ Megawati Soekarnoputri, Nobel laureate Shirin Ebadi, Prime Minister Begum Khaleda Zia of Bangladesh, and Benazir Bhutto of Pakistan, show that Muslim women can play crucial roles in society and politics. However, recognition of contributions does not necessarily bring about the same liberation for Muslim women elsewhere.²⁹ An important aspect is to create an inclusive work environment and fair rules without discrimination. Therefore, legal protection should be provided for women workers at the international, national, and local levels to ensure safety and welfare in the workplace.

Soepomo divides labor protection into three types, namely: a. Economic protection against sufficient income for workers, including in situations where work is stopped for certain reasons. b. Social protection includes occupational health insurance as well as the right to associate and organize. c. Technical protection comprises occupational security and safety for workers.³⁰

The same reason is mentioned in the CEDAW Convention³¹ which regulates various forms of protection given to women workers, as stated in Article 11 paragraph (1) letters d, e, and f, namely:

²⁷Kate Eichhorn, "Girls in the Public Sphere: Dissent, Consent, and Media Making," *Australian Feminist Studies* 35, no. 103 (2 Januari 2020): 1-14, <https://doi.org/10.1080/08164649.2019.1661771>.

²⁸Kabeer dan Mahmud, "Globalization, Gender and Poverty."

²⁹Diah Ariani Arimbi, *Contemporary Issues of Women and Islam in Muslim Societies Book Title: Reading Contemporary Indonesian Muslim Women Writers Book* (Amsterdam university Press, 2009), <https://www.jstor.org/stable/j.ctt46n07t.5>.

³⁰Soepomo, *Pokok-pokok Hukum Ketenagakerjaan Indonesia* (Jakarta: Rineka Cipta, 1976).

³¹ CEDAW is a leading international treaty on women's rights, regarded as the "women's bill of rights." As articulated by Lisa Baldez (2011, 422), CEDAW transcends the divide between feminine and feminist interests by affirming that women's gender-related interests are human rights. Adopted in December 1979 after various developments within the United Nations (UN) and international social movements focused on women's rights, CEDAW aims to eliminate discrimination and inequality between genders, with an emphasis on political, social, and economic conditions. Efforts to negotiate a more inclusive women's rights convention began in 1963, and renewed momentum for completing CEDAW came with the International Women's Year in 1975. A working group was established in 1977 to finalize the convention,

(1) States parties to the Convention shall enact appropriate regulations to eliminate discrimination against women in the workplace to ensure equal rights, specifically in terms of:³²

- a. The right to receive the same pay, including benefits for equal treatment in respect of work of value and assessment of the quality of work,
- b. The right to social security, particularly in the case of pensions, unemployment, sickness and disability, old age, and other incapacity to work, as well as the right to paid leave,
- c. The right to protection of occupational health and safety, including efforts to protect reproductive function.

According to Article 28D paragraph (2) of the 1945 Constitution, every individual has the right to work and receive fair as well as appropriate remuneration and treatment in employment. In Indonesia, employment policy is regulated through Law Number 13 Year 2003 on Manpower (Manpower Law). Articles 5 and 6 of the Manpower Law stipulate equal rights without discrimination between men and women workers in the labor market Article 5 states that every worker has the same opportunity without discrimination to obtain employment. According to Article 6, every worker or laborer has the right to receive equal treatment without discrimination from workers.³³

Related to the protection of equal wages between women and men workers, in addition to being regulated in Article 11 paragraph (1) letter d of the CEDAW Convention, the provisions are also contained in international labor conventions recognized by the Government of Indonesia. These include Convention No. 100 on Equal Pay for Men and Women for Work of Equal Value (ratified through Law No. 80 of 1957)³⁴ and Convention

which was subsequently approved and presented to the UN General Assembly in 1979. Audrey L Comstock, "Signing CEDAW and Women's Rights: Human Rights Treaty Signature and Legal Mobilization," *Law & Social Inquiry* Vol 00, no. Issue 00 (2023): 3. (<https://creativecommons.org/licenses/by-nc-nd/4.0/>).

