

ANALYSIS OF WORK AGREEMENT ON INDUSTRIAL HOME WORKER IN CV

BERKAT ANUGRAH JOMBANG

(Analysis Study of Indonesian Positive Law and Fiqih Muamalah)

THESIS

by:

Nur Lailatul Fauziah

NIM 15220095



SHARIA ECONOMIC LAW DEPARTEMENT

SHARIA FACULTY

MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY MALANG

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MALANG

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STATEMENT OF THE AUNTENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science, the author declares that the thesis entitled:

**ANALYSIS OF WORK AGREEMENT ON INDUSTRIAL HOME
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(Analysis Study of Indonesian Positive Law and Fiqih Muamalah)**

is truly the author's original work. It does not incorporate any material previously written or published by another person. If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 20th of May 2022

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**ANALYSIS OF WORK AGREEMENT ON INDUSTRIAL HOME
WORKER IN CV BERKAT ANUGRAH JOMBANG
(Analysis Study of Indonesian Positive Law and Fiqih Muamalah)**

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Malang, 20th of May 2022

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MOTTO

فَإِنَّ مَعَ الْعُسْرِ يُسْرًا (٥) إِنَّ مَعَ الْعُسْرِ يُسْرًا

For indeed, with hardship (will be) ease. Indeed, with hardship (will be) ease.

(Ash-Sharh: 5-6)

ACKNOWLEDGMENT



All praise due to Allah, The Cherisher and Sustainer of all the world. There is neither might nor power but with Allah the Great, the Exalted. With only His Grace and Guidance, this thesis entitled “Analysis of Work Agreement on Industrial Home Worker in CV Berkah Anugrah Jombang (Analysis Study of Indonesian Positive Law and Fiqih Muamalah)”

With all the support and help, discussions, guidance and directions from all parties involved during the process of completing this thesis, the author wishes to express her utmost gratitude to the following:

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Hopefully, by imparting what has been learned during the course of study in the sharia Economic Law Departement, Faculty of Sharia of State Islamic University, Maulana Malik Ibrahim Malang, it will benefit all readers and the author herself. Realizing the fact that error and weakness are impartial to being human, and this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement of this thesis

Malang, 20th of May 2022

Author,

A handwritten signature in black ink, appearing to read 'Nur Lailatul Fauziyah', with a stylized, flowing script.

Nur Lailatul Fauziyah

NIM 15220095

TRANSLITERATION GUIDANCE

A. General

The transliteration is the transfer of Arabic writing into Indonesian writing (Latin), not Arabic translation into bahasa. Included in this category are the Arabic names of the Arab nation, while the Arabic names of the non-Arab nation is written according to the national spelling of its national language, or as it is written in the reference book. The writing of the textbook title in the footnote or bibliography, still using the provisions of this transliteration.

The transliteration used by Sharia Faculty of State Islamic University of Maulana Malk Ibrahim of Malang is EYD plus, which is a transliteration based on the Joint Decree (*Surat Keputusan Bersama /SKB*) of the Minister of Religious Affairs and Minister of Education and Culture of the Republic of Indonesia, on 22 January 1998, No. 158/1987 and 0543. b/U/1987, as stated in the Arabic transliteration (A Guide Arabic Transliteration), INIS Fellow 1992.

B. Consonants

ا = unsigned	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع = '(comma facing up)
ج = j	غ = gh
ح = h	ف = f
خ = kh	ق = q
د = d	ك = k
ذ = dz	ل = l
ر = r	م = m

ز = z	ن = n
س = s	و = w
ش = sy	ه = h
ص = sh	ي = y

Hamzah (ء) which is often symbolized by the alif, if it is located at the beginning of the word then in transliteration it follows the vowel, not symbolized, but if it is located in the middle or in the end of a word, then it is symbolized by a comma above (‘), turning with a comma (‘) for the replacement of the ع symbol.

C. Vowel, Long, and Diphthong

In every Arabic writing in the Latin script, the vowel of *fathah* is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, while each long reading is written in the following way:

Vowel	Long	Diphthong
a = fathah	Ā	قال become qâla
i = kasrah	î	قيل become qîla
u = dlommah	û	دون become dûna

Specifically for the pronouncing of *ya’ nisbat*, it cannot be represented by “î”, but it should still be written with “iy” in order to describe the *ya’ nisbat* at the end. Likewise for the diphthong of *wawu* and *ya’* after *fathah* is written with “aw” and “ay”. Consider the following example:

Diphthong	Example
aw = و	قول become qawlun
ay = ي	خير become khayrun

D. Ta'marbûthah (ة)

Ta' marbûthah (ة) is transliterated as “ṭ” if it is the middle of a sentence, but when *ta' marbûthah* is at the end of a sentence, it is transliterated as “h”, for example الرسالة للمدرسة become *al-risala li-mudarrisah*, or when in the middle of a sentence consisting of the composition of *mudlaf* and *mudlaf ilayh*, is transliterated as “t” that is connected with the next sentence, for example في الله رحمة become *fi rahmatillâh*.

E. Auxiliary and *Lafdh al-Jalâlah*

The auxiliary “al” (ال) is written with lowercase form, except if it is located at the beginning of word, while “al” in the *lafadh jalâlah* which located in the middle of two words or being or become *idhafah*, it is removed from writing. Consider the following examples:

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

F. Hamzah

Hamzah is transliterated with an apostrophe. But it only applies to hamzah that is located in the middle and at the end of the word. If it is located at the

beginning of the word, hamzah is not symbolised, because in Arabic script in the form of alif.

Examples: شيء - syai'un أمرت - umirtu
النون - an-nau'un تأخذون - ta'khudzûna

G. Word Writing

Basically every word, either *fi'il* (verb), *isim* or *huruf*, is written separately. Only certain words that are written in Arabic letters are commonly combined with other words, because there are Arabic letters or *harakats* that are omitted, then in this transliteration the writing of the word is also coupled with other words that follow it.

Example : وان الله لهو خير الرازقين = wa innalillâha lahuwa khairar-râziqîn.

Although in the Arabic writing system the capital letter is unknown, in this transliteration the letter is used as well. The use of capital letters as applicable in *EYD*, including capital letters are used to write the article words, then the writing of capital letters remains at the beginning of the name of the self, not on the initial letter of the article words.

Examples : وما محمد إلا رسول = wa maâ Muhammadun illâ Rasûl
ان اول بيت وضع للدرس = inna Awwala baitin wu dli'a linnâsi

The use of capital letters for Allah only applies when in Arabic writing is complete and if the writing is combined with other words, so that the letters or *harakats* that are omitted, then the capital letter is not used.

Examples : نصر من الله فتح قريب = nasrun minallâhi wa fathun qarîb

الله الامر جميعا = lillâhi al-amru jamî'an

For those who want fluency in reading, transliteration guidelines are an integral part of recitation science.

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ABSTRAK

Nur Lailatul Fauziyah, 15220095, 2022, **Perjanjian Kerja pada Pekerja Rumahan di CV Berkah Anugrah Jombang (Studi Analisis Hukum Positif dan Fiqih Muamalah)**, Skripsi, Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang.

Pembimbing: Dr. Suwandi, M.H

Kata Kunci : perjanjian kerja pekerja rumahan; hukum positif; fiqih muamalah

Perkembangan industrialisasi memperketat persaingan kompetisi antar perusahaan, sehingga memicu pengusaha untuk mempekerjakan pekerja rumahan dengan model *putiing out system*. Dalam Undang-Undang Ketenagakerjaan, pekerja rumahan tidak termasuk dalam kategori hubungan kerja, sehingga berstatus sebagai tenaga kerja yang bekerja di luar hubungan kerja. Hal ini menyebabkan praktik pekerja rumahan belum memenuhi standar ketenagakerjaan yang berlaku. Undang-Undang Cipta Kerja sebagai peraturan pembaharu Undang-Undang ketenagakerjaan telah mengatur jenis pekerjaan fleksibel, termasuk pekerja rumahan. Dengan berbagai sistem yang ada, hubungan kerja selalu didasari oleh adanya perjanjian kerja. Sehingga penelitian ini akan menganalisis perjanjian kerja yang diterapkan untuk mempekerjakan pekerja rumahan di CV berkat Anugrah Jombang.

Terdapat 2 (dua) rumusan masalah dalam penelitian ini yakni: (1) Bagaimana perjanjian kerja pada pekerja rumahan ditinjau dari hukum positif di Indonesia? (2) Bagaimana tinjauan fiqih muamalah terhadap praktek perjanjian kerja pada pekerja rumahan? Penelitian ini merupakan jenis penelitian empiris atau penelitian lapangan dengan menggunakan pendekatan kualitatif serta menggunakan pendekatan yuridis sosiologis yakni peneliti mengidentifikasi hukum dalam sistem kehidupan yang nyata dan diuraikan dalam bentuk kalimat yang baik dan benar. Bahan hukum yang diperoleh dalam penelitian ini adalah bahan hukum primer, sekunder dan tersier.

Hasil dari penelitian ini menunjukkan bahwa (1) Perjanjian kerja yang digunakan untuk mempekerjakan pekerja rumahan di CV Berkah Anugrah seharusnya adalah PKWT. Akan tetapi dalam pelaksanaannya, perjanjian kerja dilakukan secara lisan, dan pekerja rumahan telah dipekerjakan lebih dari batas waktu yang telah ditentukan Undang-Undang, sehingga demi hukum status perjanjian kerja berubah menjadi Perjanjian PKWTT. Perubahan ini mengakibatkan pekerja rumahan harus diangkat sebagai pekerja tetap, akan tetapi CV Berkah Anugrah tidak membuat surat pengangkatan kerja. (2) Apabila ditinjau dari segi fiqih muamalah, apabila dilihat dari rukun dan syarat akad *ijarah* sudah sesuai dengan hukum Islam.

ABSTRACT

Nur Lailatul Fauziah, 15220095, 2022, **Analysis of Work Agreement on Industrial Home Worker in CV Berkah Anugrah Jombang (Analysis Study of Indonesian Positive Law and Fiqih Muamalah)**, Thesis, Sharia Economic Law Department, Sharia Faculty, Maulana Malik Ibrahim State Islamic University Malang.
Supervisor: Dr. Suwandi, M.H

Keywords : work agreement of homemaker, positive law, fiqh muamalah

The development of industrialization has tightened competition between companies, thus triggering employers to hire home workers with a putting out system model. In the Manpower Law, homeworkers are not included in the category of work relations, so their status as workers who work outside the work relationship. This has caused the practice of home workers not to meet applicable work standards. The Job Creation Law as a reforming regulation of the Manpower Law has regulated flexible types of work, including home workers. With various existing systems, the work relationship is always based on the existence of a work agreement. So this study will analyze the work agreement applied to employ home workers in CV Berkah Anugrah Jombang.

There are 2 (two) formulations of problems in this study, namely: (1) How is the validity of work agreement on home worker in CV berkah Anugrah reviewed from the positive law in Indonesia? (2) How is the review of fiqh muamalah about the practice of work agreements on home worker in CV Berkah Anugrah? The type of this research is empirical research or field research using a qualitative approach and a sociological juridical approach, the researcher identified laws in the real life system and described in good and correct sentences. Legal materials obtained in this research are primary, secondary and tertiary legal materials.

The results of this study show that (1) The work agreement used to employ home workers on the CV Berkah Anugrah should be *PKWT*. However, in practice, the work agreement made verbally and homeworkers are employed more than the time limit stipulated by Law, so for the sake of law the status of the work agreement changes to the *PKWTT*. This change resulted in home workers having to be appointed as permanent workers, but CV Berkah Anugrah did not make a work appointment letter. (2) Then reviewed of fiqh muamalah, when viewed from the pillars and terms of the *ijarah* contract, this practice are in accordance with Islamic law.

ملخص البحث

نور ليلة الفوزية، ١٥٢٢٠٠٩٥، ٢٠٢٢، اتفاقية العمل للعمال المنزلية في شراكة محدودة بركة أنوكراه جومبانج (دراسة تحليلية للقانون الوضعي وفقه المعاملة)، البحث الجامعي، قسم قانون المعاملات المالية، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: الدكتور سوواندي الماجستير.

الكلمات المفتاحية: اتفاقية العمل للعمال المنزلية، القانون الوضعي، فقه المعاملة.

إن تطورات التصنيع تضيق المنافسة بين الشركات، حتى تجبر صاحبها لإجراء العمل في منازل عمّاله بتطبيق نظام التخلّص التدريجي نموذجيا. ورد في قوانين العمل أن عمّالة المنزلية ليسوا من ضمن علاقة العمل، وكان وضعهم كعاملين الذين يعملون خارج علاقة العمل. وممارسة العمال المنزلي لم تصل إلى الحد المعياري للعمل بهذا الوضع. وأصبحت قوانين إيجاد فرص العمل كنظام مصلح قوانين العمل التي تتولى على أنواع العمل المرن من ضمنها العمال المنزلي (عامل المنزل). علاقة العمل تأسست على وجود اتفاق العمل. وسيكون هذا البحث على تحليل اتفاق العمل المطبق لتوظيف العمال المنزلي في شركة بركات أنوجراح جومبانج.

تتضمن أسئلة البحث على أسئلتين وهما: (١) كيف اتفاقية العمل للعمالة المنزلية مراجعة القانون الوضعي بإندونيسيا؟ (٢) وكيف من نظرة فقه المعاملة على تطبيق اتفاقية العمل لدى العمالة المنزلية؟ يعتبر هذا البحث من البحث التجريبي أو البحث الميداني باستخدام منهج نوعي واستخدام منهج قانوني اجتماعي، يقوم الباحث بتحديد القوانين في أنظمة الحياة الواقعية ووصفها في شكل جيدة وصحيحة. المواد القانونية التي تم الحصول عليها في هذا البحث هي مواد قانونية أولية وثانوية.

إعتمادا على نتائج البحث هناك نقطتان مهمتان: (١) أن اتفاقية العمل في الشراكة المحدودة بركة أنوكراه يجب أن تكون PKWT، ولكن في الواقع، كانت اتفاقية العمل المطبقة هي شفويا، والعمال المنزلي أعملهم أكثر من الحد الزمني الذي يحدده القانون حتى تتغير حالة اتفاقية العمل إلى اتفاقية PKWTT. وهذا التغيير يسبب إلى ملازمة وجود التعيين كعامل دائم عليهم، ولكن الشراكة المحدودة بركة أنوكراه لا تقدم رسالة الموعد كالعامل الدائم. و(٢) إنطلاقا من نظرة فقه المعاملة، كانت الشروط والأركان لعقد الإجارة مناسبة بأحكام الإسلام.

