

**LEGAL PROTECTION OF INFORMAL WORKERS IN THE
PERSPECTIVE OF HUMAN RIGHTS AND MASLAHAH**

(Study at Daksi Coffee Malang)

THESIS

BY:

ZAENAB

NIM 16230032



CONSTITUTIONAL LAW DEPARTMENT

SHARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah, with consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

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It really is a scientific work that is compiled by yourself, not duplicating or transferring data belonging to others, unless the reference is stated in either a footnote or bibliography correctly. If in the future it is proven that someone else was compiled, there is plagiarism, duplication, or transfer of other people's data either in whole or in part, then the thesis and undergraduate degree that I have obtained will be stated legally invalid

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APPROVAL SHEET

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LEGAL PROTECTION OF INFORMAL WORKERS IN THE PERSPECTIVE
OF HUMAN RIGHTS AND MASLAHAH
(Study at Daksi Coffee Malang)

The supervisor states that this thesis has met the scientific requirements to be examined on the Assembly Board of Examiners.

Malang, 15 April 2020

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LEGITIMATION SHEET

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**LEGAL PROTECTION OF INFORMAL WORKERS IN THE
PERSPECTIVE OF HUMAN RIGHTS AND MASLAHAH
(Study at Daksi Coffee Malang)**

Has passed and certified with grade : A

Malang, 17 September 2020

Dean,



Dipindai dengan CamScanner

TRANSLITERATION GUIDANCE

A. General

The transliteration guide which is used by the Syariah Faculty of State Islamic University Maulana Malik Ibrahim of Malang is the EYD plus. This is used based on the Consensus Directive from the Religion Ministry, Education and Culture Ministry of The State of Republic Indonesia, dated January 22 1998 No. 158/1987 and 0543.b/U/1987, which is also stated in The Arabic Transliteration Guide Book, INIS Felow 1992.

B. Consonant

Arab	Latin	Arab	Latin
ا	A	ط	Th
ب	B	ظ	Zh
ت	T	ع	‘
ث	Ts	غ	Gh
ج	J	ف	F
ح	H	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dz	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sy	ء	‘
ص	Sh	ي	Y

ض	DI		
---	----	--	--

The Hamzah which is usually represented by an alif, when it is at the beginning of the word, hence forth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (‘), as oppose to a comma (,) which replaces the ‘ain “ع”.

C. Vocal, Long Pronounce, and Diphthong

In every written Arabic text in the Latin form, its vowels fathah is written with “a”, kasrah with “i”, and dlommah with “u, whereas elongated vowels are written such as:

Elongated (a) vowel = â for example قال becomes qâla

Elongated (i) vowel = î for example نزل becomes qîla

Elongated (u) vowel = û for example دون becomes dûna

Especially for the pronouncing of *ya' nisbat* (in association), it cannot be represented by "i", unless it is written as "iy" to represent the *ya' nisbat* at the end. The same goes for sound of a diphthong, *wawu*, and *ya'* after fathah it is written as "aw" da "ay". Study the following examples:

Diftong (aw) = و for example قول becomes qawlun Diftong

(ay) = ي for example خير becomes khayrun

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as “t” if it is in the middle of the word, but if it is *Ta' marbûthah* at the end of the word, then it is transliterated as “h”. For example, الرسالة للمدرسة will be *al-risalat li al-mudarrisah*, or if it happens to be in

the middle of a phrase which constitutes *mudlaf and mudlaf ilayh*, then the transliteration will be using “t” which is joined with the previous word.

E. Auxiliary Verb and Lafadh Al-Jalalah

Auxiliary verb “al” (اَلْ) written with lower case form, except if it located at the beginning of word, while “al” in lafadh jalâlah which located in the middle of two words or being or become *idhafah*, it removes from writing. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *Masyâ* “Allah kânâ wa mâlam yasyâ lam yakun
4. *Billâh, azza wa jalla*

ACKNOWLEDGMENT

Alhamdulillah *rabbi'l'amin*, have given His Rahmat and servan, so we can finish this thesis entitled “**Legal Protection of Informal Workers in the Perspective of Human Rights and Maslahah (Study at Daksi Coffee Malang)**”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By allowing Him, may we belong to those who believe and get their intercession on the last day of the end, Amien.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humanity the writer will expresses the gratitude which is unequalled to:

1. Prof. Dr. Abdul Haris, M.Ag., as the Rector of The State Islamic University Maulana Malik Ibrahim of Malang.
2. Dr. Saifullah, S.H., M.Hum., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Dr. M. Aunul Hakim, S.Ag., M.H., as The Head of Constitutional Law Department of Syariah of The State Islamic University Maulana Malik Ibrahim of Malang.
4. Nur Jannani, SHI, MH as my thesis supervisor. The writer thanks for his spending time to guide, direct, and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.

5. Imam Sukadi, SH., MH as supervisor lecturer of the writer during his study at Constitutional Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
6. All the lecturers at Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang who has provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
7. The staff of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
8. My parents dan my brother who always support me financially, give me strength, motivation, and accompany me with all my struggles.
9. Thank you to Wilda Waqfa, Safinatun Najah, Indira Nurul, Marisa, Fina Wilda, Aysha, Nur Syamsiah, Almas who have accompanied my days in Malang until the end of the lecture story. Keep your spirits up and keep fighting.
10. My roommate Fatimah Az-zahra 49 in 2016 who became very good friends through a busy day at MSAA, ICP Constitutional Law 2016, Constitutional Law Department 2016 Thank you for being a good friend while in Malang. Remain family, even though we are back where we came from.

With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of living in the world and the hereafter. As a human who has never escaped fault, the writer is very hopeful for the forgiveness, criticism, and suggestions from all parties for future improvement efforts.

Malang, 15 April 2020

Writer,

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ABSTRAK

Zaenab, NIM 16230032, 2020. *Perlindungan Hukum Pekerja Informal Perspektif Hak Asasi Manusia Dan Masalah (Studi di Daksi Coffee Malang)*. Skripsi. Jurusan Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Nur Jannani, SHI, MH.

Kata Kunci: Pekerja Informal; Hak Asasi Manusia; Masalah.

Sektor informal merupakan unit usaha kecil yang melakukan kegiatan produksi atau distribusi barang dan jasa yang menciptakan lapangan kerja, kegiatan ekonomi tersebut dilakukan atas dasar kepercayaan dan tidak berbadan hukum. sektor informal mulai tumbuh subur menyerap tenaga kerja ketika peluang kerja di sektor formal tidak mampu menyediakan lapangan kerja bagi masyarakat.

Peneliti menggunakan jenis penelitian yuridis empiris, dengan menggunakan pendekatan yuridis sosiologis. Sumber data yang digunakan adalah data primer dan sekunder, teknik pengumpulan data melalui wawancara dan observasi. Peneliti mengolah data dengan cara pemeriksaan data, klasifikasi, verifikasi, analisis dan kesimpulan. Peneliti memilih Daksi Coffee Malang sebagai objek penelitian yang merupakan salah satu sektor informal di Kota Malang.

Rumusan masalah dalam penelitian ini adalah: 1). Bagaimana hak upah pekerja informal Daksi Coffee Malang yang menerima upah dibawah Upah Minimum Provinsi (UMP) perspektif Hak Asasi Manusia. 2). Bagaimana perlindungan hukum pekerja informal Daksi Coffee Malang yang menerima upah dibawah Upah Minimum Provinsi (UMP) perspektif *Maslahah*. Masalah yang dikaji dalam penelitian ini adalah mengenai perlindungan hukum pekerja informal yang tidak diupah sesuai dengan ketentuan upah minimum yang tercantum dalam Undang-Undang Ketenagakerjaan prespektif hak asasi manusia dan masalah.

Hasil penelitian ini adalah pemilik Daksi Coffee Malang beranggapan bahwa Undang-Undang Ketenagakerjaan hanya diperuntukan kepada pekerja formal atau perusahaan besar yang memiliki legalitas, hal ini dikarenakan dalam Undang-Undang Ketenagakerjaan tidak dijelaskan secara eksplisit mengenai sektor informal, besaran upah yang diterima karyawan disesuaikan dengan jam kerja, bagi karyawan yang bekerja 12 jam/hari mendapatkan gaji sebesar Rp.1.000.000/bulan, bagi karyawan yang bekerja 6jam/hari mendapatkan gaji sebesar Rp.600.000/bulan. Waktu kerja dan upah yang diterapkan Daksi Coffee kepada para pekerjanya yang telah melampaui ketentuan waktu kerja dan pengupahan sebagaimana yang diatur dalam Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, salah satu aspek memperlakukan pekerja secara baik dalam Islam adalah dengan memberikan hak dan kewajiban secara berimbang baik dari sisi beban kerja maupun dengan hak upah yang diterimanya, di dalam Islam pengusaha diharuskan memperlakukan pekerja sebagaimana memperlakukan dirinya sendiri baik dalam pemberian upah.

ABSTRACT

Zaenab, SIN 16230032, 2020. *Legal Protection of Informal Workers from the Perspective of Human Rights and Maslahah (Study at Daksi Coffee Malang)*. Thesis. Department of Constitutional Law (Siyasah), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang. Advisor: Nur Jannani, SHI, MH.

Keywords: Informal Workers; Human rights; Maslahah.

The informal sector is a small business unit that produces or distributes goods and services that create jobs, this economic activity is carried out on the basis of trust and is not a legal entity. The informal sector begins to thrive in absorbing labor when employment opportunities in the formal sector are unable to provide employment for the community.

Researchers use this type of empirical juridical research, using a sociological juridical approach. Sources of data used are primary and secondary data, data collection techniques through interviews and observations. Researchers processed the data by means of data checking, classification, verification, analysis and conclusions. The researcher chose Daksi Coffee Malang as the object of research which is one of the informal sectors in Malang City.

The formulation of the problems in this study are: 1). How are the rights of informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) from a human rights perspective. 2). How is the legal protection of informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) in Maslahah perspective. The problem examined in this research is regarding the legal protection of informal workers who are not paid according to the minimum wage stipulated in the Manpower Act from the perspective of human rights and maslahah.

The result of this research is that the owner of Daksi Coffee Malang thinks that the Manpower Act is only intended for formal workers or large companies that have legality, this is because the Manpower Act does not explicitly explain the informal sector, the amount of wages received by employees is adjusted to the hours. work, for employees who work 12 hours/day get a salary of IDR 1,000,000/month, for employees who work 6 hour/day get a salary of IDR 600,000/month. The working time and wages applied by Daksi Coffee to its workers who have exceeded the provisions of working hours and wages as regulated in Law Number 13 of 2003 concerning Manpower, one aspect of treating workers well in Islam is by giving equal rights and obligations. In terms of both the workload and the right to wages they receive, in Islam employers are required to treat workers as they treat themselves in terms of paying wages.

مستخلص البحث

زينب, رقم التسجيل 16230032, 2020. الحماية القانونية للعمال غير الرسميين من منظور حقوق الإنسان والمصلحة (دراسة في المقهى دكسي مالانج), البحث الجمعي. قسم السياسة, كلية الشريعة, الجامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرفة: نور جناني س.ح.إ., املا جيستري.