³²Undang-Undang Nomor 7 Tahun 1984 tentang Pengesahan Konvensi mengenai Penghapusan Segala Bentuk Diskriminasi terhadap Wanita., t.t.

³³Undang-undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, t.t., pasal 5-6.

³⁴Undang-Undang No. 80 Tahun 1957 Tentang Persetujuan Konsepsi Organisasi Perburuhan Internasional No.100 Mengenai Pengupahan yang Sama bagi laki-laki dan Wanita Untuk Pekerjaan Yang Sama Nilainya., t.t.

No. 111 on Discrimination in Employment and Occupation (ratified through Law No. 21 of 1999).

Some of the main issues related to women workers include wages, discrimination, social security, maternity protection, night work, termination of employment, and occupational safety and health.³⁵ These issues have also been regulated in the Labor Law, such as the prohibition of working at night (Article 76), protection of reproductive functions (Article 81), and protection of pregnancy (Article 82 paragraph (1)).

Even though legally the rights of women workers have been guaranteed in various laws and regulations as well as international conventions, the implementation is not in line with expectations. Discriminatory treatment of women workers occurs from the recruitment stage, when job announcements or vacancies provide special requirements, such as looking for unmarried women workers, attractive appearance, and willingness to not get married within a certain time.³⁶ These announcements will limit the opportunities for women who need work to apply or fill job vacancies.

Discrimination can occur in the form of restrictions on job requirements leading to discrimination based on gender. Many vacancies still require a certain gender, even though the actual character of job or position does not require a certain gender. Meanwhile, discrimination can continue in the placement or promotion of employees. Many strategic positions in job market tend to be reserved for men, while women are directed to positions related to administration, finance, or public relations.³⁷ In this context, technical and operational positions are often reserved for men workers. Women workers are often placed in positions that do not have final decision-making authority.

³⁵Marion Fiorentino dkk., "Highly Precarious General and Sexual Health Conditions of Young Domestic Servants: Results from a Qualitative Exploratory Study and Perspectives for Community-Based Research in Bamako, Mali," *AIDS Care* 35, no. 12 (2 Desember 2023): 2024–35, <https://doi.org/10.1080/09540121.2023.2189225>.

³⁶Sali Suliana, "Perlindungan Hak Pekerja Perempuan Dalam Perspektif Feminisme," *Jurnal Aspirasi* Vol 8, no. No. 2 (tahun 2017): hlm 216, <https://jurnal.dpr.go.id/index.php/aspirasi/article/view/1266>.

³⁷Heidi Hartmann, "Capitalism, Patriarchy, and Job Segregation by Sex," *Signs: Journal of Women in Culture and Society* 1, no. 3, Part 2 (April 1976): 137–69, <https://doi.org/10.1086/493283>.

Contemporary Islamic Law Review of Job Creation Law Policy: *Siyāsah dusturiyāh* and Legal Impact on Women

The discussion of fiqh *Siyāsah dusturiyāh* is inseparable from two main sources. First, *kulliyat* arguments (both verses of the Qur'an and hadith) are fixed or unchanged in changing society. Second, the results of *ijtihad* are due to changes in the situation and conditions of society.

Siyāsah dusturiyāh is a term derived from a combination of *siyāsah* and *dusturiyāh*. *Siyāsah* comes from the root word *sasa-yasusu* which means taking care of, organizing, and maintaining the interests of the people.³⁸ In the Arabic context, *siyāsah* translates as politics and is recognized in the writings of the salaf or classical scholars as *siyāsah syar'iyyah*, referring to politics based on sharia law.³⁹ In '*Al-Mu'jam al-Wasith*', there is a quote that states: "*Saasa an-naasa siyasatan*," meaning taking over leadership and governing the people. In this context, "*Saasa al-umura*" means to organize and improve these things.⁴⁰

In linguistic terms, *Siyāsah dusturiyāh*, translating to "dustur" meaning law, corresponds to the English term "Constitutio." Fiqh *Siyāsah dusturiyāh* is a description of a science that discusses government in a country. Therefore, *Siyāsah dusturiyāh* is the same as the Basic Law in Indonesia serving as the basis of every hierarchy of legislation.⁴¹

The study of *Siyāsah dusturiyāh* focuses on the formulation of legislation that guarantees human rights for every community, as well as the equality of everyone in the eyes of law without any social inequality, race, religion, culture, or gender.⁴² As in Abdul

³⁸Habib Ismail, Dani Amran Hakim, dan Muhammad Lutfi Hakim, "The Protection of Indonesian Migrant Workers under Fiqh Siyasah Dusturiyah," *Lentera Hukum* 8, no. 1 (24 April 2021): 151, <https://doi.org/10.19184/ejllh.v8i1.18725>.