CHAPTER I

INTRODUCTION

A. Background of Problem

The community is a complex entity, it includes a wide variety of individuals with various interests that interact with each other. Humans themselves are multidimensional creatures. On the one hand, humans is economic creature who has always maximized his own interest. On the other hand, human is social creature who need other humans. So, even though humans tend to pursue their own interests, they still had dependence from other human beings to create prosperous life. As the hadith narrated by Bukhari and Muslim,

الْمُؤْمِنُ لِلْمُؤْمِنِ كَالْبُنْيَانِ يَشُدُّ بَعْضُهُ بَعْضًا

*“a believer to (other) believer is like one building, one another strengthen each other.”*¹

In the pursuit of economic activities, humans must also be united. Article 33 verse (1) of The 1945 Constitution of the Republic of Indonesia stated that the economy shall be organized as a common endeavour based upon the principles of the family system. The existence of social economic gaps between people should be addressed wisely. All economic agents both entrepreneurs and workers should mutually cooperate to run economic activities which keeps growing. As the word of Allah in Quran surah Az-Zukhruf verse 32, *“Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this*

¹ Shahih Muslim No. 4684

world and have raised some of them above others in degrees (of rank) that they may make use of one another for service. But the mercy of your Lord is better than whatever they accumulate”²

Human interdependence is not only limited to society in one country, it also crosses borders, giving rise to the phenomenon of globalization. The development of globalization in the world economy was strongly influenced by the development of industrialization. Now, the industrial revolution has entered the era of 4.0 where the production system integrated with the high tech cyber system that capable of doing the work independently. The use of integrated smart robots with internet has upgraded many factories to be smart environments. This technology has brought significant benefits to industrial actors, since it saves time, energy, and cost. But, essentially human is *homo economicus*, something that starts with innovative can be a disruptive. The industrial revolution 4.0 could transform established markets because the rivalries between entrepreneurs are increasingly out of control and the big number of unemployed workers that replaced by machines.

The demands of global pressure and company competitions bring impact to business actors in Indonesia. Employers are required to get cheaper, effective and efficient ways in running their business. One way that employers do is hiring homeworkers. Homeworkers are workers that based in home not in a factory, but they work like factory worker. Homeworkers working or producing products and services that usually done by factory workers. Homeworking system becomes a

² QS. Az-Zukhruf : 32

stable and profitable model of production activities for company. This is because homeworkers can be employed at any times according to the company needs, so the company does not have to bother to rehiring and firing workers in a short time period. In addition, these homeworking systems are also fair because workers are paid according to what they can produce. Another advantage of hiring homeworkers is that employers can minimize the cost that supporting production process, such as electricity costs, places, maintenances, storages, equipments and supplies.

From the standpoint of the workers, this type of work also seems advantageous, because it is more flexible. Workers are given the freedom to determine their own time and own place of employment. This allows industrial homework be a side job to increase family's income. As we know that the necessities of life are becoming higher, families cannot rely on just one person. Each family member is required to participate in helping fulfill the household needs. Whereas they have domestic tasks that do not allow them to leave the house, such as housewife have to cook, wash, and clean the house, as well as children who have to school. Having a job that can be done without disturbing the busyness in the household is very help them to make more money.

Work undertaken by homeworkers are usually quite easy, it does not require a high skill. Such as assembling and packing, gluing envelopes, peeling shrimp, and other occupation that everyone in general can do. The working system is also quite simple and without large capital, so it's very easy to enter, without proposing, without permission, without any contract or formality. The plot is the workers receives an orders to complete a job with certain specification, then

receives wages based on the output they produces. A job like this can absorb a lot of labor, not just housewives and children, but also elderly people and disabilities who lack access to formal work. In other words, homeworkers contribute significantly to the welfare of family and society. This system has expanded the equality of employment opportunities and society incomes amid increasingly stringent global economic competition.

The existence of a homeworker system should be mutually beneficial. However, the relationships between employers and homeworkers may cause a risk to workers because they work without supervised by their employers. A system of work that calls “if there is stuff so there is money”, makes many homeworkers only pursue a wage without regard to their position in a work relation. As a result, most homework practices have not fulfilled the prevailing employment standards and the working conditions of homeworkers are in poor condition.

Homeworkers usually work for relatively longer time than the average factory worker. The homeworkers often set aside their housework and prefer to do the job from the employers. Even to pursue higher target, homeworkers often invite their siblings or children to help them although without getting paid. Working for a long time causes a high health risk. However homeworkers have to pay their own medical bills. Moreover, homeworkers also contribute to the production costs such as working equipment, electricity, and place that are normally dependents of employers. Employers or agents do not want to know how much domestic resources are used by homeworkers, they only notice how many products the workers can produce.

Being a homeworkers are often regarded as only a side activity, so this type of workers are not counted on their contributions as workers. The Indonesian government has not included homeworkers in the county's official statistic data, whether in the population census, or national labour force survey. In *Badan Pusat Statistik (BPS)*'s employment data, homeworker positions are among the categories of "free workers on non-farms" and "family/unpaid workers".³

The legal status of homeworkers is also unclear, there are companies that include them as permanent workers, some consider them as non-permanent workers, even some companies consider them as business partners rather than workers. In fact, according to Law number 13 of 2003 concerning Manpower describe that employment relations are relationships that have elements of work, wages and commands. Usually, homeworkers fulfill these three elements, so that homeworkers also include workers who are in the employment relations.

Homeworker conditions that are not recognized as workers make this type of work is vulnerable to exploitation. Homeworkers are often employed with substandard wages and no bargaining position, even though they have been working for a very long time. They do not have access to employment rights like the average labor worker. Employment provisions such as working hours, work overtime, subsidy, minimum wage, rest and leissure are not applicable. They do not have the protection of legal or social safeguards provided by the Government such as guarantee of occupational safety and health, and guarantee of retirement and old

³ Dinar Dwi Prasetyo, *Kepingan Pengalaman Hidup Pekerja Rumahan*, <http://theconversation.com/kepingan-pengalaman-hidup-pekerja-perempuan-rumahan-92214>, accessed 27 October 2019

days. They also have no certainty in working because of adjusting market conditions. Finally, there is no stability in employment, no prospects for advancement, just people being used by massive corporations until those people are not needed anymore.

Basically, an employment relationship starts with a work or employment agreement, because in that agreement there will contain everything that related to employment relation, such as the rights and obligations of both parties, the terms of employment, and the system of work that will be applied. The agreement is very important to do because it guarantees the protection and reassurance of the rights and obligations between the two parties. The work agreement in Islamic law is classified as a rent agreement, which is an *ijarah amal* that means hire in the form of service or human labor to do the work. Others refer to the *ijarah dhimmah*, which is the payment of wages. In the context of labour laws, work agreements are defined by specified period of time (*PKWT*) and unspecified period of time (*PKWTT*). Both types of work agreements have different ordinances.

The work agreement can be done in a simple form which is generally made orally or formally made in written form. Normatively, the written form more guarantees the certainty of the employment relationship between workers and employers in the work system. Generally, the work agreement used to employ homeworkers is an oral work agreement. It is also done by CV Berkah Anugrah which manufactures plastic item such as buckets, spoon, fork, and some other household appliances. The company employs a considerable range of home workers to sort, tidy and pack products.

Based on explanation above, the authors would like to do a research how work agreements are applied in the practice of homeworkers in CV Berkat Anugrah. Is the work agreement ideal to achieve social justice in terms of realizing work-life balance for homeworkers. Therefore, the author will make a research under the title “Analysis of Work Agreement of Industrial Home Worker in CV Berkat Anugrah Jombang (Analysis study of Indonesian positive law and fiqih muamalah)”

B. Problem Formulation

Based on the background mentioned above, it can be formulated some questions as follows,

1. How is the validity of work agreement on home worker in CV Berkat Anugrah reviewed from the positive law in Indonesia?
2. How is the review of fiqih muamalah about the practice of work agreements on home worker in CV Berkat Anugrah?

C. Objective of Research

Based on the problem formulations above, the purpose of this research as follows,

1. To analyze the validity of work agreement on home workers in CV berkat Anugrah reviewed from the positive laws in Indonesia
2. To find out a review of fiqih muamalah against work agreement on homeworker in CV Berkat Anugrah.

D. Benefit of Research

There are several benefit that are expected from this research, as follows,

1. Theoretically
 - a. This research is expected to be able to add information and insight about the provisions of the work agreement on industrial home workers.
 - b. It is expected that the results of this research will be able to contribute to the knowledge to be developed into further research in the future
2. Practically
 - a. This research is expected to bring results that can be used as inputs for the employers and workers related to the work agreements on home workers.
 - b. As a matter for input and information to the general public about the importance of the work agreement in accordance with the provisions of the law.

E. Operational Definition

To make the title of the research in this thesis is easy to understand, the author needs to explain some operational definitions related to the variables observed in this research, that are work agreement and the law. This is to avoid misunderstandings and mistakes in some of the terms used in this research. In accordance with the title “Analysis of Work Agreements on Industrial Homeworkers in CV Berkat Anugrah Jombang (Analysis Study of Indonesian

Positive Law and Fiqh Muamalah)”, the variables that are the focus of research are as follows:

1. Work agreement of industrial home worker

Work agreement is an agreement made between worker/labour and an employer/entrepreneur as a basis of an employment relationship between a worker and an employer, that contains of work requirements, rights and obligations of the parties. In the work agreement there is a first party who binds himself to work by receiving wages from the second party, and the employer binds himself to employ workers by paying wages. Work agreements in Islamic law are classified as lease agreements, that is *al-ijarah*, namely contracts or transactions for benefits or services with certain rewards. It also known as *ijarah amal* which means renting in the form of services or human labor to do work.⁴ There are also those who call it *ijarah Dhimmah*, namely wages .⁵

The term home work means work carried out by a person, to be referred to as a homemaker, in his or her home or in other premises of his or her choice, other than the workplace of the employer, for remuneration, which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used.⁶ Work agreement on industrial home worker means the type of employment agreement used to employ homeworkers.

⁴ Suhrawardi Lubis, *Hukum Ekonomi Islam*, (Jakarta: Sinar Grafika, 2000), p. 152

⁵ Amir Syarifudin, *Garis-Garis Besar Fiqh*, (Jakarta: Kencana, 2003), p. 216

⁶ Article 1a of Homework Convention Number. 177 of 1996

2. Positif law and fiqih muamalah

Positive law is the law that applies in a certain country or society at a certain time. Thus, in the life of the Indonesian people, positive law is the law that applies in Indonesia at this time.⁷ Then, fiqih muamalah is the laws relating to actions taken by humans in matters relating to their assets.⁸ So that fiqih muamalah is the rules of Allah swt which are aimed at regulating human life in worldly affairs or affairs related to social society.

F. Structure of Discussion

To facilitate the flow of discussion and understanding related to the issues raised, the structure of discussion that will be done is as follows:

CHAPTER I : INTRODUCTION

This chapter contains some of the basic element of this research, including the background of problem, which explains the background of conducting research related to the issue raised into the topic of writing. Based on the background then raises some questions that are outlined in the problem formulation. Also contains objectives of research that want to be achieved to answer the problems formulation, research benefits in the form of theoretical and practical benefits that can be obtained from research

⁷ Mochtar Kusumaatmadja, *Pengantar Ilmu Hukum*, (Bandung: Penerbit Alumni, 2000), p. 1

⁸ Sri Sudiarti, *Fiqh Muamalah Kontemporer*, (Medan: FEBI UIN SU Press, 2018), p. 7

results, operational definitions, and descriptions about the structure of discussion.

CHAPTER II : LITERATURE REVIEW

This chapter contains sub-chapters of previous research and theoretical frameworks. The first sub-chapter contains previous studies related to this research. Then explained the originality of this research by comparing with previous research and explaining the differences and similarities. The next sub-chapter contains a theoretical framework that will outline the agreement in general, the work agreement according to Indonesian positive law, the work agreement according to fiqh muamalah, and an overview of home workers.

CHAPTER III : RESEARCH METHODE

This chapter contains several points related to research methods in order for research to be directed, logical and rational. This chapter contains the type of research, approach of research, location of research, source and type of data, data collecting technique, and data analysis technique.

CHAPTER IV : FINDING AND DISCUSSION

In this chapter, the author will outline the data that has been obtained from research, both primary data and secondary data. Then analyze the data to answer the formulation of the problem that

has been set. This chapter contains description of research object, data exposure, and data analysis.

CHAPTER V : CONCLUSION AND SUGGESTION

This chapter is the last chapter that contains conclusions and suggestions. The conclusion contains a short answer to the formulation of the problem that has been set. The next sub-chapter is advice that contains proposals or suggestion to relevant parties for the good of society.

CHAPTER II

LITERATURE REVIEW

A. Previous Research

Work agreements are one of the most important topics in employment relationship, so it is vulnerable to bring up some problems if they are not properly monitored. Therefore, many researchers are doing research related to the practice of work agreements. These are some of the previous research which is used for comparative studies in this research, such as:

1. Thesis research by Surya Fauzi Ahmad, student of Law Faculty of Muhammadiyah University of North Sumatera, under the title “*Tinjauan Yuridis Teterhadap Perjanjian Kerja Waktu Tertentu (PKWT) dalam Undang-Undang Cipta Kerja Nomor 11 Tahun 2020 (Analisis Studi Kasus Pada PHK Buruh di Masa Pandemi Covid 19)*”, at 2021,⁹ This research discusses about work agreements to find out company’s responsibility after unilateral termination of employment relations to workers and how to resolve disputes. The type of this thesis research is juridical normative. The primary data sources used are data sourced from Islamic law, while secondary data includes laws. Data collection techniques consist of literature studies and field research, then analyzed using qualitative analysis models. The results showed that the work agreement was not in accordance

⁹ Surya Fauzi Ahmad, *Tinjauan Yuridis Teterhadap Perjanjian Kerja Waktu Tertentu (PKWT) dalam Undang-Undang Cipta Kerja Nomor 11 Tahun 2020 (Analisis Studi Kasus Pada PHK Buruh di Masa Pandemi Covid 19)*, thesis, (Medan: Muhammadiyah University of North Sumatera, 2021)

with the laws and regulations because it was carried out orally. termination of employment that is carried out unilaterally does not violate the job creation law because it occurs as a result of efficiency and force majeure conditions. The form of accountability is to provide salaries according to the performance of the workers.

2. Thesis research by Muhammad Dhandy Pangestu, student of Sharia Faculty of Raden Intan State Islamic University of Lampung, under the title, *“Implementasi Kontrak kerja Karyawan Perspektif Hukum Islam dan Hukum Positif (Studi Pada Stasiun Pengisian Bahan Bakar Umum Rajabasa Bandar Lampung)”*, at 2021.¹⁰ This research discusses about the implementation of employment contracts at Rajabasa public gas station and how Islamic law and positive law regarding the work agreement. The research method used is field research using primary and secondary data sources. the data collection methods used are interviews and documentation. The data analysis technique used is qualitative descriptive analysis. The results showed that the employment contract at Rajabasa public gas stations was already guided by the Job Creation Law. But, there are some points to pay attention such as no clear wage arrangements and no clear arrangements on leave. According to the Islamic Law perspective the employment contract that is carried out is contrary to surah Al-Maidah verse 1, because the employer does not seek as the contract is carried out. Based on positive

¹⁰ Muhammad Dhandy Pangestu, *Implementasi Kontrak kerja Karyawan Perspektif Hukum Islam dan Hukum Positif (Studi Pada Stasiun Pengisian Bahan Bakar Umum Rajabasa Bandar Lampung)*, thesis, (Lampung: UIN Raden Intan, 2021)

law, the employment contract is not in accordance with the provisions of the Job Creation Law regarding the rights that employees must obtain, namely a decent wage.

