

# Women, Work, and Siyāsah Dustūriyyah: A Critical Review of Indonesia's Job Creation Law

**Citra Widyasari S**

UIN Sunan Kalijaga Yogyakarta

E-mail: [citrawidyasari56@gmail.com](mailto:citrawidyasari56@gmail.com)

**Afifah Faiqah**

Universitas Negeri Makassar

E-mail: [Afifahfaiqah7@gmail.com](mailto:Afifahfaiqah7@gmail.com)

**Abstract:** *This article examines Law No. 6 of 2023 on Job Creation from the perspective of Islamic constitutional theory (siyāsah dustūriyyah) and the objectives of Islamic law (maqāṣid al-sharī‘ah), focusing on the protection of women workers’ rights. Although the law recognizes key protections—such as menstrual leave, maternity leave, and wage equality—its implementation is undermined by weak enforcement and structural gaps, particularly for women employed under short-term contracts, outsourcing schemes, or in the informal sector. Using a normative qualitative approach, this study evaluates the law’s normative substance against Islamic principles of social justice, protection of human dignity, and state responsibility toward vulnerable groups. The findings reveal a normative contradiction: while the law aligns with international standards such as CEDAW in form, it fails to offer substantive justice as required by Islamic constitutional ethics. The dominant emphasis on labor market flexibility and investment certainty diminishes state accountability and reinforces systemic discrimination against female workers. The study concludes that Law No. 6/2023 lacks a transformative vision for gender equity and fails to embody maqāṣid principles in legislative outcomes. It recommends policy reforms that integrate Islamic ethical frameworks into national labor law. Future research should adopt empirical methods to assess how current legal norms shape the lived experiences of women workers in Indonesia’s evolving labor landscape..*

**Keywords:** *Gender Justice; Maqāṣid Al-Sharī‘ah; Siyāsah Dusturiyyah; Job Creation Law.*

**Abstrak:** Penelitian ini bertujuan untuk mengkaji Undang-Undang Nomor 6 Tahun 2023 tentang Cipta Kerja dari perspektif pemikiran ketatanegaraan Islam (*siyāsah dustūriyyah*) dan tujuan-tujuan hukum Islam (*maqāṣid asy-ṣyārī‘ah*), dengan fokus pada perlindungan hak-hak buruh perempuan. Meskipun undang-

undang ini secara normatif mengakui beberapa hak perempuan pekerja seperti cuti haid, cuti melahirkan, dan kesetaraan upah, implementasi dan pengawasan terhadap hak-hak tersebut masih lemah. Hal ini berdampak pada ketidakpastian perlindungan bagi perempuan yang bekerja dalam sistem kontrak jangka pendek, *outsourcing*, serta sektor informal. Secara teoritis, penelitian ini mengintegrasikan pendekatan normatif-kualitatif dengan kerangka *siyāsah dusturiyyah* dan *maqāṣid asy-syari'ah* untuk mengevaluasi sejauh mana UU No. 6/2023 mencerminkan prinsip keadilan substantif dalam Islam. Temuan utama menunjukkan bahwa undang-undang ini masih memprioritaskan efisiensi pasar daripada perlindungan kelompok rentan, sehingga bertentangan dengan mandat keadilan sosial dalam ajaran Islam. Negara dianggap gagal menjalankan tanggung jawab etisnya sebagai pelindung rakyat apabila membiarkan buruh perempuan berada dalam posisi subordinat. Penelitian ini merekomendasikan pembaruan kebijakan ketenagakerjaan yang tidak hanya berorientasi pada pertumbuhan ekonomi, tetapi juga berbasis pada nilai-nilai *maqasid* dan etika konstitusional Islam. Kajian lanjutan perlu memperluas pendekatan dengan metode empiris untuk menilai dampak nyata regulasi terhadap kesejahteraan perempuan pekerja di Indonesia.

**Kata kunci:** *Keadilan Gender; Maqāṣid Asy-Syari'Ah; Siyāsah Dusturiyyah; UU Cipta Kerja.*

## Introduction

Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law (*Perppu*) No. 2 of 2022 on Job Creation as Law represents a continuation of the state's institutional response to the constitutional dynamics following Constitutional Court Decision No. 91/PUU-XVIII/2020. This ruling declared Law No. 11 of 2020 on Job Creation conditionally unconstitutional, citing a failure to uphold meaningful public participation in the legislative process.<sup>1</sup> Instead of amending the legislative procedure in accordance with the Court's mandate, the government issued a *Perppu*, which was

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<sup>1</sup> Pemerintah Indonesia, "Undang-Undang Republik Indonesia No. 6 Tahun 2023 Tentang Cipta Kerja" (Lembaga Sekretariat Negara, 2023).

subsequently ratified into law with no substantive changes.<sup>2</sup> This course of action not only triggered debates concerning constitutional compliance but also intensified public concerns over the state's position regarding vulnerable labor groups (most notably, female workers).

Within Indonesia's labor landscape, women face dual challenges: structural burdens stemming from a flexible labor regime and cultural inequities rooted in entrenched patriarchal norms. These challenges are exacerbated by the absence of affirmative policy measures in the 2023 Job Creation Law explicitly designed to safeguard women workers' unique rights, such as menstrual leave, maternity leave, and access to lactation facilities.<sup>3</sup> The reinforcement of contractual labor and the expansion of outsourcing mechanisms in this legislation have significantly undermined employment security, particularly for women whose biological and social roles require greater legal protection. The critique of this law, therefore, transcends legal technicalities and delves into the ethical and social justice dimensions of the state-labor relationship.<sup>4</sup>

Various studies have highlighted critical aspects of this legislation. Lahiri-Dutt and Robinson (2008), for instance, caution that protective measures such as menstrual leave may serve as a double-edged sword, while intended as protection, such policies often lead to discriminatory hiring practices.<sup>5</sup> Hidayah (2023) points out the restricted access that women have to economic resources under legal systems that claim to be based on Islamic principles yet remain

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<sup>2</sup> Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments," *Asian Journal of Comparative Law* 17, no. 1 (July 2022): 51–75, <https://doi.org/10.1017/asjcl.2022.7>.

<sup>3</sup> Arinto Nugroho et al., "The Impact of Labor Law Reform on Indonesian Workers: A Comparative Study After the Job Creation Law," *Lex Scientia Law Review* 8, no. 1 (September 22, 2024), <https://doi.org/10.15294/lslr.v8i1.14064>.

<sup>4</sup> Jae-Boong Kim, "Effects of Leadership, Organizational Justice and Psychological Empowerment on Job Performance," *Journal of the Korea Convergence Society* 9, no. 12 (December 28, 2018): 265–72, <https://doi.org/10.15207/JKCS.2018.9.12.265>.

