

**THE RIGHT OF WORSHIP FACILITIES IN THE WORK  
ENVIRONMENT ACCORDING TO ARTICLE 29 OF KENDARI CITY  
REGULATION NUMBER 1 OF 2015 REGARDING LOCAL  
WORKFORCE : A PERSPECTIVE OF MASLAHAH MURSALAH  
(Study in Restaurants in Kendari City)**

**THESIS**

**By :**

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**SIN: 17230098**



**CONSTITUTIONAL LAW (SIYASAH) DEPARTMENT  
SHARIA FACULTY  
STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM  
MALANG  
2024**

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**THESIS**

**Submitted to fulfill one of the requirements for obtaining a BA in Law (S.H.)**

**in the Constitutional Law Study Program**

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**SIN 17230098**



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**2024**

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## STATEMENT OF THE AUTHENTICITY

In the name of Allah, With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

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WORKFORCE : A PERSPECTIVE OF MASLAHAH MURSALAH  
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Is truly the writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 07 March 2024

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## APPROVAL SHEET

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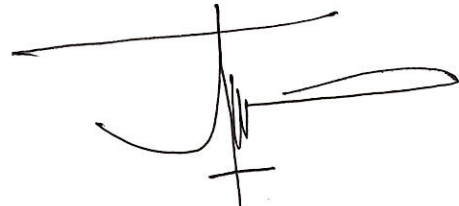
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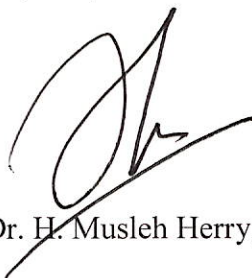
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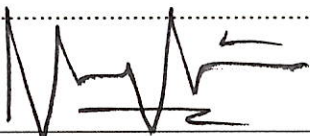
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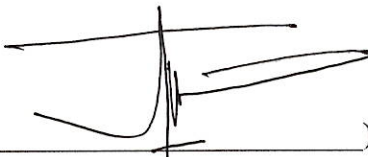
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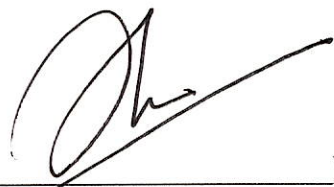
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## MOTTO

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا<sup>ظ</sup>

*“Allah tidak membebani seseorang melainkan sesuai dengan kesanggupannya...”*

-Q.S. Al-Baqarah: 286



## TRANSLITERACY GUIDELINES

Transliteration is the transfer of Arabic writing into Indonesian (Latin) writing, not a translation of Arabic into Indonesian. Included in this category are Arabic names from Arab nations, while Arabic names from nations other than Arabic are written as spelled in the national language, or as written in the reference book. Writing the title opens inside the footnote as well as the bibliography, but using this transliteration.

There are many transliteration options and provisions that can be used in writing scientific works, both international and national standards and provisions specifically used by certain publishers. Latin Arabic Transliteration Guidelines which are the result of a joint decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia Number: 258 of 1987 and Number: 0543b/U/1987.

### A. CONSONANTS

A list of Arabic letters and their translation into Latin letters can be seen on the following page:

ARAB	LATIN	ARAB	LATIN
A	Alif	Not denoted	Not denoted
B	Not	B	Be
T	Facing	T	The
Th	S a	S	Ice (with dot on top)
C	Jim	J	Is
H	H{a	H{	Ha (with dot on top)

Kh	Bitter	Kh	What and what?
of the	From the	D	Of
Z	Z al	WITH	Zet (with dot on top)
R	Sun	R	Is
Z	He will	WITH	Sets
Q	Sin	S	Is
Sh	The reason	Sy	Es dan ye
p	S{ad	S{	Ice (with dots below)
Z	D{ad	D{	De (with dot below)
i	T{a	T{	Te (with dot below)
Z	Z{a	WITH{	Zet (with dot below)
A	'Ain	' <u>    </u>	Reversed apostrophes
g	Gain	G	Ge
F	But	F	If
Q	Someone	O	Qi
K	Purchase	K	The
to	Lam	L	E1
M	Me	M	In
N	Nun	N	In
And	Me	IN	We
e	Ha	H	Ha
E/A	Hamza	<u>    </u> '	Apostrophe

Y	Of	AND	Ye
---	----	-----	----

## B. VOWELS, LONG AND DIPHTHONGS

Every Arabic writing is in the form of Latin vowel writing victory written with "a", *kasrah* with "e", *dlommah* with "u", while the respective Long readings are written in the following way:

Vowel (a) is long	= â for example قال	Become qâla
Vowel (i) is long	= î for example قيل	Become qila
Vowel (u) is long	= and misalnya don	Menjadi duna

Specifically for the reading "nisbat", then it cannot be replaced with "i". but still written with "iy" in order to describe it" ratio at the end. Likewise for diphthong sounds, "wawunya" after *victory* written \s with "aw" and "ay". Consider the following example:

Diphthong (aw)	= أو for example قول becomes qawla
diphthong (is)	= اي for example خير becomes khairun

## C. OF MARBUTAH (ة)

"Ta" marbûthah is transliterated with "t" if it is in the middle of a sentence, but if "ta" marbûthah is at the end of a sentence then it is transliterated using "h" for example للمدرسة الرسالة becomes al *risalat lil al-mudarrisah*, or when in the middle of a sentence consisting of an arrangement *mud run* and *mudlaf ilayh*, then transliterated using t connected to the sentence, for example في رحمة الله becomes fi *rahmatillâh*.