3. Thesis research by Muhammad Jaduk Chusna, student of Sharia and Law Faculty of Sunan Kalijaga State Islamic University, under the title “*Analisis Terhadap Perjanjian Kerja Waktu Tertentu di PT. Siprama Cakrawala Yogyakarta*”, at 2017.¹¹ This research discusses whether work agreement of specified periode of time (*PKWT*) in PT. Siprama Cakrawala Yogyakarta is in accordance with Indonesian Contract Law (Civil Code), and whether the *PKWT* is in accordance with Law No. 13 of 2003 concerning Manpower. This research is a field research, with research data collection techniques through collection in the field and literature. The field research was conducted by interviewing PT. Siprama Cakrawala and related former workers. Literature study conducted by documenting documents and literature that relating to research material. The approach taken in this research is juridical-normative, where the approach is based on the main legal material by examining theories, concepts, principles of law and legislation relating to *PKWT* at PT. Siprama Cakrawala Yogyakarta. The results showed that *PKWT* was in accordance with the Civil Code, where the principle of contract law is complementary which means that an agreement can be distorted while the parties agree. However, when viewed

¹¹ Muhammad Jaduk Chusna, *Analisis Terhadap Perjanjian Kerja Waktu Tertentu di PT Siprama Cakrawala Yogyakarta*, thesis, (Yogyakarta: UIN Sunan Kalijaga, 2017)

from the perspective of the Manpower Law, one of the contents of the *PKWT* is not in accordance with article 153 paragraph (1) letter e and article 154 letter b of the Manpower Law. Where employers are prohibited from terminating employment due to pregnancy, even though the company did not terminate employment, there are indications that the company urged workers to resign on the reasons that pregnant workers are not justified in the Manpower Law. So even though the *PKWT* is legal according to the Civil Code and the Labour Law, it can be canceled.

4. Skripsi Thesis research by Rizka Amaliya Maghfiroh, student of Sharia Faculty of Maulana Malik Ibrahim State Islamic University, under the title “*Praktek Perjanjian Kerja Waktu Tertentu di PT. Cahaya Indah Madya Pratama (Kajian Undang-Undang Ketenagakerjaan dan Hukum Islam)*”, at 2016.¹² This research discusses about how the practice of work agreement on specified period of time (*PKWT*) at PT Cahaya Indah Madya Pratama according to the labour law, and how the *PKWT* at PT Cahaya Indah Madya Pratama according to Islamic law. This research is an empirical research with a qualitative approach. The data used in the form of primary data and secondary data with data collection techniques through observation stages using a sample method to answer problems in research. The results showed that PT. Cahaya Indah Madya Pratama did not use the written agreement on *PKWT* but rather with an oral agreement. This principle that used is contrary

¹² Rizka Amaliya Maghfiroh, *Praktek Perjanjian Kerja Waktu Tertentu di PT. Cahaya Indah Madya Pratama (Kajian Undang-Undang Ketenagakerjaan dan Hukum Islam)*, thesis, (Malang: UIN Maulana Malik Ibrahim, 2016)

to Law No. 13 of 2003 on Manpower. The application of this system is because the parties are relatives who broadly outline the parties in carrying out the work based on the principle of trust. In Islamic law, it does not look at the way the agreement was made, either in writing or orally. Islam prioritizes the element of good *I'tikad* both of the parties, the clear contract, the pillars and the requirements are fulfilled, then the agreement is valid and not violate Islamic law.

Table 1. Similarities and differences of previous research

No	Name	Tittle	Similarities	Differences	
				Previous Research	Now Research
1.	Surya Fauzi Ahmad/ Law Faculty/ Muhammad iyah University of North Sumatera/ 2021	Tinjauan Yuridis Teterhadap Perjanjian Kerja Waktu Tertentu (PKWT) dalam Undang-Undang Cipta Kerja Nomor 11 Tahun 2020 (Analisis Studi Kasus Pada PHK Buruh di Masa Pandemi Covid 19	Analyze about <i>PKWT</i> , using Job Creation Laws for analyze,	Focus of research on corporate accountability after unilateral <i>PHK</i> due to company efficiency and force majour conditions; Using normative juridical research; Analysis using Job Creation Law only;	Focus of research on the work system and legal status of industrial home worker that is Types of flexible work; Using empirical research; Analysis using fiqh muamalah in addition to Job Creation Law.
2.	Muhammad Dhandy Pangestu/	Implementasi Kontrak kerja	Analysis of work agreement,	The problem that occurs are	The problems that occurs are regarding

	Sharia Faculty/ State Islamic University of Raden Intan Lampung/ 2021	Karyawan Perspektif Hukum Islam dan Hukum Positif (Studi Pada Stasiun Pengisian Bahan Bakar Umum Rajabasa Bandar Lampung)	using Indonesian Positive Laws and Islamic Laws	regarding the arrangement of wages, leave entitlements , and rest periods; The object of research is work agreement in Rajabasa gas station, Lampung	the legal status of industrial home worker from <i>PKWT</i> , to <i>PKWTT</i> , and there was no job appointment; The object of research is work agreement in CV Berkat Anugrah Jombang
3.	Muhammad Jaduk Chusana/ Faculty of Sharia and Law/ State Islamic University of Sunan Kalijaga Yogyakarta/ 2017	Analisis Terhadap Perjanjian Kerja Waktu Tertentu di PT. Siprama Cakrawala Yogyakarta	Analysis of work agreement with types of empirical research	Use analysis according to the Civil Code and Law of Manpower; The object of research is <i>PKWT</i> at PT Siprama Cakrawala Yogyakarta	Use analysis according to Islamic Law beside Indonesin Positive Law, Analyze using Job Creation Law; The object of research is <i>PKWT</i> at CV Berkat Anugrah Jombang
4.	Rizka Amaliya Maghfirah/ Sharia Faculty/ State Islamic University of Maulana Malik Ibrahim Malang/ 2016	Praktek Perjanjian Kerja Waktu Tertentu di PT. Cahaya Indah Madya Pratama (Kajian Undang-Undang Ketenagakerjaan dan	Analysis of work agreement with types of empirical research	The research object is <i>PKWT</i> at PT. Cahaya Indah Madya Pratama, where the working system is clear in the Labour Law;	The research object is unclear whether it is <i>PKWTT</i> or <i>PKWT</i> because in the home work system, the time is undetermined , and the work system is flexible;

		Hukum Islam)		Analyze using Manpower Law.	Analyze using Job Creation Law beside Manpower Law.
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B. Theoretical Framework

1. General Study of Work Agreement

a. Work Agreement According to Indonesian Positive Law

The work agreement is the basis of the existence of an employment relationship between workers and employers. Work agreements in Dutch are usually called *Arbeidsoverenkomen*.¹³ According to the provisions of article 1601a Civil Code, it is stated that, “*The work agreement is an agreement in which the one party, (the laborer) binds himself to under the command of the other party (the employer) for a certain time, does the work by accepting wages*”

While, Law number 13 of 2003 concerning Manpower mentioned that an (individual) work agreement shall be defined as an agreement made between a worker or labourer and an entrepreneur or an employer. The agreement specifies work requirements, rights and obligations of both sides.¹⁴

¹³ Djumadi, *Hukum Perburuhan: Perjanjian Kerja*, (Jakarta: PT RajaGrafindo Persada, 2006), p. 29.

¹⁴ Article 1 verse 14 of Law Number 13 of 2003 on Manpower

Based on the understanding of the work agreement above, there are several elements of the work agreement, including:¹⁵

1. There is an element of work

In a work agreement there must be a work that is promised as the object of the agreement. The work must be done by the worker himself, if someone else does it must be with the permission of the employer. This is in accordance with the provisions of article 1603a of civil code, which reads, “the worker is obliged to do his own work, only with the permission of the employer, he can have a third person replace him”.

2. There is an element of service

The manifestation of work that given to the worker from the employer is that worker must obey the orders of employer to do his job, as promised.

3. The existence of a certain time or time element

In conducting a working relationship must be done in accordance with the time specified in the work agreement. In doing work, the workers are not allowed to do the work as they wish, the implementation of work should not conflict with the provisions of legislation and public order.

4. There is an element of pay or wages

¹⁵ Djumadi, *Hukum Perburuhan Perjanjian Kerja*, (Jakarta: PT RajaGrafindo Persada, 2006), p. 36-40

Wages are one of the important elements in the working relationship, it can be said that the purpose of workers doing work is to get wages. If there is no element of wages then a relationship is not a working relationship.

Legal subjects in work agreement are employers and workers. Whereas, the object of the work agreement is the energy that is attached to the worker, on the basis of the energy that is issued then the worker will get wages.¹⁶

Basically, there is no regulation that bind the form and content of the agreement, because it is secured with the principle of “contract freedom”, a principle that states that each person can essentially make a contract (agreement) that contain various kinds of agreements as long as they are not contrary to law, morality, and public order. The principle is listed in article 1338 paragraph (1) Civil Code, with regard to article 1320, 1335, and 1337 of Civil Code in addition to Article 52 Law No. 13 of 2003 on Manpower.¹⁷

The provisions of article 51 paragraph (1) of Law No. 13 of 2003 on Manpower regulates that work agreements are made by written or spoken, this means that work agreement is possible to be unwritten.¹⁸

In making a work agreement, there are requirements that must be met. The requirements of the work agreement are essentially differentiated into two, which are material requirements and formal requirements. The

¹⁶ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, (Jakarta: Sinar Grafika, 2016), p. 41.

¹⁷ Eko Wahyudi, dkk., *Hukum Ketenagakerjaan*, (Jakarta: Sinar Grafika, 2016), p. 14; Sayid Mohammad Rifqi Noval, *Hukum Ketenagakerjaan*, (Bandung: PT Refika Aditama, 2017), p. 120.

¹⁸ Noval, *Hukum Ketenagakerjaan*, p. 120.

material requirement is regulated in Article 52 Law No. 13 of 2003, while the formal requirement is regulated in article 54 of Law No. 13 of 2003. The material requirements of the work agreements are made on the basis:

- a) The agreement of both sides;
- b) The capability or competence to take legally-sanctioned actions;
- c) The availability or existence of the job which both sides have agreed about;
- d) The notion that the job which both sides have agreed about does not run against public order, morality, and what is prescribed in the valid legislation.

Work agreements are divided into two types based on time period, namely the Specified Period of Time or *Perjanjian Kerja Waktu Tertentu (PKWT)* and the Unspecified Period of Time or *Perjanjian Kerja Waktu Tidak Tertentu (PKWTT)*. The division of these two labor agreements is based on:¹⁹

- a. Period of time, or
- b. Completion of a particular work

A work agreement for specified periode of time (*PKWT*) that is an agreement between a worker and an entrepreneur that is only made for certain jobs which according to the type and nature or activities of the job,

¹⁹ Article 81 number 12 Law Number 11 of 2020 on Job Creation

will be finished within a specified periode of time.²⁰ So, *PKWT* cannot be held for permanent jobs. The types of work that use *PKWT* are as follows:

- a. work that is once completed or which is temporary in nature;
- b. work that is estimated to be completed in the not too distant future;
- c. seasonal work;
- d. work related to new products, new activities, or additional products that are still under trial or exploration;
- e. work whose type and nature or activity is not fixed.

If the *PKWT* does not match the job criteria above, then by law it changes to *PKWTT*.

The work agreement for unspecified period of time (*PKWTT*) is an agreement between a worker and an employer that time periods is undetermined, whether in agreements, laws, or customs. Or happens legally because of employer break existing law.²¹ That understanding is based on the provisions of Article 1603q verse (1) of the Civil Code.

As a legal consequence of the change of *PKWT* to *PKWTT*, if the entrepreneur wants to end the working relationship, the worker's right and the settlement procedures are conducted in accordance with the provisions of the law for *PKWTT*. In addition, the end of employment agreements can be caused by several reasons, including:

- a) the worker dies;

²⁰ Noval, *Hukum Ketenagakerjaan*, p. 122

²¹ Noval, *Hukum Ketenagakerjaan*, p. 122

- b) the work agreement expires;
- c) the completion of a particular work;
- d) the existence of court decisions and/or decisions of industrial relations dispute resolution institutions that already have permanent legal force;
or
- e) the existence of certain circumstances or events (such as natural disasters, social unrest, or security disturbances) listed in work agreements, company regulations, or collective work agreements that may lead to the end of the working relationship.

The work agreement does not end due to the death of the entrepreneur or the transfer of the company's right due to sales, inheritance, or grants. In the event of a transfer of the company, the rights of workers become the responsibility of the new employer, unless otherwise specified in the transfer agreement that does not reduce the rights of workers.

If an individual entrepreneur dies, the employer's heirs can terminate the work agreement after negotiating with the worker. If the worker dies, the labor heir is entitled to his rights in accordance with the laws and regulations or rights that have been stipulated in the employment agreement, company regulations, or collective labor agreements.²²

In the event that the *PKWT* ends due to the expiration of the term of the employment agreement or the completion of a certain work, the employer is obliged to provide compensation money to the worker/laborer.

²² Article 81 number 16 Job Creation Law

Where the compensation money must be in accordance with the working period of workers/ laborer in the concerned.²³

b. Work Agreement According to Fiqih Muamalah

In Islam, employment matters are governed in the *Ijarah*. In etymology, *al-Ijarah* of the word *al-Ajru* meaning *al-'Iwadh* (replacement). That is why *ats-Tsawabu* in the context of the reward is named *al-Ajru* (wage).²⁴ As for terminology, fiqh scholars differ in opinion, among other things:

- a) According to Hanafiyah, *ijarah* is a contract of the benefits with compensation or rewards.²⁵
- b) According to Malikiyah, *ijarah* is a contract that gives ownership rights of the benefits from a *mubah* item for a certain period with reward that do not derived from that benefits.²⁶
- c) According to Syafi'iyah, *ijarah* is a type of contract or transaction for a intended benefit, which is certain, *mubah*, and can be utilized by giving rewards.²⁷
- d) According to Hanabilah, *ijarah* is a contract for the benefits that are permitted by syara, can be taken at any time at the specified time,

²³ Article 81 number 17 Job Creation Law

²⁴ Abdul Rahman Ghazaly, Ghufroon Ihsan, and Sapiudin Shidiq, *Fiqih Muamalat*, (Jakarta: Kencana, 2015), p. 277.

²⁵ Panji Adam, *Fikih Muamalah Maliyah*, (Bandung: PT Refika Aditama, 2017), p. 198.

²⁶ Ahmad Wardi Muslich, *Fiqh Muamalat*, (Jakarta: Amzah, 2013), p. 316.