<sup>5</sup> Kuntala Lahiri-Dutt and Kathryn Robinson, "'Period Problems' at the Coalface," *Feminist Review* 89, no. 1 (June 2008): 102–21, <https://doi.org/10.1057/fr.2008.5>.

entrenched in patriarchal power structures.<sup>6</sup> Mahy (2022) and Shalihah (2022) reveal the flawed deliberative process underlying the drafting of the Job Creation Law, which diluted the meaning of public participation in a constitutional democracy.<sup>7</sup> Meanwhile, Hakimi et al. (2024) offer a perspective from contemporary Islamic law, emphasizing the need to prioritize the protection of vulnerable groups when evaluating the justice of labor policies.<sup>8</sup>

However, most of these studies fall short of utilizing a normative Islamic framework as a tool for evaluating public policy. In the context of a Muslim-majority country, the application of *siyāsah dustūriyyah* (Islamic constitutional theory) becomes crucial as an evaluative instrument that not only gauges a regulation's compliance with formal constitutional norms but also with Islamic ethical principles of social justice. *Siyāsah dustūriyyah* does not merely concern itself with state structure and governance mechanisms; it is a normative construct aimed at ensuring that laws function to protect the weak, uphold the public good (*maṣlaḥah*), and promote substantive justice.<sup>9</sup> Therefore, assessing Law No. 6 of 2023 requires more than procedural legality; it demands a normative inquiry into its alignment with the objectives of Islamic law (*maqāṣid al-sharī'ah*), which include the protection of life (*ḥifẓ al-nafs*), dignity (*ḥifẓ al-ʿird*), progeny (*ḥifẓ al-nasl*), intellect (*ḥifẓ al-ʿaql*), and wealth (*ḥifẓ al-māl*) all of which are directly relevant to the issue of safeguarding female workers.

The limited application of Islamic constitutional thought in the analysis of Law No. 6 of 2023 reveals an underexplored academic space that demands serious scholarly engagement. This article seeks to address that gap by offering an alternative perspective that assesses contemporary labor policy through the lens of *siyāsah dustūriyyah*

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<sup>6</sup> Nur Hidayah, "Gender, Economy, and the Law: Women Entrepreneurs in Indonesian and Islamic Legal Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (June 20, 2023): 1171, <https://doi.org/10.22373/sjhk.v7i2.17944>.

<sup>7</sup> Mahy, "Indonesia's Omnibus Law on Job Creation."

<sup>8</sup> Abdul Rahim Hakimi et al., "Legal Policy for Women Workers in Indonesia: A Review of Contemporary Islamic Law," *MILRev: Metro Islamic Law Review* 3, no. 1 (April 4, 2024): 66, <https://doi.org/10.32332/milrev.v3i1.9023>.

<sup>9</sup> Habib Ismail, Dani Amran Hakim, and Muhammad Lutfi Hakim, "The Protection of Indonesian Migrant Workers under Fiqh Siyāsah Dusturiyah," *Lentera Hukum* 8, no. 1 (April 24, 2021): 151, <https://doi.org/10.19184/cjlh.v8i1.18725>.

(Islamic constitutional thought), particularly regarding its implications for the rights and welfare of female workers. This framework facilitates a more comprehensive evaluation of public policy by integrating both legal-formal dimensions and the ethical-normative values derived from the Shari‘ah. By critically examining the normative provisions of the law and juxtaposing them with foundational principles of Islamic political theory, this study aims to provide both theoretical insights and practical contributions to the discourse on gender-just labor law reform.

Rather than merely debating the formal legality of a statute, the *siyāsah dustūriyyah* approach allows for the testing of a law’s moral legitimacy. Within this framework, the validity of law extends beyond procedural correctness to include its efficacy in realizing the *maṣlahah* (public good) and delivering substantive justice to all citizens, especially marginalized groups such as women workers.<sup>10</sup> Accordingly, Law No. 6 of 2023 must be understood not merely as a technocratic continuation of its predecessor, but as a concrete manifestation of the state’s legal-political orientation (one that directly shapes the socio) economic relations of a labor environment dominated by the logic of market efficiency and deregulation.

In relation to *maqāṣid al-shari‘ah* (the higher objectives of Islamic law), the protection of women’s rights in the workplace cannot be treated as an optional form of affirmative action. Rather, it constitutes a core manifestation of Islamic values, encompassing the preservation of life (*ḥifẓ al-naḥs*), dignity (*ḥifẓ al-‘ird*), progeny (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).<sup>11</sup> When a state regulation simplifies industrial relations through the promotion of outsourcing and short-term contractual labor—without acknowledging the biological and social needs of female workers—such a policy stands in direct contradiction to the objectives of the Shari‘ah. Therefore, Law No. 6 of 2023 must be evaluated through the lens of *maqāṣid* as an ethical and moral benchmark of legal justice.

By combining *siyāsah dustūriyyah* and *maqāṣid al-shari‘ah*, this article endeavors to develop an analytical model that is contextually

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<sup>10</sup>Sali Suliana, “Perlindungan Hak Pekerja Perempuan Dalam Perspektif Feminisme,” *Jurnal Apirasi* Vol 8, no. No. 2 (tahun 2017): hlm 216.

<sup>11</sup> Mohammad Hashim Kamali, *Actualization (Taf‘il) of The Higher Purposes (Maqāṣid) of Shari‘ah* (Herndon, VA: International Institute of Islamic Thought, 2020).

relevant for a Muslim-majority society like Indonesia. This approach is particularly urgent given the dominance of positivist legal studies, which often neglect the value-laden dimensions of law. This study not only identifies normative deficiencies in Law No. 6 of 2023 but also reasserts that justice in labor legislation must be measured not merely by formal equality, but by Islamic principles that uphold human dignity and champion those who are structurally marginalized. In this light, the integration of Islamic values should not be viewed as legal conservatism, but rather as a moral emancipation of the legal system toward a more humane order.<sup>12</sup>

This research proceeds from the premise that labor law reform must encompass not only procedural and technical dimensions but also the ethical and spiritual values embedded in society.<sup>13</sup> Hence, the article aspires to build a historically and normatively grounded argument to dissect the provisions of Law No. 6 of 2023 with an emphasis on the protection of women workers as a core indicator of genuine social justice. This study contributes not only to the expansion of Islamic constitutional thought but also to the development of inclusive legislation that is responsive to the needs of vulnerable groups.

The research adopts a qualitative normative method, using library-based inquiry (library research). Data were collected from primary legal sources such as the official text of Law No. 6 of 2023, the 1945 Constitution of the Republic of Indonesia, and relevant Constitutional Court rulings, complemented by secondary sources comprising classical and contemporary literature on *siyāsah dustūriyyah* and *maqāṣid al-sharī'ah*. Through this approach, the analysis is directed at evaluating how the normative structure of legislation can be examined not only through legal-formal constructs but also through Islamic moral frameworks and substantive principles of justice.<sup>14</sup> The

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<sup>12</sup> Toseef Azid and Jennifer Ward-Batts, eds., *Economic Empowerment of Women in the Islamic World: Theory and Practice*, Advances in Research on Islamic Economics and Finance, vol. 1 (New Jersey London Singapore Beijing Shanghai Hong Kong Taipei Chennai Tokyo: World Scientific, 2020), <https://doi.org/10.1142/11603>.

<sup>13</sup> Nabiyla Risfa Izzati, "Deregulation in Job Creation Law: The Future of Indonesian Labor Law," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 2 (2022): 191–209, <https://doi.org/10.22304/pjih.v9n2.a3>.

<sup>14</sup> Abdul Aziz Ibrahim and Abdul Aziz, "Islamic Concept of Development in the Light of Siyāsah Shar'īyyah and Maqasid Shariah Frameworks: A Literature

theoretical framework of this article is built upon two core dimensions: *siyāsah dustūriyyah* and *maqāṣid al-shari'ah*. The former is employed to assess the relationship between political authority and legal legitimacy within an Islamic state model, while the latter serves as a normative parameter for evaluating how far public policies fulfill the five primary objectives of the *Shari'ah*: the protection of religion, life, intellect, progeny, and property.<sup>15</sup> By integrating both, this article presents an analytical framework that not only tests the formal legality of the law but also foregrounds ethical and spiritual accountability as integral to the state's obligation to its citizens (especially its female labor force).

