

***WORKERS' RIGHTS ACCORDING TO ISLAMIC LAW
PERSPECTIVE (THE PRINCIPLE OF MUDHARABAH) THAT
CAN BE APPLIED IN TRADE AND INVESTMENT
AGREEMENTS***

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ABSTRACT

Many experiences have shown that the working conditions can be related to the contract between the laborers and the company or the employer. Sometimes the collective bargaining power of the workers to the employers can not bring the workers much hope for their betterment in the future because of many restrictions in the government rules towards labor. This kind of contract brings an opposition status between the employer and the laborers. The opposition between the worker's to the company. Linguistically, the word Mudharabah is used to signify an idea of "giving out a part of capital to somebody to trade in, provided that the profit is shared between them in which an apportioned share is allocated to the activity of trader in doing the business". In the fields of labor law, Mudharabah principle can also be applied in the contract between the capital owner and the laborers. The principle of the Mudharabah comes from the point of view that all human beings are equal. Equal in sense that he or she has dignity and that all of them are workers, since no body is exempted or to live without some kind of exertion of effort, except for disabilities. There is no concept in Islamic that one class or one group in society is above or superior to the other. In an ideal Islamic society that Islam teaches, there is no subdivisions of classes that these are the group or the class of entrepreneur or managers and these are workers.

Keywords: *Workers Rights, Islamic Law, Trade and Investment Agreement*

Introduction

One obstacle for trade development of some developed countries is the phenomenon of the loss of income and jobs consequently as the more Multinational Corporations (MNCs) take advantages of their ability to move money, management, and production away from a high wage country to a low wage country. Accordingly, there are many

concerns for the Foreign Direct Investment (FDI) in their practice at the host countries, which most of them are developing countries, that caused violation of labor standards and environmental standards as well as dismal workers' living condition.

What has been addressed in many international trade and investment agreements so far, is the issues of

workers' right to realize the creation of effective labor union or to create the progress of the labor standard minimum of wages. Such phenomena that had happened in some developing countries, show the difficulties to apply the concept of workers right because of the lack of regulations in that country. In addition, there are also difficulties to enforce the violations on the workers' rights because the capitalist system still open the gap between the workers and the capital owners, which makes it hard to expect the enterprises to follow the rules of ethics against the workers. Many workers cannot realize their right to create labor union, and to have higher wages progressively. Many cases, such as SONY, GE, and MGM case show that some of the Multi-National Corporations (MNC's) who build their crown in foreign countries have violated international standards of healthy environment and violates the labors' standards and other workers rights in the host country, which then resulted in dispute resolution in international courts or ADRs. At least, the companies have to face the risk of loss in their business because of strikes, slow down, work to rule, etc. that has been wasting thousands of working hours.

Many experiences have shown that the working conditions can be

related to the contract between the laborers and the company or the employer. Sometimes the Collective Bargaining Power of the workers to the employers can not bring the workers much hope for their betterment in the future because of many restrictions in the government rules towards labor. This kind of contract brings an opposition status between the employer and the laborers. The opposition between the workers' to the Company. Moreover, the lack of sense of belonging to the company does not encourage higher productivity. This type of relation, has caused so many disputes between the Company and its workers, which delayed the process of production.

Human rights movement has tried hard to support labor movements in congress or other legislative power in the country, by promoting the rights of strikes, slow-down, etc. as the necessary ways of the workers to achieve what they want, such as higher wages, and a better working condition. In many Industrial countries, those ways still as important rights of workers that are stipulated in labor codes. However, most of all, the main thing is that both the employer and workers need the profit from the marketing of the Company's production in order to be able to pay the higher wages. The unfriendly funding

system of the conventional banks that requires collateral and interest in their loan to the companies only made the situation worse. The most practical solution for the company is to downsize and many workers have been the victims of layoffs. This situation becomes a dilemma for both the employer and the workers themselves. To avoid this situation, a type of cooperation between the employer and the workers is needed. Employer and workers must work together to spur productivity. To achieve the maximum benefit from the workers productivity, the employer needs to treat the workers as a partner in their business.