³⁹Abd Halim, *Relasi Islam, Politik, Dan Kekuasaan* (Yogyakarta: LkiS, 2013).

⁴⁰Rapung Samsuddin, *Fiqh Demokrasi : Mengungkap Kekeliruan Haramnya Umat Terlibat Pemilu Dan Politik* (Jakarta: Gozian Press, 2013), hlm 45.

⁴¹Anjar Kurniawan, "Tinjauan Fiqh Siyāsah dusturiyāh terhadap Pelaksanaan Pembangunan Desa Menurut Undang-undang Nomor 6 Tahun 2014 tentang Desa (Studi di Desa Banjarsari, Kecamatan Waysulan, Kabupaten Lampung)" (Lampung, UIN Raden Intan, 201M), hlm 15, <http://repository.radenintan.ac.id/5281/>.

⁴²Ismail, Hakim, dan Hakim, "The Protection of Indonesian Migrant Workers under Fiqh Siyasah Dusturiyah."

Wahab Kallaf's view, recognizing the principles of the formation of basic laws in Islam is a guarantee of human rights for every member of society and the equal position of all people before law without discrimination or differences in social stratification, wealth, education, health, and religion. ⁴³

Siyāṣah dusturiyāh is a broad field of science that covers various types of science. This field discusses politics and state administration by explaining the following: ⁴⁴

1. *Imamah*: The leader of the state or head of government.
2. The people and obligations (citizen): The rights and duties of citizens in a political context.
3. *Bai'at*: The pledge or oath of allegiance given by the people to the leader of the country.
4. *Ahl al-Hall Wa al-Aqd*: The party with the authority to appoint and dismiss the leader of the state.
5. *W iẓarah*: Ministers in the government and the roles and responsibilities.

In this discussion, *Siyāṣah dusturiyāh* provides answers to the study of Job Creation Law on women's welfare.⁴⁵ As previously explained, the concept uses benefit scales on the substance of policy. Furthermore, *Siyāṣah dusturiyāh* deals with the scales of benefit of the formation and substance of the copyright law in fulfilling the rights and obligations of protection for women workers.⁹In essence, the field of science discusses politics and state administration, covering topics such as state leaders, the rights and obligations of citizens, the people's pledge of allegiance, the authority to appoint and dismiss leaders, and the roles and responsibilities of government ministers.

In every form of governance, there exists a state leader, commonly referred to as the head of state, alongside the citizens, both of whom play integral roles in the functioning of

⁴³Abdul Wahab Khallah, *Sejarah dan Pembentukan Perkembangan Hukum Islam*, ter. Wajidi Sayadi (Jakarta: Rajagrafindo, 2002), hlm 25.

⁴⁴Salman Abdul Muthalib, "Siyasah Dusturiyyah Sebagai Sistem Perpolitikan dalam al-Qur'an" *Tafse: Jurnal of Qur'anic Studies* Vol. 4, no. No. 2 (Desember 2019): hlm 165, <https://jurnal.ar-raniry.ac.id/index.php/tafse>.

⁴⁵Ihwan Sorimin dan Zezen Zainul Ali, "The Comparative Study of the Protection of Women's Rights in Article 463 of the New Criminal Code with Law Number 36 of 2009 Concerning Health Perspective of Jaser Auda," *MILRev : Metro Islamic Law Review* 2, no. 2 (16 November 2023): 186, <https://doi.org/10.32332/milrev.v2i2.7824>.