## Result and Discussion

### General Overview of Law No. 6 of 2023 and Indonesia's Constitutional Context

Within Indonesia's constitutional framework, the issuance of a *Peraturan Pemerintah Pengganti Undang-Undang* (Government Regulation in Lieu of Law, or *Perppu*) is a prerogative granted to the President under Article 22 of the 1945 Constitution of the Republic of Indonesia. This provision stipulates that in situations of compelling urgency, the President may enact a *Perppu*, which must then be submitted to the House of Representatives (DPR) for approval at its next session. *Perppu* No. 2 of 2022 on Job Creation was issued by President Joko Widodo on December 30, 2022, as a response to the legal aftermath of Constitutional Court Decision No. 91/PUU-XVIII/2020, which declared Law No. 11 of 2020 on Job Creation to be conditionally unconstitutional. Subsequently, the *Perppu* was ratified into Law No. 6 of 2023 through parliamentary approval, establishing it as the new legal foundation for national labor and economic regulation.

The Constitutional Court had provided a two-year period for the government to revise the Job Creation Law in accordance with principles of participatory and transparent legislative drafting. However, rather than undertaking a full legislative reform through regular procedures, the government opted to issue a *Perppu*, citing

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Review Approach,” *Journal of Islamic Studies in Socio-Economic Development* 13, no. 3 (2020): 36–60.

<sup>15</sup> Ali Muhammad Bhat, “Maqasid Al-Shari’ah Is a Divine Shield of Islamic Policy,” *Journal of Islamic Thought and Philosophy* 2, no. 2 (November 30, 2023): 128–50, <https://doi.org/10.15642/jitp.2023.2.2.128-150>.

global economic instability and investment uncertainty as urgent conditions requiring immediate legal intervention. This action sparked significant debate from both legal and political perspectives, particularly concerning whether the existing conditions met the Court's established criteria for a "compelling urgency," as articulated in Decision No. 138/PUU-VII/2009. Despite these controversies, the *Perppu* was formally enacted as law, reaffirming the state's ongoing preference for omnibus-style regulatory reform centered on market efficiency and investment facilitation.<sup>16</sup>

Substantively, Law No. 6 of 2023 largely replicates the content of *Perppu* No. 2 of 2022, which itself had adopted the core provisions of Law No. 11 of 2020. In the field of labor regulation, the law retains several contentious provisions, including the contractual work system, the expansion of outsourcing mechanisms, and wage flexibilization. Criticism of these provisions has not only focused on procedural irregularities but also targeted the law's policy orientation, which is widely perceived as neglecting the protection of workers—particularly female workers. In both public discourse and academic studies, persistent concerns have been raised regarding the potential erosion of women's fundamental labor rights, including menstrual leave, maternity entitlements, and protection from exploitative working conditions.<sup>17</sup>

This regulatory transformation reflects a shift in labor policy from a welfare-oriented approach toward one that prioritizes market efficiency. Workers are increasingly positioned as economic agents expected to adapt to macroeconomic demands, rather than as citizens entitled to state-guaranteed labor protections. For female workers, this shift is particularly problematic, as they often face dual barriers: gender-based discrimination in the workplace and structural injustices embedded within the labor law system. In the absence of affirmative

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<sup>16</sup> Mahy, "Indonesia's Omnibus Law on Job Creation."

<sup>17</sup> Sulistio Adiwianto, Tegar Pamungkas Putra Mahardika, and Titan Leeavi, "Kepastian Hukum Tentang Kesejahteraan Tenaga Kerja Dalam Perspektif Undang-Undang Cipta Kerja," *National Multidisciplinary Sciences* 2, no. 4 (July 31, 2023): 349–55, <https://doi.org/10.32528/nms.v2i4.315>.



legal protections, women become increasingly vulnerable within an increasingly flexible and precarious labor market.<sup>18</sup>

Law No. 6 of 2023 also invites broader reflection on the direction of post-reform political economy policies, in which the priorities of investment and economic liberalization appear to outweigh the constitutional principle of social justice. The state's preference for an “investor-friendly” climate often clashes with its constitutional mandate to protect citizens' rights to gain employment and a decent livelihood, as guaranteed in Article 27 paragraph (2) of the 1945 Constitution of Indonesia Republic.<sup>19</sup> Within this framework, female workers (who have historically and structurally been marginalized) serve as a crucial indicator in assessing the extent to which legislation upholds the principle of substantive justice within a democratic rule-of-law system.

Considering the aforementioned concerns, Law No. 6 of 2023 cannot be understood merely as a neutral legislative instrument; it must be read as a reflection of a broader legislative process dominated by executive authority and characterized by limited public participation. Such a process not only weakens the system of checks and balances fundamental to democratic governance, but also reveals how legal instruments are often employed to advance the interests of capital rather than to ensure justice for vulnerable populations.<sup>20</sup> Hence, a comprehensive understanding of Law No. 6 of 2023 requires more than a doctrinal reading of its text—it demands a critical analysis of power relations, legal legitimacy, and the degree of state alignment with the interests of the marginalized in Indonesia's labor law architecture.

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<sup>18</sup> Shamsul Falaah, “Islamic Shari’ah and the Rights of Women: The Maldives’ Thirst for International Human Rights Norms of Equality and Non-Discrimination,” *Muslim World Journal of Human Rights* 13, no. 1 (June 1, 2016): 101–30, <https://doi.org/10.1515/mwjhr-2016-0009>; Hakimi et al., “Legal Policy for Women Workers in Indonesia.”

<sup>19</sup> Sarah Qosim, “Opini Hukum Dan Harmonisasi Undang-Undang Cipta Kerja Di Indonesia,” *ADALAH* 6, no. 4 (August 9, 2022): 45–55, <https://doi.org/10.15408/adalah.v6i4.27574>.

<sup>20</sup> Ahmad Fadli Fauzi, “Politik Hukum Undang-Undang Cipta Kerja Pada Aspek Hubungan Industrial,” *Jurnal Lex Renaissance* 8, no. 1 (June 1, 2023): 20–38, <https://doi.org/10.20885/JLR.vol8.iss1.art2>.

Comparison Between *Perppu* No. 2 of 2022 and Law No. 6 of 2023

Aspect	Perppu No. 2 of 2022	UU No. 6 of 2023
Legal Basis	Article 22 of the 1945 Constitution	Ratified by the DPR (House of Representatives) as formal legalization of the <i>Perppu</i>
Status	Temporary; requires parliamentary approval	Legally binding as a formal law
Purpose of Issuance	Response to Constitutional Court Decision No. 91/PUU-XVIII/2020 and global economic issues	Legal ratification of the <i>Perppu</i> and formal endorsement of the Job Creation agenda
General Characteristics	Reiterates Law No. 11/2020 with minor editorial adjustments	Little substantive change from the <i>Perppu</i> ; strengthens the omnibus law approach
Controversy	Criticized for failing to meet the “compelling urgency” standard	Ongoing criticism regarding legitimacy and workers’ rights protection

Impact on Women Workers	Raised concerns over the erosion of rights such as menstrual leave, maternity protection	Offers no substantial new protections for female workers
Regulatory Orientation	Oriented toward labor market flexibilization and efficiency	Reinforces a pro-efficiency, investor-friendly stance with minimal labor protections

### **Problematic Articles from the Law on the Perspective of Gender Justice**

The ratification of Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 into Law No. 6 of 2023 did not substantially alter the regulatory content that had previously sparked controversy, particularly in matters of labor policy. On the contrary, the formal legalization of this regulation has provided stronger juridical legitimacy to provisions deemed problematic from the standpoint of social and gender justice. In the context of protecting women workers, this law retains numerous normative elements that risk perpetuating (even deepening) structural inequalities faced by women, both in formal and informal employment sectors.<sup>21</sup>

One of the most critical normative issues lies in the regulation of fixed-term employment contracts (PKWT). Article 56(3) of Law No. 6 of 2023 stipulates:

“Further provisions regarding the types and characteristics of work as well as the duration or completion of certain work as referred to in paragraphs

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<sup>21</sup> Rizky. P. P. Karo Karo and Amanda Fitri Yana, “Konsepsi Omnibus Law terhadap Perlindungan Tenaga Kerja Wanita di Indonesia,” *Warta Dharmawangsa* 14, no. 4 (October 16, 2020): 723–29, <https://doi.org/10.46576/wdw.v14i4.901>.