## D. ADJECTIVES AND LAFDZ AL-JALÂLAH

The article "al" (ال) is written in lowercase, unless it is at the beginning of a sentence, while the "al" in lafadz jalalah is in the middle of the sentence being relied upon. (*Idhafah*) then removed. Consider the following examples:

1. Al-Imam al-Bukhâiy said.....
2. Al-Bukhâiy in the introduction to his book explains .....
3. *Masyâ 'Allah kânâ wa mâlam yasyâ lam yakun.*
4. *Billah'azzawajall.*

#### E. INDONESIAN ARABIC NAMES AND WORDS

In principle, every word originating from Arabic must be written using a transliteration system. If the word is the Arabic name of an Indonesian or Indonesianized Arabic, there is no need to write it using a transliteration system. Consider the following example:

“...Abdurrahman Wahid, the fourth former President of the Republic of Indonesia, and Amin Rais, former Chairman of the MPR at the same time, have made an agreement to eradicate nepotism, collusion and collusion from the face of Indonesia, one way is through intensifying prayers in various government offices, However ....”

Note that the names "Abdurrahman Wahid", "Amin Rais" and the word "shalat" are written using the Indonesian writing procedure which is adapted to the writing of his name. Even though these words come from Arabic, they are Indonesian names and people, so they are not written in the manner of "Abd al-Rahmân Wahîd," "Amîn Raîs" and are not written in "shalât".

## FOREWORD



Alhamdulillahirabbil'alamin, who has given us the grace and assistance in writing this thesis entitled: "The Right of the Worship Facilities in the Work Environment According to Article 29 of the Kendari City Regional Regulation Number 1 of 2015 regarding Local Workers : A Perspective of Maslahah Mursalah (Study in Restaurants in Kendari City)" we can finish it well. We offer our prayers and greetings to the great prophet Rasulullah Muhammad SAW who has given us guidance in living this life in a syar'i manner. Hopefully with his intercession, InshaAllah, we will enter the group of believers and be safe on the last day of judgment. Amen.

With all the teaching, guidance/direction, as well as the service assistance that has been given, then with all humility the writer conveys many thanks to:

1. Prof. Dr. H. M. Zainuddin, M.A., as Chancellor of the Maulana Malik Ibrahim State Islamic University of Malang.
2. Dr. Sudirman, M.A., as Dean of the Sharia Faculty, Maulana Malik Ibrahim State Islamic University, Malang.
3. Musleh Harry, S.H., M.Hum., as the Head of the Constitutional Law Study Program (Siyasah) of the Islamic University Maulana Malik Ibrahim Malang State Islamic University.

4. Dr. Musleh Harry, S.H., M.Hum. and Khairul Umam, S.HI., M.HI., as a panel of examiners who have given instructions, input, criticism and suggestions to the writer for the perfection of this thesis.
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7. All the lecturers and staff of the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang who have provided learning and service to all of us. With sincere intentions, hopefully all of their deeds will become part of worship to gain the pleasure of Allah SWT.
8. The writer's parents, Umi Nesti Zuniarti and Abi Achmad Sunarko. The author would like to express his infinite gratitude for the abundance of love, endless prayers and moral and material support that cannot be repaid.
9. To the writer's brothers, sisters and brothers who always provide positive energy and encourage the writer
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11. Bayu Dewa Anggono who always provides support, motivation and time and reminds the writer to always progress.
12. As well as all parties who I cannot mention one by one who have helped both morally and materially in the completion of this thesis.

The author hopes that what has been obtained and the results of this work while studying at the Constitutional Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang, can be useful for readers. The author, as an ordinary human being who never escapes mistakes, realizes that writing this thesis is still far from perfect. Therefore, the author really hopes for criticism and suggestions from all parties for the perfection of this thesis.



## ABSTRAK

Nada Kenovia Sunarko Puteri, 17230098, Hak Sarana Beribadah Di Lingkungan Kerja Menurut Pasal 29 Perda Kota Kendari Nomor 1 Tahun 2015 Tentang Tenaga Kerja Lokal Perspektif Masalah Mursalah (Studi di Rumah-Rumah Makan di Kota Kendari), 2024. Skripsi, Program Studi Hukum Tata Negara (Siyasah), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Dr. H. M. Aunul Hakim, M.H.