²⁷ Ghazaly, *Fiqih Muamalat*, p. 277.

either in the form of certain objects or properties in dependents or certain job with certain rewards.²⁸

Simply, *ijarah* can be interpreted as a contract or transaction of benefits or services with certain rewards. If the object of the transaction is the benefits or services of an object called *ijarah al'ain*, such as renting a house to be occupied. If the object of the transaction is the benefit or service from someone's power, it is called *ijarah ad-dzimah* or wage payment.²⁹ There are also people who call it *ijarah amal* which means rent in the form of services or human labor to do work.³⁰

The Fiqh scholars have agreed on the legality of *ijarah* except Abu Bakar al-Asham, Ismail bin Ulayya, Hasan Basri, al-Qasyani, an-Nahrawani, and Ibn Kaisan. They prohibit because *ijarah* is buying and selling benefits, while the benefits themselves at the time of the contract can not be handed over. After some time the benefits can be enjoyed little by little. While, something that does not exist at the time of the contract can not be traded. It was later denied by Ibn Rusyd that although the benefits did not exist at the time of the agreement, but in general the benefits will be realized, this is the consideration of the Syara'. Jumhur Ulama allow *ijarah* when performed in accordance with the provisions stipulated by the Syara ' based on the verses of the Qur'an, the hadith of the Prophet, and the

²⁸ Adam, *Fikih Muamalah*, p. 198.

²⁹ Syarifuddin, *Garis-Garis Besar Fiqh*, p. 216.

³⁰ Lubis, *Hukum Ekonomi Islam*, p. 152

decree of scholar *ijma*.³¹ The legal basis on the ability of *al-Ijarah* as follows:

...فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ...

“... then if they breastfeed for you, then give them their payment ...” (QS. At-Thalaq: 6)

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ
الْأَمِينُ

“One of the women said, ‘O my father, hire him. Indeed, the best one of you can hire is the strong and the trustworthy.’” (QS. Al-Qashas: 26)

أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ (رواه ابن ماجه)

“Give payment or merit for someone who work for you before his sweat dry.” (HR Ibnu Majah)

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اخْتَجِمَ وَأَعْطِيَ الْحَجَامَ أَجْرَهُ (رواه
البخارى ومسلم)

³¹ Wahbah az-Zuhaili, *Fiqh Islam wa Adilatuhu*, vol. V, translated by Abdul Hayyie al-Kattani, (Jakarta: Gema Insani, 2011), p. 386.

Rasululah SAW said: "if you bleed, then give the payment to skilled laborer." (H.R. Bukhari dan Muslim).

Based on the scholar *ijma*, the law of *ijarah* is *mubah*. Muslims at the time of Prophet Friends agreed to allow *ijarah* before the existence of Asham, Ibn Ulayyah, and others. It is based on people's needs for the benefits of *ijarah* as their needs for real goods.³²

To allow agreement to become legal must be fulfilled by pillars and requirements. According to Hanafiyah, it's only one pillar that is *sighat* or *ijab* and *qabul* on both sides. According to the majority of scholar, there are four pillars, that are:

(1) *Aqid* (someone who doing *akad*), consist of *ajir* (people whose power is hired/worker) and *musta'jir* (people who hires someone's power/employer). The worker or labor divided into two types, namely:³³

(a) *Ajir khas* (special worker), that is a worker who works only for one person for a certain period. In this case, he may not work for anyone other than the person who hired him.

(b) *Ajir musytarak* (general worker), that is a worker who work for more than one person, so that they are allied in utilizing their energy. In this case, *ajir musytarak* can work for several people at one time.

³² Wahbah az-Zuhaili, *Fiqih Islam wa Adilatuhu*, p. 386.

³³ Muslich, *Fiqih Muamalat*, p. 333

- (2) *Sighat*, (statement). This statements consist of *ijab* and *qabul*
- (3) *Ujrah* (wage or salary)
- (4) The benefit, whether the benefit of a rented item or the service and power of the person working.

As for the requirements of *ijarah* consist of four kind, that are the requirements for the occurrence of the contract (*syarat al-in'iqad*), the requirements for the holding of the contract (*syarat an-nafadz*), the requirements of the legality of the contract (*syarat ash-shihhah*), and the requirements for binding the contract (*syaratal- luzuum*).³⁴

Syarat in'iqad are related to *aqid*, *akad*, and *akad* object. Requirements relating to *aqid* is having good mind. According to Syafi'iyah and Hanabilah scholars, the requirements of *aqid* are having good mind and adult (*baligh* and *mumayyis*). According to Hanafiyah and Malikiyah scholars, people who have good mind do not have to be *baligh*. Therefore, *mumayyiz* people can also make *ijarah*, only the legality of the *ijarah* must be approved by his/her guardian.³⁵

Syarat an-nafadz in the *ijarah* are the ownership right or authority. *Ijarah* done by *fudhuli* (people who spend others' property without his/her permission) is invalid. According to Hanafiah and Malikiyah the status is *mauquf* (suspended) until there is approval of the original owner. While, according to Syafi'iyah and Hanabilah the status of this *ijarah* is canceled.³⁶

³⁴ Az-Zuhaili, *Fiqh Islam wa Adillatuhu*, p. 389

³⁵ Ghazaly, *Fiqh Muamalat*, p. 279.

³⁶ Ghazaly, *Fiqh Muamalat*, h. 279

The legal requirements (*syarat ash-sihah*) of *ijarah* are must be fulfilled by several conditions relating to *aqid*, *ma'qud alaih* (object), *ujrah* (wage), and it own *akad*. The requirements are:³⁷

- (1) Agreement of both parties;
- (2) The subject of *ijarah* must be clear, so it does not create dispute between two side;
- (3) The object of *ijarah* must be able to surrendered in real terms (intrinsically) as well as syara;
- (4) The benefits that are the object of *ijarah* are permitted by syara;
- (5) The job is not the *mustajir*'s obligation, such as praying, fasting and the others;
- (6) The hired person (*ajir*) shall not take advantage of his/her work for himself;
- (7) The benefit of the *mauqud alaih* must be in accordance with the purpose of the *ijarah* contract, which is generally accepted.

The requirements relating to wages are as follows:

- (1) Wages must be a valuable and known property, and
- (2) Wages are not in the form of benefits similar to *mauqud alaih*.

As for *syarath al-luzuum*, it takes two requiremants, namely:³⁸

- (1) A rented item is free from defects that damage their utilization, and
- (2) There are no *udzur* (obstacle) that may void the *ijarah* contract.

³⁷ Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, p. 390-400

³⁸ Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, p. 404-410

5. General Study of Industrial Home Worker

The phenomenon of home workers has been around for a long time, but has only been discussed in public since the 1990s, and has subsequently become a global issue since the ILO's Home Workers Convention in 1996.³⁹ The term homeworkers refers to workers of a company who work outside the company's environment, they work at their own home or elsewhere outside the company. In Indonesia, they are also called laborers without factory. According to the definition of International Labour Organization (ILO) Homework Convention (C177) year 1996, home worker is:

“The term home work means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used.

Unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions.”⁴⁰

Self-employed worker (entrepreneur) that worked in their house are not considered as a homeworker. A person who works independently is a person who bears financial risk of the production and sales/marketing of the products and/or services they produce. Workers who sometimes bring their

³⁹ Arianti Ina Restanti Hunga, “Mencari Pengakuan”: *Home-Workers dalam Industri Barik Berbasis Putting-Out System (Studi Kasus di Jawa Tengah)*, journal: EKO-FEMINISME IV, (Salatiga: Parahita Press, 2016), p.29

⁴⁰ Article 1a of Home Work Convention

jobs to their home are also not considered homeworkers.⁴¹ The differences between homeworkers and other workers can be seen from the table below:

Table 2. differences between home based worker and other workers

Characteri stic	Home worker	Self worker (entrepreneur)	Househol d worker	Factory worker
Work place	in his/her home or in other premises of his/her choice, other than the workplace of the employer	in his/her home or in other premises that self prepared	Employer house	Factory
Work for	Intermediary/ businessman	Her/himself	employer	corporation / businessman
Payment/ wage	From work (usually each piece/ product)	From service/ product sale	For work (each time)	For work (each time)
Production tool	Self prepare or prepared by employe partially	Self prepare	Prepared by employe	Prepared by corporation/ businessman

Source: International Labor Organization (ILO) - MAMPU

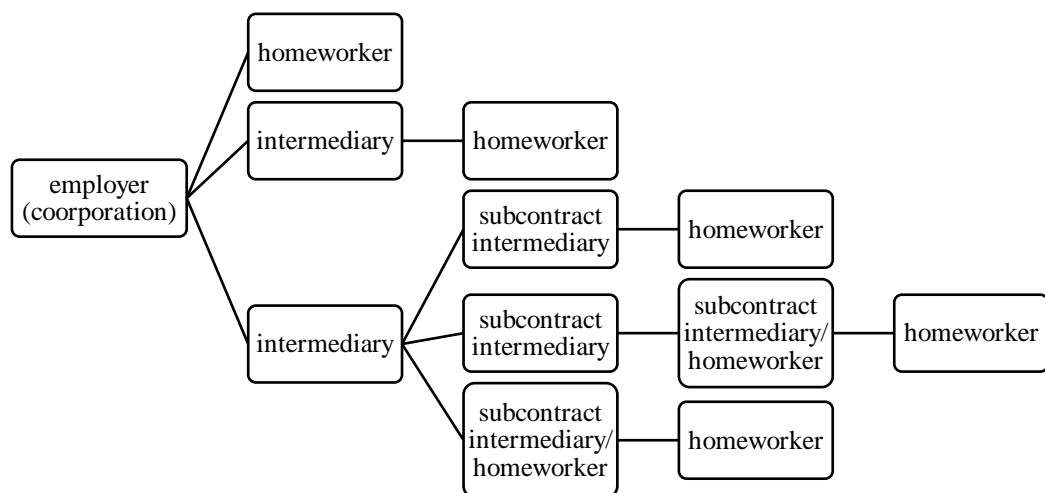
Home work is one form of informal work done at home and mostly done by women.⁴² Therefore, home workers are often called female workers.

⁴¹ Asosiasi Pengusaha Indonesia (APINDO), *Panduan Praktik yang Baik untuk Mempekerjakan Pekerja Rumahan bagi Pengusaha*, (Jakarta: ILO, 2013), <http://mampu.bappenas.go.id/pengetahuan/publikasi/panduan-praktik-yang-baik-untuk-mempekerjakan-pekerja-rumahan-bagi-pengusaha/> p. 4.

⁴² Annie Delaney, Rosalia Burchielli, Shelley Marshall, and Jane Tate, *Homeworking Women, A Gender Justice Perspektif*, (New York: Routledge, 2019), <https://www.routledge.com/Homeworking-Women-A-Gender-Justice-Perspective/Delaney-Burchielli-Marshall-Tate/p/book/9781783535323>, p. 2

The characteristics of homeworker themselves are a dependent subcontract worker who works directly or indirectly for a worker or an agent (intermediary), usually in a wholesale that also known as wholesale worker, an outside worker, or a worker in a putting out system.⁴³ So that, homeworker relationships with entrepreneurs can be directly or by way of an intermediary. As shown in the following chart:

Chart 1. Patterns of work relationships of home workers with employers⁴⁴



Source: International Labor Organization, 2013

⁴³ Neilen Haspels and Aya Matsuura, *Pekerja Berbasis Rumahan: Kerja Layak dan Perlindungan Sosial melalui Organisasi dan Pemberdayaan*, (Jakarta: ILO, 2015), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_436852.pdf, p. 3.

⁴⁴ Yuniarti Tri Suwadji, dkk, *Perlindungan Pekerja Rumahan di Sektor Industri*, (Jakarta: PT Sulaksana Pantisa Indonesia, 2016), p. 4

Some examples of work that are often done by homeworkers include: finishing garment products such as sewing, weaving, embroidery; packing process; food processing; and others.

The existence of homeworkers is not new in Indonesia, there is research which states that homeworkers have been here since 1928 in the textile industry.⁴⁵ However, until now homeworkers have not received the recognition as a labor force. Until now homeworkers are included in informal work.

Home workers are actually found in the field with different local terms, such as; *borongan*, *sanggan*, *maklon*, *rengsi*, *mancal*, *jrogan gaok*, *tempahan*, *bos* or *bos kecil*, *pengobeng*, *jedot* or *makelar*, etc. This difference in terms is related to the product that is processed or produced. For example, the term *mancal* is used for home workers in convection processing, the term *sanggan* (for women) and *jragan gaok* (for men) are used for home workers in batik products.⁴⁶

Indonesia does not have any regulation governing the home worker in specific. However, at international level, the International Labour Organization (ILO) has organized home workers in Convention number 177 of 1999 concerning home workers (C. 177) and recommendations number 184 of 1996 concerning home work.

⁴⁵ M. Oey-Gardiner, E. Suleeman, I. Tjandraningsih, W. Hartanto and H. Wijaya, *Women and children homeworkers in Indonesia*, journal: Asian Informal Workers. Global risks, local protection, (New York: Routledge, 2017), p. 259.

⁴⁶ Arianti Ina Restanti Hunga, "*mencari Pengakuan*": *Home-Workers dalam Industri Barik Berbasis Putting-Out System (Studi Kasus di Jawa Tengah)*, journal: EKO-FEMINISME IV, (Salatiga: Parahita Press, 2016), p.32

In Indonesia, discussions about the situation of home workers began in the late 90s by Non-Governmental Organizations (NGOs), universities, and Indonesian governments with support from the ILO projects. In 1996, NGOs and academics formed *Mitra Wanita Pekerja Rumahan Indonesia (MWPRI)* in Malang, East Java. In mid-2012, the Department of Foreign Affairs and Trade (DFAT) of Australian government and the Ministry of the National Development Planning (*Kementerian Perencanaan Pembangunan Nasional/Bappenas*) of Government of Indonesia collaborated to develop the *MAMPU (Maju Perempuan Indonesia untuk Penanggulangan Kemiskinan)* program.⁴⁷

There are also Non-Government Organizations (NGOs) that actively assist homeworkers in Indonesia, including the *Mitra Wanita Pekerja Rumahan Indonesia (MWPRI)* in Malang, *Yayasan Bitra Indonesia* in Medan, Trade Union Right Centre (TURC) in Jakarta and *Yayasan Annisa Swasti (YASANTI)* in Yogyakarta and Central Java currently assisting as many as 4.778 homeworkers.

⁴⁷ Haspels, *Pekerja Berbasis Rumahan*, p. 16.

CHAPTER III

RESEARCH METHOD

A. Type of Research

The type of this research is empirical legal research. Empirical research is research that related to the opinions and behaviors of community members in community life relationships. In other words, empirical research reveals the implementation of living law in society through the deeds committed by the community.⁴⁸

Empirical research is conducted by field research, which is the type of research that is oriented on the collection of empirical data in the field. Researchers will explore data through observations of data sources in the field. So, there will be a phenomenon of public law or social fact in society.

B. Approach of Research

The approach used in this research is the sociological juridical approach. This is because the issue regarding homeworkers in this research is social phenomenon that requires sociological approach to analyzing legal issues. This research is based on normative jurisprudence (regulation) but it is not reviewing the norm system in legislation, it is the observation of how reactions and interactions occur when the norm system works within the society.⁴⁹

⁴⁸ Pedoman Penulisan Karya Ilmiah Fakultas Syariah, p. 25.

⁴⁹ Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif*, (Yogyakarta: Pustaka Pelajar, 2010), p. 47.