(1) and (2) shall be regulated by Government Regulation”<sup>22</sup>

This provision omits any explicit limitation on the maximum duration of fixed-term contracts. The absence of such a statutory ceiling within the body of the law creates significant space for uncontrolled labor flexibilization. This approach contrasts starkly with the earlier regulation in Article 59 of Law No. 13 of 2003, which clearly limited the fixed-term employment contracts (PWKT) to a maximum of two years with a single possible extension of one year. The removal of legal certainty concerning contract duration exposes women workers to a persistent cycle of temporary employment with little prospect of permanent status.<sup>23</sup>

The impact of this regulatory shift is especially pronounced among women employed in sectors prone to short-term contracting practices, such as the textile industry, food and beverage services, public utilities, and cleaning services. Employers may exploit the contractual status as a legal instrument to evade obligations related to maternity rights, including maternity leave, breastfeeding periods, and access to retirement benefits.<sup>24</sup> In many cases, the fixed-term employment contracts (PWKT) status places women workers in a structurally disadvantaged position, as their “temporary” classification is often used to deny them access to long-term social protection schemes. This legal architecture, therefore, institutionalizes job insecurity and significantly weakens the bargaining position of female workers vis-à-vis market forces.<sup>25</sup>

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<sup>22</sup> Pemerintah Indonesia, “Undang-Undang Republik Indonesia No. 6 Tahun 2023 Tentang Cipta Kerja.” Original text: “*Ketentuan lebih lanjut mengenai jenis dan sifat pekerjaan serta jangka waktu atau selesainya pekerjaan tertentu sebagaimana dimaksud pada ayat (1) dan ayat (2) diatur dengan Peraturan Pemerintah*”

<sup>23</sup> Turro S Wongkaren et al., “Analisa Implementasi UU Cipta Kerja Kluster Perjanjian Kerja Waktu Tertentu (PKWT) Dan Alih Daya,” *Jurnal Ketenagakerjaan* 17, no. 3 (December 1, 2022): 208–35, <https://doi.org/10.47198/naker.v17i3.184>.

<sup>24</sup> Nugroho et al., “The Impact of Labor Law Reform on Indonesian Workers”; Karo Karo and Yana, “Konsepsi Omnibus Law terhadap Perlindungan Tenaga Kerja Wanita di Indonesia.”

<sup>25</sup> Hesty Kartikasari and Agus Machfud Fauzi, “Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum,” *DOKTRINA: JOURNAL OF LAW* 4, no. 1 (April 30, 2021): 39–52, <https://doi.org/10.31289/doktrina.v4i1.4482>.

In addition, the provision on outsourcing practices has been substantively relaxed. Article 66(1) of Law No. 6 of 2023 states:

“The employment agreement between the outsourcing company and the worker/laborer employed by the outsourcing company shall be made in writing and shall contain the terms of employment and protection for the worker/laborer in accordance with statutory regulations)”<sup>26</sup>

However, unlike previous regulations that restricted outsourcing strictly to non-core activities, this law omits any explicit limitation on the types of jobs that may be outsourced. Instead of being rigidly codified in the primary legislation, such restrictions are now delegated entirely to government regulations. The implications of this shift are considerable, as it enables the extension of outsourcing into core functions of enterprises, such as production lines, quality control, and logistics.

In practice, outsourcing systems of this kind are frequently utilized by companies as a cost-reduction strategy, primarily through the elimination of structural obligations such as permanent wage payments, holiday allowances, pension schemes, and maternity entitlements. Women workers constitute the most affected group under such a policy framework, given their predominance in labor-intensive sectors characterized by minimal social protection. Many of them endure long-term job insecurity and lack access to adequate healthcare services or maternity leave due to their flexible employment status and binding outsourced contractual arrangements.<sup>27</sup>

Consequently, the provisions in Law No. 6 of 2023 concerning fixed-term contracts (PKWT) and outsourcing structurally reinforce

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<sup>26</sup> Pemerintah Indonesia, “Undang-Undang Republik Indonesia No. 6 Tahun 2023 Tentang Cipta Kerja.” Original text: “*Perjanjian kerja antara perusahaan alih daya dan pekerja/ buruh yang dipekerjakan oleh perusahaan alih daya dibuat secara tertulis dan memuat syarat-syarat kerja serta perlindungan bagi pekerja/ buruh sesuai dengan ketentuan peraturan perundang-undangan.*”

<sup>27</sup> Fithriatus Shalihah, “Industrial Relations with Specific Time Work Agreements after the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020 in The Perspective of Legal Justice,” *Jurnal Hukum Novelty* 13, no. 1 (July 22, 2022): 65, <https://doi.org/10.26555/novelty.v13i1.a22545>.

gender inequality in the workplace. Policies devised under the guise of market efficiency fail to acknowledge the biological and social burdens uniquely borne by women, such as reproductive cycles and caregiving responsibilities. In the absence of affirmative protection, these legal norms not only fall short in safeguarding women's rights but also contribute to the reproduction of structural injustice within industrial relations. Viewed through the lens of constitutional values and the objectives of Islamic law (*maqāṣid al-sharī'ah*), this situation highlights a clear disjunction between the normative ideals of social justice and a legislative practice that tends to align with the interests of capital.

Beyond the issues of labor flexibilization and the expansion of outsourcing practices, Law No. 6 of 2023 also reflects a normative decline in provisions that should have specifically guaranteed maternity protection. A prominent example is the omission of an explicit clause on menstrual leave from the main body of the law. Previously, Article 81(1) of Law No. 13 of 2003 on Manpower unequivocally stated that female employees experiencing menstruation and feeling unwell were not required to work on the first and second days of their cycle.<sup>28</sup> In the latest regulation, however, this right is no longer articulated in statutory form and has been delegated to lower-level government regulations. The implication of this shift is a weakened legal standing of the right in question. Without explicit statutory guarantees, implementation becomes uncertain and heavily reliant on the goodwill of employers.

This condition is further aggravated by the absence of strong enforcement provisions or sanctions against employers who violate the rights of women workers. As a result, what should have been an affirmative legal norm is reduced to an administrative formality with weak practical application. While maternity leave is still generally recognized under Article 79 of Law No. 6 of 2023, the law fails to provide detailed provisions or mechanisms for its enforcement. In the context of short-term contract and outsourcing-based labor relations, many women face unilateral termination of employment during the late stages of pregnancy. The flexible labor system thus facilitates the

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<sup>28</sup> M Rizal, "STUDI PERLINDUNGAN HUKUM BAGI PEKERJA ANAK (Studi Kasus UU No. 13 Tahun 2003 Dalam Tinjauan Fiqh Siyasah Di Kota Tebing Tinggi)," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 6, no. 2 (December 16, 2021): 198–209, <https://doi.org/10.32505/legalite.v6i2.3569>.

evasion of maternity leave obligations and associated benefits without imposing clear legal consequences on violators.<sup>29</sup>

This reality reveals a stark contradiction between the normative guarantees provided in statutory texts and the actual conditions faced by women in the workforce. The principle of non-discrimination, as mandated by Article 27(2) of the 1945 Constitution of the Republic of Indonesia, along with various international instruments such as CEDAW,<sup>30</sup> and ILO Convention No. 183 on Maternity Protection,<sup>31</sup> appears to have been diminished within a regulatory framework overly driven by market efficiency.<sup>32</sup> Within the framework of *maqāṣid al-shari'ah*, such negligence reflects a breach of the foundational principles of protection of life (*ḥifẓ al-naḥs*), the dignity of women (*ḥifẓ al-'ird*), and lineage (*ḥifẓ al-nasl*), as there is no structurally secured space that enables women to carry out their biological and social roles with dignity in the workplace.