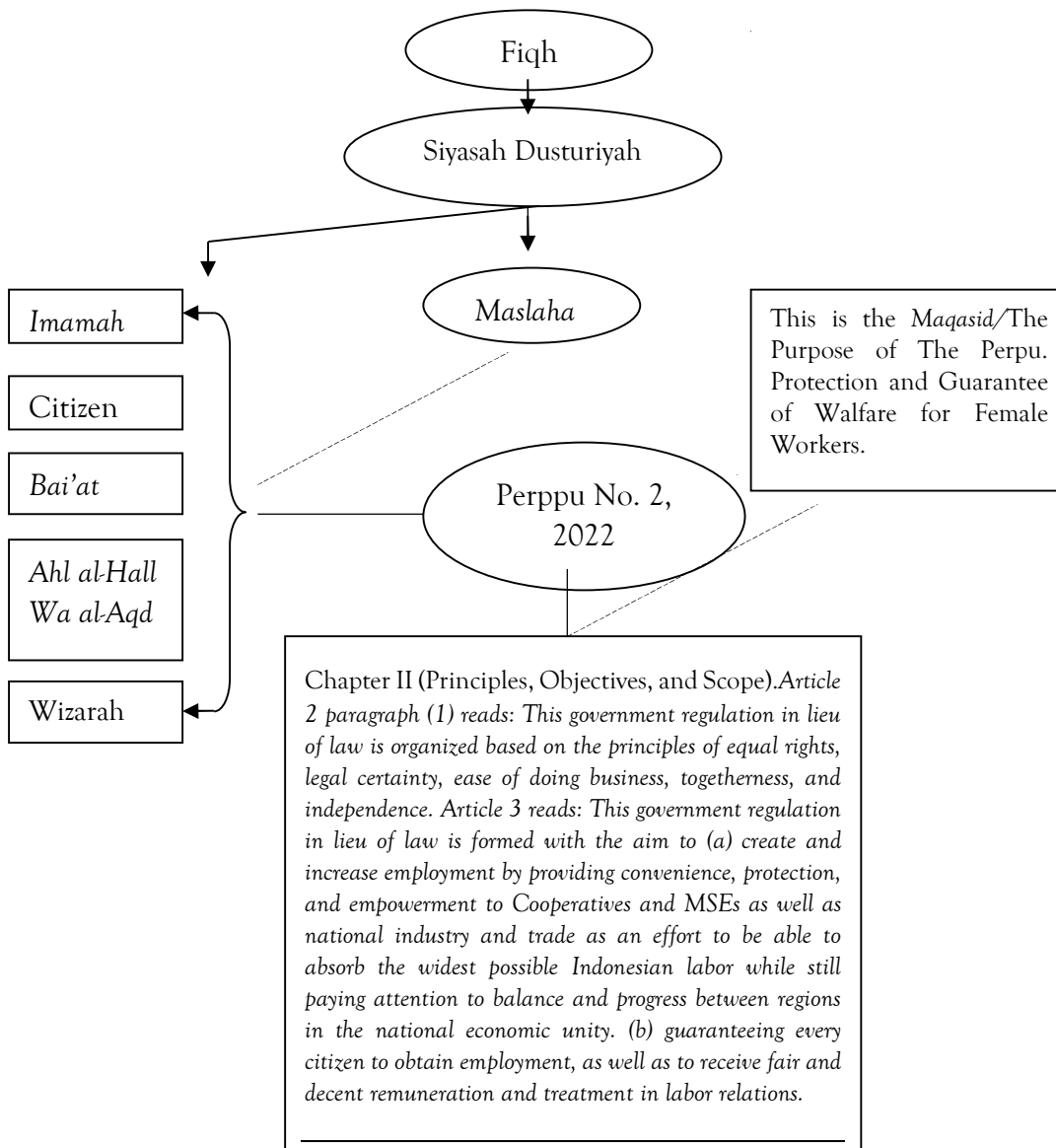
the system. According to Q.S at-Taubah: 12, *But if they break their oaths after pledging and attack your faith, then fight the champions of disbelief—who never honor their oaths—so perhaps they will desist.*⁴⁶ The presence and interaction between the head of state and the people have a very important significance in a state because both contribute to determining the objective.⁴⁷ Apart from discussing governance, *siyāsah dusturiyah* also explains the rights of the people. The implementation of Perppu No. 2 of 2022 concerning Job Creation shows the reciprocal relationship between the obligations and duties of the government with the rights of the people. The duty of the head of government in Islam is to prevent injustice and misfortune to increase peaceful coexistence. As Allah's word Q.S An-Nisa:59: Meaning: *“O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you ‘truly’ believe in Allah and the Last Day. This is the best and fairest resolution.”*⁴⁸

⁴⁶A. Djazuli, *Siyasah: Implementasi Kemaslahatan Umat Dalam Rambu-Rambu Syariah* (Jakarta: Kencana Prenada Media Group, 2007), hlm 73.