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**Kata Kunci:** Hak Sarana Beribadah; Kota Kendari; Rumah Makan; Tenaga Kerja;

Tenaga kerja memegang peranan sentral sebagai salah satu faktor utama dalam pembangunan ekonomi nasional. Implikasinya, negara memiliki tanggung jawab yang sangat penting untuk memfasilitasi warga negaranya agar dapat memperoleh pekerjaan yang layak sesuai dengan kemampuan dan kebutuhan mereka. Selain itu, pentingnya peran negara juga tercermin dalam pemenuhan hak beribadah bagi para pekerja, yang dijamin oleh Pasal 29 dalam Peraturan Daerah Kota Kendari Nomor 1 Tahun 2015 Tentang Tenaga Kerja Lokal. Hal ini menunjukkan bahwa negara memegang peran kunci dalam memastikan kesejahteraan dan perlindungan hak-hak fundamental bagi tenaga kerja di tingkat lokal.

Penelitian ini akan menguraikan masalah pemenuhan hak sarana beribadah bagi pekerja muslim yang dilaksanakan oleh pemilik rumah-rumah makan di Kota Kendari dan efektivitas penerapan pasal 29 Perda Kota Kendari Nomor 1 Tahun 2015 tentang Tenaga Kerja Lokal di rumah-rumah makan dalam pemenuhan hak pekerja di Kota Kendari yang kemudian akan ditinjau dengan aspek teori efektivitas hukum dan perspektif *Maslahah Mursalah*.

Jenis penelitian ini menggunakan penelitian yuridis – empiris yaitu penelitian hukum mengenai pemberlakuan atau implementasi ketentuan hukum normatif. Dengan pendekatan yuridis – sosiologis dengan berdasarkan norma-norma yang mengikat. Subyek data yang diperoleh melalui data primer dan data sekunder dimana pengumpulan data yang digunakan dalam penelitian ini, dengan wawancara, observasi, dan dokumentasi yang kemudian data-data tersebut diolah dengan tahap *editing, classifying, verifying, analysing, dan conclusion*.

Berdasarkan uraian hasil penelitian dan pembahasan yang telah dilakukan, pemenuhan hak sarana beribadah pekerja muslim di Kota Kendari belum dilaksanakan sepenuhnya oleh pemilik rumah makan/tempat makan. Ketentuan Pasal 29 Perda Kota Kendari Nomor 1 Tahun 2015 di rumah makan, belum efektif diterapkan oleh Dinas Tenaga Kerja dan Perindustrian Kota Kendari. Hal tersebut dibuktikan dengan hasil penelitian yang menunjukkan bahwa pengawasan melalui mekanisme monitoring di rumah makan/tempat makan belum maksimal dilaksanakan serta penegakan atas pelanggaran ketentuan Pasal 29 belum diterapkan.

## ABSTRACT

Nada Kenovia Sunarko Puteri, 17230098, The Right to the Opportunity to Worship in the Work Environment According to Article 29 of Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers (Studies in Restaurants in Kendari City), 2024. Undergraduate Thesis, Constitutional Law Study Program (Siyasah), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang. Thesis Adviser: Dr. H. M. Aunul Hakim, M.H.

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**Keywords:** The Right of Worship Facilities, Labor, Restaurants, Kendari City

Labor plays a central role as one of the main factors in national economic development. The implication is that the state has a very important responsibility to facilitate its citizens to obtain decent work according to their abilities and needs. Apart from that, the importance of the state's role is also reflected in the fulfillment of the right to worship for workers, which is guaranteed by Article 29 in Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers. This shows that the state plays a key role in ensuring welfare and protecting fundamental rights for workers at the local level.

This research will describe the problem of fulfilling the right of worship facilities for Muslim workers carried out by restaurant owners in Kendari City and the effectiveness of implementing article 29 of the Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers in restaurants in fulfilling workers' rights in Kendari City which will then be reviewed with aspects of legal effectiveness theory and *Maslahah Mursalah* perspective.

This type of research uses juridical - empirical research, namely legal research regarding the enactment or implementation of normative legal provisions. With a juridical - sociological approach based on binding norms. The subject data was obtained through primary data and secondary data where the data used in this research was collected, with interviews, observation and documentation, then the data was processed through the editing, classifying, verifying, analyzing and conclusion stages.

Based on the description of the research results and discussions that have been carried out, the fulfillment of the right to worship of Muslim workers in Kendari City has not been fully implemented by the owners of restaurants/eating places. The provisions of Article 29 of the Kendari City Regional Regulation Number 1 of 2015 regarding restaurants have not been effectively implemented by the Kendari City Manpower and Industry Service. This is proven by research results which show that supervision through monitoring mechanisms in restaurants/eating places has not been implemented optimally and enforcement of violations of the provisions of Article 29 has not been implemented.