Beyond the neglect of reproductive rights, this legislation also exhibits a weakening of normative commitments regarding essential workplace facilities for women. Provisions concerning lactation rooms, breastfeeding time, and reproductive health services are no longer explicitly articulated within the body of the law but are instead deferred to secondary regulations.<sup>33</sup> This approach underscores the absence of gender sensitivity in the legislative process concerning labor policies. Yet such provisions are critical to ensuring women's full and equitable participation in the labor force. The absence of affirmative legal norms in Law No. 6 of 2023 reinforces the perception that women are still

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<sup>29</sup> Fadli Fauzi, "Politik Hukum Undang-Undang Cipta Kerja Pada Aspek Hubungan Industrial."

<sup>30</sup> CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women (1979), a UN treaty obligating states to eliminate discrimination and promote gender equality, especially in employment, health, and education.

<sup>31</sup> ILO Convention: International Labour Organization conventions are binding treaties setting global labour standards. Notably, ILO Convention No. 183 ensures maternity protection, including leave, health safeguards, and job security for women workers.

<sup>32</sup> Audrine Gandhis Arsita Dini and Nabitatus Sa'adah, "The Analysis of Labor Law Arrangements against Women Workers" 5, no. 1 (2022): 14–29, <https://doi.org/10.30659/ldj.5.1.14-29>.

<sup>33</sup> Dini and Sa'adah.

viewed as peripheral actors in the broader landscape of national economic policy.

Even more concerning is the near-total absence of legal protection for workers in the informal sector—where the majority of female labor is concentrated. Not a single article in the legislation explicitly addresses the rights or safeguards for informal workers, including domestic workers, laundresses, or street vendors—despite their crucial role in sustaining household economies and lower-class communities.<sup>34</sup> This omission reflects a regulatory bias toward the formal, industrial, and investment-oriented sectors, while failing to recognize or protect the economic contributions of reproductive and informal labor.

A historical mapping of key legislative developments reveals a regression in the protection of women workers’ rights. The following table illustrates how essential provisions have deteriorated from Law No. 13 of 2003 to Law No. 6 of 2023:

Topic/Substance	Law No. 13/2003	Law No. 11/2020	Law No. 6/2023
<b>PKWT Duration Limit</b>	Max. 2 years + 1-year extension (Art. 59)	Removed explicit limit, delegated to Government Regulation	Delegated to Government Regulation (Art. 56(3)), no explicit limit
<b>Outsourced Job Types</b>	Only supporting roles allowed	Expanded through implementing regulation	No explicit restriction (Art. 66)

<sup>34</sup> Yogi Satria Nugraha et al., “Urgensi Rancangan Undang-Undang Perlindungan Pekerja Informal: Analisis Hak Atas Kesehatan,” *Fundamental: Jurnal Ilmiah Hukum* 12, no. 2 (December 31, 2023): 334–53, <https://doi.org/10.34304/jf.v12i2.181>.



Menstrual Leave	Explicitly stated (Art. 81)	Not explicitly reaffirmed	Omitted from the statute, deferred to PP
Maternity Leave	Explicitly stated (Art. 82)	Retained generally	Mentioned in Art. 79, lacks technical detail
Performance-Based Wage System	Not explicitly regulated	Optionally accommodated	Confirmed in Art. 88A(2)

The data above indicate a legislative trajectory that is increasingly detached from the principles of protection for vulnerable groups. The prioritization of market efficiency and investor convenience, without robust affirmative safeguards, signifies a regression in justice within the structure of national labor law. Thus, identifying problematic articles in Law No. 6 of 2023 is not merely an academic exercise but a moral imperative to critically reassess the nation’s legal paradigm. A reorientation is urgently needed to ensure that social justice, gender equality, and the values of *maqāṣid al-sharī’ah* are not confined to rhetorical flourishes but are truly internalized in the regulatory architecture of the state.

**Women Workers’ Rights in Law No. 6 of 2023: A *Siyāṣah Dustūriyyah* Review**

In the tradition of Islamic constitutional thought, the legitimacy of state power does not rest solely on procedural validity but also on moral accountability to realize substantive justice. *Siyāṣah dustūriyyah* asserts that a law is not only constitutionally valid but must also be ethically sound—serving the public good (*maṣlahah*), protecting the

vulnerable, and fulfilling the imperatives of social justice.<sup>35</sup> Therefore, the enactment of Government Regulation in Lieu of Law (*Perppu*) No. 2 of 2022 into Law No. 6 of 2023 warrants critical examination beyond its formal legality, particularly in terms of its alignment with the values of *maqāṣid al-shari‘ah* and Islamic principles of justice.

Law No. 6 of 2023 was passed amid a legal atmosphere still unsettled following Constitutional Court Decision No. 91/PUU-XVIII/2020, which explicitly declared that the formation of the Omnibus Law on Job Creation violated the principle of meaningful public participation. Instead of reconstructing the legislative process on more inclusive and deliberative grounds, the government opted for an executive route by issuing a *Perppu* that was later ratified with nearly identical substantive content. From the perspective of *siyāsah dustūriyyah*, this approach reflects a deviation from the principles of *shūrā* (consultation) and *al-mas’ūliyyah al-siyāsiyyah* (political accountability), as legal legitimacy should be rooted in public consensus, not merely administrative expediency or market-driven imperatives.<sup>36</sup>

Substantively, Law No. 6 of 2023 reinforces labor market deregulation through the flexibilization of employment relations and the removal of established worker protections—an approach that disproportionately affects women, the most structurally vulnerable group in the labor force. The legalization of open-ended fixed-term contracts (PKWT) and the expansion of outsourcing into core business functions have created precarious employment conditions, especially for women who are pregnant, postpartum, or fulfilling caregiving roles.<sup>37</sup> In Islamic political ethics, such policies contradict the principle of “*taṣarruf al-imām ‘ala al-ra‘iyyah manūṭun bi al-maṣlaḥah*,” which holds

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<sup>35</sup> Ahmad Yani Anshori, *Tafsir Negara Islam Dalam Dialog Kebangsaan Di Indonesia* (Yogyakarta: Siyasat Press, 2008); Muhammad Ḍiya Ad-Dīn Ar-Raīs, *An-Nazariyyah As-Siyāsiyah Al-Islāmiyyah*, (Kairo: Maktabah Al-Anglo Al-Miṣriyyah, 1960).

<sup>36</sup> Ismail, Hakim, and Hakim, “The Protection of Indonesian Migrant Workers under Fiqh Siyasah Dusturiyah.”