⁴⁷Sukron Kamil, *Pemikiran Politik Islam Tematik* (Jakarta: Kencana Prenada Media Group, 2013), hlm 3.

⁴⁸Muhammad Hasbi Ash-Shiddieqy, *Tafsir Al-Qur'anul Madjid an-Nur* (Jakarta: Cakrawala Publishing, 2011), hlm 130.

Figure 1. Analysis Concept Map



The establishment of policy is based on achieving a benefit, and the scales can be seen through maqasid shari'ah or wisdom of establishing law. Referring to the enactment of the work copyright perppu listed in Chapter II (Principles, Objectives, and Scope), Article 2 paragraph (1) reads, This government regulation in lieu of law is organized based on the principles of equal rights, legal certainty, ease of doing business, togetherness, and independence. Meanwhile, Article 3 reads, This government regulation in lieu of law is formed to (a) create and increase employment by providing convenience, protection, and empowerment to Cooperatives and MSEs as well as national industry and trade in absorbing the widest possible Indonesian labor while paying

attention to balance and progress. (b) guaranteeing every citizen to obtain employment, as well as to receive fair and decent remuneration and treatment in labor relations.

Legal products formed by the government and the apparatus are made for certain purposes with the limit that the rules do not cause the opposite effect of the formation.⁴⁹ Concerning Perppu on job creation, the rules compiled must accommodate the interests of men and women laborers. The Indicators are based on the purpose (*maqasid*) of establishing Perppu as stated in Chapter II (Principles, Objectives, and Scope) of Article 2 paragraph (1). Several articles in *Perppu Cipta Kerja* are considered to have negative effects on the interests of women workers:

a) Forest Area Conversion, based on article 19:⁵⁰

Changes in designation and the function of forest areas shall be stipulated by the central government by considering the results of integrated study. (2) Provisions regarding the procedures for changes in designation and changes in function of forest areas as intended shall be stipulated in a government regulation.

Article 26 reads:⁵¹ (1) Use of protected forest can be in the form of area, environmental services, and collection of non-timber forest products. (2) Use of protected forests as referred to in paragraph (1) shall be carried out by granting business licenses from the central government.

The substance of the articles on the conversion of forest areas can strengthen the threat of seizure of areas including forest areas. In contrast, the conversion of forest areas can cause the quality of the environment to decline, leading to a reduction in food supply. This is a threat to women because of the requirement of

⁴⁹ A. Gad Makhlof, "The Doctrinal Development of Contemporary Islamic Law: Fiqh Academies as an Institutional Framework," *Oxford Journal of Law and Religion* 10, no. 3 (2021): 464–86, <https://doi.org/10.1093/ojlr/rwac005>.

⁵⁰Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja, SK No. 158406 A, pasal 19 ayat (1),.

⁵¹Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja, SK No. 158406 A, pasal 26 ayat (1),.

adequate nutrition for the development of children in the womb. The lack of food and water due to environmental damage also increases the difficulty for women to carry out domestic duties. This is because women workers are at risk of getting tired more quickly than men, due to the relatively smaller physical condition of women and the influence of hormones.⁵²

- b) Threats to environmental damage by simplifying licensing, with the simplification of business licensing and investment requirements in article 6 can also cause the function of AMDAL (Environmental Impact Analysis) to no longer be prioritized as an effort to prevent negative impacts.⁵³ The facilities and infrastructure factors that are not in accordance with the provisions will be a major influence on the physical and mental conditions of women workers.⁵⁴ Indigenous peoples who rely on land and natural resources have to suffer from environmental damage due to the lack of implementation of AMDAL.
- c) The threat of low wages and women's gap is still a problem in the world of work and Perppu on Job Creation is considered to worsen the condition.