In the last few years, there is a tendency for companies to change their approach toward their workers from competition to corporation. Such in example is the trend for some companies to employ Employee Stock Ownership Plans (ESOPs) on their management of business, which main characteristics, e.g., workers are permitted to buy company' stock and workers have their representative in the management process. If this system can be organized well, it could spur the productivity and create the peace on international trade and investment. In fact, such thing has been promoted since long time ago, which more or less has similar charac-

teristics. This kind of cooperation between the company and the workers that we will see in this paper is what that has been known as the principle of Mudharabah in Islamic law perspective. This principle will be explained below in the second part of this term paper. Before we come into this principle, we first will elaborate the basic principle of human rights for workers in Islamic law perspective.

Workers' Rights In Islamic Law Perspective

Basic Human Rights for Workers in Islamic Teaching

As a system of law, Islam has a different type or structures than other systems. It is because of its comprehensive character, which is not only compose sacred functions that is related to worship of men to God, but also it gives guidance on the relation among men and between men and nature. The teaching in Islam also consist of guidance to solve many kinds of problem in worldly issues.

Islamic teaching exhort men to become upper handed individuals. This was stressed in one Hadits that says:"...the upper hand is better than the lower one, the upper being the one which bestows and the lower one which

begs.” It means that people who are able to give something to others are better than those who are depend on the others. To be able to become an upper handed person, he or she has a source of income, in other word jobs. Therefore, the exhortation to be an upper handed person implies that access to job is a human right. That is why work is become so important in Muslim’s life. The importance of work can be seen in the followings:

In a Hadits, the Prophet Muhammad, peace be upon him (hereafter abbreviated as: pbuh), stated that:

“No one has earned a better living than the one who has earned with his own hand (labor) and the Prophet David earned (his living) with his own hand.”

And also,

“...It is better for anyone of you to take a rope and cut the wood (from the forest) and carry it over his back and sell it (as a means of earning his living) rather than to ask a person for something and that person may give him or not.”

Islam has long been promoting workers rights, even to a slave. In the early Islamic state the Holly Prophet Muhammad, pbuh, stressed that slaves should be treated as ordinary workers. They must have the same rights as

laborers. In one Hadits the Holy Prophet, pbuh, said:

“Slaves are your brothers whom God has placed at your disposal. So feed them whatever you eat, clothe them with whatever you wear and remember, do not entrust them with toilsome work; but if you must have it done then assist them.”

This Hadits also says about the importance of giving a basic need for living expenses as the minimum wages for the laborer. The employer should honor workers rights and he must fulfill his obligation to his workers properly. A Hadits says: “What else than the sin that a man stops the food of the one who is under his charge”. This hadits also brings the sign to avoid the layoff in the critical situation of the company. If the company really needs to do the down-sizing it should give the separation payment to the employee.

To give workers salary or wages on time is also stressed. In one of the Hadits, the Prophet Muhammad, pbuh, said: “Pay the employee his wage before his sweat dries up”. This Hadits also stipulates that wages must be delivered as soon as the work has done. In this case, it is acceptable to pay the salary monthly or earlier regularly as long as the payment is due in a specific timing.

Laborers also has right to have a long time of employment. The saying of Abu Said in a Hadits stated that: "That Messenger of Allah (pbuh) had forbidden from the hiring of the laborer until he manifests for him his wage." This Hadits stipulates a prohibition for the employee to hire a worker abusively, such as to be only as an information to know the estimation of wages that he could spend to the kind of work. This Hadits shows that laborers have rights to terms that they wish for their future, including job security. It is also can be said that, actually it is not good for a company, in order to find a low wages, to only hire workers for several weeks or month without any promises of employment (part timer) continuously.

About the rights of laborers in a country, the government must prepare the rules or regulations in connection with this matter. The basic responsibility of the government is to prepare the regulation that will help the workers based on capacity and function of the government itself. In a Hadits, the Prophet, pbuh. said: "An office is a trust: it is a humiliation expect for those who rise equal to the task and pay everyone his due." The government also need to prepare regulations in connection with the workers who work abroad or provide the ratification regarding

international treaties and Trade Agreement, which has relations with workers rights. In the contract or bargaining between the employers and the employee, the government is only acting as a mediator between the two parties.

Workers' Right According to the Principle of Mudharabah

Linguistically, the word Mudharabah is used to signify an idea of "giving out a part of capital to somebody to trade in, provided that the profit is shared between them in which an apportioned share is allocated to the activity of trader in doing the business". Historically, Mudharabah was widely practiced in the Pre Islamic era as a form of partnership. The Prophet Muhammad, pbuh. himself has been an entrepreneur in trade based on Mudharabah principle before the revelations. In Legal terminology, Mudharabah was defined as a contract of co-partnership as can be seen in the quotation below:

"...Mudharabah, in legal terminology, is a contract in which certain property or stock (Ras al-Mal) is offered by the owner or proprietor (rab Al-Mal) to the other party to form a joint partnership in which both parties will participate in profit. The other party is entitled to a profit in lieu of his labor since he is

giving to manage the property (Mudharabah).”