<sup>37</sup> Syahwal Syahwal, “Dilema Hak Atas Pekerjaan Dalam Kebijakan Pasar Tenaga Kerja Fleksibel,” *Jurnal HAM* 13, no. 2 (August 30, 2022): 271, <https://doi.org/10.30641/ham.2022.13.271-286>.

that any decision by the ruler must be grounded in the welfare of the people—not reduced to narrow economic rationalism.<sup>38</sup>

Historical precedents in Islamic governance affirm the state's duty to ensure safe and equitable participation for women in social and economic life. As documented in *Economic Empowerment of Women in the Islamic World*, figures such as Khadijah and Aisha played pivotal roles in trade, education, and public discourse. They were not passive beneficiaries of protection but active agents whose contributions were institutionally recognized. This Prophetic vision should serve as a normative foundation for contemporary *siyāsah dustūriyyah*, a framework of governance that sees gender justice not as a foreign import but as a fundamental value embedded in the Islamic worldview.<sup>39</sup>

Hashim Kamali emphasizes that the primary obstacles faced by women in employment contexts often stem not from Islamic teachings themselves but from patriarchal cultural norms that distort the interpretation of religious law and public policy. When a state allows such culturally biased interpretations to shape its regulatory framework without normative correction, it forfeits its *shar'i* legitimacy.<sup>40</sup> Although Law No. 6 of 2023 may be valid in positive legal terms, it has yet to demonstrate substantive support for women workers. The absence of affirmative provisions safeguarding maternity rights, gender-responsive social protections, and mechanisms for monitoring workplace discrimination reveals a policy framework still beholden to market logic rather than guided by the pursuit of social justice.

In practice, the state's neutral stance toward both market forces and patriarchal social structures has exacerbated the systemic inequality experienced by women workers. As Elmira Akhmetova aptly critiques, such neutrality is not a virtue but a form of moral abdication. A state

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<sup>38</sup> Ayman Mohammed Haroush Ayman Mohammed Haroush, "The Purposes of Islamic Sharia Politics: 4 مقاصد السياسة الشرعية", *مجلة العلوم الإسلامية*, no. 3 (June 30, 2021): 70–55, <https://doi.org/10.26389/AJSRP.R050421>.

<sup>39</sup> Elmira Akhmetova, "Women's Rights: The *Qur'anic* Ideals and Contemporary Realities," in *Economic Empowerment of Women in the Islamic World*, by Toseef Azid and Jennifer L Ward-Batts (WORLD SCIENTIFIC, 2020), 145–64, [https://doi.org/10.1142/9789811212154\\_0008](https://doi.org/10.1142/9789811212154_0008).

<sup>40</sup> Mohammad Hashim Kamali, "Women in the Workplace: *Shari'ah* and Contemporary Perspectives," in *Economic Empowerment of Women in the Islamic World*, by Toseef Azid and Jennifer L Ward-Batts (WORLD SCIENTIFIC, 2020), 101–26, [https://doi.org/10.1142/9789811212154\\_0006](https://doi.org/10.1142/9789811212154_0006).

that remains passive in the face of structural injustice cannot be said to fulfill its ethical mandate of governance in Islam.<sup>41</sup> By contrast, genuine good governance (as envisioned within Islamic political ethics) only be realized when the state actively promotes legal advocacy for vulnerable groups and integrates the principles of *maqāṣid al-sharī'ah* into every layer of public policy.<sup>42</sup>

Thus, evaluating Law No. 6 of 2023 through the lens of *siyāsah dustūriyyah* raises a critical normative question: was this regulation genuinely crafted to uphold justice, or was it primarily designed to accommodate capital interests and bureaucratic efficiency? If the latter appears more convincing, then it is time to revive the ethical vision of Islamic governance—not to replace the values of national law, but to realign state policies with the ideals of Islamic social justice. In this context, women workers must not remain peripheral figures mentioned in regulatory texts; rather, they must be central to a courageous, equitable, and dignified policy orientation.

### Women Workers' Rights in the Job Creation Law: A Maqāṣid al-Sharī'ah Review

The principles of *maqāṣid al-sharī'ah* (higher objectives of Islamic law) serve as a critical framework for evaluating the extent to which labor legislation (such as Law No. 6 of 2023 on Job Creation) achieves substantive justice for women workers in Indonesia. As an ethical foundation in Islamic legal thought, *maqāṣid* functions not only as a normative guideline in public policymaking but also as an evaluative tool to assess the alignment between the ideals of Islamic law and the socio-economic realities of society.<sup>43</sup> In the context of female labor, *maqāṣid* demands the active presence of the state and society in ensuring the protection of life, health, safety, dignity, and access to

<sup>41</sup> Akhmetova, "Women's Rights."

<sup>42</sup> Ahmad Yani Anshori and Landy Trisna Abdurrahman, "Constitutional Contestation of the Islamic State Concept in the Indonesian Parliament 1956-1959," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (December 17, 2024): 278–316, <https://doi.org/10.18860/j-fsh.v16i2.29572>.

<sup>43</sup> Naser Abdallah Abu Zetun and Aydah Mhagir Abutayeh, "واقع المرأة العاملة، "في القطاع غير الرسمي في المجتمع الأردني: دراسة سوسيولوجية في جنوب الأردن," *Dirasat: Human and Social Sciences* 51, no. 4 (July 30, 2024): 1–17, <https://doi.org/10.35516/hum.v51i4.3859>.

wealth and economic autonomy.<sup>44</sup> However, when these values are tested against the substance and implementation of Law No. 6 of 2023, clear tensions emerge between the ethical aspirations of the *sharīʿah* and the state's economically driven legislative agenda.

One of the central principles of *maqāṣid* is *ḥifẓ al-nafs*, the protection of human life. Within the sphere of industrial relations, this principle obliges the state to guarantee a work environment that is safe, healthy, and free from all forms of violence—whether physical or psychological.<sup>45</sup> Yet, Law No. 6 of 2023 contains no explicit provisions ensuring protection from gender-based violence in the workplace. Worse still, the law's reinforcement of contractual labor schemes and expansion of outsourcing mechanisms further exposes women to the risk of arbitrary dismissal, particularly during pregnancy or postpartum periods. In such conditions, the principle of life protection is not only unfulfilled but structurally neglected. Rather than acting as a guardian of human welfare, the state appears more inclined to function as a facilitator of market logic—an orientation fundamentally at odds with the moral vision of the *sharīʿah*.

Another essential dimension of *maqāṣid*, *ḥifẓ al-nasl* or the protection of progeny, is directly relevant to discussions on the reproductive rights of women workers. In this regard, Law No. 6 of 2023 offers no explicit guarantees concerning critical needs such as menstrual leave, breastfeeding time, or institutional support such as on-site childcare facilities. Provisions previously stipulated in earlier labor regulations have been either removed or relegated to subordinate government regulations, thereby losing their normative legal force at the legislative level. Many employers exploit short-term contract statuses to avoid fulfilling maternal obligations. From a *maqāṣid*-based perspective, any policy that hinders women from fulfilling their maternal roles without structural support constitutes a violation of the principles safeguarding family continuity and generational preservation.<sup>46</sup>

<sup>44</sup> Falaah, “Islamic Shari’ah and the Rights of Women.”

<sup>45</sup> Kamali, *Actualization (Taf’īl) of The Higher Purposes (Maqāṣid) of Shari’ah*.