الكلمات المفتاحية: العمال غير الرسميين؛ حقوق الانسان؛ مصلحة القطاع غير الرسمي هو وحدة أعمال صغيرة تنتج أو توزع السلع والخدمات التي تخلق فرص عمل، ويتم هذا النشاط الاقتصادي على أساس الثقة وليس كياناً قانونياً. يبدأ القطاع غير الرسمي في الازدهار في استيعاب العمالة عندما تكون فرص العمل في القطاع الرسمي غير قادرة على توفير فرص العمل للمجتمع.

يستخدم الباحثون هذا النوع من البحث القانوني التجريبي، باستخدام منهج قانوني اجتماعي. مصادر البيانات المستخدمة هي البيانات الأولية والثانوية، وتقنيات جمع البيانات من خلال المقابلات والملاحظات. قام الباحثون بمعالجة البيانات عن طريق التدقيق والتصنيف والتحقق والتحليل والاستنتاجات. اختار الباحث المقهى دكسي مالانج كموضوع للبحث وهو أحد القطاعات غير الرسمية في مدينة مالانج.

صياغة المشاكل في هذه الدراسة هي: (1). كيف هي حقوق العمال غير الرسميين في المقهى دكسي مالانج الذين يتقاضون أجوراً أقل من الحد الأدنى للأجور الإقليمي (UMP) من منظور حقوق الإنسان. (2). كيف هي الحماية القانونية للعمال غير الرسميين في المقهى دكسي مالانج الذين يتلقون أجوراً أقل من الحد الأدنى للأجور في المقاطعة (UMP) في منظور مصلحة المشكلة التي تم تناولها في هذا البحث هي الحماية القانونية للعمال غير المهيكليين الذين لا يتقاضون أجورهم وفق الحد الأدنى للأجور المنصوص عليه في قانون القوى العاملة من منظور حقوق الإنسان والمصالح.

نتيجة هذا البحث أن مالك داكسي كوفي مالانج يعتقد أن قانون القوى العاملة مخصص فقط للعاملين الرسميين أو الشركات الكبيرة التي لديها شرعية، وذلك لأن قانون القوى العاملة لا يشرح صراحة القطاع غير الرسمي، يتم تعديل مقدار الأجور التي يتلقاها الموظفون حسب الساعات. العمل، بالنسبة للموظفين الذين يعملون 12 ساعة في اليوم، يحصلون على

راتب قدره 1,000,000 روبية إندونيسية/شهريًا ، بالنسبة للموظفين الذين يعملون 6 ساعات/يوم ، يحصلون على راتب قدره 600,000 روبية إندونيسية/شهريًا. أوقات العمل والأجور التي تطبقها قهوة داكسي على عمالها الذين تجاوزوا أحكام أوقات العمل والأجور كما هو منصوص عليه في القانون رقم 13 لسنة 2003 بشأن القوى العاملة ، أحد جوانب المعاملة الجيدة للعمال في الإسلام هو منح حقوق و واجبات متساوية. فيما يتعلق بكل من عبء العمل والحق في الأجور التي يتقاضونها ، فإن أصحاب العمل في الإسلام ملزمون بمعاملة العمال كما يعاملون أنفسهم من حيث دفع الأجور.



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CHAPTER I PRELIMINARY

A. Background

The state must guarantee the basic rights and obligations of its citizens in the constitution, as a consequence of the welfare state law adopted by Indonesia. This is done by including citizens' rights and obligations in the constitution, so the state must recognize, respect, and respect the rights of citizens, including the fulfillment of these human rights in real life. This obligation is contained in the provisions of Article 28I of the 1945 Constitution which stipulates that the protection, promotion, enforcement, fulfillment of human rights is the responsibility of the state, in this case, the government.

One of the human rights that must be recognized, fulfilled, and guaranteed by the state is human rights in the field of labor, namely the right to work and obtain work, this is regulated in the provisions of article 27 paragraph (2) of the 1945 Constitution, which stipulates that each every citizen has the right to work and a decent living for humanity, besides that it is regulated in the provisions of article 28D paragraph (2) of the 1945 Constitution it can be concluded that, the state through the government must fulfill the community's needs for their rights to work and obtain work because this right guaranteed by the constitution.¹

Efforts to realize the fulfillment and legal protection of a person's right to get a job and work, namely by the issuance of Law No. 13 of 2003 concerning

¹ The 1945 Constitution of the Republic of Indonesia (State Gazette Number 14 of 2006, BASIC CONSTITUTION, 1945 CONSTITUTION, MPR, Legislative, Judiciary, Executive, Political Parties, Fourth Amendment).

Manpower. One of the basic principles contained in this law is that anyone who is a citizen of Indonesia has the right to work and get a job by getting a decent wage, as well as getting fair and proper treatment in an employment relationship.

At this time in Indonesia, there has been a dualism of the economic sectors namely different economic systems and strong side by side. The two systems are not transitional economic systems in which the character and characteristics of the old are weakening and the new is getting stronger but both are equally strong and far different. This dualism is that at the same time in society two social styles are different from each other and each one develops fully and influences each other. Thus, Dualism Economy is an economic system that refers to two different but equally strong systems. The system is a modern economy and a people's economy.² For example, in the world of work, we often hear the terms formal and informal sectors.

The formal sector is a field or business field that is licensed by the authorized official and registered with a government office. The business entity, if seen at the tax office or trade and industry office, is registered with the name and line of business. The characteristics of the formal sector, namely the existence of a permit to establish a business from the government (SIUP), there is a deed of the establishment by the Notary, has a clear accounting / financial reports, routinely reports finances to the tax office. Examples of formal business sectors are Limited

² Dumairy, *Perekonomian pembangunan*. (Jakarta:Erlangga, 1996), p. 48

Liability Companies (PT), Partnership Partnerships (CV), State-owned enterprises (SOEs), and other businesses that have business licenses at the Manpower Office.³

The informal sector is a small business unit that carries out the production and/or distribution of goods and services to create jobs and income for those involved with these units working with limitations, both capital, facilities, personnel, and expertise. These activities are owned by individuals or families, or some people who carry out joint ventures to carry out economic activities based on trust and agreement, irregular activity patterns, small business scale and using simple technology, these efforts to serve certain groups of people or are limited and have power high competitiveness, and not incorporated. Examples of the informal sector are hawkers, street vendors, farm laborers, pedicab drivers.⁴ So people who work in the informal sector are called informal workers.

According to Article 1 paragraph (3) of Law Number 13 of 2003 Concerning Manpower, what is meant by Workers/laborers is every person who works for wages or other forms of remuneration.⁵ The article defines who the workers/laborers are by criteria, everyone who works, and receives wages or other forms of remuneration. The definition of informal workers is not explicitly stated in the Manpower Act, but the sound of the article can be used as a reference about who the workers are, both formal and informal.

³ Anne Friday Safari, *Hubungan Perburuhan Permasalahan dan Prospek* (Jakarta: Akatiga, 2005), p. 4-5

⁴ Uli Parulian Sihombing, *Pekerja Informal Berjuang Untuk Hidup* (Jakarta: Lembaga Bantuan Hukum Jakarta, 2011), p. 5

⁵ Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight, Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

The provisions of the previous Manpower Act, namely in Law Number 25 of 1997 concerning Manpower, explicitly stated about informal sector workers. Listed in article Article 1 Paragraph (31): *Informal sector businesses are the activities of individuals or families or several people who carry out joint ventures to carry out economic activities based on trust and agreement and are not incorporated.* Article 1 Paragraph (33): *An informal sector employment relationship is a working relationship that exists between workers and individuals or some people conducting joint ventures that are not incorporated based on mutual trust and agree to receive wages and/or rewards or profit-sharing.* Article 1 Paragraph (32): *"Informal workers are workers who work in informal sector employment relations by receiving wages and/or rewards".*⁶

One of the triggers for the emergence of the informal sector is the imbalance of labor supply and demand. When employment opportunities in the formal sector are unable to employ the community, the informal sector begins to flourish, even accelerating beyond the formal sector. One of the strategic issues in the field of manpower that is often heard from the print media and used as the object of research is the legal protection of informal workers. So far the existence of the informal sector has benefited employers and the state, it seems that it does not make reciprocity for informal workers.

Law No. 13 of 2003 concerning Manpower only provides space for the formal sector so that matters relating to the relations of workers and employers have

⁶ Law of the Republic of Indonesia Number 25 of 1997 concerning Manpower, (State Gazette of the Republic of Indonesia Number 184 of 1998 employment, wages, laborers, employers, (additional explanation of the State Gazette of the Republic of Indonesia Number 3791))

been reached in the concept of industrial relations and have a clear control mechanism, which already has regulations. However, in the informal sector, there is no mechanism of control of relations between workers and employers because there are no regulating regulations.

Informal workers do not get legal aspects of labor protections such as minimum wages, severance pay, overtime pay, old-age benefits, health insurance, and so on. While formal workers can easily discuss or demand it with the company they work for, by not getting the aspects of labor protection that formal workers get, informal workers often live in uncertainty and are vulnerable to termination of employment, being unemployed or even falling into poverty and one of the weaknesses of informal workers when going to work in the informal sector is not using a written contract.

Informal workers mostly have the low educational background and low wages. For example, farmworkers are often paid based on general agreements that apply in the local area or even paid at the will of the employer. So many informal workers are paid below the Provincial Minimum Wage (UMP), related to the problem of wages listed in article 88 and article 89 of Law Number 13 of 2003 on Manpower which explains that every worker/laborer has the right to earn an income that meets a decent living, To realize a decent living for humanity, the government sets a wage policy that protects workers/laborers. Employers who do not pay wages under the Provincial Minimum Wage (UMP) are considered criminals with the threat of imprisonment of one to four years and a minimum fine of 100 million and

a maximum of 400 million. The Provincial Minimum Wage (UMP) is a basic salary for workers who are still not married and have a work period of 0-12 months.⁷

The problem of workers/laborers who are not paid by government policies that instruct employers to pay according to the Provincial Minimum Wage (UMP) is new. Based on data from the Department of Manpower and Transmigration (Disnakertrans) of Malang City in 2016, it was recorded that around 25 percent of workers out of a total of 56 thousand Malang City workers who worked in 905 companies did not receive the proper wages. If it is calculated there are around 14.000 workers who receive salaries below the Malang City Minimum Wage (UMK), which at the time was Rp. 2.099.000.⁸

The State of Indonesia recognizes and upholds human rights as well as in Islam, Allah SWT explains that a law must be determined fairly, that the purpose of all of that is to uphold justice among his servants and so that humans behave fairly among fellow human beings. This means that whatever means and means can create justice then it is all by religion and does not violate it. Human rights in Islam are listed in the Holy Qur'an one of which is in the An-Nisa verse 58 which reads:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

⁷ Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight, Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

⁸ <https://www.timesindonesia.co.id/read/news/124314/ribuan-buruh-di-malang-masih-terima-gaji-di-bawah-umk> accessed on March 9, 2020 at 11:52

it means: "*Verily, Allah has ordered you to deliver the message to those who have the right to receive it, and (to ask you) if you establish a law among men so that you will establish it fairly. Surely Allah gives you the best teaching. Surely Allah is All-Hearing, All-Seeing.*"⁹ From this verse, Allah commands not to discriminate against one another and is just when making laws. In this case between formal workers and informal workers get the same rights.