From those basic principle above, some practitioners in Islamic law use this term of Mudharabah in many ways based on the field of the business. In the fields of finance, Mudharabah as usually taught in many literature is: A unit trust agreement between a lender (a financial intermediary) and an entrepreneur (the mudharib) whereby the lender agrees to finance the entrepreneur's project and shares in the profit or loss according to a predetermined ratio. Consequently, the definition of Mudharabah is not strictly apply only in specific condition or subject matter as it is above. The important meaning of Muddharabah is the principle of profit and loss sharing between two or more partner in business.

In the fields of labor law, Mudharabah principle can also be applied in the contract between the capital owner and the laborers. The principle of the Mudharabah comes from the point of view that all human beings are equal. Equal in sense that he or she has dignity and that all of them are workers, since no body is exempted or to live without some kind of exertion of effort, except for disabilities. There is no concept in Islamic that one class or one group in society is above or superior

to the other. In an ideal Islamic society that Islam teaches, there is no subdivisions of classes that these are the group or the class of entrepreneur or managers and these are workers. In this sense, the difference only in levels, expertise or the field of works that they have.

However, in the daily living, every community has different grades of people; such as rich as well as poor or intelligent, as well as dull. They live together and need cooperation among them to make a living. With cooperation of all these people, every member of the community could earn his living. The rich can invest their money and the poor can put in their labor. Thus by cooperation both can earn profit. This is the basic conception of equality in Mudharabah contract between the capital owner and the workers.

According to the Muslim jurists, Islam has made mudharabah lawful because the people need it; since it often happens that men, who have money and property, lack the ability to use it for productive purposes while others, who have the necessary ability to utilize such financial resources, are poor and penniless. A contract of Mudharabah between such parties enables them to utilize the wealth of the rich and the labor of the poor for the benefit of both. This system

is relevant in the Qur’an, Surah XLIII: 32, which says:

“It is We Who divide between them their livelihood in the life of this world: and We raise some of them above others in ranks so that some many command work from others.”

In the principle of Mudharabah, workers have the same position in bargaining power to the employer. Both employer and the workers are partners in order to earn the company’s profits. In doing their job with the principle of Mudharabah, the worker has the right in accomplishing the job in one or other ways, including to hire a technician or laborer to carry out the work of the firm, to maintain the buildings for keeping the goods and to hire animals or other means of transport for carrying the goods of the firm. These are the managerial works that based on the contract of Mudharabah in principle as a commenda partnership between the capital owners or investors and their agent-managers in trade business or investment.

However, in general, this principle gives the similar rights to any kind of work for the laborer. It is basically because of the term of trust, all jobs they do give him share of the profit that the enterprise earned. So that the salary that they receive must be calculated in terms

of salary plus bonus that the enterprise gain. This form of business organization has a very healthy effect on the position of the laborers. They feel happy and satisfied for they share in the profit. They even work harder because very increases they made they have share on it in return.

In terms of wages, workers have the right to earn higher portion of profits than the capital owner (investors), based on the work they do. This condition will be applied in case of the capital owners are not involved in management of the business. If the investors also involved in running the business, the investors will get more profits in return, because there are more costs that the investors should bring into the process of production.

Abdul Majeed Qureshi, a labor expert in Pakistan, makes a strong plea for just wages or the labor and that the privileged position of capital be taken away from it and be restored back to labor. He stated that ‘depreciation’ of labor must be paid for: ”just as the expenses for maintenance, repair and reconditioning of buildings and machinery are accounted for in the expenditure of the business, similarly maintenance of health and medical aid should be fully accounted for in regular expenditure.” Muhammad Nejatullah

Shiddiqi quoted Qureshi's opinion about wages as:

*“Qureshi reserves half of the total profits of concern for labour and would also like to see **labour own 60 per cent shares in the concern at which they are working.... The just wages are defined by the report as a need-based minimum plus a differential according to nature of work, productivity and profitability of the industry. These wages must be supplemented by a number of other facilities: residential, medical, educational, recreational, etc. Labor is also entitled to a bonus or profits and to the produce of the industry at commercial rates, if not free. He should be given financial aid or interest-free loans (repayable subject to capacity to pay) in case of emergency...**”*