<sup>46</sup> Abdul Azim Islahi, “Economic Empowerment of Women in Islam,” in *Economic Empowerment of Women in the Islamic World*, by Toseef Azid and Jennifer L Ward-Batts (WORLD SCIENTIFIC, 2020), 21–38,

Similarly, the principle of *ḥifẓ al-māl* (the protection of ownership and economic rights) serves as a critical foundation in Islamic legal thought. In Islam, women possess the right to work, earn income, and manage their assets independently without gender-based discrimination. However, the legitimization of piecework systems and output-based wage schemes under Law No. 6 of 2023 has, in practice, created precarious and unstable working conditions for female laborers. In the informal sector (where women constitute the majority) the current system fails to account for the double burden many women carry, including biological constraints and domestic responsibilities. This situation is further aggravated by the absence of adequate social protection mechanisms, limited access to pension schemes, and a lack of long-term economic security.<sup>47</sup> In effect, Law No. 6 of 2023 inadvertently reinforces gender-based economic inequality—a condition that Islamic justice, as articulated in *maqāṣid al-shari‘ah*, seeks to rectify and prevent.

The principle of *ḥifẓ al-‘ird*—the protection of human dignity—highlights the essential need for recognizing women's identity and social roles within the workplace. In the context of Indonesia's labor reality, many women are subjected to verbal harassment, stereotypical assumptions about productivity, and discriminatory barriers to promotion, merely because they bear the dual responsibilities of wage labor and household management. Yet, Law No. 6 of 2023 fails to explicitly institutionalize mechanisms for eliminating gender-based workplace discrimination, whether through substantive norms or affirmative policy. The absence of a robust legal framework to safeguard the dignity of female workers exposes a significant disconnect between constitutional mandates and practical enforcement. Within Islamic jurisprudence, human dignity is deemed inviolable and forms an integral part of one's fundamental rights. Ignoring the protection of women's dignity, therefore, constitutes a

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[https://doi.org/10.1142/9789811212154\\_0002](https://doi.org/10.1142/9789811212154_0002); A. Mehellou, M.S. Mohamad Saleh, and B. Omar, "Maqāṣid Al-Shari‘ah as Goal Framing for Sustainable Behaviours: A Conceptual Framework," *Intellectual Discourse* 31, no. 1 (2023): 183–209.

<sup>47</sup> Mirza Satria Buana and Rahmat Budiman, "INDONESIA'S MINIMUM WAGE POLICY AFTER THE OMNIBUS LAW," *UUM Journal of Legal Studies* 13 (2022), <https://doi.org/10.32890/uumjls2022.13.2.8>.

denial of their right to live honorably and equitably in all spheres of life, including the sphere of work.<sup>48</sup>

Furthermore, the principle of *ḥifẓ al-ʿaql* (the safeguarding of intellect) emphasizes the importance of access to education, skills training, and capacity development as essential components of genuine empowerment. Ideally, labor laws should structurally enable women to grow intellectually and advance professionally. However, Law No. 6 of 2023 does not integrate affirmative provisions that directly confront structural barriers preventing women from ascending into higher career ranks.<sup>49</sup> In reality, many women remain trapped in low-wage, entry-level positions despite possessing relevant experience and qualifications. This reflects a persistent epistemic and social inequality that current labor policies have yet to adequately address. When the state fails to design regulatory frameworks that ensure vertical mobility and the intellectual empowerment of women, *ḥifẓ al-ʿaql* ceases to be part of the ethical foundation of national legislation.

It is also crucial to note that *maqāṣid al-sharʿiyyah* demands not only the formulation of legal norms, but also a sustained political will and transformative cultural change. A study conducted by Abu Zetun and Abutayeh on the informal labor sector in Maʿan, Jordan, underscores that legal provisions alone are insufficient unless accompanied by supportive social transformation. Many women in the informal sector remain excluded from legal protection, often due to familial pressures or cultural norms that perpetuate economic dependence on men.<sup>50</sup> These findings mirror the situation in Indonesia, where female informal workers (particularly domestic helpers, laundry workers, and small-scale traders) remain marginalized in the legal framework of Law No. 6 of 2023. Within the *maqāṣid* paradigm, justice cannot be achieved solely through ethical principles of law unless those principles are matched with the courage to challenge structures that sustain subordination.

Hashim Kamali's perspective becomes particularly relevant here. He argues that the root of gender inequality lies not in Islamic

<sup>48</sup> Hakimi et al., "Legal Policy for Women Workers in Indonesia."

<sup>49</sup> Adiwinarto, Mahardika, and Leeavi, "Kepastian Hukum Tentang Kesejahteraan Tenaga Kerja Dalam Perspektif Undang-Undang Cipta Kerja."

<sup>50</sup> Abu Zetun and Abutayeh, "واقع المرأة العاملة في القطاع غير الرسمي في المجتمع الأردني."

doctrine itself, but in patriarchal legal interpretations that marginalize women's voices.<sup>51</sup> When the state fails to confront such interpretations through fair and progressive public policies, it abdicates its responsibility within the framework of *siyāsah dustūriyyah* and *maqāṣid al-sharī'ah*. In this regard, Law No. 6 of 2023 reveals a lack of political will to dismantle structural inequality and instead remains entrenched in a deregulatory logic that prioritizes market efficiency over the protection of human dignity.

A critique of Law No. 6 of 2023 from the perspective of *maqāṣid* should not be misconstrued as a wholesale rejection of its content, but rather as a call to reexamine the ethical legitimacy of the law. In Islamic legal thought, legitimacy is not defined solely by procedural validity but also by moral substance and a commitment to the protection of the marginalized. When public policy fails to provide a fair and safe space for women to work, empower themselves, and thrive, it forfeits its ethical foundation.<sup>52</sup> In this sense, *maqāṣid* operates as a normative mirror, assessing not only the enforceability of law but also the moral trajectory and underlying aims of legal authority.

Accordingly, Law No. 6 of 2023 must be reread through the lens of *maqāṣid*, not limited to formal legal scrutiny, but deeply rooted in the ethical values of *sharī'ah* that uphold social justice. Does this regulation truly create safe, decent, and humane working conditions for women? Has the state established protective mechanisms that liberate female laborers from cycles of precarity and subordination? If these questions remain unresolved, then legal reform in the labor sector must move beyond administrative refinement toward the strengthening of justice itself, as the core objective of *maqāṣid al-sharī'ah*.

### **Between State Norms and Sharia Principles: Protecting Female Workers**

A comparative analysis between the principles of women's labor rights protection in Law No. 6 of 2023 and the standards of constitutional justice in Islam opens an important discursive space on how the state defines justice within labor policy frameworks.

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<sup>51</sup> Kamali, "Women in the Workplace."

<sup>52</sup> Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society*, The Lewis Henry Morgan Lectures 1985 (Cambridge ; New York: Cambridge University Press, 1989).



Normatively, this law articulates its commitment to safeguarding women's rights through provisions concerning menstrual leave, miscarriage leave, equal pay, and female representation in managerial positions. At a surface level, these clauses suggest an effort by the state to align domestic regulations with international frameworks such as the CEDAW Convention, which explicitly prohibits all forms of discrimination against women in the workplace.<sup>53</sup> However, when assessed through the lens of Islamic constitutional justice, many provisions within this law fall short of delivering substantive justice for female workers. In Islamic legal thought, justice is not merely defined as the absence of discrimination, but rather as the active presence of systems that enable protection, participation, and equal recognition for women in both public and private domains.<sup>54</sup>

Law No. 6 of 2023 does acknowledge legal protections, particularly through the recognition of rights to menstrual and miscarriage leave, but the regulations remain generic and weak in terms of enforcement mechanisms. Many employers circumvent the implementation of such rights by citing contractual flexibility or the temporary status of workers, thereby rendering legal norms ineffective in practice. From the Islamic perspective on justice, the protection of women in the workforce cannot be left to the goodwill of private employers; it must be structurally enforced through legal systems that guarantee the fulfillment of these rights. Islamic jurisprudence even prohibits the dismissal of pregnant employees and underscores the right to postnatal rest, as outlined in various *fiqh* positions and the broader framework of *maqāṣid al-sharī'ah*.<sup>55</sup> Justice, therefore, in the Islamic paradigm, is inherently affirmative (never neutral) and must explicitly address the structural barriers that prevent women from fully accessing their legal and moral entitlements.<sup>56</sup>

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<sup>53</sup> Nuraida Jamil, "HAK ASASI PEREMPUAN DALAM KONSTITUSI DAN KONVENSII CEDAW," *Muwazāh* 6, no. 2 (August 27, 2015), <https://doi.org/10.28918/muwazah.v6i2.442>.