By the Decree of the Governor of East Java Number 188/568/KPTS/013/2019 concerning Regency/City Minimum Wages in East Java in 2020, it is regulated that the city minimum wage (UMK) of Malang is Rp.2.895.502.74¹⁰, however, in the Manpower Act and the governor's decree it is not clearly stated that the payment of wages must be by the Provincial / City Minimum Wage intended for formal or informal workers. However, from what we know today formal workers have their rights to work in inverse proportion to informal workers. Based on these problems the researchers chose the object of research in Daksi Coffee which is one of the informal sectors in Malang which has 3 branches and based on data that is known under the business owner of Daksi Coffee giving wages to its employees is not appropriate even far from the provincial minimum wage (UMP). Based on the description that has been explained above, the researcher is interested in taking the title of the research "*Legal Protection of Informal Workers in the Perspective of Human Rights and Maslahah (study at Daksi Coffe Malang)*" which will later be outlined in the form of a research thesis.

⁹ Farid Abdul Khalid, *Fikih Politik Islam* (Jakarta: Amzah, 2005), p. 205

¹⁰ Decree of the Governor of East Java Number 188/568/ KPTS/013/2019 concerning Regency/City Minimum Wages in East Java in 2020

B. Scope of Problem

Limitation of the problem is a limitation of the problem under study, this is intended to avoid discussion that widens and does not achieve the substance of the research, the authors need to limit the problem of this study on Legal Protection of Informal Workers who get wages below the provincial minimum wage (UMP) in terms of aspects Human rights and problems are based on studies at Daksi Coffee, Malang.

C. Problem Formulation

Based on the background that has been described previously, it can formulate the problem in the form of questions as follows:

1. How are the rights of informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) perspective of Human Rights?
2. How is the legal protection for informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) perspective of masalah?

D. Research Objectives

Based on the problem formulation that has been described above, the objectives of this study are:

1. To find out the rights of informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) perspective of Human Rights

2. To find out the legal protection for informal workers in Daksi Coffee Malang who receive wages below the Provincial Minimum Wage (UMP) perspective of masalah

E. Research Benefits

The results of this study are expected to provide theoretical and practical uses, including the following:

1. Theoretical Benefits
 - a. It is hoped that this research can provide useful knowledge and ideas for the development of legal knowledge in general and state administrative law in particular, regarding the protection of informal worker law.
 - b. Contribute thoughts and a more realistic picture of the legal protection of informal workers.
 - c. The results of this study can be used as reference material for similar studies.
2. Practical benefits
 - a. Provide input and knowledge for those who are competent and directly related to this research.
 - b. Increase insight into the development of knowledge for researchers related to the problem under study, and can be used as input and reference for further researchers interested in the same problem.
 - c. To train the writer in expressing certain problems systematically and trying to solve existing problems with scientific methods.

F. Operational Definition

To avoid mistakes in understanding and interpreting the title, the author deems it necessary to state the term restrictions, namely as follows:

1. Legal Protection

Legal protection is protecting human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights granted by the law or in other words legal protection is a variety of legal efforts that must be given by law enforcement officials to provide a sense of security, both mental and physical from interference and various threats from any party.¹¹

2. Informal Workers

According to Law Number 25 of 1997 concerning Manpower, Informal Workers are workers who work in informal sector employment relations by receiving wages and/or rewards. Informal sector businesses are the activities of individuals or families or several people who carry out joint ventures to carry out economic activities based on trust and agreement and are not incorporated. Informal sector employment relations are work relationships established between workers and individuals or several people who do joint business which is not incorporated as a basis of mutual trust and agree to receive wages and/or rewards or profit-sharing.¹²

¹¹ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 53.

¹² Law of the Republic of Indonesia Number 25 of 1997 concerning Manpower, (State Gazette of the Republic of Indonesia Number 184 of 1998 employment, wages, laborers, employers, (additional explanation of the State Gazette of the Republic of Indonesia Number 3791))

3. Human Rights

In Article 1 of Law No. 39 Year 1999 concerning Human Rights stated that: "Human Rights (HAM) is a set of rights inherent in the nature and existence of humans as God's creatures and is a gift that must be respected, upheld high, and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.¹³ This research discusses the focus on workers' human rights related to their wage rights to obtain welfare and a decent living for humanity.

4. Maslahah

Maslahah in Arabic means good or positive.¹⁴ Maslahah also means benefits or a job that contains benefits, whereas, in terminology, it can be interpreted as taking benefits and rejecting mudharat (danger) to maintain the aim of syara '(Islamic law). The aim of syara 'which must be preserved is to preserve religion, soul, reason, descent, and wealth. If someone does an activity that is essential to maintain the five aspects, it is called maslahah.¹⁵

¹³ Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia Number 165 of 1999, Supplement to State Gazette of the Republic of Indonesia Number 3886

¹⁴ Ahmad Warson Munawwir, *Kamus Al-Munawwir* (Surabaya:Pustaka Progresif, 1997), p. 788.

¹⁵ Harun, *Pemikiran Najmudin At-Thufi Tentang Konsep Maslahah Sebagai Teori Istinbath Hukum Islam*, (Jurnal Digital Ishraqi Vol.5 2009), p. 24.

CHAPTER II

LITERATURE REVIEW

A. Prior Research

This previous research is very important to find points of difference and similarity as well as a comparison in this study. To the best of the researcher's knowledge, several research titles have been found that are related to this study. The intended research includes:

1. Netty Endrawati "Legal Protection of Child Labor in the Informal Sector (Case Study in the City of Kediri)" Islamic University of Kediri, 2012.

Research conducted by Netty Endrawati discusses related regulations issued regarding the guarantee of protection for working children but the implementation has not been carried out according to the rules due to economic, cultural, community roles, and government apparatus limitations, so far many problems have been discovered. issues related to working children. The equation with the authors is equally discussing informal workers. The difference in this thesis is that it does not only focus on child protection in the informal sector but all those working in the informal sector.

2. Triana Sofiana "Legal Protection of Informal Sector Women's Workers" Faculty of Sharia IAIN Pekalongan, 2017.

This thesis discusses women workers in the informal sector who are currently still experiencing social denial (social exclusion) by both men and the state. The equation with the authors is equally discussing informal workers. The difference

in this thesis is that it not only focuses on the protection of women in the informal sector but all those working in the informal sector.

3. Siti Ummu Adillah and Sri Anik "Social Security Policy for Informal Sector Workers Based on Social Justice to Improve Welfare" Faculty of Law, Sultan Agung University of Semarang and Faculty of Economics, Sultan Agung University of Semarang, in 2015.

This thesis discusses the social security of employment for informal sector workers must be the main work program of the government to improve welfare. The equation with the authors is equally discussing informal workers. The difference in this thesis is that it does not only focus on the protection of labor social security for informal sector workers.

Table 2.1
Prior Research

No	Researcher and Title	Equation	Difference
1.	Netty Endrawati, Faculty of Law, Kediri University. "Legal Protection of Child Labor in the Informal Sector (Case Study in Kediri City)" 2012	Legal protection for informal workers whose implementation has not yet taken place in the field, and uses the same type of research as empirical research.	Research conducted by Netty Endrawati discusses the rules made regarding guarantee of protection for working children but the implementation has not been carried out according to

			regulations, so there are still many cases of violation of working children.
2.	Triana Sofiani, Faculty of Sharia IAIN Pekalongan "Legal Protection of Informal Sector Women Workers" 2017	Legal protection of informal workers which until now unclear work regulations; disproportionate payroll system; there is no social security and health and has not fulfilled the rights of informal workers.	Thesis made by Triana Sofiana, discusses women workers in the informal sector who are still experiencing social exclusion by both men and the state.
3.	Siti Ummu Adillah and Sri Anik Faculty of Law, Sultan Agung University of Semarang and Faculty of Economics, Sultan Agung University of Semarang "Social	Fulfillment of the rights of informal workers that have been regulated by the Law but have not yet been implemented in its implementation.	This study discusses the social security of employment for informal sector workers must be the main work program of the

<p>Security Policy for Informal Sector Workers Based on Social Justice to Improve Welfare" 2015.</p>		<p>government to improve welfare.</p>
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B. Literature Review

1. Legal Protection

Legal protection in English is known as legal protection, while in Dutch it is known as Rechts bescherming. Etymologically, legal protection consists of two words, protection and law. In the Big Indonesian Dictionary (KBBI) protection is defined as a place of protection, things (deeds and so on), the process of how to protect.¹⁶ The law functions as a protection of human interests so that human interests are protected, the law must be carried out professionally. This means that protection is an action or activity carried out in certain ways according to the applicable law or regulation.

Legal protection is the right of every citizen, and on the other hand that legal protection is an obligation for the country itself, therefore the state is obliged to provide legal protection to its citizens. In principle, legal protection for the community rests and comes from the concept of recognition and protection of human dignity, and dignity. So that the recognition and protection of the rights of

¹⁶ Large Indonesian Language Dictionary (KBBI) Online, <https://kbbi.web.id/perlindungan>, accessed on January 28, 2020 at 12:25

the suspect as part of human rights without discrimination. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, which can be realized in forms such as through restitution, compensation, medical services, and legal assistance.¹⁷

According to Philipus M. Hadjon, he argues that legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness.¹⁸ According to Setiono, legal protection is an act or effort to protect the public from arbitrary acts by the authorities that are not by the rule of law, to realize order and peace, so that it allows humans to enjoy their dignity as human beings.¹⁹ Whereas Satjipto Raharjo stated that legal protection is to protect human rights that are harmed by others and that protection is given to the public so that they can enjoy all the rights granted by law. Because according to the nature and purpose of the law is to provide protection (protection) to the community, which must be realized in the form of legal certainty.

Based on the description and opinion of the experts above, it can be concluded that legal protection is an act to protect every person against acts that violate the law or violate the rights of others, which are carried out by the government through its law enforcement apparatuses using certain methods based on laws or laws and regulations.²⁰ Laws that apply as an effort to fulfill the rights

¹⁷ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : UI Press, 1984), p. 133.

¹⁸ Philipus M. Hadjon, *Perlindungan Bagi Rakyat di Indonesia*, (Surabaya, PT. Bina Ilmu: 1987), p. 1-2

¹⁹ Setiono, *Rule Of Law (Supremasi Hukum)*, (Surakarta, Masters in Law, Postgraduate, Sebelas Maret University, 2004), p. 3.

²⁰ Satjipto Raharjo, *Ilmu Hukum*, (Bandung: PT. Citra Aditya Bakti, 2000), p. 53

of every citizen, including for arbitrary acts committed by the authorities (law enforcement officials themselves).

EM. Mayers defines that law is all the rules that contain moral considerations, are shown in human behavior in society, and as a guide for the authorities in the State in carrying out their duties. According to Immanuel Kant, the legal regulations concerning legal independence are all the conditions under which the free will of one person can adjust to the free will of another person. BC Amin gave the understanding that law is a collection of regulations consisting of norms and sanctions, in which the purpose of the law is to maintain order in human acceptance so that security and order are maintained. From the three definitions revealed by the legal experts, a conclusion can be drawn that the law has several elements, namely:²¹

- a. Regulations regarding human behavior in association with society.
- b. The regulation is held by the official authorized bodies.
- c. Sanctions for violating these regulations are strict

Law exists in society and society there is always a legal system so that there arises adagio: “*ubi societas ibi jus*”. So, in the expert's opinion, the law has four functions, namely:

- a. Law as the maintenance of order;
- b. Law as a means of development;
- c. Law as a means of enforcing justice; and
- d. Law as a means of public education.