Article 88D paragraph(1)⁵⁵

The minimum wage as referred to in Article 88C paragraph (1) and paragraph (2) shall be calculated using the formula.

⁵²Thomas R. Cunningham et al., "Work-related Fatigue: A Hazard for Workers Experiencing Disproportionate Occupational Risks," *American Journal of Industrial Medicine* 65, no. 11 (November 2022): 913–25, <https://doi.org/10.1002/ajim.23325>.

⁵³Ida Bagus Indra Wiratma Pidada, I. Made Arjaya, dan I. Ketut Kasta Arya Wijaya, "The Impact of Environmental Permitting with a Risk-Based Approach on Investments Based on the Job Creation Law," dalam *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry"* (ICCLB 2023), ed. oleh Mirsa Umiyati dkk., vol. 804, *Advances in Social Science, Education and Humanities Research* (Paris: Atlantis Press SARL, 2023), 850–68, https://doi.org/10.2991/978-2-38476-180-7_91.

⁵⁴Diki Bima Prasetyo dkk., "Identification of Subjective Fatigue accompanied by Hypertension in Female Workers Making Tiles in Indonesia: A Cross-Sectional Survey," *International Journal of Occupational Safety and Health* 13, no. 4 (10 Oktober 2023): 484–93, <https://doi.org/10.3126/ijosh.v13i4.48940>.

⁵⁵Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja, SK No. 158406 A, pasal 88 ayat (1),

*Article 88D paragraph(2)*⁵⁶

The minimum wage formula as referred to in paragraph (1) considers economic growth, inflation, and certain indices.

The existence of a "certain index" clause in Article 88D paragraph 2 of Perppu on Job Creation is considered to remove low wages. In Article 88F, the existence is considered to allow the government to set a minimum wage formula from what has been regulated in the previous Job Creation or Perppu on Job Creation in certain circumstances.⁵⁷ The discussion of wage policy should refer to the objective situation of workers. The new government regulation will worsen the wage system when there has been a disparity between women workers.⁵⁸

Wages should reflect the actual conditions of workers and be sufficient for livelihood. According to the CEDAW Committee, the government must guarantee the protection of leave for women during childbirth, menstruation, and breastfeeding, as well as provide overtime pay.⁵⁹ The expansion does not provide clear boundaries regarding which fields can use outsourcing, and the lack of order makes the outsourcing system uncontrollable.

- d) Expansion of the System Perppu Cipta Kerja does not provide clear boundaries and this makes the outsourcing system uncontrolled.

Article 64 reads:⁶⁰(1) *A company may assign part of the performance of work to another company through an outsourcing agreement made in writing. (2) The Government shall*

⁵⁶Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja, SK No. 158406 A, pasal 88 ayat (2),

⁵⁷"Pasal-pasal yang merugikan buruh dalam perppu cipta kerja," diakses 7 Oktober 2023, <https://grafis.tempo.co/read/3199/pasal-pasal-yang-merugikan-buruh-dalam-perpu-cipta-kerja>,

⁵⁸Sm Lim dan Se Chia, "The prevalence of fatigue and associated health and safety risk factors among taxi drivers in Singapore," *Singapore Medical Journal* 56, no. 02 (Februari 2015): 92-97, <https://doi.org/10.11622/smedj.2014169>.

⁵⁹Viola D. Oceanio, "Maternity Leave and Gender Equality: Comparative Studies of Indonesia, Malaysia, and Thailand," *Populasi* 30, no. 2 (14 Desember 2022): 15, <https://doi.org/10.22146/jp.80183>.

⁶⁰Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja, SK No. 158406 A, pasal 6 4 ayat (1-3),

stipulate the partial execution of work as referred to in paragraph (1). (3) Further provisions regarding the stipulation of part of the implementation of the work as referred to in paragraph (2) shall be stipulated in a Government Regulation.