From the quotation above, especially in the bold letters phrase, can be seen the principle of mudharabah between the company or investors and laborers. The idea of making laborers as shareholders is also stressed in the view of that the laborers become interested in the growth of the industry in which they are employed. In addition, it is also needed to concern that the wage rate is linked with the profits of the firm. To “bridge the gulf” between the living condition of the employers and the employees or between the investors and

the laborers, it needed to find the actual wages by distinguishing between need-based minimum wages and ideal wages. For this reason, Muhammad Umer Chapra, Arabian Doctor in economic, leaves the actual wages to be determined between these two limits “by the interaction of supply and demand, the extent of economic growth, the level of moral consciousness in the Muslim society and the extent to which the state plays its legitimate role.”

The Applications of Mudharabah Intrade and Investment Agreements Considering Workers' Rights

The Application of Mudharabah in Trade Agreement.

In trade agreement that stipulates contemplation about labor rights, it needs to reveal the benefits that each party will get from the agreement in their trade relation. Generally, each party wants to have development in progress during the agreement period. In bilateral agreement, the provisions that has connection with labor must have reflection of the consideration regarding labor standards and enforcement, labor conflicts; labor statistics, labors' working condition and the safety of their

family living condition. And also about wages that can be negotiable.

There are some aspects that need to be considered in connection with worker rights in trade agreements. They need to stress in cooperation and joint actions on a number of labor issues, including the treatment for foreign workers. Many foreign laborers live in a very worrying condition. There are no strict rules that could be functioned as the law for them to get their work takes place. On the other hand, the mobility of the immigrant from neighboring country cause problem in work competition with citizens in the country. Native people (or the citizens) could lost their job because of the availability of foreign workers.

In connection with NAFTA, there need to be as an enormous concern on labor mobility from Mexico to the US. Many workers from Mexico boundary went across the adjacent between the two countries to find jobs. Some of them work on farms or constructions with a dismal living condition. Unfortunately this matter has not been part of the concerns included in the agreement. This is acceptable because this matter does not have much relations with trade between the two countries. However, it may pose matters in immigration and population problem in those countries, which in term will cause obstacles in

economic relations and development in both country. This problem is actually can be reduced if the labor condition on the country of origin of the immigrants has been well managed. The problem that has been stressed in the Trade Agreement so far is in the enforcement of the workers rights in the host country of the MNCs that involves the contracting parties. If in the agreement can be unanimously agreed that the company must take care of the workers rights, it will reduce the immigrant cross borders, because they already find their steady job in their own country.

In applying Mudharabah principle in trade agreement, we can take into our perception a basic concept of Mudharabah as a contract between two parties or two countries regarding the rights of their labor, which are working outside the boundaries of their countries. Here we need to see some other conceptions that are relevant with other matter that can strengthen the trade between the two countries. For example workers become one of the largest commodity that has been exported from some developing countries to Western and Middle East countries. If in the trade agreement can be well negotiated about the workers rights and their living condition in the exporting countries, including their full rights in the labor

contract according to mudharabah principle of profit sharing, the two countries will receive the benefits of the transaction, such as in come from taxation or devisas. The agreement itself must include the matters on maintaining the wages, the living conditions, safety as well as the continuation of works issues.

In connection with MNCs in the developing countries, the problems in the workers rights that could be negotiated in the trade agreement are including the working condition or management and the continuation of the employment. In NAFTA, for example, the US. will get some benefit from the bilateral agreement with the requirement on placing a certain percentage of the company's stocks to the employees of each imported product in the U.S. custom cervices. With this requirement, the US. will helps to improve living condition to Mexican workers. If the minimum wages improved, the cost of production will be higher and it will also mark up the price higher. This is good for the competition in the world markets, which is good also for the US. If the minimum wages of the laborers improved, it will opens to demand for other market or will open market for other industry. It is also good for the US. because it means that it can raise the US export to Mexico in luxurious goods.

This thing also can raise commercial taxes, export taxes and income taxes in both country.