²¹ Sudikno Mertokusumo, *Mengenal Suatu Hukum Pengantar* (Yogyakarta: Liberty, 1999), p.5

Legal protection is government interference in the field of labor/labor which aims to create fair labor because labor laws provide rights for workers as whole people because it must be protected both in terms of safety, health, wages that are feasible and so on without ignoring the interests of employers namely continuity. Concerning legal protection for needs or workers, according to Imam Soepomo worker protection is divided into 3 (three) types, namely:²²

- a. Economic protection is a type of protection relating to efforts to provide workers with an income that is sufficient to meet their daily needs for themselves and their families, including in the case that the worker is unable to work because of something against his will. Included in the economic protection, including protection of wages, employment social security (Jamsostek) and Holiday Allowance (THR)
- b. Social protection, which is protection relating to community businesses, the purpose of which is to enable workers to enjoy and develop their livelihood as human beings in general and as members of the community and family members. This social protection covers the protection of child laborers, women workers, employers must provide time off and leave.
- c. Technical protection, i.e. protection relating to businesses to protect workers from accident hazards that can be caused by planes or by other work tools or materials that are processed or worked by companies. This technical protection relates to K3 (Occupational Safety and Health), namely labor protection which aims to prevent workers from avoiding any hazards that

²² Imam Soepomo, Pengantar Hukum Prburuhan, (Jakarta, Djambatan: 1985), p.97

may arise in the workplace either caused by tools or materials that are worked on from an employment relationship.

2. Worker General Overview

a. Understanding Workers

Workers' understanding in Law Number 13 of 2003 concerning manpower stipulates that the use of the term worker is always followed by the term labor which signifies that this Law means the same meaning. In Article 1 number 3 of Law Number 13 of 2003 concerning Manpower, it provides an understanding. "A worker/laborer is any person who works and receives wages or other forms of remuneration."

During the Dutch colonial era, the workers meant men were menial laborers such as coolies, artisans, and others. These people were called the blue-collar by the Dutch government in the past, while those who did fine work such as administrative staff who could sit on the table were called white collars. Usually, the people included in this group are the nobles who work in the office and also the people of the Netherlands and other Foreign Easterners.²³

After independence no longer recognizes the difference between these fine laborers and unskilled laborers, all people who work in the private sector both at other people and legal entities are called laborers. In the development of labor law in Indonesia, the term labor is strived to be replaced by the term labor, the government's reason is that the term labor is not by the personality of the nation,

²³ Zaeni Asyhadie, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*, (Jakarta: PT Raja Grafindo Persada, 2007), p. 19-20.

workers are more likely to refer to the group that is always suppressed and is under another party, namely the employer.²⁴

Labor is every person who can do work to produce goods and services either to meet his own needs or the community. Whereas the employer is an individual, entrepreneur, legal entity, or another body that employs labor by paying wages or other forms of compensation.

Workers or laborers who are in the interests of employers are something so attached to the individual worker/laborer that the worker or laborer always follows his energy to the place where he is employed, and the employer sometimes arbitrarily terminates the employment relationship because the energy is no longer needed. Therefore, the government, by issuing laws and regulations, participates in protecting the weak parties (workers/laborers) from the power of employers, to place them in an appropriate position by human dignity.²⁵

Laborers, workers, laborers, and employees are the same. But in Indonesian culture, "Labor" connotes as lowly, despicable, harsh workers, and so on. Whereas workers, laborers, and employees are designations for higher workers and tend to be given to workers who do not use muscles but the brain in doing work. But in essence, these four words have the same meaning: Worker. This mainly refers to the Manpower Act, which applies generally to all workers and employers in Indonesia.

²⁴ Abdul Rachmad Budiono, *Hukum Perburuhan*, (Jakarta: PT Indeks, 2001), p. 5.

²⁵ <https://id.wikipedia.org/wiki/Buruh> , accessed on February 1 2020 at 5.52

b. Informal Workers

According to Law Number 25 of 1997 concerning Manpower, informal sector workers are workers who work in informal sector employment relationships by receiving wages and/or rewards. The definition of informal sector business itself is the activity of individuals or families or several people who carry out joint ventures to carry out economic activities based on trust and agreement and are not incorporated. The employment relationship between an informal sector business and its workers is only based on mutual trust and agreement by receiving wages and/or rewards or profit-sharing.²⁶

In the definition of the informal sector, the Central Statistics Agency (BPS) approaches the main employment status of workers. The informal sector grouping conducted by BPS is quite different from the grouping conducted by the ILO (International Labor organization) of those who work as self-employed and workers who help families, while the Central Statistics Agency (BPS) adds those who work as casual workers and seek to be assisted by free workers. This is due to the nature of casual workers in Indonesia who are usually informal with inadequate wages, low productivity, and relatively poor working conditions.

According to Keith Hart, there are two kinds of informal sectors in terms of income generation opportunities, namely:

²⁶ Law of the Republic of Indonesia Number 25 of 1997 concerning Manpower, (State Gazette of the Republic of Indonesia Number 184 of 1998 employment, wages, laborers, employers, (additional explanation of the State Gazette of the Republic of Indonesia Number 3791))

1) Legitimate, consisting of:

- a) Primary and secondary activities The primary and secondary activities, such as agriculture, market-oriented plantations, building contractors, and others.
- b) Tertiary business with relatively large capital The tertiary business with relatively large capital, such as housing, transportation, business for public purposes, and others.
- c) Small-scale distribution The small-scale distribution, such as street vendors, market traders, grocery traders, hawkers, and others.
- d) Personal transactions are like lending and borrowing.
- e) Other services such as buskers, shoeshine shears, barbers, garbage dumps, and others.

2) Not valid, consisting of:

- a) Illegal services and trading services Namely generally divided into collectors of stolen goods, drug trafficking, smuggling, prostitution, and others.
- b) Transactions Such as petty theft (pickpocketing), grand theft (armed robbery), counterfeiting of money, gambling, and others.²⁷

²⁷ John David, *Intimations of Keith Hart's 'Informal Economy'* <http://ssrn.com/abstract=2031291> accessed February 1 2020 at 8:42

c. Rules About Wages

The government pays full attention to wages. Based on the provisions of Article 88 of Law No. 13 of 2003, namely every worker/laborer has the right to earn income that meets a decent living for humanity. To realize income that fulfills a decent living for humanity, the government sets a wage policy that protects workers/laborers.

The form of remuneration that protects workers/laborers is regulated in the provision of Article 88 number (3) of Law No. 13 of 2003 concerning Manpower, which consists of:

- 1) Minimum wage
- 2) Overtime wages
- 3) Wages do not come to work because they are unable to
- 4) Wages do not come to work due to other activities outside of work
- 5) Wages for exercising rest time rights
- 6) The form and method of payment of wages
- 7) Fines and deductions from wages
- 8) Things that can be calculated with wages
- 9) Proportional wage structure and scale
- 10) Wages for severance pay
- 11) Wages for calculating income tax.

The first form of wage protection is the minimum wage. The government sets minimum wages based on the necessities of a decent living by paying attention

to productivity and economic growth. The minimum wage as referred to in Article 88 number 3 letter consists of:

- 1) Minimum wages based on provincial or district/city area
- 2) Minimum wages are based on the sector in the province or district/city.

The minimum wage is determined by the Governor by taking into account the recommendations of the Provincial Wage Board and/or the Regent / Mayor. The components and implementation of the stages of achieving a decent living need are regulated by a Ministerial Decree. As in Article 90 of Law Number 13 the Year 2003, employers are prohibited from paying wages lower than the minimum wage.

The stipulation of the minimum wage, besides, must provide benefits for improving the standard of living of workers/laborers and their families (especially those receiving low wages) to fulfill a decent life. Because the level of wages that are too low can result in decreased morale, which ultimately inhibits work productivity and work performance which in turn affects the increase in production and business continuity (company).²⁸

This minimum wage must be complied with by employers, except employers who cannot afford to pay the minimum wage, can be exempted from the obligation by submitting an application to the Minister of Manpower accompanied by recommendations from the local Head of Manpower Office. Based on this request the Minister of Manpower can suspend the implementation of the minimum wage for a maximum of 12 months.

²⁸ Zainal Asikin, *Dasar-Dasar Hukum Perburuhan*, (Jakarta: PT Raja Grafindo Persada, 1994), p. 89-91

The second form of wage protection is work time, based on the provisions of Article 77 number 1 of Law No. 13 of 2003, it was explained that every employer is required to implement the provisions of working time. The stipulations on working hours are regulated in Article 77 number 2 of Law Number 13 of 2003, namely:

- 1) 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week; or
- 2) 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week.

The third form of wage protection is time off and leave. Based on the provisions of Article 79 of Law No. 13 of 2003, employers are required to give time for rest and leave to workers/laborers. Time to rest and leave to workers/laborers namely:

- 1) Rest between working hours, at least half an hour after working for 4 (four) hours continuously and the rest period does not include working hours
- 2) Rest weekly 1 (one) day for 6 (six) working days in 1 (one) week or 2 (two) days for 5 (five) working days in 1 (one) week
- 3) Annual leave, at least 12 (twelve) working days after the relevant worker/laborer works for 12 (twelve) months continuously
- 4) Long breaks of at least 2 (two) months and carried out in the seventh and eighth years of 1 (one) month each for workers/laborers who have worked for 6 (six) years continuously at the same company with the provisions of the workers/laborers no longer has the right to have annual breaks within 2

(two) current years and thereafter applies to any multiple of the 6 (six) year work period.

Another form of wage protection is protection while performing worship. As stipulated in Article 80 of Act No. 13 of 2003, the entrepreneur is obliged to provide sufficient opportunities for workers/laborers to carry out worship that is required by their religion.

Wage protection on official holidays is regulated in Article 85 of Law Number 13 of 2003. Workers/laborers are not required to work on official holidays. If the employer employs workers to work on official holidays, it must be based on an agreement between the worker/laborer and the employer.

3. Human Rights

a. Definition of Human Rights

Human rights are rights inherent in human beings and without those rights, humans cannot live like humans. These rights are obtained together with his birth or presence in the life of the community. Human rights are general because it is believed that some rights are held without distinction of nationality, race, or gender. Human rights are also supra legal, meaning that it does not depend on the existence of a country or the Constitution, the power of government even has higher authority because it comes from a higher source, namely God.²⁹

Human rights are general or universal because it is believed that some rights possessed by humans do not have differences over nationality, race, or gender. The

²⁹ Heri Herdiawanto, *Cerdas, Kritis, dan Aktif Berwarganegara* (Jakarta: PT. Gelora Aksara Pratama, 2010), p. 64.

basis of human rights is that humans are on equal footing and have equal opportunities in various aspects to develop their potential. One human right that is universally important to protect is human rights violations in the form of torture, torture, and arbitrary detention.