C. Location of Research

The locations of the research are places where researchers have used to do research to obtain desired data. This research is made on the CV Berkah Anugrah located in the Rejosari, Reoagung, Ngoro, Jombang, East Java. Research was also carried out in several houses owned by homeworkers who will be the objects of this research

D. Source and Type of Data

The type of data used in empirical research comes from primary data, which is direct data obtained from problem through interviews and observations for qualitative research or the questionnaires distribution for quantitative research.⁵⁰ However, in addition this research also used secondary data as an additional material obtained from the second source. Secondary data is complementary data that can be correlated with primary data. As for the source of data intended in this research is from which data can be obtained.⁵¹ The source of this data is:⁵²

a. Primary Data

The primary data in legal research is the data obtained mainly from the result of empirical research, which is direct research in society.⁵³ Primary data obtained directly from its source, observed and recorded for the first time.⁵⁴ The words and actions of the people who observed or interviewed

⁵⁰ Pedoman Penulisan Karya Ilmiah Fakultas Syariah, p. 28.

⁵¹ Sutrisno Hadi, *Metodologi Research Jilid I*, (Yogyakarta: Andi offset, 1993), p. 66.

⁵² Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2006), p. 30.

⁵³ Fajar, *Dualisme Penelitian Hukum Normatif & Empiris*, p. 156.

⁵⁴ Marzuki, *Metode Riset*, (Yogyakarta: Adipura, 2000), p. 55.

are the main data sources that are then recorded through written notes or through video or audio tape, photo capture, or film. In this case, these data are obtained directly from the object of research through interviews with the CV Berkah Anugrah and some homeworkers

b. Secondary Data

Secondary data of legal research is the data obtained from the study of literatures or library material that relating with research materials or called legal materials.⁵⁵ Legal material consists of primary legal materials, secondary legal materials, and tesier legal materials. The primary legal material in this study is a legislation that deals with employment that is Civil Code, Law number 13 of 2003 on Manpower, Law number 11 of 2020 on Job Creation, Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. While secondary legal materials are legal materials that can provide explanations of primary legal materials, namely in the form of draft legislation, research results, books, scientific journals, newspapers, pamphlets, lefleats, brochures, and internet news. Tertiary legal material is a legal material that can provide instructions and explanations of primary legal materials and secondary legal materials, which are dictionaries, ensklopedi, lexicons, and others.

⁵⁵ Fajar, *Dualisme Penelitian Hukum Normatif & Empiris*, p. 156.

E. Data Collecting Technique

The method of data collection is the way that researchers use to get the necessary data. Researchers collect data in the following ways:

a. Interview

An interview is a method of data collecting through information that is asked directly to the informant. The Researcher use semi-structured interview technique, where researcher has prepared questions according to the theme of the research, but it still followed by a few sub-questions that are deemed necessary when conducting the interview.

b. Documentation

Investigating the documents that have corelation with the object of research and other data which relating to what is researched. The data collected may constitute information from the papers, magazines, archives and other books about the system of home work

F. Data Analysis Technique

The social facts that become the data in this research will be processed through several steps, namely:

a. Editing

Reexamination of the completeness of data obtained, the clarity of meaning, the consistency of answer or information, the relevance to research, as well as the uniformity of data received by researchers. So that, with these data

can get an overview of the answers, while also able to solve the problems that are being researched.

b. Classifying

All data both from interviews, research observations and related documents will be read and studied in depth. So, the data that exists is only data related to the formulation of problems and research objectives.

c. Verifying

Rechecking to obtain the validity of data so that the existing data can be verified, or in other words the data verification is as something that is established at the time before, during, and after the collection of data in the parallel forms, to build a common insight called analysis.⁵⁶

d. Analyzing

Once the data needed is obtained from this research, then the next step is data analysis to obtain the final conclusion. Data analysis is the process of drafting data so that the data can be interpreted.⁵⁷

To achieve the objectives of the results of this research, then use a qualitative descriptive technique. According to Bodgan and Biklen, qualitative descriptive research is an effort made by way of collaborating with data, organizing data, disseminating data into manageable units, synthesizing it, searching and finding patterns, finding what is important and what is learned and revising what can be told to others.⁵⁸

⁵⁶ Nana Sudjana and Ahwal Kusumah, *Proposal Penelitian di Perguruan Tinggi*, (Bandung: Sinar Baru Algasindo, 2000), p.84.

⁵⁷ Dadang Ahmad, *Metode Penelitian Agama*, (Bandung: CV Pustaka Setia, 2000), p. 102.

⁵⁸ Hadi, *Metodologi Research*, p. 248.

In this research, researchers will describe and analyze the phenomenon, events, social activities, attitudes, perceptions, and thoughts of both the company owner and the homeworkers. Some of these descriptions are then used to find principles and explanations that lead to the conclusions.

e. Concluding

As the final stages of data processing is concluding. The meaning of concluding is the conclusion of the data obtained after the analysis to obtain an answer to the anxiety of what is displayed in the background of the problem.⁵⁹ Here, the researcher make conclusions or key points which then produce a clear, concise, and understood illustration of how the validity of the work agreement on industrail home workers reviewed from the Indonesian positive law and fiqih muamalah.

⁵⁹ Sudjana, *Proposal Penelitian*, p. 16.

CHAPTER IV

FINDING AND DISCUSSION

A. Description of Research Object

1. Brief History and Profile of CV Berkah Anugrah⁶⁰

CV Berkah Anugrah is a company engaged in the industry and trade of plastic products located in Rejoagung Village, Ngoro District, Jombang Regency, East Java. CV Berkah Anugrah began its establishment in 2000 and began its commercial operations by producing sandals, shoes and some plastic products in 2001. In 2003, CV Berkah Anugrah began to focus on producing plastic household appliances such as tablespoons, jelly spoons, bucket, hangers, and various other household appliance products.

CV Berkah Anugrah continues to upgrade his company to a plastic processing that cares about the environment. This is evidenced by the participation of CV Berkah Anugrah to be part of Indonesian Plastic Recycling Association or ADUPI (Asosiasi Daur Ulang Plastik Indonesia). The company expanded its production activities by conducting solid waste management under the guidance and direction of the Ministry of Environment in 2010.

In 2017, CV Berkah Anugrah collaborated with several hospitals to recycle non-B3 hospital solid waste (Toxic and Hazardous Materials) such as used infusion bottles, jerry cans, and others. That waste then processed into non-food grade plastic products, including urination potty for men, urination potty

⁶⁰ Komarul Huda, interview, (Jombang, 2 April 2022)

for women, defecation potty, cast/building bucket, and 25 kg polybag plastic for hospital waste. Currently CV Berkat Anugrah has two factories, all of which are located in Rejosari subvillage. The first factory is devoted to producing household appliances or other plastic items, while the second factory is for processing hospital waste.

In running its business, CV Berkat Anugrah already has several legal documents as follows:

- a. *Akta* : 1963703.198803.1803
- b. *NPWP* : 82.420.429.1-602.000
- c. *Surat Izin Usaha Perdagangan (SIUP) Kecil* : 517/940/415.35/2017
- d. *Surat Keterangan Domisili Usaha (SKDU)* : 100/67/415.70.23/2017
- e. *Izin Usaha Industri (IUI)* : 536/009/415.35/2018
- f. *Tanda Daftar Perusahaan (TDP)* : 132034700205
- g. *Informasi Tata Ruang (ITR)* : 102/3517.400-9/2017
- h. *Izin Pemanfaatan Ruang (IPR)* : 591/104/415.35/2017
- i. *Izin Perubahan Penggunaan Tanah (IPPT) untuk keperluan industri plastik* : 283/IPPT/BPN.35.17/2017
- j. *Izin Mendirikan Bangunan (IMB)* : 640/0013/415.35/2018
- k. *Rekomendasi Persetujuan Dokumen Pengelolaan Lingkungan Hidup* :
660/1758/415.34/2017
- l. *Dokumen Pengelolaan Lingkungan Hidup (DPLH)* :
660/01/038/415.34/2017

m. *Izin Lingkungan* from Bupati Jombang Mr. H. Nyono Suharli
Wihandoko : 188.4.5/410/415.103.4/2017

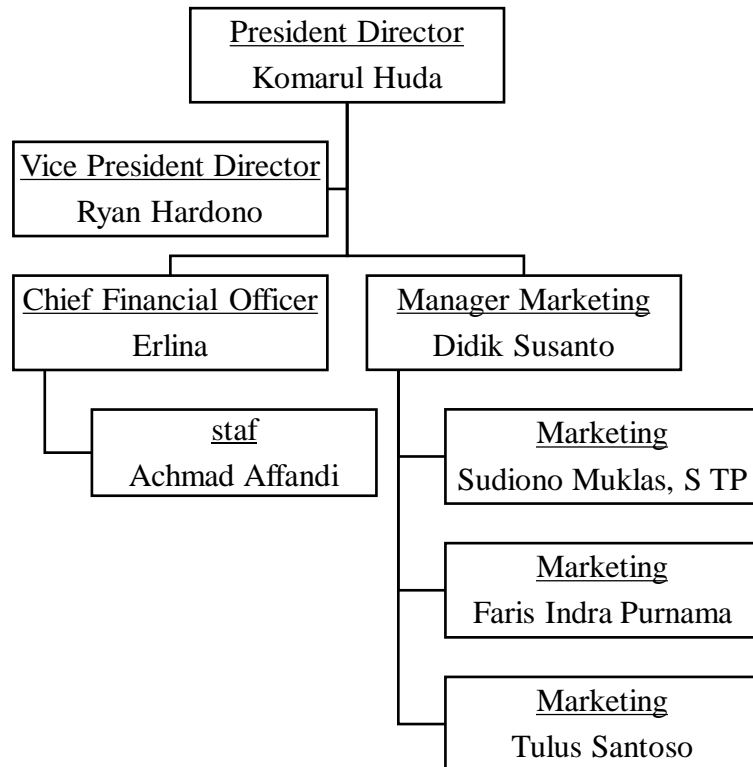
2. Vision and Mission

The vision and mission of the company is a goal or direction for the company in running its business. The vision of CV Berkat Anugrah is “*to become an integrated plastic company that dominates in Indonesia*”. Then, this vision is elaborated into a series of strategies called missions, including:

- a. Continue to innovate in line with the development of customer needs, by producing plastic goods in accordance with the latest needs in society.
- b. Specifically supporting industrial activities in Jombang Regency and national industry in general.
- c. Participate in increasing per capita income by absorbing labor from residents around industrial sites who are employed as employees and workswomen.
- d. Carrying out environmentally caring plastic management, by participating in the management of hospital solid waste in accordance with the principle of 3R (Reduce, Reuse, Recycle).

3. Organizational Structure

Chart 2. Organizational structure of CV Berkah Anugrah Jombang



4. Workers in CV Berkah Anugrah

CV Berkah Anugrah currently has dozens of workers of different ages. Almost all the workers are the people of Rejoagung Village itself, because indeed CV Berkah Anugrah prioritizes the people of Rejoagung village, especially from Rejosari subvillage. This aims to empower the people of Rejoagung village whose human resources are still low. Almost all workers in CV Berkah Anugrah are graduates of elementary school (Sekolah Dasar/SD), junior high school (Sekolah Menengah Pertama/SMP) or senior high school (Sekolah Menengah Atas/SMA).

Workers in CV Berkat Anugrah are divided into two types of workers based on their wage payment system, namely daily workers (*pekerja harian*) and wholesale workers (*pekerja borongan*). For daily workers, their wages are calculated from the number of days they work, while the wholesale workers' wages are calculated from how many products they do. Daily workers are devoted to work done in factories, while wholesale workers for work done outside the factory, so it can also be called home workers. Daily workers are in charge of the production department that operates machines, such as shredders, plastic product printing machines (molding), and shredders (*incirenators*), while home workers are in charge of sorting products, finishing and packing.

The division of labor in CV Thanks to grace for daily workers is distinguished between male workers and female workers. Male workers are tasked with making and preparing materials by operating shredders or *increnators*, while female workers are in charge of production using plastic product printing machines (molding). However, for home workers it is not determined the division of labor between men and women. Anyone can work as a home worker on a CV Berkat Anugrah as long as they can do the work according to the provisions set by the company.

Daily workers are divided into two shifts every day, namely morning shifts (07.00-11.00 wib) and afternoon shifts (13.00-16.00 wib). There are also those who work overtime at night. Usually the morning shift consists of 23 workers, the noon shift is 6 workers, and for overtime 6 workers.

Each daily worker has their own attendance that records the hours they start and finish working. So that each worker has a different time in doing his work. This causes the wages received by each worker is different. Wages are given to workers every weekend. For daily workers who work a full week from Monday to Saturday will be rewarded in the form of additional wage bonuses. The amount of the bonus is equivalent to wages for one day. While the wages for home workers are calculated using a per piece system and do not depend on the length of working hours, so it is adjusted to the results of work that can be completed by home workers.

B. Data Exposure

This research involved several home workers who all worked on CV Berkas Anugrah for a long time, at least 5 years. The research was conducted 2 times, in 2020 and 2022. All the home workers in this study were the people of Rejosari Hamlet. Based on an interview with CV Berkas Anugrah said that there were once workers who came from outside the Rejosari Hamlet area, but did not last long because they often did not get the products that would be done.⁶¹

Based on the results of interviews with CV Berkas Anugrah and some of the home workers, the data is obtained as follows:

1. Work System of Homemaker in CV Berkas Anugrah

Home workers in CV Berkas Anugrah are employed using the putting out system model, which is part or all of the production process where

⁶¹ Endah Sugiarti, interview, (Jombang, 14 March 2020)

production activities are carried out outside the factory. However, CV Berkat Anugrah does not fully use this system in all its production processes. Only the finishing process is done in a puttig out system. The process of processing raw materials into semi finished product is carried out in the factory. This is because the process of making products is carried out using machines. The semi-finished products are then handed over to home workers to be spruced up, sorted and packaged in their homes or elsewhere outside the factory. After that, home workers hand over the results of the packaged products back to the factory. So, CV Berkat Anugrah does not use intermediaries in hiring home workers. Home workers pick up the products they are going to work directly from the factory.

The workload carried out by home workers is uncertain, as it adjusts the products produced by the factory. For example, for jelly spoon products, tablespoons, and forks, home workers are tasked with tidying products from molded remains and packing products into plastic bags. As for fruit fork products, home workers are tasked with folding the mica boxes for packaging as well as packing the products. This causes the wages given for each product are different, depending on what product is done. Home workers do not have a definite wage every month. The wage payment system for home workers in CV Berkat Anugrah is carried out on a wholesale basis, namely wages calculated per unit of product that can be done by workers.

In doing his work, tools and materials used by home workers such as plastic packaging, mica boxes, cardboard, insulation, scales, and press machines, are provided by CV Berkat Anugrah. However, for other supporting

equipment such as scissors, bucket, and containers are provided by workers themselves. Because the work is done outside the factory, work facilities such as workplaces, electricity, and the cost of distributing goods from the home of the home worker to the factory are also borne by the workers themselves

CV Berkat Anugrah does not require a time limit on processing, but generally workers take products from the factory in the morning and submit the results of their work in the afternoon. In every pick-up or return of products, records are made by the factory. The recording is in the form of names and many products produced by home workers. This record by employers is used to determine the amount of wages that will be received by home workers every weekend.