## مستخلص البحث

ندى كينوفيا سوناركو بوتيري، 17230098، الحق في فرصة العبادة في بيئة العمل وفقاً للمادة 29 من اللائحة الإقليمية لمدينة كينداري رقم 1 لعام 2015 بشأن العمال المحليين (دراسات في المطاعم في مدينة كينداري)، 2024. الأطروحة، دراسة القانون الدستوري برنامج (السياسة) كلية الشريعة جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: دكتور الحاج محمد عون الحكيم ماجستير في القانون

### حق العبادة، العمل، المطاعم، مدينة كينداري: الكلمات المفتاحية

يلعب العمل دوراً مركزياً باعتباره أحد العوامل الرئيسية في التنمية الاقتصادية الوطنية. والمغزى من ذلك هو أن الدولة تتحمل مسؤولية بالغة الأهمية لتسهيل حصول مواطنيها على عمل لائق وفقاً لقدراتهم واحتياجاتهم. وبصرف النظر عن ذلك، فإن أهمية دور الدولة تنعكس أيضاً في إعمال حق العبادة للعمال، وهو ما تكفله المادة 29 في اللائحة الإقليمية لمدينة كينداري رقم 1 لعام 2015 بشأن العمال المحليين. وهذا لمستوى يبدل على أن الدولة تلعب دوراً رئيسياً في ضمان الرفاهية وحماية الحقوق الأساسية للعمال على المحلي.

سيصف هذا البحث مشكلة استيفاء حق العبادة للعمال المسلمين التي يقوم بها أصحاب المطاعم في مدينة كينداري وفعالية تنفيذ المادة 29 من اللائحة الإقليمية لمدينة كينداري رقم 1 لسنة 2015 بشأن العمال المحليين في المطاعم في استيفاء حقوق العمال في مدينة كينداري والتي سيتم بعد ذلك مراجعتها بجوانب نظرية الفعالية القانونية.

بناءً على وصف نتائج البحث والمناقشات التي تم إجراؤها، فإن إعمال حق العبادة للعمال المسلمين في مدينة كينداري لم يتم تنفيذه بالكامل من قبل أصحاب المطاعم/أماكن تناول الطعام. لم يتم تنفيذ أحكام المادة 29 من اللائحة الإقليمية لمدينة كينداري رقم 1 لعام 2015 فيما يتعلق بالمطاعم بشكل فعال من قبل دائرة القوى العاملة والصناعة في مدينة كينداري. وهذا ما أثبتته نتائج الأبحاث التي أظهرت أن الرقابة من خلال آليات المراقبة في المطاعم وأماكن تناول الطعام لم يتم تنفيذها على النحو الأمثل ولم يتم تنفيذ 29. مخالفات أحكام المادة

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## CHAPTER I

### INTRODUCTION

#### A. Research Background

In implementing national development, labor has a very important role and position as actors and development goals<sup>1</sup>. Labor is a factor that encourages and accelerates the rise and fall of an economy's competitiveness<sup>2</sup>. This means that it has implications for the state's obligation to facilitate its citizens to obtain decent work.

Therefore, in Indonesia the right to work is a human right inherent in every society which must be upheld and respected. This is as stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "every citizen of the Republic of Indonesia has the right to work and a living worthy of humanity".

Referring to this article, it can be understood that the aim of employment development is to create jobs for citizens to earn a decent living. However, rapid global economic development and technological progress have brought about many changes in various sectors, giving rise to tight business competition in all business sectors.

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<sup>1</sup> Ratih Dheviana Puru Hitaningtyas, *Elimination of Criminal Sanctions Related to Employers' Obligations to Participate in Social Security Programs*, Legal Panorama Journal, (2017) Vol.2, No.1, 21

<sup>2</sup> Adam, *Building the Competitiveness of Indonesian Workers Through Increasing Productivity*, Indonesian Population Journal, (2016) Vol. 11 No. 2, 72

In the business world, improving services to other companies and consumers requires fast and efficient time, so that global and very tight competition develops. A highly competitive environment requires companies to prioritize market demands which require speed in responding to customer demands, because often the speed factor in responding to market and customer demands can determine victory in competition and not the price factor.

Ironically, workers/laborers have contributed enough to support this country's economy, but their contributions are not appreciated. Sometimes workers/laborers cannot demand anything because their lives are not in their hands. Perhaps the only thing that can help workers is the emergence of a third party who is able to bridge and has power (*legality*) to put pressure on entrepreneurs who are in this position held by the government<sup>3</sup>.

Thus, it is necessary to make further arrangements regarding the protection of workers, so that they can function well in supporting development. On that basis, and as a follow-up to Article 27 paragraph (2) of the 1945 Constitution, the government then established Law Number 13 of 2003 concerning Employment.

Through the Employment Law, the Government has been given space to intervene in employment relations between workers and employers, as well as providing legitimacy for the protection of workers' and labor rights. Thus, the government must be able to provide guarantees so that the laws and regulations governing employment issues can be implemented by all business actors. One of

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<sup>3</sup> Grendi Hendrastomo, *Measuring Workers' Welfare: Fighting for Workers' Welfare Between State and Corporate Interests*(2010) Vol. 16, no. 2, 2-3

them is related to the right to worship facilities for workers, especially Muslim workers.

The large number of Muslim workers in Indonesia means that understanding and regulating this matter is a necessity, so that the potential for conflict in society can be minimized. In Islam, among the worship of Allah SWT, prayer is one of the most vital obligatory acts of worship. Apart from that, there are also various sunnah acts of worship that are highly valued and often looked at half. It is mandatory for Muslims to carry it out, especially in the month of Ramadan and other Hijryah months. Therefore, regulation of guarantees for the rights to facilities and opportunities for freedom of religion and worship is very important. In this regard, there are facilities for worship that must be of particular concern to restaurant owners in Kendari City to provide these facilities so that workers who have the right to carry out their worship are not disturbed.