According to Law Number 39 of 1999 concerning Human Rights in considering b "that human rights are basic rights that are inherently inherent in human beings, are universal and lasting, therefore they must be protected, respected, defended and must not be ignored, reduced or deprived of by anyone".³⁰

The understanding of human rights according to experts:

- 1) Marjono Reksodiputro: "Human rights are rights that are so close to human nature, so without these rights, we do not have dignity as human beings (inherent dignity). Therefore also these rights must not be violated or revoked.
- 2) Ramdlon Naning: "Human rights are rights inherent in human dignity attached to them as the creatures of Allah Almighty. Human rights are rights that humans have according to their nature, which cannot be separated from their essence."
- 3) Miriam Budiardjo: "Human rights are human rights that are obtained and brought along with his birth or presence in the life of the community. It is assumed that some of these rights are exercised without distinction based on nation, race, religion, or sex, and because they are universal. The basis

³⁰ Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia Number 165 of 1999, Supplement to State Gazette of the Republic of Indonesia Number 3886)

of all human rights is that humans have the opportunity to develop by their talents and ideas."³¹

From the understanding adopted by the law and scholars above human rights are natural rights, which cannot be reduced under any circumstances or absolute. This understanding emphasizes that the source of human rights is God or nature / not gifts from humans or kings/rulers.

b. Human Rights in Employment

As the commitment of the Indonesian state that national development is carried out in the framework of the development of Indonesian people as a whole and also the development of society as a whole to create a prosperous, just, prosperous, equitable society, both material and spiritual based on the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia.

Manpower has a very important role as the agent and the goal of our country's national development, therefore the fulfillment of the rights of workers must be fulfilled as a manifestation of national development itself. That by the role and position of the workforce, employment development is needed to improve the quality of the workforce and its participation in development and to improve the protection of workers and their families by human dignity and dignity in general.

The nature of the protection of human rights in the labor system includes all aspects of common interests, as stated in the legislation namely Law Number 21 of 2000 concerning Trade Unions / Labor Unions, Law Number 13 of 20003

³¹ Sri Utari, *Pengertian dan Sejarah Hak Asasi Manusia* (research result. Faculty of Law, Udayana University, 1995), p. 2.

concerning Labor, Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Overseas, Act Number 3 of 1992 concerning Workers' Social Security, Act Number 1 of 1970 concerning Work Safety, including all the latest implementing regulations of the law, Act Number 12 of 1948 which is a Work Act that is strengthened by Act Number 1 of 1951 which was declared valid for the whole of Indonesia, Act Number 23 of 1948 concerning Labor Inspection which was later also strengthened by Act Number 3 In 1951 it was declared valid for the whole of Indonesia, Law Number 23 Ta 1953 concerning Reporting Obligations of Companies, Law Number 21 of 1954 concerning Labor Agreements Between Trade Unions and Employers, Law Number 22 of 1957 concerning Settlement of Labor Disputes, Law Number 14 of 1969 concerning Basic Provisions of Labor, Law Law Number 1 of 1970 concerning Work Safety.

Furthermore, based on the Law, government regulations to implement the above Act also include Government Regulation Number 7 of 1948 which applies the Work Act of 1948, Government Regulation Number 13 of 1950 concerning Work Time and Rest Period, Government Regulation Number 21 of 1954 concerning Annual Breaks for Workers / Workers, Government Regulation Number 41 of 1953 concerning the Obligation to Report Companies and Regarding the Accident Law Number 33 of 1947 Government Regulation Number 2 of 1948 concerning Accident Regulations, Minister of Manpower Regulation on Coverage

Sick, Pregnant, Childbirth and Death. Government Regulation Number 33 of 1977 concerning Workers' Social Insurance.³²

Based on the description above, this shows that the state is present in terms of fulfilling human rights protection guarantees specifically in the field of labor, as a process to fulfill and achieve the aspirations of national development namely a prosperous, just, prosperous society that is equally materially and spiritually as a manifestation of the divine values that are contained in Pancasila and the 1945 Constitution of the Republic of Indonesia.

We can also see the fulfillment of the protection of human rights, especially in the field of labor, the formation of trade unions as a place of protection for workers to fight for their rights, as stipulated in Law Number 21 of 2000 concerning Trade Labors/Workers theoretically, there are three types of work protection as a form of protection of human rights, especially in the field of employment itself, namely social protection, technical protection, and economic protection. Furthermore, these three types of protection are usually referred to as social security.³³

One of the human rights related to employment is about wages. Wages play an important role and are characteristic of an employment relationship, we can even say wages are the main goal of a worker doing work on another person or legal entity. That is why the government participates in handling the wage problem through various policies as outlined in the legislation. As stated in Article 88

³² H. Zainal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: PT. Raja Grafindo Persada, 2010), p. 28.

³³ Zaeni Asyhadie, *Hukum Ketenagakerjaan Bidang Hubungan Kerja* (Jakarta: PT Raja Grafindo Persada, 2013), p. 20.

paragraph (1) of Law Number 13 of 2003 concerning Manpower, it is stated that every worker / laborer has the right to earn income that fulfills a decent living for humanity and is also described in Article 38 of Law Number 39 of 1999 concerning Human Rights Human, which reads: (1) Every citizen, according to his talents, skills and abilities, has the right to decent work. (2) Everyone has the right to freely choose a job he likes and also has the right to just conditions of employment. (3) Everyone, whether male or female who performs the same, comparable, equal or similar work, is entitled to wages and the terms of the same work agreement. (4) Every person, whether male or female, in carrying out work that is commensurate with his human dignity has the right to a fair wage in accordance with his achievement and can guarantee the survival of his family.

As explained above related to the minimum wage is always directed to the achievement of the needs of decent living. Employers must not pay wages lower than the minimum wage as stipulated in legislation. Wage arrangements determined by agreement between employers and workers/laborers or trade unions/labor unions must not be lower than the wage provisions stipulated in the current legislation. If the agreement is lower or contrary to the laws and regulations, the agreement is certainly null and void, and the employer is obliged to pay workers' wages according to the applicable laws and regulations.

4. Masalah

Etymologically masalah is a single word from al-masalih, which is synonymous with the word *al-masalih*, which is "bring good" Sometimes another term is also used which is al-islah which means "looking for a good". Not

infrequently the word *maslahah* or *istislah* is accompanied by the word *al-munasib* which means "things that are suitable, appropriate and appropriate for their use". From some of these meanings can be taken an understanding that everything, anything, which contains benefits in it both to obtain benefits, goodness, and to reject harm, then all of that is called *maslahah*.³⁴

Maslahah is one of the analytical methods used by the ulama of *usul* in establishing the law (*istinbat*) whose problem is not explicitly regulated in the Holy Qur'an and al-Hadisth but this method only emphasizes the aspects of *maslahat* directly.³⁵ In the context of the study of the science of *usul al-fiqh*, the word becomes a technical term, which means "the various benefits" which Shari intended in establishing the law for his servants, which include the purpose of preserving religion, life, reason, descent, and assets, as well as preventing things that can result in a person's escape from these five interests.

Islamic Shari'ah is oriented to the benefit and emphasizes the harmony of the law to advance the benefit The basic premise is that law must serve the interests of the community. Benefits or interests can be categorized into three categories, namely:

- a. *Maslahah* based on the terms of change *maslahat*.
- b. *Maslahah* based on the existence of *maslahat* according to *syara'*.
- c. *Maslahah* based on the quality and importance of the benefit.³⁶

³⁴ H.M.Hasbi Umar, *Nalar Fiqh Kontemporer* (Cet. I; Jakarta: Gaung Persada Press, 2007), p. 112.

³⁵ Abd. Wahab Khallaf, *Ushul al-Fiqhi* (Jakarta: Majelis ATa li Indonesiyyin li al-Dakwah al-Islamiyah, 1973), p. 116.

³⁶ Mustafa Ahmad al-Zarqa', *Al-Istislah wa al-Masai ih al-Mursalat fi Syari'ah al-Islamiyyah wa Ushul Fiqh*, diterjemahkan oleh Ade Dedi Rohayana, *Hukum Islam dan Perubahan Sosial* (Studi Komparatif Delapan Mazhab Fiqhi) (Cet I; Jakarta : Riora Cipta, 2000), h. 33.

CHAPTER III

RESEARCH METHODS

A. Research Type

This type of research in this research is empirical legal research. This type of empirical research or field research (Field Research) is a study that focuses on examining the situation in the field, from research objects that focus on examining the conditions in the field, from the research object can produce a reality that occurs and develop existing concepts of research that intensively studies about the setting behind the current state and interaction of a social, individual, group, institution, and society.

Field research intends to learn intensively about the current state of the background, and the interaction of a social, individual, group, institution, and community.³⁷ This empirical study was carried out by looking at the facts that existed in Daksi Coffee Malang so researchers could make this study empirically from describing events that researchers knew about workers in Daksi Coffee Malang, then analyzed with existing theories.

³⁷ Zainuddin Ali, M.A, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika,2016), p. 1.

B. Research Approach

This research approach is a scientific perspective that is used to understand the legal materials used. The function of the approach is to simplify the analysis, clarify understanding of objects, provide objectivity, and limit the area of research.³⁸ The method of approach used in this research is the sociological juridical approach. The sociological juridical approach is to identify and conceptualize the law as a real and functional institution in a real living system. The sociological juridical approach emphasizes research aimed at gaining empirical legal knowledge by jumping directly into the object to find out whether workers in Daksi Coffee have fulfilled their rights as workers, namely getting wages by the provisions of the Manpower Act so that there is a match between the applicable rules with social reality or in other words the compatibility between *dass sollen* and *dass sein*. To find out the sociological situation of the Daksi Coffee workers, researchers conducted a direct visit to the object of research to conduct interviews with the owners and Daksi Coffee workers.

C. Research Location

In this study, researchers took the location or object of research in Daksi Coffee, located on Jalan Gajayana No. 50, Dinoyo Village, Lowokwaru District, Malang City, East Java. The reason the researchers chose this location was that Daksi Coffee was one of the informal sectors in Malang and had three branches located in Malang and Lumajang. Based on observations researchers know that the

³⁸ Andi Prastowo, *Metode Penelitian Kualitatif*, (Yogyakarta: Ar-Ruzz Media, 2011), h. 18

business owner has not provided wages to his employees by the provisions of the Provincial Minimum Wage (UMP).



(Daksi Coffee Location)

D. Subject Determination Method

Research subjects or respondents are people who are asked to provide information about a fact or opinion. Determination of the research subject is used to obtain information clearly and in depth. Determination of research subjects or respondents in this study was carried out by *purposive sampling*.

Taking research subjects or respondents using purposive sampling is stated to be suitable with the research problem being discussed by the researcher, namely the determination of the subject is based on the researcher's objectives in expressing the problems raised in the study. Research subjects are determined based on the person who is considered to know the most about the information needed in the study, so that it will make it easier for researchers to explore the situation to be studied. Researchers determine research subjects based on the problems to be studied regarding the legal protection of informal workers. So, the research subjects are business owners and informal workers.

E. Types and Data Sources

The type of data used in empirical research comes from primary data, which is data that is directly obtained from problems through interviews and observations for qualitative research or the distribution of questionnaires for quantitative research. The secondary that can be used is information obtained from books or written documents.³⁹ While the source of data is something important in a study. Data sources used in this study are classified into:

1. Primary Data Sources

Primary data sources are data obtained directly from the first source/field.⁴⁰

Primary data sources are data obtained from the first source of individuals or groups.⁴¹ In this case, primary data obtained directly from the field in the form of interviews with business owners and workers in Malang Coffee Daction.