CV Berkat Anugrah does not use intermediaries to hire home workers, they recruit home workers directly. However, researchers found that among the home workers there were those who had hired home workers again, without any notice to the CV Berkat Anugrah. This practice is done because there are people who want to work on CV Berkat Anugrah as a home worker but are still hesitant, so try first before actually deciding to work at CV Berkat Anugrah.

2. Condition of Home Worker

The existence of home workers in CV Berkat Anugrah began from the owner's concern for the many people of Rejosari Hamlet who are still in poverty. The majority of the people of Rejosari Hamlet work as farmers whose income is only exists when harvesting. Even if the harvest is successful, if they

experience crop failure then they have no income at all and even tend to lose money. Even though the needs of life are getting higher. This situation encourages the owner of CV Berkah Anugrah to invite the people of Rejosari Hamlet, especially housewives who are considered to have a lot of free time at home to participate in finding additional income to meet their daily needs, so they do not just rely on the head of the household.

CV Berkah Anugrah offers a job that is quite easy and flexible for housewives to do. Considering that housewives are limited in their space because they have domestic responsibilities in their homes such as cleaning the house, cooking, taking care of children, and various other domestic tasks.

CV Berkah Anugrah gives freedom to the housewife in doing the work that given. Whether it is free working hours without disturbing the busyness as a housewife, a free workspace that can be done at home, and work that is quite easy to do. "*Pekerjaan yang ditawarkan kepada Ibu- ibu ya pekerjaan yang sekiranya bisa disambi mengerjakan pekerjaan rumah*"⁶² The job offered by CV Berkah Anugrah includes finishing products, tidying up products, and packaging products. While the process of making products is done in the factory. So that the housewives are also involved in the production process even though they do not work inside the factory.

Although home workers look profitable for housewives because they are free to determine their own working hours, workplace, and even work tools, this freedom is risky for workers. This freedom has an impact on the lack of

⁶² Erlina, interview, (Jombang, 10 March 2020)

binding supervision from CV Berkah Anugrah, making it very vulnerable to violations in labor practices.

The presence of home workers who spread not in one place (factory) makes them poorly organized and difficult to monitor their working conditions. Especially in CV Berkah Anugrah, home workers are employed with a wage system that is calculated in piece-rate, so that it systematically requires workers to work with a high level of productivity. This triggers home workers to only pursue wages without regard to their working conditions.

The more work that can be completed, the more wages will be earned. Often the home workers put aside household work and prefer to do work from employers. In fact, in order to pursue higher targets, some home workers invite their relatives or children to help. It is particularly vulnerable to the emergence of the practice of child labor and unpaid labor because children have a tendency to be given orders on the basis of volunteering to help with homework. *“kadang kalau garapan lagi banyak ya dibantu sama anak-anak, soalnya kan saya juga ke sawah kalau tidak dibantu ya tidak bisa selesai”*⁶³ *“kalau pekerjaannya belum selesai padahal sudah harus disetor ke pabrik ya biasanya ada tetangga yang bantu, atau biasanya kalau saudara berkunjung ke rumah ya sambil bantu-bantu”*⁶⁴ In this research, all home workers interviewed stated that they had involved their children or relatives to help their work.

⁶³ Dwi Indah Setyorini, interview, (Jombang, 14 March 2020)

⁶⁴ Alfiyah, interview, (Jombang, 13 March 2020)

The freedom to determine working hours also causes high risk for home workers. Although the original purpose was for workers to be able to do work in between their busy lives as housewives, in practice unlimited working hours triggered workers to continue working more than 7 hours per day. *“saya kalau ngerjakan ini ya tidak pasti jamnya, soalnya saya kan juga ke sawah, kadang kalau malam nggak kerasa tiba-tiba sudah jam 12.”*⁶⁵

In this research, all home workers interviewed did not know about the provision of maximum working time limit. The CV Berkat Anugrah also does not know how long the workers have worked, because it is completely up to the workers. *“Biasanya saya mulai ngerjakan ini sekitar jam delapan saat anak-anak sudah berangkat sekolah, terus istirahat jam 12 kemudian jam 2 lanjut kerja lagi sampai sore. Tapi ya tidak selalu seperti itu, disesuaikan sama kegiatan hari itu, kadang lama bekerjanya. Tergantung sama banyaknya barang juga.”*⁶⁶ Although in CV Berkat Anugrah there are day off in every week, but the work system that is not bound by time makes home workers do not apply provisions regarding holidays or leaves according to existing regulations. Workers are free to determine for themselves when they work and when they take time off from work.

Working for a long time poses a high health risk, because it is prone to work accidents as a result of work fatigue. But, homeworkers bear the medical expenses themselves in case of a work accident. According to the workers, the

⁶⁵ Setyorini, interview, (Jombang, 14 March 2020)

⁶⁶ Siti Riadhoh Solikhatin, interview, (Jombang, 15 March 2020)

work they do is easy and harmless. Moreover, they themselves determine how they work, so that all risks that may occur are their own responsibility. Pain that is usually suffered by workers is back pain caused by sitting too long, or injuries due to being hit by scissors, press machines or other work tools. *“gunting yang dipakai ini kan tajam sekai ya, soalnya buat menggunting sendok plastik. Pernah tangan saya tidak sengaja terkena gunting jadi harus hati-hati.”*⁶⁷ Until now, CV Berkat Anugrah has never received health complaints or requests for medical expenses from homeworkers. From these circumstances, it can be seen that occupational health and safety issues are ignored by the employer as well as the workers themselves. Disruption of health due to work activities and work accidents as a risk of work are borne by the homeworkers as a consequence of the work they did.

A free workplace that determined by the workers themselves, automatically causes the work facilities such as electricity, as well as work support equipment to be provided by the workers themselves. Including the maintenance costs. The tools provided by the factory include insulation, scales and presses machine, but not all workers get them. While equipment such as scissors, sacks, and containers are provided by workers themselves. Because the workplace is outside the factory, the cost of distributing goods from the worker's house to the factory is borne by the workers themselves.

The workers interviewed in this research stated that they had no problem with it, because according to them, the tools used were tools that were

⁶⁷ Alfiyah, interview, (Jombang, 13 March 2020)

already in their homes, besides that the distance between their homes and factories was quite close because it was still in one area of Rejosari hamlet, so it did not require transportation costs.

Home workers do their work in their houses, but there are also those who have their own places or rooms near their houses. The increasing function of the house into a workplace makes the home environment unsafe and uncomfortable. It is common for homeworkers' houses to look like warehouses or mini factories, because of the large number of semi-finished products or finished products inside their houses. This makes the condition of the house becomes more crowded than other houses in general and less suitable as a place to live.

In addition, dangerous tools and materials can hurt workers and their families. But the workers do not mind this, because they themselves want to do their work in their houses. *“Kadang saya merasa khawatir kalau anak-anak mainan gunting atau pisau yang saya pakai untuk bekerja, jadi harus benar-benar disimpan di tempat yang aman.”*⁶⁸ *“biasanya plastik sisa-sisa guntingan pinggiran sendok itu kan lancip, jadi sakit sekali kalau tidak sengaja terkena kaki ketika berjalan, kadang anak-anak atau kerabat yang sedang berkunjung ke rumah sering kena, bahkan saya sendiri juga sering kena, jadi harus rajin-rajin dibersihkan.”*⁶⁹

⁶⁸ Nanik, interview, (Jombang, 15 March 2020)

⁶⁹ Setyorini, interview, (Jombang, 14 March 2020)

Although still in one area (Rejosari hamlet) but the workers tend to work individually. Job competition among home workers has become quite tight. In CV Berkah Anugrah, workers whose houses are closest to the factory site, get more jobs than workers whose houses are far from the factory site. *“karena rumah saya jauh dari pabrik, saya sering tidak kebagian garapan. Biasanya saya tahu ada garapan ya dari pekerja yang harian itu ngasih tau, kadang juga tidak dikasih tau, mungkin karena saya sudah tua, sering salah ngerjakannya, dan juga lama ngerjakannya”*⁷⁰ *“tiap pagi ya harus ngecek ke pabrik, biar tau kalau ada garapan, kalau gak gitu ya bakal ketinggalan sama yang lain”*⁷¹.

Competition becomes more and more intense when factories produce fewer products. For example, during the Covid-19 pandemic, the factory reduced its production by more than half its usual production, resulting in many home workers not getting goods to work, so that half of them could not work and earn income. In addition to competing with fellow home workers they also compete with daily workers who double as home workers.

So, some workers work twice, when in the morning or afternoon they work in the factory according to shifts, and when they go home they bring goods to work at home, so that they get paid twice, as daily workers and as wholesale workers according to the products they have worked on. *“Sejak pandemi covid ini saya sudah tidak mengambil barang lagi dari pabrik, sungkan sama pekerja*

⁷⁰ Alfiyah, interview, (Jombang, 13 March 2020)

⁷¹ Jami'an Ashari, interview, (Jombang, 15 March 2020)

*harian di pabrik, produksi barang semakin sedikit, barang juga jadi rebutan dengan pekerja harian di pabrik,”*⁷²

From the discussion mentioned above, it can be seen that the working conditions of home workers are very at risk of exploitation at work. Home workers work with unlimited working hours and workplace. Home workers work outside the factory without supervision. They use the assets (houses, furniture and contents) and the resources of the house (electricity, water and occupants of the house) belonging to the worker personally, without being taken into account as part of the production costs that should be the responsibility of the entrepreneur. The salary system is disproportionate, the minimum wage is paid not based on units of time but based on units of output, without bonuses and without allowances. There is no time off or leave, the absence of social security and health insurance. There is also no certainty in the continuity of work.

The risks mentioned above, are not realized by home workers or by the CV Berkah Anugrah itself. They assume that the work they do is just a side job, as a means to make extra money and just to fill their free time. In addition, this type of work does not require special skills, monotonous and temporary, so they consider it reasonable or appropriate if the working conditions are not proper when compared to workers in general. Precisely with this home based working, they feel very lucky because they are given job opportunities even if only at home and can earn money in a short time (every week). *“awalnya saya tidak*

⁷² Siti Riadhoh Solikhatin, interview, (Jombang, 1 April 2022)

tertarik dengan pekerjaan ini soalnya dapat(uang)nya sedikit, tapi daripada saya tidak jelas mau ngapain jadi ya saya lakukan saja sambil jaga toko, lumayan bisa dapat uang tambahan”⁷³

The home workers do not consider that this activity they do as working in the true sense. According to them, the world of work connotation is work done outside the home such as in rice fields, in the market, in factories, or elsewhere, while the activities they do are in their own home and very flexible. They are also not sure that they can be called workers or not. In this research, some home workers stated that their status in official government data (on identity cards (Kartu Tanda Penduduk/KTP) and Family Cards (Kartu Keluarga/KK)) was as a housewife, farmer, entrepreneur, or self-employed person, not as a worker.

This is in accordance with the explanation from the ILO Organization which stated that homeworkers are often faced with several problems, including:⁷⁴

- a) There is no written work agreement/ employment contract,
- b) no bargaining position,
- c) wages under the minimum wage of Regency/City,
- d) working hours often too long,
- e) no jobs guarantee or uncertain income,
- f) no social security,

⁷³ Ashari, interview (Jombang, 15 March 2020)

⁷⁴ International Labour Organization, *Leaflet Mengenal Pekerja Rumahan*, https://www.ilo.org/jakarta/whatwedo/publications/WCMS_318038/lang--en/index.htm, accessed 30 September 2019

- g) no guarantee of occupational safety and health,
- h) no maternal protection (pregnancy, childbirth and breastfeeding),
- i) no mechanism for dispute resolution,
- j) barriers to forming or running union activities,
- k) involvement of child labor,
- l) Bears some of the production costs and risks that are generally the responsibility of the employer.

In addition to the problem of employment conditions above, in general homeworker also face major challenges, which are:

- a) invisible (in terms of representation, policies, programs, budgets, etc);
- b) covered by regulation in Law No. 13 of 2003 on Manpower, but in reality does not receive the rights and protections as regulated in the Law;
- c) often unknown as workers and often unaware of their existence as workers;
- d) scattered and disorganized, lack of awareness and ability to enforce rights;
- e) complicated supply chains and layered intermediaries so that work relationships are often 'vague' and their working conditions are difficult to monitor and supervise.

3. Implementation of Work Agreements for Homeworker at CV Berkat Anugrah

Work agreements on home workers on CV Berkat Anugrah are done simply and concisely. Recruitment of work is carried out directly without any complicated mechanisms. Prospective workers only have to meet the CV Berkat

Anugrah in person. Then the CV Berkat Anugrah will explain about how the work system, what is done, the payment process, and the amount of wages that will be received by home workers. *“kalau dulu pada awalnya jika mau kerja harus menghadap Ibu Erlina (Istri Bapak Komarul Huda selaku pemilik CV Berkat Anugerah) secara langsung, tapi kalau sekarang cukup menemui saya saja sudah bisa. Soalnya kan saya yang mencatat keluar masuknya barang, kalau ada pekerja yang ingin mengambil barang untuk dikerjakan ya harus bertanya ke saya dulu, terus kalau mau setor juga bilang ke saya”*⁷⁵ *“Mbak Endah itu orang yang dipercaya oleh Ibu Erlina, ya mandor lah mbak, kalau ada apa-apa kita bilang ke Mbak Endah, kalau mau ambil barang atau setor barang ya ke dia.”*⁷⁶

The mechanism of accepting workers is, if there is someone who intends to work as a home worker, then he must meet Mrs. Erlina as the owner of the company, after being approved, the worker will be directed to meet Mrs. Endah as the foreman. When meeting this foreman, workers are explained in more detail about the work system, orders, and wages to be obtained. However, over time, if someone want to apply for a job as a home worker, it is enough to tell the foreman trusted by the CV Berkat Anugrah, without the company owner, even though the position is not included in the ranks of the company's organizational structure, but has a quite crucial position in accepting home workers.

⁷⁵ Endah Sugiarti, interview, (Jombang, 2 April 2022)

⁷⁶ Kamimah, interview, (Jombang, 1 April 2022)

Matters regarding the workload and the types of orders that must be done as well as the amount of wages in each job are not explained at the beginning of the employment agreement, but explained over time adjusting the products produced by the factory. This is because the work done by home workers is different, depending on the products that produced by the factory at that time.

For example, for jelly spoon products, home workers are tasked with packing products into plastic packaging with a quantity of 1 kilogram. For tablespoon products (PS spoons), home workers are tasked with packing products into plastic with a quantity of 100 pieces into one package. For small fork products, home workers are tasked with folding mica packaging and also packing forks into the mica packaging with a quantity of 55 forks. The wage earned for jelly spoon products is Rp 500 per pack, for tablespoon products is Rp 100 per pack, and for small fork products is Rp 100 per pack.