Juridically, there are several regulations that regulate the fulfillment of the right to worship for workers. In general, it has been regulated through Article 29 paragraph (2) of the 1945 Constitution which reads: "The state guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs." After the amendment to the 1945 Constitution, it was also regulated in Article 28E paragraph (1) of the Second Amendment to the 1945 Constitution, namely: "Everyone is free to embrace their own religion and worship according to their religion..."

Furthermore, it is specifically regulated through Law Number 13 of 2003 concerning Employment, namely Article 80, which reads: "Employers are obliged

to provide sufficient opportunities for workers/laborers to carry out the worship required by their religion."

This provision was then followed up by the Kendari City Government through the establishment of Regional Regulation Number 1 of 2015 concerning Local Workers, where Article 29 paragraph (2) regulates the opportunity to worship for workers which reads "Companies/entrepreneurs/employers are obliged to provide sufficient free time to workers and workers/labourers to carry out the worship required/sunnah by their religion."

However, in reality, the efforts that have been made in the context of protection have not worked as envisioned. In other words, there are still many employers who abuse their obligations and oppress workers' rights by imposing their will on workers or dictating work agreements to their workers, for example the implementation of religious services during work time. Even though the law requires the fulfillment of workers'/labourers' rights to worship to the maximum, for companies, this is actually perceived as an obstacle because it will reduce profits or profit.

In the past, case after case has surfaced regarding workers' right to worship which has not been fully fulfilled, for example cases regarding prayer, where company management scheduled unit, section or leadership meetings at 12.00-14.00. Some prayer facilities are also not available for Muslim or Muslim employees.<sup>4</sup> Furthermore, the case of prohibiting employees from carrying out

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<sup>4</sup> <https://www.kompasiana.com/sangpemenangpembelajar/54f3606c745513962b6c72e2/don't-hinder-workers'-right-to-worship>, accessed on February 28 2023 at 14.00 WIB

Friday prayers in congregation at PT. Indonesia Tshing Shang Stainless Steel (ITSS) in Morowali, Central Sulawesi, where the company asked its employees to take turns praying.<sup>5</sup>

In some cases, which are not infrequently less of a concern, but can be very clearly seen in society, where there is a condition that causes workers in restaurants to lose time for obligatory prayers, especially the Maghrib prayer, which is relatively short in duration due to certain conditions in restaurants. In the restaurant concerned, there has been a backlog of orders so that workers are pressed for time with production and customer satisfaction. In this case, what is highlighted is the lack of firmness from the owner or a system that can regulate the rights given to workers to take turns praying.

One of the rights of workers that is not paid enough attention by business owners is the right to the means of worship needed for workers to exercise their right to worship. This was the trigger for a conflict between workers and restaurant owners which went viral in 2022 because workers used more rest time than was stated in the Standard Operating Procedures (SOP). According to the statement, the worker needed quite a long time to carry out his prayers because there were no facilities for worship at his place of work, which required him to go to the nearest prayer room or mosque so that his working hours became inefficient. This case attracted public attention and was mediated by the Kendari City Manpower Office.

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<sup>5</sup> (<https://daerah.sindonews.com/berita/1207749/174/> employees-of-iron-and-steel-factories-in-Sulteng-are-prohibited-from-Friday-prayers-in-congregation accessed on 28 February 2023 at 13.30 WIB).

If there is such a phenomenon, what about the implementation of the right to worship for restaurant workers in Kendari City? Because based on the author's initial observations in the last few months, it shows that several restaurants in Kendari City are still ignoring the fulfillment of the right to provide facilities for worship for Muslim workers.

Based on the view of *maslahah mursalah* which has the purpose of safeguarding the welfare of humans, the provision of worship facilities is based on the purpose of providing benefits to workers in restaurants in Kota Kendari, with the hope of preventing actions that can harm or hinder those who want to obtain the right to worship in the work environment.

Have the provisions for implementing worship for Muslim workers in restaurants been implemented consistently by employers in restaurants in Kendari City, so that they are truly effective and the benefits are felt by restaurant workers in Kendari City? Concretely, how to provide facilities or places for Fardhu 'Ain prayers for workers, providing free time to perform Fardhu 'Ain prayers and Friday prayers, as well as providing free time to carry out Sunnah worship as recommended in Islamic Sharia.

In writing this scientific work, the author aims to find out the legal protection of workers' rights to worship by providing means of worship as regulated in statutory regulations as well as Islamic legal views regarding workers' rights to worship and writing this in the form of a thesis entitled **"THE RIGHT OF THE WORSHIP FACILITIES IN THE WORK ENVIRONMENT ACCORDING TO ARTICLE 29 OF THE KENDARI CITY REGULATION NUMBER 1 OF**

## **2015 REGARDING LOCAL WORKERS FROM THE MASLAHAH MURSALAH PERSPECTIVE" (Study of Restaurants in Kendari City).**

### **B. Research Limitations**

In conducting research related to "The Right of Worship Facilities in the Work Environment According to Article 29 of the Kendari City Regional Regulation Number 1 of 2015 regarding Local Workers from the Maslahah Mursalah Perspective" in order to be more in-depth and perfect, the research limitations include;

1. Limitations on means of worship Obligatory and/or sunnah prayers for Muslims who work in restaurants.
2. The location limit for this research is 18 restaurants in Kendari City.
3. This research only examines the fulfillment of the right to worship facilities for Muslim workers in restaurants. Then it will be drawn based on the theory of effectiveness and the view of maslahah mursalah.