2. Secondary Data Sources

Secondary data is data obtained from other parties, not directly obtained by researchers from research subjects. This secondary data is data that explains primary data.⁴² Secondary data such as official documents, books, and research results in the form of reports and laws and regulations that support research results. Secondary data that will be used are literature in the form of books relating to legal protection, informal workers, human rights and masalah, legal journals related to

³⁹ Fakultas Syariah UIN Maulana Malik Ibrahim Malang, *Pedoman Penulisan Karya Ilmiah*, (Malang, Fakultas Syariah, 2015), h. 47.

⁴⁰ Amiruddin dan Asikin, *Pengantar Metode Penelitian Hukum*, p. 30.

⁴¹ Umar Husein, *Metode Penelitian untuk Skripsi dan Tesis Bisnis*, (Jakarta: PT Raja Grafindo, 2007), p. 42.

⁴² Anwar Saifuddin, *Metodologi Penelitian*, (Yogyakarta: Pustaka Pelajar, 2004), p. 91.

writing this thesis, newspapers, and literature discussing legal protection, informal workers, human rights Humans and problems.

F. Data Collection Methods

Data needed in this paper generally consists of data sourced from field research. In connection with this study, the data collection was carried out by the authors through observation and interviews by asking several research questions. To make it easier to analyze data, the researchers collected data using the following methods:

1. Observation

The method of observation is the method of collecting data by observing the ongoing activities. In this study, researchers used unstructured observations, where something that would be the object of observation was not systematically prepared.

Observations in this study were carried out several times. First, the initial observation was carried out on Friday January 24 2020. In this initial observation, the researcher sought the object of research in Malang Coffee Daction by the problem through information obtained from an employee working at the Coffee Daction. The second observation was made on Thursday, 30 January 2020, this second observation the author conveyed the intention to the business owner of Daksi Coffee to request permission to research Daksi Coffee. Besides, the author also received general information about workers in Daksi Coffee. The third observation was made on Monday February 3 2020, by getting the information about the work system and remuneration system that has been implemented by Daksi Coffee business owners to their workers.

2. Interview

In this study, researchers interviewed with Atho'illah as the business owner and Dicky Maulana, Ali Mustofa, Solihin, Ahmad Fauzi, Syifaudin, Amel, Indira, Bayu, Hadi, Sari, Izza who are workers in the Coffee Daction. In this interview, the researcher focused on the work system and remuneration system applied at Daksi Coffee, in this interview the researcher used a type of semistructured interview. The aim is to find problems more openly.

G. Data Processing Method

To manage all the data obtained, it is necessary to have a procedure for managing and analyzing data by the approach used in this study, then the technique used in this research is descriptive qualitative analysis.⁴³ The data analysis process used is as follows:

1. Data Checking (Editing)

The process by which researchers make clarification, readability, consistency, and completeness of data collected. The clarification process involves explaining whether the data that has been collected will create a conceptual or technical problem when the researcher or conceptual does not interfere with the analysis process so that it can lead to bias in interpreting the results of the analysis. Readability is related to whether the data that has been logically collected can be used as a justification for interpretation of the results of the analysis. Consistency includes a variety of data types related to the measurement scale to be used.

⁴³ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo, 2006), p. 31.

Completeness refers to the collection of complete data so that it can be used to answer problems that have been formulated in the study.

The first stage is carried out to re-examine the data obtained mainly from its completeness, clarity of meaning, suitability and relevance to other data groups with the aim of whether the data is sufficient to solve the problem under study and to reduce errors and lack of data in research and to improve data quality. In this technique, the researcher also checks the accuracy of the data obtained from respondents, namely from the business owner and some workers at Daksi Coffee.

2. Classification

Reducing existing data by compiling and classifying the data obtained into certain patterns or specific problems to obtain readings and understanding by research needs.⁴⁴ This second step is carried out using research data being examined and then grouped or classified according to needs with the aim of making reading easier. The priority is to make the benchmark of Article 88 Number 13 of 2003 concerning Labor then adjusted to the results of interviews with business owners and some workers in the Daksi Coffee.

3. Verification

Data verification is the steps and activities undertaken by researchers to obtain data from informants. In this case, the researcher checks the data then is synchronized or synchronized by interviewing the respondents so that later they obtain valid data.

⁴⁴ Saifullah, *Metodelogi Penelitian*, (Malang: Fakultas Syariah, 2006)

Check back carefully about the data that has been categorized above. To avoid ambiguity in the research, this verification stage becomes a necessity in the research. Data about the legal protection of informal workers in the perspective of human rights and problems (studies in Daksi Coffee Malang) which still raises questions or are still general researchers try to explain again so that it is easy to be understood by researchers or readers.

4. Analysis

The data obtained will be continued with the analysis phase. An analysis is a process of simplifying data into a form that is easier to read and understand. It can also be interpreted by the activity of changing data from research into information that can be used in making conclusions. This process is used to obtain an overview of the subject under study.

5. Conclusions

At this stage, it is concluding. The conclusion in this study is a new finding that has never before existed.⁴⁵ After the researcher describes all the data collected, the researcher then makes a conclusion from the research results that are adjusted to the main problem, namely the legal protection of informal workers in the perspective of human rights and masalah mursalah(study at Daksi Coffee Malang).

⁴⁵ Sugiyono, *Metode Penelitian Kualitatif*, (Bandung: Alfabeta, 2009), p, 252-253.

CHAPTER IV

RESEARCH RESULTS AND DISCUSSION

A. Overview of the Research Location

Daksi Coffee is one of the hundreds of cafes in Malang. Daksi is an Islamic themed cafe that was built in early 2015, Atho'illah is the owner of Daksi Coffee who is an alumnus of Malang Maulana Malik Ibrahim University majoring in Social Sciences Education who is also a writer. The proceeds from the sale of books written by Atho'illah are the capital to build Daksi Coffee. The word Daksi is an abbreviation of the word propaganda and motivation.

Daksi Coffee has a beautiful and green atmosphere and provides various facilities such as a library, a special room for meetings, places of worship, a green place, and some beautiful paintings are always a place for photos for visitors and various other facilities. Every two weeks a study or meeting is held, such as the Qur'anic sermons, scientific studies, seminars, joint discussions, book discussions, or talk shows that present inspirational figures, Muslim scholars, motivators, and inspirational figures. Every once a month we will hold a sharing agenda with orphans or poor people as Daksi Coffee's social program. Because Daksi has an Islamic theme so the names of the dishes provided are also unique such as Daksi coffee, Bismillah coffee, Hamdalah coffee, ni'matillah coffee, and others.

At present Daksi already has 3 branches which are divided into 2 cities namely 2 cafes located in Malang and 1 cafe located in Lumajang city. Cafes like Daksi are also sought after by job seekers. Currently, Daksi has several workers

who are divided into Daksi Coffee branches. Workers who are in the Daksi coffee are mostly students and high school graduates, that is because the Daksi does not have the recruitment requirements for workers so that anyone can work in Daksi without any specific conditions or expertise.

Within a week Daksi Coffee operates 24 hours non-stop, this is because Daksi Coffee's visitors are mostly students and not a few students are interested in doing college assignments until late at night at Daksi Coffee, this is the reason Daksi Coffee is open during 24 hours non-stop, so the owner of the taxi apply a work shift system to his workers.



B. Wages of Informal Workers Who Receive Wages Below the Provincial Minimum Wage (UMP) Perspective of Human Rights.

Work is the right of all people, the 1945 Constitution requires all citizens to obtain the right to work and a decent living. Therefore, it immediately protects the rights of its citizens in obtaining decent work and livelihoods as a form of achieving people's welfare.⁴⁶ The achievement of people's welfare reflects an ideal national development. It is said so because one of the most important national development missions is the welfare of the people in addition to justice and equality.

According to Article 5 of Law No. 13 Year 2003 states that "Every worker has the same opportunity without discrimination to get a job".⁴⁷ All Indonesian citizens get the same treatment in getting a job, between formal workers and informal workers can get the same job with the same treatment without discrimination from businesses. That the government through labor regulations does not differentiate between formal and informal workers. Between formal and informal workers have the same right to get a job while getting the same rights in wages.

Daksi coffee is one of the informal sectors in Malang and has three branches located in Malang and Lumajang. The employee wage mechanism in the Coffe Daction uses a wage system according to the time at which wages are given to

⁴⁶ The 1945 Constitution of the Republic of Indonesia (State Gazette Number 14 of 2006, BASIC CONSTITUTION, 1945 CONSTITUTION, MPR, Legislative, Judiciary, Executive, Political Parties, Fourth Amendment).

⁴⁷ Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight, Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

employees based on the length of time the employee has worked. By the results of interviews conducted by researchers with Atho'llah as a business owner, researchers get the following data:

"Most of those who work here are college students and I prefer my friends. I do not give conditions for job applicants, all who want to work here are accepted because the work here is easy. The workers here I give employment contracts whose contents include working hours, wages, and time off / permit. Daksi Coffee does not provide social security to the workers, but if there are employees who are sick or accident will be assisted. Workers' wages are given according to the employee's working hours. The amount of wages received by employees is adjusted to the working hours of employees, for employees who work 12 hours/day will get a salary of Rp. 1,000,000/month, for employees who work 6 hours/day will get a salary of Rp. 600,000/month. The reason I do not give wages according to the existing rules is that the income from this business is not enough to provide salaries by the existing rules to the workers"⁴⁸

From the results of interviews conducted by researchers with workers in Daksi Coffee, it was found that their working hours varied. Like the results of interviews conducted with Indira as a worker at Daksi Coffee who has worked for 2 months working time 6 hours/day and several Daksi Coffee workers, researchers get the following data:

"When my initial job was not made a written contract only verbal agreement was not clear, I worked every day and was not given a day off if permission would

⁴⁸ Atho'llah, Interview (Malang, 30 January 2020)

be deducted from his monthly wage. I do not know the wage rules must be by the provisions of the Provincial Minimum Wage (UMP) intended for office workers only or all workers. I strongly object to wages that are far from the Provincial Minimum Wage (UMP) let alone there is no holiday at all, maybe not a problem with low wages Provincial Minimum Wage (UMP) but at least the humane.”⁴⁹

"I worked at the Daksi for only about a month or more, when the initial work was made a written work contract containing wages, hours of work, and permits. I work 12 hours/day and every day I enter, is given a permitted allotment in a month that is for 2 times a month, in the work contract it is explained that if I take the permit quota the salary will not be deducted, but my salary is deducted, and the remuneration is not appropriate with the written contract work. Wages are given less than the written salary contracted to work. I object to this because the business owner of Daksi likes to change the contents of the work contract. So shortly I decide to stop working.”⁵⁰

"I have been working there for more than 2 years, I am free to enter any time here because I still have family ties with the business owner of the Daksi, and if I do not enter, the wages are not deducted. I feel that I don't mind wages below the Provincial Minimum Wage (UMP) because my goal here is not to make money but only to gain experience.”⁵¹

From the results of interviews with business owners and Daksi Coffee workers, it can be concluded that the workers in Daksi work hours vary, some work

⁴⁹ Indira, Interview (Malang, 7 Februari 2020)

⁵⁰ Amel, Interview (Malang, 21 Februari 2020)

⁵¹ Fauzi, Interview (Malang, 21 Februari 2020)

6 hours/day, 8 hours/day, and 12 hours/day. Workers also work every day of the week without holidays, because working hours affect wages. If it is related to the provisions on working hours regulated in Article 77 number (2) of Law Number 13 Year 2003, namely:⁵²

- a. 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week or,
- b. 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week.