There is no specific criteria if someone wants to work as a home worker at CV Berkat Anugrah, it's just that the CV Berkat Anugrah will pay attention to the following things, that is

- a. people whose houses are quite close to the factory
- b. the person is neat, patient, painstaking, and careful
- c. able to finish work quickly

The form of work agreement in CV Berkat Anugrah is verbally, there is no written agreement. When receiving workers, there is no letter of appointment from the CV Berkat Anugrah. There is no formality whatsoever.

This practice has been practiced for many years, so it has become a habit. Workers and employers already know about the meaning and purpose of the work agreement. So that the basis for determining the work agreement is only limited to mutual trust between the workers and the CV Berkat Anugrah. *“yang bekerja ini kan masyarakat sekitar pabrik saja, tetangga sendiri, saudara sendiri, jadi kalau mau kerja langsung saja, tidak perlu pakai sistem yang terlalu formal.”*⁷⁷

Some home workers are aware that their work agreements are not up to standard and they are employed without a formal agreement. However, they understand this because the company is just a CV that is considered not too big. In addition, the type of work that is easy and the work system is flexible, which can be done anytime and anywhere according to the wishes of the workers themselves. It raises the perception that what they do is not working in the true sense. And they assume that home workers are just a sideline between their busy life as a housewife or as workers in other sectors, such as farmers, sellers, and others.

On the other hand, employers are concerned to make formal agreements or contracts with home workers because of the characteristics of home workers that are very flexible, so it is not clearly regulated in labor law. Home workers are considered as additional labor that is only used when needed. This causes the number of home workers in the CV Berkat Anugrah is not

⁷⁷ Erlina, interview, (Jombang, 10 March 2020)

known with certainty and tends to be fluctuating according to the needs of the factory.

In this research, researchers interviewed 5 home workers in 2020. In 2022, 3 out of 5 people are no longer working as home workers on CV Berkat Anugrah. They lost their jobs because the competition with other home workers is getting tougher. This is due to less factory production due to the Covid-19 pandemic. *“Adanya pekerja rumahan ini kan awalnya hanya sebagai pekerja tambahan apabila pekerjaan di pabrik overload, jadi tidak ada catatan khusus tentang pekerja rumahan ini”*.⁷⁸

CV Berkat Anugrah has no records or information about home workers. There is only a record of the results of each worker's work when taking the product and returning the product. The note only lists the name and how many items were taken and deposited by the home worker. The note will be used to determine the wages to be given to workers.

In this research, researchers found that there are home workers who hire workers again without the knowledge of the CV Berkat Anugrah. This is done because there are others people who want to work as a home worker but still hesitate and want to try first by participating in the work of one of the home workers. *“Dulu sempat ada yang ikut membantu karena ingin mencoba dulu sebelum benar-benar memutuskan untuk bekerja di CV berkat Anugrah, tapi ternyata tidak cocok dengan gaji yang didapatkan, ya tidak jadi.”*⁷⁹

⁷⁸ Erlina, interview, (Jombang, 10 March 2020)

⁷⁹ Alfiyah, interview (Jombang, 13 March 2020)

Workers who are not organized in a formal factory working relationship also have a negative impact that can hinder the company. CV Berkat Anugrah experienced several problems while employing these kind of homeworkers. Some of the most frequently encountered obstacles include:

- a. untidy in doing the work according to factory standart
- b. not finished on time

*“Kadang ada yang kurang teliti jadi banyak pekerjaannya yang tidak rapi, biasanya yang seperti itu harus dikerjakan ulang sehingga memakan waktu lebih banyak. Yang paling sering ya tidak selesai tepat waktu. Biasanya ketika barang sudah harus dikirim ternyata barangnya tidak ada di pabrik, belum selesai dikerjakan sama pekerja rumahan”.*⁸⁰

This is the most common problem experienced by CV Berkat Anugrah due to the uncontrolled work system in one factory area. Although CV Berkat Anugrah tends to employ people around the factory, but the manufacturing process that is not directly supervised raises the risk of a discrepancy between the work result of the homeworkers and the standards desired by CV Berkat Anugrah.

C. Data Analysis

Based on the presentation of the research data above, here is the analysis of data according to the perspective of positive law in Indonesia and according to Islamic law, in this case is fiqh muamalah:

⁸⁰ Sugiarti, interview, (Jombang, 2 April 2022)

1. Work agreement for homeworkers at CV Berkat Anugrah in terms of positive law in Indonesia

The work agreement is the starting point for the employment relationship between the employer and the worker. The Manpower Law clearly states that, *“The employment relationship occurs due to an employment agreement between the employer and the worker/laborer.”*⁸¹

Therefore, the existence of an work agreement is crucial for workers and employers to clarify the working relationship between the two parties. Especially for types of work that are very vulnerable to exploitation such as home workers who are employed by putting out the system.

The employment agreement can serve as a binder between workers and employers so that the relationship between workers and employers can be ideal in accordance with the provisions applicable in Indonesia, without anyone being harmed by either party, because in the work agreement listed all basic things in the working relationship that guarantee certainty to protect both parties, such as work conditions, rights and obligations of both parties. This is in accordance with the understanding of the work agreement itself according to the Manpower Law namely, *“The employment agreement is an agreement between workers/laborers and employers that contains the terms of work, rights, and obligations of the parties”*.⁸²

⁸¹ Article 50 of Manpower Law

⁸² Article 1 of Manpower Law

Work agreements in hiring home workers who are employed by putting out the system must certainly be seen from various aspects of the law, namely the Civil Code, Law number 13 of 2003 on Manpower, and Act number 11 of 2020 on Job Creation Law as a renewal. In general, based on Article 1601a of the Civil Code, it states, “*A work agreement is an agreement in which the party of one worker, binding himself to under his orders the other party, the employer for a certain time, performs the work by receiving wages.*”

Based on this understanding, one of the most important things in the work agreement is the word agreement between the two parties to agree and implement the agreement they have made. With the agreement, it indicates that both parties are right and ready to bear any risks that may occur due to the agreement. This agreement is the basis for implementing an employment agreement between home workers and CV Berkah Anugrah. In CV Berkah Anugrah there is only an agreement on the employment relationship not the work agreement as a whole. The employment agreement is only done orally without any written agreement.

The Manpower Law allows a work agreement to be implemented orally. This is in accordance with article 51 of the Law number 13 of 2003 on Manpower, “*work agreements are made in writing or orally*”.⁸³ However, the use of oral work agreements cannot be implemented to employ any kind of worker. There are certain types of jobs that must be employed using an work agreement in writing.

⁸³ Article 51 verse 1 of Manpower Law

The oral work agreement is considered valid according to the law as long as it does not conflict with the terms of the agreement, both the terms related to the subject of the agreement (subjective terms) and the conditions related to the object of the agreement (objective terms). These conditions are regulated in Article 1320 of the Civil Code and are also regulated in article 52 of the Manpower Law. The legal requirements of the employment agreement according to the labor law are:

The work agreement is made on the basis of:

- a. agreement of both parties;*
- b. ability or proficiency to perform legal acts;*
- c. the promised work; and*
- d. the work promised does not conflict with public order, decency, and applicable laws and regulations.⁸⁴*

Subjective terms in this case are the agreement of both parties and the ability to perform legal acts. If these conditions are not met then the legal consequences of the agreement can be canceled. As for the objective terms, namely regarding the existence of promised work and the work must not be contrary to the public order of decency, and the applicable laws and regulations then if it is not fulfilled then the legal consequence is that the agreement is null and void.⁸⁵ The agreement is null and void, meaning that the agreement was never born from the start, and thus there has never been an engagement.⁸⁶

⁸⁴ Article 52 verse 1 of Manpower Law

⁸⁵ Article 52 verse 2 and 3 of Manpower Law

⁸⁶ Elly Erawati dan Herlien Budiono, *Penjelasan Hukum tentang Kebatalan Perjanjian*, (Jakarta: Nasional Legal Reform Program, 2010), https://putusan3.mahkamahagung.go.id/restatement/download_file/11e9b3892cfdca8ab85313834383535/pdf/11e9b3892cfdcaf68b7b313834383535.html, accessed 2 February 2022

Based on these provisions, the work agreement at CV Berkat Anugrah has met the subjective requirements of the validity of the work agreement. Although without a written agreement, both the home worker and the CV Berkat Anugrah have agreed to be bound to each other in a working relationship. But it cannot be denied that this agreement is an agreement made unilaterally by CV Berkat Anugrah itself and workers inevitably have to agree to the agreement if they intend to work at CV Berkah Anugrah. However, both the home worker and the CV Berkat Anugrah do not object to the form or content of the work agreement carried out. In addition, for the requirements of the prowess of the parties, both the workers and CV Berkat Anugrah are considered capable and able to perform legal acts.

But for objective terms, the work agreement between home workers and CV Berkat Anugrah found some problems. Based on the exposure to the data that has been described above, in employing home workers found several problems that harm the home worker, among others:

- a) There is no written work agreement/ employment contract,
- b) no bargaining position,
- c) wages under the minimum wage of Regency/City,
- d) working hours often too long,
- e) no jobs guarantee or uncertain income,
- f) no social security,
- g) no guarantee of occupational safety and health,
- h) no maternal protection (pregnancy, childbirth and breastfeeding),

- i) no mechanism for dispute resolution,
- j) barriers to forming or running union activities,
- k) involvement of child labor,
- l) Bears some of the production costs and risks that are generally the responsibility of the employer.

Some of these problems occur due to stigma about home workers who are only considered as side workers and do not include as a work in the real sense. So that their existence is less noticed. As a result they cannot access the rights of workers in general, such as various guarantees and protections from the government. Some of the home workers in this research stated that they worked as home workers only for additional activities besides their main jobs as farmers, shopkeepers, or as housewives. CV Berkas Anugrah also initially hired home workers to help the community around the factory to get extra money, not deliberately hiring home workers from the beginning.

Since the enactment of the Job Creation Law, some of the problems experienced by home workers began to be regulated. For example, regarding working hours, although it is regulated that every employer is obliged to implement the provisions of working time, with the following provisions:⁸⁷

- 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.

⁸⁷ Article 81 number 21 of Job Creation Law

However, these provisions are excluded for certain business sectors. Government Regulation Number 35 of 2021 concerning Work Agreements for a Specified of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, regulates business sectors that are allowed not to follow the provisions of working time, with characteristics:⁸⁸

- a. Work can be done less or more than 7 hours a day or 40 hours a week and 8 hours a day or 40 hours a week.
- b. Flexible working time or flexi work
- c. Work that can be done outside the work site.

This indicates that the rules of working hours mentioned earlier are only as basic calculations and are not standard in nature. Through this provision, it can be known that the Job Creation Law regulates also flexible types of work, not bound by place and time. Everything returned based on the agreement agreed by the worker as well as the employer.

Regarding wages, the Job Creation Law also added new provisions regarding the classification of wage types.

“Wages are set based on:

- a. Unit of time; and/or*
- b. Unit of results”⁸⁹*

In Government Regulation Number 36 of 2021 on Wages, it is further regulated regarding wages based on unit result.

⁸⁸ Government Regulation Number 35 of 2021 on Work Agreements for a Specified of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment

⁸⁹ Article 81 number 25 of Job Creation Law

- (1) wages based on the unit of results as intended in article 14 letter b shall be determined in accordance with the results of the work that has been agreed upon
- (2) determination of the amount of wages as intended in paragraph (1) shall be carried out by employers based on the results of agreements between workers/workers and employers.⁹⁰

Based on the new provisions, there are no problems with the working practices of home workers. The job creation Law gives workers and employers the freedom to enter into work agreements as needed. With this explanation, the use of home workers by CV Berkah Anugrah is allowed, according to the law in Indonesia.

Although the Law seems to give freedom in making work agreements, but still must be in accordance with other provisions. The Job Creation Law classifies a work agreement into 2, that is, a work agreement made for a certain time and for an indefinite time.

- (1) The work agreement is made for a certain time or for a non-specified time.
- (2) work agreement for a certain time as intended in paragraph (1) is based on:
 - a. period of time; or
 - b. completion of a certain work.
- (3) The period or completion of a certain work as intended in paragraph (2) shall be determined by the work agreement.
- (4) Further provisions regarding certain time work agreements based on the period or completion of a particular work shall be provided for in Government Regulations.⁹¹

The Work Agreements for a Unspecified of Time (*Perjanjian kerja Waktu Tidak Tertentu/PKWTT*) is specifically for work that is permanent in

⁹⁰ Article 15 of Government Regulation Number 36 of 2021 on Wages

⁹¹ Article 81 number 12 of Job Creation Law

nature. The Job Creation Law provides an explanation of permanent workers. *“What is meant by permanent work is work that is continuous, unbroken, not time-limited and is part of a production process in one company or work that is not seasonal.”*⁹² This type of worker is a worker who works regularly and sustainably in a company.

The Work Agreement Work Agreements for a Specified of Time (*Perjanjian Kerja Waktu Tertentu/PKWT*) cannot be done for a fixed type of work. The Job Creation Law states,

Work agreements for a certain time can only be made for certain jobs that according to the type and nature or activity of the work will be completed within a certain time, namely as follows:

- a. work that is once completed or which is temporary in nature;*
- b. work that is estimated to be completed in the not too distant future;*
- c. seasonal work;*
- d. work related to new products, new activities, or additional products that are still under trial or exploration; or*
- e. work whose type and nature or activity is not fixed.*⁹³

Based on the criteria mentioned above, the practice of home workers in CV Berkas Anugrah should be employed using *PKWT*. This is because home workers are considered seasonal workers who are only needed when the factory is overloaded in producing goods. In the attachment of the Job Creation Law explains that, *“The work required due to certain conditions then the work is a seasonal work that does not include permanent work, so it can be the object of a certain time work agreement.”*⁹⁴

⁹² Attachment of Article 81 number 15 of Job Creation Law

⁹³ Article 81 number 15 of Job Creation Law

⁹⁴ Attachment of Article 81 number 15 of Job Creation Law

Government Regulation Number 35 of 2021 on Work Agreements for a Specified Period of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, mentions that seasonal work is categorized into two, namely work that depend on the season or weather, and work that depend on certain condition. It is further stated in article 7 paragraph (3) of Government Regulation number 35 of 2021 that work which implementation depends on certain conditions is additional work carried out to fulfill certain orders or targets.

Regarding the maximum time limit in employing workers using *PKWT*, Article 8 of Government Regulation Number 35 of 2021 states that,⁹⁵

- (1) PKWT based on the period can be made for a maximum of 5 (five) years;*
- (2) in the event that the period is about to expire and the work carried out has not been completed, it can be carried out to extend the PKWT with a period of time according to the agreement between the employer and the worker / laborer with the provisions of the entire term of the PKWT and its extension of not more than 5 (five) years;*
- (3) the working period of the worker/laborer in the event of an extension of the PKWT period is still calculated since the occurrence of the PKWT employment relationship.*

Based on these provisions, *PKWT* can only be carried out for a maximum of 5 years. In the practice of working for home workers at CV Berkah Anugrah, the average worker has been working for more than 5 years, and without any extension. Workers can work continuously according to their ability and willingness. This causes problems regarding the status of the work

⁹⁵ Article 8 of Government Regulation Number 35 of 2021 on Work Agreements for a Specified Period

agreement applied. The basic difference between *PKWT* and *PKWTT* is the working time limit, where *PKWT* is limited by a period of time while *PKWTT* has no time limit other than the time to retire or the worker dies.