The Application of Mudharabah in Investment Agreement

The basics intention to invest capital is how the investment can make profit to the investor. It can be long term or in short term. They could be local or international. In international joint venture, for example between capital from investor of one country and expert and management in other country, the investor must see the feasibility of the project or company that he put his share in it. There will be so many risks that the company will face, either commercial or political risks. Commercial risk that the company will probably find is that the production does not meet the expectation, where the nominal profit is logging behind the inflation in the host country or there cold be too hard in marketing the products. And the political risk could come if the Government situation in the country does not steady and could have many changes in their regulations. To make an investment save enough to cope with the situation on the host country is to find the way of cooperation between the company and the managerial level of workers or the workers in general.

The most important thing to make the investment safe is if the company could have great support from its workers. The support could be in the form of laborers' hard work that can increase more production, or the support in managerial that could involve the workers in every decision that the company makes by placing some of the important shares to the workers or employee. To give the opportunity for the workers to buy the stock of the company and to involve them in management are the reflection of a team work in the company. With this position, the progress of the company can be monitored by the employees and they can be involved in resolving company's problems.

On the other side, by giving the chance of partnership with the workers or the employee, it can create higher income to the workers. Especially to the workers or the employee who has regular salaries, by having shares of the company, they will have an expectation to have better living in the future. They also have their rights in management of the company. They can create themselves to be prepared at the time they can build their own investment to run other business. In this situation, even though they still have the opportunity to create labor union, the function of the

organization will not be as an opposition but only to fulfill their right to speak and to vote their representative in the management. Labor Union is of the type that has no opportunity to strikes, slow down, etc, which could add to the cost of production of the company. With the involvement of the workers in management, every problem in the company can be addressed thus the solution may be solved readily. This way of solution can avoid the layoffs and make the workers has a decision in trying to find solution of company's problem.

In the investment agreement, the government can make requirements that the company should sell a portion of its stocks to their employees. The rule of investment must include the ease to create employee base management. The principle of Mudharabah in terms of securities, virtually, has a similar concept with Employee Stock Ownership Plans (ESOPs) or other kinds of company stock. Ehsan Ahmad wrote in his book that the Mudharabah securities are including control and voting rights, maturity, preference over equity claims and conversions.

In the principle of Mudharabah, workers have the same position in bargaining power to the employer due to the maximization of productivity and the profit of the business. Dr. Muhammad

Nejatullah Siddiqi wrote that: "There is a great emphasis on cooperation between labor and enterprise and on mutual consultation as a mode of decision making." This is the main character of the Mudharabah partnership.

In the principle of Mudharabah, the bargaining power itself based on individual position. If the position of the workers had to be applied into a Collective Bargaining Agreement, it must bring the real intention of the workers. Moreover, it should not be an abusive object of regulations on the governmental practice. In this sense, not only the majority of workers can make a negotiation with the company by means of the collective bargaining agreement, but also individual of the workers can go into the negotiation. This including the managerial position in the worker team. With this position, every problem can be relatively faster to handle; because in this place the laborers can discuss their function in management of the company.

Conclusion

The system of economic of capitalist has brought the opposition between the capital owner (employee) and the workers. Under the capitalist system, the laborers work for wages throughout their whole life and, very

often lose their sense of freedom. The arrogant of capitalist has stimulated the external of the socialist system, which than the history has shown that such an extreme opposition between the capital owner and the shown can not work well in the process of production. The principle of Mudharabah in Islamic law has put the two parties, the capital owner and the workers in the same position. The workers has their dignity as a creative people and they have their freedom and independence. Then they will work hard for they have their freedom and independence. Then they will work hard for they have their personal interest or incentive in the work. Under the capitalist system it is not very uncommon that thousands of working hours are wasted every year by slow-down, or work-to-rule or strikes. With the system of Mudharabah those acts are not needed any more. Mudharabah gives laborers a share of the profits which provides them with a strong incentive to work harder. They begin to take a greater personal interest in their work which helps to increase the productivity of their work.

If in ESOPs, the workers need to put money to buy shares of the company stocks, in the principle of Mudharabah, the work itself has been the share from the workers to the company, even though there is no restriction

for the workers to buy the company stocks for their own future. The managerial and entrepreneurship in Islam is more valuable than stock or capital itself. Because, it consist of the ethos of work and encourage productivity. The standard minimum of wages for the worker does not have to be searched by strikes or labor union, but from the hard working itself that brings more productivity and for that they are deserve to get higher salary based on the higher profit that the company earn each year. With this characteristics of cooperation, the company does not have to deal with layoffs or to do downsize. For the government, it would be able to produce a better deal in the international trade agreement or the country's investment regulation.

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