Based on the results of interviews conducted with Daksi Coffee workers, it is known that their work time has exceeded the working time as stipulated in Article 77 number (2) of Law Number 13 Year 2003 concerning Labor if it is calculated by workers whose work hours are 6 hours/day times 1 week, the worker works 42 hours a week and is not given a day off.

According to Law Number 39 of 1999 concerning Human Rights, it is explained that: "Human Rights are a set of rights inherent in the nature and existence of human beings as God's creatures and are His gifts that must be respected and respected by the State, Law, Government and everyone for the sake of honor and protection of human dignity and dignity". Law Number 39 of 1999

⁵² Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight, Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

concerning Human Rights, regulates human rights and basic human freedoms, in broad outline regulated in Article 9 to Article 66 consisting of:⁵³

1. Right to life;
2. The right to have a family and carry on descendants;
3. The right to develop oneself;
4. The right to obtain justice;
5. The right to personal freedom;
6. The right to security;
7. Right to welfare;
8. Right to participate in government;
9. Women's rights;
10. Children's rights.

All rights must be inherent as a whole for everyone who works to achieve their welfare. In this case each laborer. The term labor is now replaced by the term worker with the intention of more respect for human dignity. Daksi Coffee workers who are dominated by students have different reasons for working at Daksi Coffee such as working to pay for college, to pay for their daily lives, and to pay to board. However, the wages they get cannot be said to be adequate to meet their needs. Based on East Java Governor Decree No. 188/568/KPTS/013/2019 concerning Regency/City Minimum Wage in East Java in 2020 it is known that the City

⁵³ Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (State Gazette of the Republic of Indonesia Number 165 of 1999, Supplement to State Gazette of the Republic of Indonesia Number 3886

Minimum Wage (UMK) of Malang City is Rp.2,895,502.74⁵⁴, if adjusted for the wages of the worker Daksi Coffee who gets a salary of around Rp.600.000 to Rp.1.000.000 with work time that has exceeded work time as regulated in Article 77 number (2) of Law Number 13 Year 2003 concerning Manpower, of course, violates the welfare rights of workers.

Table 4.1
The wages of Daksi Coffee workers

No.	Worker's name	Working time	Wage
1.	Fauzi	12 hours	Rp 1.000.000,-
2.	Dicky Maulana	12 hours	Rp 1.000.000,-
3.	Ali Mustofa	8 hours	Rp 600.000,
4.	Solihin	8 hours	Rp 600.000,-
5.	Syifaudin	6 hours	Rp 600.000,-
6.	Amel	12 hours	Rp 1.000.000,-
7.	Indira	6 hours	Rp 600.000,-
8.	Bayu	8 hours	Rp 600.000,-
9.	Hadi	12 hours	Rp. 1000.000,-
10.	Sari	9 hours	Rp. 800.000,-
11.	Izza	9 hours	RP. 800.000,-

Source: Processed data

⁵⁴ Decree of the Governor of East Java Number 188/568/ KPTS/013/2019 concerning Regency/City Minimum Wages in East Java in 2020

The elements to be considered in determining the level of living wage must be by social practices and conditions, which include the needs of workers and families, the general level of wages in the country concerned, the cost of living, social security, and the relative standard of living of other social groups. The practice of minimum wages has not been able to meet the needs of decent living workers and is far from the real costs incurred by workers to meet their needs because living wages are one component of decent living. At present, the concept of a decent wage is guided by the minimum wage set by the government by taking into account economic factors including the need for economic development, the level of productivity of each region.

In the context of wages, Indonesia has not been able to set wages according to the principles of living wages based on Human Rights which contain elements of:⁵⁵

1. Wages can cover the needs of decent living for workers and their families.
2. Determination of wages takes into account the general level of wages in the country concerned, the cost of living, social security, and the relative standard of living of other social groups.
3. Minimum wages take into account economic factors including economic development needs and productivity levels.
4. Accompanied by the government's obligation to maintain a high level of employment.

⁵⁵ Buya al Ghazali, Wahyuddin dan Rina Trisnawati, “*Analisis faktor-faktor yang Mempengaruhi Tingkat Upah pada Auditor Sektor Publik (Pemerintah)*”, *Daya Saing*” (Journal of Resource Management Economics, Vol. 13, No. 2, 2012)

5. Availability of social security for workers. This is of course the government also pays attention to the sustainability of the company so that it can develop and grow in global competition.

The Government has tried to regulate by issuing Government Regulation No. 78 of 2015 concerning Wages, where wages must refer to the needs of a decent living and with due regard to productivity and economic growth. In general, three components are considered to influence the amount of the minimum wage, namely: (1) Minimum Physical Needs, (2) Consumer Price Index, (3) Regional Economic Growth.⁵⁶

The wage position is very important for the determination of the minimum wage based on the applicable laws and regulations to achieve labor welfare, where employers are prohibited from paying wages lower than the minimum wage. The government sets this minimum wage based on the necessities of a decent living and by paying attention to productivity and economic growth.

The Manpower Act and its implementing regulations clearly and expressly regulate manpower in Indonesia, if a violation occurs, it is not a mistake of the regulation but is caused by various factors. *First*, the lack of legal awareness of the legal actors themselves, both employers and workers. Logically, the law is made for mutual benefit so that no one feels disadvantaged, but often the law has sought a gap from the law itself for various reasons, for the benefit of individuals and groups. *Second*, the lack of supervision of the implementation of the applicable Act, because supervision is the most important element in the protection of workers such

⁵⁶ Government Regulation Number 78 Year 2015 concerning Wages

as by providing education to employers and informal sector workers such as the Coffee Daction, so no misinterpretation considers the Manpower Act only intended for the formal sector, as well as an effort to uphold labor law thoroughly.

The Manpower Law covers all interests of workers and business people. However, often the regulations contained in the Manpower Act are misused for the benefit of these business actors. There are still many violations of rights that occur in various companies, at this time the position of workers / informal workers are vulnerable to violations by business operators, especially informal workers who do not understand what their rights are by the Manpower Act.

C. Legal Protection of Informal Workers Who Receive Wages Below the Provincial Minimum Wage (UMP) Perspective of Maslahah.

Work is the right of every person to achieve a good life without being restricted by his social position. Thus everyone has the right to get a job by their respective lives. Al-Qur'an as a basis and guidance for Muslims contains teachings that teach its adherents to always be compassionate towards each other, including the workers. Islamic teachings teach and encourage them to recognize and respect each individual's rights. So it is not justified if the regulations governing the relations between workers and employers harm one party and benefit the other party. This is a form of protection that aims to preserve the nature and dignity of people if they experience socio-economic risks with financing that can be reached by each employer and worker themselves. Therefore, the regulations made by the authorities should not harm employers or workers, both formal and informal workers.

In the Fiqh study of employment, there are two technical terms in defining, namely *Fiqh al-Ujarah* and *Fiqh al-Ummal*. Discussion of issues relating to the issue of manpower sheets in the fiqh books is discussed in the chapter or article on the Ijarah contract which falls into the category of *Fiqh al-Muamalah*, while the regulation of government rights in making regulations is related to labor issues in relations between workers and employers generally discussed in the *siyasaah maliyah* chapter on the study of *Fiqh al-Siyasah*.⁵⁷

Imam Shatibhi explained that all scholars agreed to conclude that Allah established various provisions of the Shari'a to preserve the five basic human elements (*adhdharurriyat al-khams*) which are also commonly referred to as *al-maqashid asysyar'iyah* (the aims of sharia'). Whereas al-Ghazali termed *al-ushul al-khamsah* (the five basics). The five elements are, maintaining religion, soul, reason, descent, and property. All who aim to maintain the five bases are *al-mashlahah*. Of the five elements *maslahah* in this study focuses on the element of wealth, in this case, is wages.

The payment of wages in Islam does not provide detailed textual provisions, both in the provisions of the Koran and the Sunnah of the Apostles. The minimum wage level in Islam is given by paying attention to basic human needs which include food, clothing, and housing. A worker must be paid enough so that he pays food, clothing, and housing, for him and his family. The education of their children must also be fulfilled, and so must health services for them and their families. Prophet

⁵⁷ Mochtar Effendy, *Manajemen Suatu Pendekatan Berdasarkan Ajaran Islam*, (Jakarta: PT. Bharata Karya Aksara, 1986) p.55

Muhammad SAW determined the minimum wage for someone who worked in government based on his view to give him a good life. He said: *"For a government employee, if he is not married, let him get married, if he has no servants, he may have if he does not have a house, let him build one, and whoever crosses that line, then surely he is a usurper or a thief."* The benchmarks set by the Prophet Muhammad SAW, the Muslims should always be remembered in providing a minimum salary/wage in an Islamic state.⁵⁸

One aspect of treating workers well in Islam is to provide rights and obligations in a balanced manner both in terms of workload and wage rights they receive. Daksi Coffee's working hours have exceeded work hours as stipulated in Article 77 number (2) of Law Number 13 of 2003 concerning Labor, and wages are given far below the Provincial Minimum Wage (UMP). This is regulated by Daksi Coffee business owners for several reasons, one of which is because cafe income is not enough to pay workers by the Provincial Minimum Wage (UMP), but in Islam employers are required to treat workers as they treat themselves well in the provision of wages. Wages are one of the rights that must be fulfilled by the employer if, the worker has fulfilled his obligations by the agreement agreed by both parties.

Work agreements between employers and workers are usually in the form of a work contract agreed by both parties at the beginning. Based on the results of interviews conducted by researchers with workers, it is known that Daksi Coffee

⁵⁸ Muhammad Sharif Chaudhry, *Sistem Ekonomi Islam*, (Jakarta: Prenada Media Group, 2012), p.199

business owners do not always make contracts in writing, sometimes work contracts are made verbally. The work agreement is the legal umbrella of the parties involved in the contract. As a legal event, an employment agreement is a reference as a legal fact that the parties involved in a contract have committed to work together in the field of capital or services.

The obligation to record a contract is a keyword as well as an affirmation that the relations between workers and employers have been fully regulated in the agreement. The recording is also intended as a preventive measure for possible misappropriation of commitments that have been mutually agreed upon. Methodologically, the terms of recording in the form of an employment contract are based on the objectives of *maslahah*.⁵⁹ So that contracts made verbally vulnerable to violations.

The form of legal protection for workers contained in Law Number 13 of 2003 concerning Manpower, which is the right of workers includes Article 6 "Every worker/laborer has the right to receive the same treatment without discrimination from employers". Article 86 "Every worker/laborer has the right to obtain protection for (a) occupational safety and health, (b) morals and decency and (c) treatment by human dignity and values and religious values". Article 88 Paragraph (1) "Every worker/laborer has the right to earn income that meets a decent living for humanity". Article 99 paragraph (1) "Every worker/laborer and his family are entitled to obtain labor social security"⁶⁰

⁵⁹ Yusuf Qardhawi, *Peran Nilai dan Moral Dalam Perekonomian Islam*, (Jakarta: Robbani Press, 1997), p. 403

⁶⁰ Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight,

In the case of employers not being able to pay the minimum wage, Article 90 of Law Number 13 Year 2003 regarding Manpower regulates as follows:

1. Entrepreneurs are prohibited from paying wages lower than the minimum wage as referred to in Article 89.
2. Suspension can be made for entrepreneurs who are unable to pay the minimum wage as referred to in Article 89.
3. The procedure for the suspension referred to in paragraph (2) shall be regulated by a Ministerial Decree.