### **C. Statement of Problem**

Based on the description of the problem described, to study this problem in more depth, the author's study is:

1. How is the provision of prayer facilities for Muslim workers implemented by restaurant owners in Kendari City?
2. How effective is the implementation of Article 29 of Kendari City Regional Regulation Number 1 of 2015 in restaurants in fulfilling workers' rights in Kendari City from a maslahah mursalah perspective?



#### **D. Objective of Research**

Based on the description of the problems stated above, the objectives of this research are as follows:

1. This research aims to determine how Muslim workers' rights to worship are implemented by restaurant owners in Kendari City.
2. This research aims to determine the effectiveness of implementing Article 29 of Kendari City Regional Regulation Number 1 of 2015 in restaurants in fulfilling workers' rights in Kendari City from Maslahah Murlah's perspective.

#### **E. Benefits of Research**

1. Theoretical Uses:

Theoretically, this research is expected to provide knowledge and information to readers as well as add in-depth studies to determine the protection of the right to worship for Muslim workers who work in restaurants in Kendari City and contribute to the development of legal knowledge in fulfilling the right to worship for workers by analyzing articles 29 Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers.

2. Practical Uses:

- a. It is hoped that the results of this research can contribute to understanding regarding the right to provide prayer facilities for Muslim workers in restaurants in Kendari City on the basis of Article

29 of the Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers.

- b. It is hoped that this research can be a driver of awareness for various levels to increase effectiveness in fulfilling the rights of Muslim workers in restaurants in Kendari City, especially in providing facilities or places of worship.
- c. As well as for the author to use as a basis for broadening his knowledge regarding what has been studied and found regarding the legal issues that occurred.

## **F. Operational Definition**

To reduce misunderstandings about the terminology used in this research and provide a clearer understanding, it is deemed necessary to define these terms. The author explains this meaning

### **1. Right**

In the Indonesian Dictionary, rights have the meaning "authority, power to do something (because it has been determined by law, regulations, etc.), correct power over something or to demand something, and authority according to law"<sup>6</sup>

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<sup>6</sup> Alwi Hasan, et al. Indonesia Dictionary. (Jakarta: Department of National Education Balai Pustaka, 2005), p. 381-382

According to the Law Dictionary, "right" is power, authority given by law to legal subjects; Legal demands that others behave in a certain way, Freedom to do something according to the law.

## 2. Worship

Ibadah is a term used to refer to everything that is loved and pleased by God, whether in the form of words, or actions, both external and internal.<sup>7</sup>

The concept of worship in Islam is devotion, servitude, and glorification to Allah SWT. Worship includes all words and actions that are loved and pleased by God, both outward and inward.<sup>8</sup>

Worship is divided into worship of the heart, verbal and body parts. Worship covers all aspects of life and is the center of religious teachings. The essence of worshipping Allah is to humble yourself to Allah accompanied by a feeling of love for Him. And we are said to humble ourselves to Allah, when we follow what Allah has commanded and stay away from what Allah has forbidden.<sup>9</sup>

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<sup>7</sup> What is Worship? – ConsultSyariah.com. accessed December 18, 2023<https://konsultasisyariah.com/30399-apa-itu-ibadah.html>.

<sup>8</sup> Understanding Worship in Islam | Almanhaj. accessed December 18, 2023<https://almanhaj.or.id/2267-pengertian-ibadah-dalam-islam.html>.

<sup>9</sup> Why Do We Worship? Ritual and Spirituality in Islam. accessed December 18, 2023<https://muhammadiyah.or.id/untuk-apa-kita-beribadah-ritual-dan-spiritual-dalam-islam/>.

### 3. Labor

The workforce is the population of working age who are ready to do work, including those who are already working, those who are looking for work, those who are in school and those who take care of the household.<sup>10</sup>

Labor is all human activity, both physical and spiritual, which is devoted to the production process to produce goods and services as well as the benefits of an item. Labor is a production factor recognized by every economic system, including Islamic, capitalist and socialist economies.<sup>11</sup>

## **G. Structure of Discussion**

This writing systematic consists of five (5) chapters, with the following details:

### CHAPTER I: INTRODUCTION

Intended to explore general references consisting of problem background, operational definition, problem formulation, research objectives and uses, literature review, research methods and writing systematics.

### CHAPTER II: LITERATURE REVIEW

Literature review explaining theory, namely human rights, workers' rights, legal protection, worker protection, guarantees of freedom of worship for workers in statutory regulations and field observation research.