<sup>54</sup> Rosen, *The Anthropology of Justice*.

<sup>55</sup> Hakimi et al., "Legal Policy for Women Workers in Indonesia."

<sup>56</sup> Antony Black, *The History of Islamic Political Thought: From the Prophet to the Present* (New York: Routledge, 2002); Hamsah Hasan, "HUBUNGAN ISLAM DAN NEGARA: Merespons Wacana Politik Islam Kontemporer Di Indonesia," *Al-Ahkam* 1, no. 25 (April 25, 2015): 19, <https://doi.org/10.21580/ahkam.2015.1.25.192>.

Equality in employment opportunities represents another principle promoted by Law No. 6 of 2023. However, in practice, this principle often remains at the level of rhetoric. Empirical data shows that men continue to dominate managerial positions, while affirmative action policies for women have not been systematically implemented.<sup>57</sup> In contrast, Islamic legal tradition views equality not simply as equal opportunity, but as the state's obligation to dismantle structural barriers that hinder women's advancement. Islamic history offers compelling precedents, such as the economic and intellectual leadership of Khadijah and 'Ā'ishah, demonstrating that gender equality in Islam demands genuine social transformation. This includes creating tangible space for women to lead and contribute, beyond formal declarations or tokenistic representation.<sup>58</sup>

The principle of corporate social responsibility (CSR) as outlined in Law No. 6 of 2023 presents a potentially strategic avenue for advancing the protection of women's labor rights. However, this principle currently lacks binding legal force and is often driven more by corporate image-building than by a sense of moral obligation. In Islamic thought, social responsibility is not merely an act of philanthropy, but an integral component of distributive justice embedded within the structure of ownership and production. This principle requires that business actors treat the rights of workers as a trust (*amanah*) for which they will be held accountable (ethically, legally, and spiritually) not as a mere administrative formality. This paradigmatic divergence reflects a deeper distinction: while the term "CSR" may be shared in both the law and Islamic ethics, its substance and objectives are fundamentally different, one is reputation-centered, the other is rooted in moral accountability before God and society.<sup>59</sup>

The alignment of Law No. 6 of 2023 with international standards such as CEDAW may be seen as a progressive step within the framework of positive law. However, within the Islamic tradition of constitutional justice, the ethical benchmark lies not only in

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<sup>57</sup> Azid and Ward-Batts, *Economic Empowerment of Women in the Islamic World*; Kartikasari and Fauzi, "Penolakan Masyarakat Terhadap Pengesahan Omnibus Law Cipta Kerja Dalam Perspektif Sosiologi Hukum."

<sup>58</sup> Islahi, "Economic Empowerment of Women in Islam."

<sup>59</sup> Mehellou, Mohamad Saleh, and Omar, "Maqāṣid Al-Sharī'ah as Goal Framing for Sustainable Behaviours: A Conceptual Framework."

compliance with international instruments but in the degree to which such policies yield tangible social justice outcomes. Islamic justice demands that the state play an active role in protecting vulnerable groups, including women workers from exploitation and marginalization.<sup>60</sup> As such, policies that merely align with international norms without addressing the specific vulnerabilities of women in local socio-cultural and economic contexts fall short of fulfilling the substantive demands of Islamic justice.

From this perspective, the comparison between Law No. 6 of 2023 and the standards of Islamic constitutional justice reveals a normative convergence in intent, but a stark divergence in implementation and moral foundation. Justice, in its Islamic constitutional form, is not satisfied with the mere recognition of rights; it requires effective protective mechanisms and legal systems that are not subordinated to market logic.<sup>61</sup> When the law continues to permit flexible labor schemes without structural safeguards for women, it risks entrenching the very injustices it ought to rectify. Therefore, Law No. 6 of 2023 must be reinterpreted not only through the lens of positive law and international conventions, but also through the Islamic worldview that regards justice as a foundational principle of governance and public policy. The question is not merely whether women's rights are formally acknowledged, but whether the state substantively intervenes to create a just, equitable, and dignified work environment for women as an essential component of public civility. Without structural commitment and moral courage to reform a biased system, the promises of justice will remain confined to legal texts—and fail to materialize in lived reality.

## Conclusion

This article tried to revisit Law No. 6 of 2023 on Job Creation through the lens of *siyāṣah dustūriyyah* (Islamic constitutional thought) and *maqāṣid al-sharī'ah* (the higher objectives of Islamic law), with a particular focus on the protection of women workers' rights. The main finding of this research reveals that although the law formally includes several provisions aimed at protecting women workers, such as the

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<sup>60</sup> Hakimi et al., "Legal Policy for Women Workers in Indonesia."

<sup>61</sup> Hidayah, "Gender, Economy, and the Law."

recognition of menstrual and miscarriage leave, equal pay, and the enhancement of corporate social responsibility, it still falls short in guaranteeing the kind of substantive justice mandated by Islamic legal and ethical principles. From the perspective of *siyāsah dustūriyyah*, the legislation reflects a disconnection between the legislative process and the Islamic principles of participatory governance (*shūrā*) and moral accountability of power (*al-mas'ūliyyah al-siyāsiyyah*). The absence of affirmative mechanisms to incorporate women's voices in policy-making, alongside the state's weak commitment to enforcing structural protections for female workers, illustrates a deviation from the concept of shar'ī legitimacy in legal governance. Laws shaped predominantly by economic calculus, without integrating social justice or protection for vulnerable groups, run counter to the ethical spirit of Islamic governance.

Likewise, when examined through the lens of *maqāṣid al-shari'ah*, the law has not effectively realized the core objectives of Islamic legal theory: protection of life (*ḥifẓ al-nafs*), dignity (*ḥifẓ al-'ird*), lineage (*ḥifẓ al-nasl*), property (*ḥifẓ al-māl*), and intellect (*ḥifẓ al-'aql*). The legislative emphasis on fixed-term contracts, expanded outsourcing, and wage flexibilization has indirectly entrenched women workers in unstable and unprotected labor conditions. The law also lacks strong legal mechanisms to ensure women's access to vocational training, career advancement, and discrimination-free workplaces. In this regard, the justice offered by the law remains formalistic and fails to address the structural transformation required by the *maqāṣid* framework.

This study is limited by its normative-qualitative approach, which focuses primarily on legal texts and theoretical frameworks. It does not incorporate empirical insights such as interviews or fieldwork to explore the lived experiences of women workers. Moreover, it has not fully examined the varied implementation of the law across different industrial sectors and geographic regions in Indonesia, each of which presents distinct socio-economic vulnerabilities. Future research is encouraged to integrate a juridical-empirical approach by capturing the direct experiences of women workers in both formal and informal sectors. Field studies tracing the concrete impacts of Law No. 6 of 2023 on women's everyday working lives would enrich the conceptual findings generated through *siyāsah dustūriyyah* and *maqāṣid al-shari'ah*. Additionally, future inquiries should explore the role of Islamic

labor organizations and the potential of religious fatwas as part of broader advocacy strategies to advance women's labor rights within the national legal system.

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