Elucidation of Article 90 paragraph (2) of Law Number 13 Year 2003 regarding Manpower states as follows: "The suspension of the implementation of the minimum wage for companies that can not afford is intended to free the company concerned to carry out the minimum wage that applies within a certain period. If the suspension is terminated, the relevant company is obliged to carry out the minimum wage that was in force at the time but was not obliged to pay compliance with the minimum wage provisions in effect at the time the suspension was granted".⁶¹ In essence, employers are prohibited from providing wages below the minimum wage provisions under the Manpower Act.

Criminal threats for employers who pay workers below the minimum wage are a minimum of 1 (one) year imprisonment and a maximum of 4 (four) years and/or a minimum fine of Rp.100 million and a maximum of Rp.400 million.

Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

⁶¹ Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003 Labor, Employment, Work Agreements, Employment Relations, Oversight, Layoffs, Workers' Institutions, Wages, Central Government, Regional Governments, (Explanation in Supplement to the State Gazette Republic of Indonesia No. 4279)

Criminal legal remedies are *ultimum remedium* (last resort), so it should only be taken if other efforts (as explained above) have been taken.

Such a situation is the role of government as supervision is very necessary for helping to determine a fair wage by considering humanitarian factors. Because the government has a duty that is the obligation and supervision and maintain justice and welfare of the people. A fair wage level is the goal of wage policies in Islam so that the government may not set a wage solely because it wants to improve the welfare of the workers/laborers, but instead creates tyranny against employers so that they do not get profits or even cause losses.

Protection of rights in Islamic law is the implementation of the principle of justice, in which workers and employers have the same position. Every work agreement entered into between the two parties, namely between the employee and the employer is a legal umbrella for both parties. Inside there are obligations and rights that must be fulfilled between the two parties and can be used as legal protection for workers who get treatment outside of the agreed work agreement between the two parties. Workers must know in detail about the contents of the employment agreement that has been agreed by both parties. If workers are not careful in understanding the contents of the work agreement, if there is a dispute between the employer and the worker, the protection obtained will not be maximized.

CHAPTER V

CLOSING

A. Conclusion

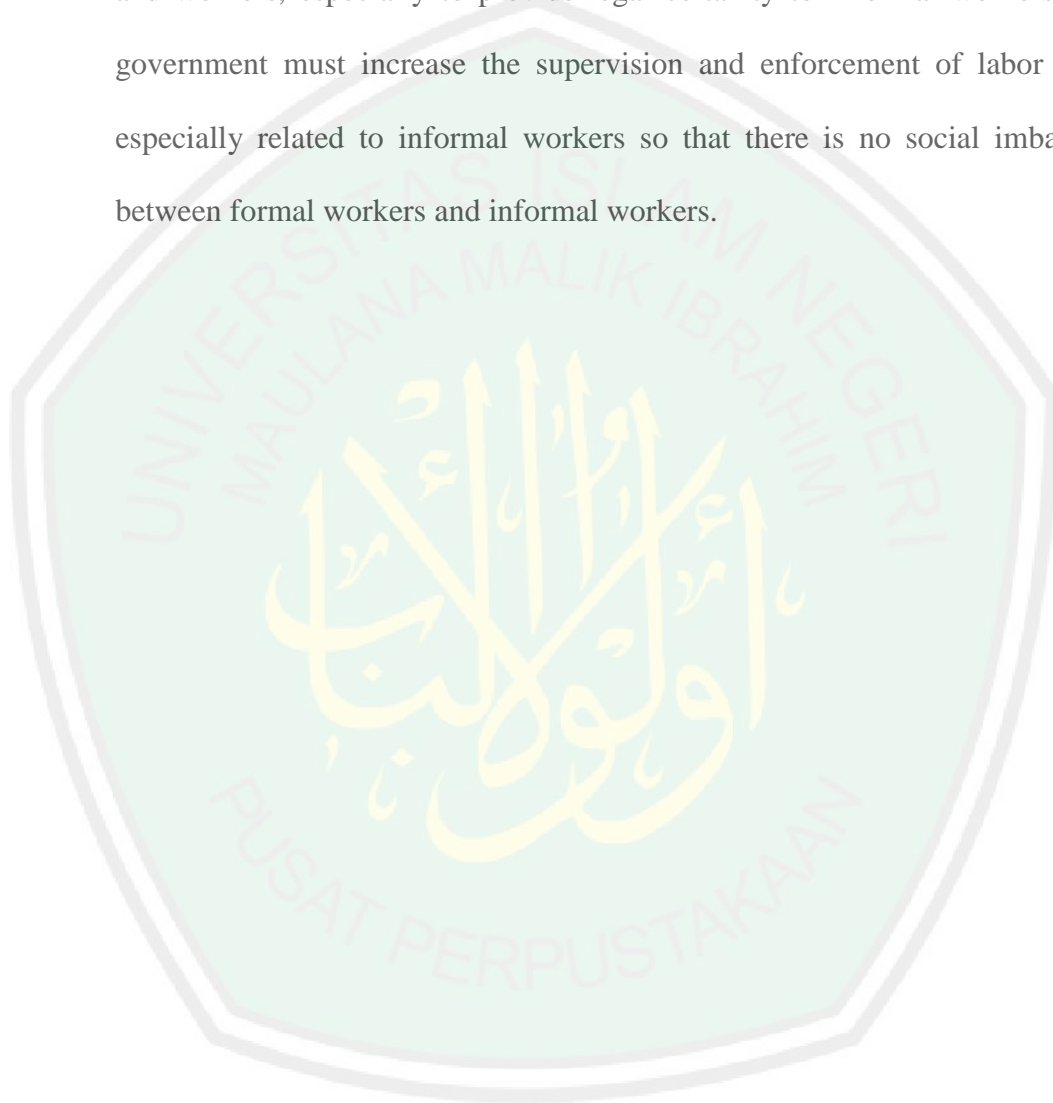
Some things that can be concluded from the research that has been done with two problem statements are as follows:

1. Daksi Coffee workers who are dominated by students have different reasons for working at Daksi Coffee such as working to pay for college, to pay for their daily lives, and to pay to board. However, the wages they get cannot be said to be adequate to meet their needs. Based on the East Java Governor Decree No. 188/568/KPTS/ 013/2019 concerning Regency/City Minimum Wages in East Java in 2020 it is known that the City Minimum Wage (UMK) of Malang City is in the amount of Rp. 2,955,502.74. Based on the employee wage mechanism in the Coffe Daction using a wage system according to the time when wages are given to employees based on the length of time they do work, the amount of wages received by employees is adjusted to employee hours, for employees who work 12 hours/day get a salary of Rp. 1,000,000 / month, for employees who work 6 hours/day will get a salary of Rp. 600,000 month. With working hours that have exceeded the working hours as regulated in Article 77 point (2) of Law Number 13 of 2003 concerning Manpower, of course it has violated the rights of workers' welfare as regulated in Law Number 39 of 1999 concerning Human Rights..

2. The purpose of the Shari'a is to preserve the five basic elements of man (*adhdharuriyat al-khams*) which are also commonly referred to as *al-maqashid asyar'iyah* (the objectives of syara '). The five elements are, maintaining religion, soul, reason, descent, and property. All who aim to maintain the five bases are *al-mashlahah*. Of the five elements *maslahah* in this study focuses on the element of wealth, in this case, is wages. One aspect of treating workers well in Islam is to provide rights and obligations in a balanced manner both in terms of workload and the wage rights they receive, but some employees who work at Coffee Daksi complain about wages that are not by the workload, and sometimes wages are deducted without clarity. This is certainly far from the word *maslahah*. The working hours of Daksi Coffee workers who have exceeded the working time as stipulated in Article 77 number (2) of Law Number 13 of 2003 concerning Labor, and wages are given far below the Provincial Minimum Wage (UMP). In Islam, employers are required to treat workers as they treat themselves well in the provision of wages. Wages are one of the rights that must be fulfilled by the employer if, the worker has fulfilled his obligations by the agreement that has been agreed by both parties which serve as the legal umbrella of the parties involved in a contract. Methodologically, the terms of recording in the form of an employment contract are based on the objectives of the *maslahah*.

B. Recommendation

From the results of the analysis above, we need a clear regulation to protect the rights of informal workers that can be accepted by both employers and workers, especially to provide legal certainty to informal workers. The government must increase the supervision and enforcement of labor laws, especially related to informal workers so that there is no social imbalance between formal workers and informal workers.



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No.	Day/Date	Subject of Consultation	Signature
1.	Wednesday, 11-12-2019	The title's thesis proposal	
2.	Monday, 27-01-2020	Title and Background	
3.	Wednesday, 05-01-2020	Title and Background	
4.	Tuesday, 03-03-2020	Literature review and Research Methods	
5.	Monday, 09-03-2020	Literature review and Research Methods	
6.	Thursday, 12-03-2020	Thesis proposal revision	
7.	Thursday, 19-03-2020	Thesis proposal revision	
8.	Monday, 23-03-2020	Outline of Research Results and Discussion	
9.	Wednesday, 29-04-2020	Outline of Research Results and Discussion	
10.	Monday, 01-06-2020	All the parts of the Thesis	

Malang, 15 April 2020

Acknowledged by:

Head of Constitutional Law Department

Dr. M. Aunul Hakim, S.Ag., M.H.

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ATTACHMENTS

Attachment 1

List of questions for Daksi Coffee business owners Malang

1. Since when was the Daksi Coffee business opened?
2. What are the conditions that must be met by workers when applying for a job at Daksi Coffee?
3. Are workers made a work contract and what are the contents of the Daksi Coffee work contract?
4. How much wages are given to new employees?
5. When were the workers' wages increased?
6. What are the benefits provided to workers?

List of questions for Daksi Coffee Malang workers.

1. How long have you worked at Daksi Coffee?
2. Is a work contract drawn up and what is the content of the work contract?
3. How many hours do you work each day?
4. Do you know that there are rules governing workers who must be given wages in accordance with the Provincial Minimum Wage (UMP)?
5. Do you have no objection to the wage that is far from the Provincial Minimum Wage (UMP)?

Attachment 2



Interview with Mr. Atho'illah as the owner of Daksi Coffee Malang about the wages of Daksi Coffee workers, the interview was conducted at Daksi Coffee

Malang on 31 January 2020



Interview with Fauzi and Sholihin as Daksi Coffee Malang workers about the wages of Daksi Coffee workers, the interview was conducted at Daksi Coffee

Malang on 21 February 2020



Interview with Ali Mustofa as Daksi Coffee Malang workers about the wages of Daksi Coffee workers, the interview was conducted at Daksi Coffee Malang on 21 February 2020



Interview with Indira as Daksi Coffee Malang workers about the wages of Daksi Coffee workers, the interview was conducted at Daksi Coffee Malang on 7 February 2020



Daksi Coffee Malang

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