Perppu does not provide a sufficient explanation about which jobs are allowed to use the outsourcing system, while the Labor Law regulates five jobs allowed to use outsourcing. This condition has the potential to cause exploitation of women workers in the form of precarious employment relationships. The conditions will certainly affect women workers, resulting in physical fatigue and deep emotional disturbances.⁶¹

- e) Long leave is no longer mandatory, and Article 79 reads, ⁶²*paragraph (5) In addition to the rest and leave periods as referred to in paragraphs (1) and (2) and (3), certain companies may provide long breaks as stipulated in work agreements, company regulations, or collective labor agreements. Paragraph (6) Further provisions concerning certain companies as referred to in paragraph (5) shall be regulated by Government Regulation.*

The provision of long leave is no longer mandatory for companies, but optional. The only rest periods that workers are required to provide are annual leave, breaks between working hours, and weekly holidays, while long breaks are optional.

The government and the community as civil society should create a healthy and constructive climate of criticism towards a better direction. In this context, *Perppu Cipta Kerja* No. 2 of 2022 is a regulation whose position is very important in protecting the workforce, specifically women. The double workload of housewives and family breadwinners indirectly creates a culture that subordinates the position of women.⁶³ The biological conditions automatically result in responsibility for pregnancy, childbirth, and breastfeeding.

⁶¹Shindaini dkk., "Mental health condition among female workers during COVID-19 pandemic."

⁶²*Peraturan Pemerintah Pengganti Undang-undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja*, SK No. 158406 A, pasal 79 ayat (5),

⁶³Anuji Upekshika Gamage dan Rohini De Alwis Seneviratne, "Perceived Job Stress and Presence of Hypertension Among Administrative Officers in Sri Lanka," *Asia Pacific Journal of Public Health* 28, no. 1_suppl (Januari 2016): 41S-52S, <https://doi.org/10.1177/1010539515598834>.

In the public sector, women often face common workplace problems of being marginalized in jobs with low pay, poor working conditions, and lack of job security. Meanwhile, this is mostly experienced by women with lower secondary education experience. In urban and rural areas, jobs often filled are factory workers and farm laborers, respectively.⁶⁴ Education is not the only factor that tends to marginalize women in the marginal jobs. Workers also employ women in certain sectors and types of work because of lower wages than men. In addition, women workers in the informal sector, who work in irregular and unorganized conditions, also experience exploitation, specifically those living in poverty. These components need to be carefully considered in making policy, specifically regarding labor regulations.

CONCLUSION

In conclusion, *Siyāsah dusturiyāh* was a political concept that discussed the structure of government and the rights of the people. The interaction between the head of state and the citizens had significant importance in determining the purpose. This was because both played a role in shaping the direction and objectives of the state. The implementation of Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Job Creation showed the interaction between the obligations and the rights of workers. The government also had authority over the citizens. From the perspective of *siyāsah dusturiyāh*, policy-making was conducted to achieve *maslahah* (public welfare). This evaluation could be measured through *Maqasid Shari'ah*, which was the purpose of establishing law. The purpose of Job Creation Perppu, as stated in Chapter II Article 2 letter b ensured that every citizen had the opportunity to obtain employment as well as receive fair and decent compensation. Furthermore, the formation of Perppu also included the Protection and Guarantee of Welfare for Women Workers. Several articles were not in line with or contradict the purpose of Perppu, but had adverse effects on women workers. Some provisions detrimental to women included (1) Conversion of Protected Forest Areas (Articles 19 and

⁶⁴Nicolaas Warouw, "Negotiating Modernity: Women Workers, Islam and Urban Trajectory in Indonesia," *Islam and Christian-Muslim Relations* 27, no. 3 (2 Juli 2016): 283-302, <https://doi.org/10.1080/09596410.2016.1177974>.

26) might increase the risk of expropriation of areas, such as protected forest areas. (2) Threats to Environmental Damage due to simplification of licensing and investment processes (as mentioned in Article 6). (3) Threats to Low Wages (Article 88D), which was considered to result in low wage levels for workers. (4) Expansion of the outsourcing system (Article 64) did not provide clear limitations on which sectors could use outsourced labor. (5) The obligation for long leave was no longer required (Article 79). These criticisms showed the need to reconsider some aspects of Perppu to ensure the achievement of legal objectives (*maqasid*).

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