### CHAPTER III: RESEARCH METHODS

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<sup>10</sup> Rizki Herdian Zenda, "The Role of the Industrial Sector in Labor Absorption in the City of Surabaya," 2, No. 01 (March 2017). matter. 372

<sup>11</sup> Amin Budiawan, "Factors that Influence Labor Absorption in Small Fish Processing Industries in Demak Regency," 2, No. 1 (February 2013) p. 3

Research methods are the stages that must be carried out by researchers in order to get the right results so that there is no doubt about their truth. In research methods, there are types and research approaches used in research so that the flow of this research is clear, then the data sources, which are useful so that researchers and readers know the primary, secondary and tertiary data sources in this research.

The data collection method used in this research, then the data processing method is: *editing, classifying*, and verifying. After the data collection process, a data validity technique will be carried out using the triangulation method or combining various existing data collection techniques and data sources.

Next is the data analysis used in this research which aims to study and examine the results of data processing which are displayed in good sentence structure so that they can be read and interpreted easily by researchers and also easily understood by readers of this scientific research.

#### CHAPTER IV: RESEARCH RESULTS AND DISCUSSION

This chapter contains an analysis outlined regarding the systematic legal protection and review of Islamic law regarding the right to the opportunity to worship based on Article 29 of the Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers.

#### CHAPTER V: CLOSING

Contains conclusions and suggestions to facilitate understanding of the research results and conclusion.

The final part of this thesis contains a bibliography showing the literature used by the author, appendices and the author's curriculum vitae.

## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

In general, there have been many studies that discuss the right to worship for workers, but in this case the review is related to reviewing legal protection for workers who have the right to worship in their work environment so far the author has found in several studies, including:

*First*, in a study entitled **Freedom of Workers in Conducting Worship in Industrial Areas** By Ikhwan Aulia Fatahillah in 2020, this research provides an in-depth description and understanding of the freedom to carry out religious obligations for workers in relation to Law Number 13 of 2003 concerning Employment and the freedom to carry out religious obligations for workers.

The aim of this research is to provide an in-depth description and understanding of Workers' Freedom to Practice Worship in Connection with Law Number 13 of 2003 concerning Employment and Freedom to Carry Out Religious Obligations for workers in Bekasi Regency. This results in a view where workers still hope for improvement. Quality and quantity of worship facilities so that they can carry out their worship more comfortably and that the awareness of worship of the workers is at an ordinary level or level where they truly believe in Allah with minimal knowledge of the faith, they also carry out religious practices as proof of their faith itself and proof of obedience to Allah. The difference with this research is that it focuses on providing the right to

worship. This research emphasizes the provision of facilities for Muslim workers in restaurants.

*Second*, in a journal titled **The Right to Perform Worship for Workers in the Gate City of Salam Pamekasan (Review of Islamic Law and Employment Law)** by Moch. Cholid Wardi in 2020, discussed labor realities in relation to the right to perform religious duties and how Islamic law and the Employment Law review these realities.

In writing this research, which aims to find out the reality of labor in relation to the right to perform worship and how the review of Islamic law and the Labor Law on this reality, the results were obtained, namely that in the City of Gate Salam Pamekasan, no data was found regarding prohibitions on worship, but there were still "restrictions" that leads to the regulation of the time provisions given in the process of carrying out worship. From the perspective of Employment Law Number 13 of 2003, no data on concrete violations related to articles 79 and 80 concerning the Right to Rest and Practice Worship were found. Meanwhile, this research was conducted to determine the provision of rights to facilities or places of worship for workers in restaurants from the *maslahah mursalah* perspective.

*Third*, in the thesis entitled **Employers' Obligations in Providing the Right to Perform Worship for Workers at CV. Baurexa Garda Persada Jabon Sidoarjo: Study of Law no. 13 of 2003 concerning Employment** by Ainin Rizky in 2022 which discusses the obligations of employers in providing workers with the right to practice their religion.



The results of this research are that basically every employer is required to provide sufficient opportunities for workers to carry out the worship required by the workers' religion and beliefs. However, CV's fulfillment of its obligations. Baureksa Garda Persada in giving its workers the right to carry out worship has not been fulfilled properly, because the fulfillment of the right to carry out worship is only given to workers who have the majority religion (Islam), while for workers who adhere to minority religions at CV. Baureksa Garda Persada has not been given to them. The difference between the research conducted by Ainin Rizky and this research is the research location and limitations of the research.

*Fourth*, in the thesis entitled **Legal Protection of Workers' Rights to Worship (Review of Positive Law and Islamic Law)** by Lee Mita Nudiyana in 2019 regarding workers' rights to worship according to fiqh and statutory regulations as well as factors inhibiting legal protection of workers' rights to worship in Indonesia.

The research aims to determine workers' rights to worship according to Islamic jurisprudence and statutory regulations as well as factors inhibiting legal protection of workers' rights to worship in Indonesia. Resulting in findings of various examples of violations of workers' right to worship, namely violations of wearing the hijab according to Islamic law where the order to wear the hijab is mandatory for every Muslim woman. Regarding the prohibition on prayer breaks and Friday prayer breaks, if you look at article 80 of the Manpower Law. Meanwhile, this research was conducted to explore the

granting of rights and fulfillment in the means of worship for workers, which was then influenced by the effectiveness of the law.