PKWT cannot be done to employ permanent workers. If the *PKWT* is done for work other than those mentioned in article 81 number 15 Job Creation Law above and it is done for permanent work then the consequence is that the agreement is for the sake of legally changed to *PKWTT*.⁹⁶

Regarding the form of the work agreement, *PKWT* cannot be done orally and must be in writing.

- (1) *The work agreement for a certain time is made in writing and must use Indonesian and Latin letters.*
- (2) *In the event that the time work agreement is made in Indonesian and foreign languages, if then there is a difference in interpretation between the two, the certain time work agreement made in the Indonesian applies.*⁹⁷

The verbal work agreement applied to employ home workers at CV Berkat Anugrah and also *PKWT* which are carried out for more than 5 years resulted the agreement being null and void, so it turned into *PKWTT*, so that home workers must be employed as permanent workers. The status of home workers changed to permanent workers on CV Berkat Anugrah who are employed using *PKWTT*, so that home workers get several rights, including:

- a. entitled to wages after completion of the work in accordance with the agreement

⁹⁶ Article 81 number 15 of Job Creation Law

⁹⁷ Article 81 number 13 of Job Creation Law

- b. entitled to social security
- c. entitled to other facilities, relief funds, and others applicable in the company
- d. entitled to non-discriminatory treatment
- e. entitled to occupational health and safety protection, death, and awards
- f. entitled to freedom of association

If the work agreement is done orally, then the employer is obliged to make a letter of appointment of work. This is in accordance with the provisions of article 63 of the Law number 13 of 2003 on Manpower, namely,

- “(1) In the event that the work agreement of the time is not specified to be made orally, then the employer is obliged to make a letter of appointment for the worker / labour concerned.*
- (2) Letter of appointment as intended in paragraph (1), at least containing information:*
 - a. the name and address of the worker/worker;*
 - b. start date of work;*
 - c. type of work; and*
 - d. the amount of wages.”⁹⁸*

In this research, although the work agreement to employ home workers was done orally, CV Berkah Anugrah did not make a letter of appointment. This is certainly not in accordance with the applicable regulations. Based on the description, it can be concluded that the work agreement made to employ home workers on CV Berkah Anugrah is not in accordance with the positive laws that apply in Indonesia.

⁹⁸ Article 63 of Manpower Law

2. Fiqih Muamalah Review of Work Agreement Practices on Industrial HomeWorker in CV Berkat Anugrah

This study focused on the review of Islamic law according to the general provisions of the fiqh muamalah. Fiqh is a science that seeks to understand the laws contained in the Qur'an and sunnah and which branch from it in the form of ijma' and ijtihad, to be applied to human actions. Then the science of fiqh developed into one of understanding as a mention for Islamic law.

The definition of fiqh then evolved into the meaning of religious knowledge. Or science based on religion is the second phase. In this phase fiqh covers all types, including faith of Sufism, and others. Abu Hanifah's kitab al-fiqh akbar does not offend the law at all, but its contents are matters related to the faith. In the end in the third phase fiqh is understood as a discipline of Islamic law. If at first fiqh is a tool to understand or to study, in this final phase of the fiqh becomes the object of study. A discipline studied is no longer a tool let alone a process. Fiqh means Islamic law or some refer to it as a positive law of Islam, because of the dominance of human reason in understanding revelation..⁹⁹

Unlike the provisions of positive law in Indonesia that are sourced from human reason, Islamic law is sourced and oriented towards Allah's revelation, which is in the form of the Quran and sunnah. While muamalah is a term used to discuss the relationship between humans and humans, such as the working relationship discussed in this study, that is between home workers and CV Berkah Anugrah.

⁹⁹ Muhammad Yusuf Musa, *Pengantar Studi fikih Islam*, (Jakarta: al-kautsar, 2014), p. 5.

Every relationship between human beings occurs always beginning with a contract or agreement. Likewise, in a working relationship, it always begins with a work agreement. The labor law in fiqh muamalah is called *ijarah*. *Ijarah* can be interpreted by contracts or transactions of benefits or services with certain rewards. If the object of the transaction of benefits or services of a person's labor, it is called *ijarah Dhimmah* or wages.¹⁰⁰ There are also those who call it *ijarah amal* which means renting in the form of services or human labor to do work.¹⁰¹

In order for the *ijarah* contract to be valid, it must be fulfilled in the pillars and conditions. According to the majority of scholars, there are four pillars of *ijarah*, namely *aqid*, *sighat*, *ujrah*, and benefits. Here is an explanation when used in analyzing work agreements to employ home workers on CV Berkah Anugrah:

1) *Aqid*,

Aqid is two people who have a contract. In this study, those who act as *ajir* is a home worker as a person who is employed by employer, while the one as *musta'jir* is the owner of CV Berkah Anugrah as a person who rents labor to be used. Home workers belong to the category of *ajir musytarak* because it has flexible characteristics. Home workers can work for several people at a time because the work allows it to be done as a side job. In the practice found in CV Berkah Anugrah, most workers

¹⁰⁰ Syarifudin, *Garis-Garis Besar Fiqh*, p. 216

¹⁰¹ Lubis, *Hukum Ekonomi Islam*, p. 152

make their profession as a home worker only as an additional worker in addition to his main job as a farmer, shopkeeper or as a housewife.

2) *Sighat*

Sighat means the expressions of *ijab* and *qabul*. *Ijab* is the statement of the first party regarding the content of the desired engagement, while *qabul* is the statement of the second party to accept it. The work agreement between the home worker and CV Berkah Anugrah occurs after the agreement of the work relationship that is done orally without any written agreement. therefore, the *ushlub sighat* used is a contract with *lafadz* (speech).

The mechanism of accepting workers in CV Berkah Anugrah is, if there is someone who intends to work as a home worker, then he must meet Mrs. Erlina as the owner of the company, after an agreement, the worker will be directed to meet Mrs. Endah as the foreman. When meeting this foreman, workers are explained in more detail about the work system, orders, and wages to be obtained. However, over time, if the owner of the company is busy and cannot be found, then if anyone wants to work enough to meet Mrs. Endah alone, without meeting the owner of CV Berkah Anugrah.

In this case, the pillars of *sighat* are carried out when the home worker meets the owner or foreman who has been trusted by CV Berkah Anugrah and expresses the will to work on CV Berkah Anugrah, then the owner or foreman briefly explains the work system, what equipment is

provided by the company, and how the wage payment system is simple, and then approved by the home worker.

The existence of *ijab* and *qabul* is intended to show the existence of mutual desire and willingness between prospective home workers and CV Berkah Anugrah. With the statement of each party will give rise to rights and obligations that bind both parties.

3) *Ujrah*

Ujrah means the wages that home workers will receive when they have completed their work. Wages paid here are in the form of money whose value is recognized as a legitimate currency according to the law.

4) Benefit

The benefits in this study are the benefits of services or from an item that is rented. In this case the benefits are the labor of the working person, that is the labor of the home worker. With the energy utilized in this activity, the production process carried out by CV Berkah Anugrah can run smoothly.

The four pillars already existed when the occurrence of *ijarah* contracts between home workers and CV Berkah Anugrah.

The terms of *ijarah* consist of four types, namely the term of the occurrence of the contract (*syarat al-in'iqad*), the term of the gradual contract (*syarat an-nafadz*), the legal term of the contract (*syarat ash-shihhah*), and the term of binding it akad (*syaratal- luzuum*).

Syarat in'iqad (the term of the occurrence of the contract) relates to the *aqid*, contract, and the object of the contract. Conditions related to *aqid* that both parties who do the contract must be *baligh*, sensible, and not in a forced state. In this study, both *ajir* and *mustajir* are mature and healthy in physically and mentally. Although basically the work agreement is made by the CV Berkat Anugrah itself, but home workers do not mind to accept the agreement, because basically home workers do need the job.

Regarding the conditions related to the *mauqud alaih* or the object of the contract. In the work agreement for home workers at CV Berkat Anugrah, the provisions regarding the work system are explained at the beginning when the work agreement occurs, including the terms of work, how the mechanism of work, what is usually done, the systematic payment of wages, as well as what equipment is provided by CV Berkah Anugrah and what equipment can be provided by the workers themselves. Work that is the object in the work agreement of home workers in CV Berkat Anugrah is a halal job and does not deviate from the provisions of *syara*.

Syarat an-nafadz (the term of the contract) in the *ijarah* contract is the existence of ownership rights or power. In this case, the parties who carry out the *ijarah* contract must have full power over what they promise in the work agreement. From the CV Berkah Anugrah who did the contract is Mrs. Erlina as the owner of the company or Mrs. Endah as the foreman and the person trusted by Mrs. Erlina. While from the side of home workers, the labor

used in doing work should be the workers themselves, workers who are bound by agreements with the CV Berkah Anugrah.

In this study, it was found that there were home workers who hired others without the knowledge of CV Berkah Anugrah. Some are assisted by children, neighbors or relatives and there are also home workers who hire workers again. However, the CV Berkah Anugrah does not mind this, because the concern of CV Berkah Anugrah is that home workers complete their work in accordance with the criteria and standards set by CV Berkah Anugrah. The company doesn't mind how the worker does his job.

Syarat ash-shihhah (terms for the validity of the contract). *Ijarah* must be fulfilled several conditions related to *aqid* (subject), *ma'qud alaih* (object), *ujrah* (wages), and his own contract, these conditions are:¹⁰²

- (1) The agreement of both parties,
- (2) The object of the contract is that the benefits must be clear, so as not to cause disputes,
- (3) The object of the *ijarah* contract must be able to be submitted in real (essential) or *syara*,
- (4) The benefits that become the object of *ijarah* are permitted by *syara*,
- (5) The work performed is not an obligation for the tenant before the *ijarah*,
- (6) The hired person shall not benefit from his work for himself,

¹⁰² Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, p. 390-400

(7) The benefits of *mauqud alaih* must be in accordance with the purpose of the *ijarah* contract, which is commonly accepted.

Generally, these conditions have been fulfilled in the work agreement of home workers in CV Berkah Anugrah.

The conditions related to *ujrah* or wages are, *ujrah* in the *ijarah* contract must be in the form of valuable and known property, either by looking directly or mentioned the criteria in full. In addition, wages do not take the form of benefits similar to *ma'qud alaih* (object of contract). In this case the wages paid are in the form of legally valid money as a means of payment received in society.

In the work agreement for home workers at CV Berkah Anugrah, the provisions regarding the number of *ujrah* are not mentioned at the beginning of the work agreement, but are explained over time to adjust the products that produced by the factory. For example, when the factory produces jelly spoons, the foreman will tell the *ujrah* that will be given which is Rp 500 per package. Here the home worker can choose he will take a job that jelly spoon or other products such as tablespoons or fruit forks or even does not take at all. However, the wage payment mechanism is mentioned at the beginning of the agreement, that is home workers will be paid every weekend according to the amount of work that has been completed by the worker.

Syarat al- luzuum (the term for binding the contract). In order for the *ijarah* contract to bind home workers with the CV Berkah Anugrah, two conditions are needed, namely:

- a. The goods leased are free from defects that damage their utilization, and
- b. There is no *udzur* (excuse reason) that can cancel the *ijarah* contract

Both of these conditions have been fulfilled in the practice of work agreements in CV Berkat Anugrah. The goods rented in this study are services or labor used by home workers in their work. All of the home workers in the study were in good health without any disabilities that could hinder them from completing their work as a homemaker in CV Berkat Anugrah.

Based on the discussion above, it can be seen that Islamic law has a more flexible basis in its application. The work agreement to employ home workers in CV Berkat Anugrah is considered to be in accordance with Islamic law, although in its implementation there are some irregularities such as workers who hire workers again without the knowledge of the CV Berkat Anugrah, but it is okay because CV Berkat Anugrah does not mind how the worker does his job. The concern of CV Berkah Anugrah is that home workers complete their work in accordance with the criteria and standards set by CV Berkat Anugrah.

CHAPTER V

CONCLUSIONS AND SUGGESTIONS

A. Conclusions

Based on the results of research and discussions that have been described in the previous chapters, the following conclusions can be drawn:

1. Industrial home worker in CV Berkah Anugrah are categorized as seasonal worker because they are only employed when the factory is overloaded in producing goods. Based on article 81 number 15 of Law Number 11 of 2020 on Job Creation juncto article 5 verse (1) of Government Regulation Number 35 of 2021 on Work Agreements for a Specified Period of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, The work agreement in CV Berkah Anugrah should be a Work Agreements for a Specified of Time (*PKWT*). However, in its implementation, the work agreement is made orally and *PKWT* are carried out for more than 5 years, so that for the sake of law the status of the work agreement changes from a Work Agreements for a Specified of Time (*PKWT*) to a Non-Specified Time Work Agreement (*PKWTT*). This change resulted in home workers having to be appointed as a permanent workers, but CV Berkah Anugrah did not make a letter of appointment, as stipulated in article 63 of the Law number 13 of 2003 on Manpower, so the practice of employment agreements in employing

home workers on CV Berkat Anugrah was not in accordance with the provisions of positive law in Indonesia.

2. Industrial home worker in CV Berkat Anugrah Jombang are considered as *ajir musytarak* because they have flexible characteristic, which can work for several people at one time and can be used as a side job. The work agreement to employ home workers on CV Berkat Anugrah when viewed from the pillars and terms of the *ijarah* contract is in accordance with the provisions of fiqh muamalah, although in the implementation there are some irregularity such as workers who hire workers again without the knowledge of the CV Berkat Anugrah. However, this is no problem because of the willingness of the CV Berkat Anugrah. Both parties, worker and employers are equally pleased with the agreement that has been made.

B. Suggestion

After paying attention to the discussion and conclusion about the results of the analysis that has been discussed above, the suggestions that the author can convey regarding the work agreement for home workers are:

1. In the implementation of the work agreement to employ home workers, it should be done in writing. With a written agreement, the terms of work, rights and obligations of workers and employers can be clearly documented, so as to provide legal certainty that guarantees the fulfillment of the rights and obligations of both parties.

2. The work agreements that bind the working relationship between employers and workers should get stricter supervision from the government. This is because the agreement is made by two parties with subordinated positions, where one party (worker) is weaker position when compared to the other party (employer).

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APPENDIXES

Documentation of activity in CV Berkat Anugrah Jombang



Documentation with CV Berkat Anugrah Jombang

1. Interview the researcher with Mr Komarul Huda as the President Director of CV Berkat Anugrah



2. Interview the researcher with Mrs. Endah Sugiarti as the foreman of CV

Berkat Anugrah



Documentation with industrial home worker

1. Interview the researcher with Mrs. Kamimah



2. Interview the researcher with Mr. Jami'an Ashari



3. Interview the researcher with Mrs. Nanik



4. Interview the researcher with Mrs. Siti Riadhoh Solikhatin



5. Interview the researcher with Mrs. Dwi Indah Setyorini



6. Interview the researcher with Mrs. Alfiah



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