*Fifth*, in a study entitled **Legal Protection For Employees Who Lose The Right To Worship** By Masyitoh Rachmawati in 2019 discussing forms of legal protection for workers who lose their right to worship and legal remedies that workers can take against companies that hinder workers' right to worship.

This research aims to determine the form of legal protection for workers who lose their right to worship and the legal remedies that workers can take against companies that hinder workers' right to worship. So that the results of the research are that the form of legal protection for workers who lose their right to worship is based on the provisions (article 80 of Law of the Republic of Indonesia Number 13 of 2003) that employers are obliged to provide sufficient opportunities for workers to carry out the worship required by their religion, so that employers it is prohibited to prevent workers from carrying out worship that is required by their religion, and if workers do not get the opportunity to worship then employers violate the provisions with sanctions of imprisonment and fines based on (the provisions of article 185), and if employers do not provide wages to workers who lose their right to worship based on (the provisions of article 93 paragraph (2) letter e) then the entrepreneur will receive legal consequences, namely prison sanctions and fines based on (the provisions of article 186 paragraph (1)) if the entrepreneur obstructs the worker's right to worship and there is an element of threat to the

worker, the entrepreneur will suffer legal consequences from The border is based on (the provisions of Article 175 of the Criminal Code)

Table 1: Originality of Research

No.	Researcher Name	Name/Title	Types of research	Difference
1.	Ikhwan Aulia Fatahillah 2020 UIN Sunan Gunung Djati Bandung	Freedom of Workers in Conducting Worship in Industrial Areas	Empirical	The aim of this research is to provide an in-depth description and understanding of the freedom to carry out religious obligations for workers in relation to Law Number 13 of 2003 concerning Employment and the freedom to carry out religious obligations for workers in Bekasi Regency. Meanwhile, my research is more focused on how to grant the right to worship in the month of Ramadan.
2.	Moch. Cholid Wardi 2020 IAIN Madura	The Right to Perform Worship for Workers in the Gate City of Salam Pamekasan (Review of Islamic Law and Employment Law)	Normative	The purpose of writing this research is to find out the reality of labor in relation to the right to perform worship and how Islamic law and the Employment Law review this reality. Meanwhile, my research emphasizes getting the

				opportunity to worship at work.
3.	Ainin Rizky 2022 UIN Maulana Malik Ibrahim Malang	Employers' Obligations in Providing the Right to Perform Worship for Workers at CV. Baureksa Garda Persada Jabon Sidoarjo: Study of Law no. 13 of 2003 concerning Employment	Empirical	The aim of this research is to examine the obligations of employers in providing workers with the right to practice their religion. Meanwhile, my research is about fulfilling the right to the opportunity to worship for workers.
4.	Lee Mita Nudiyana 2019 UIN Syarif Hidayatullah Jakarta	Legal Protection of Workers' Rights to Worship (Review of Positive Law and Islamic Law)	Normative	The aim of this research is to determine workers' rights to worship according to Islamic jurisprudence and statutory regulations as well as factors inhibiting legal protection of workers' rights to worship in Indonesia. Meanwhile, my research emphasizes that there is a right to the opportunity to worship which is regulated in law which must be fulfilled.
5.	Masyitoh Rachmawati 2019 Muhammadiyah University Surabaya	Legal Protection For Employees Who Lose The Right To Worship	Normative	This research aims to determine the form of legal protection for workers who lose their right to worship and the legal remedies that workers can take against companies that hinder

				workers' right to worship. Meanwhile, my research prioritizes the right to the opportunity to worship.
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## **B. Theoretical Studies**

### **1. Legal Effectiveness Theory**

In reality, the law not only functions as social control, but can also carry out a social engineering function (social engineering or instrument of change). Thus, the effectiveness of the law can be seen both from the point of view of its social control function and from the point of view of its function as a tool for making change.<sup>12</sup>

Factors that can influence the effectiveness of the law can be detailed as follows:

- a. The legal factors themselves;
- b. Law enforcement factors, namely the parties who form and implement the law;
- c. Facilities or facilities factors that support law enforcement;
- d. Community factors, namely the environment in which the law applies or is applied;
- e. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in life.<sup>13</sup>

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<sup>12</sup> Soerjono Soekanto, Factors that Influence Law Enforcement (Jakarta: Rajawali Pers, 2019), p. 8

<sup>13</sup> Soerjono Soekanto, Factors that Influence Law Enforcement, p. 8.

The purpose of law is to achieve peace by creating certainty and justice in society. Legal certainty requires the formulation of generally applicable legal rules, which also means that the rules must be strictly enforced or implemented. This is the reason that the law must be known with certainty by the members of the community, because the law consists of rules set for current events and for the future and that the rules apply in general. Thus, in addition to the duties of certainty and justice, the element of utility in the law is also concluded. This means that every member of the community knows for sure what things can be done and what is forbidden to be done, in addition to ensuring that the members of the community are not harmed in their interests within appropriate limits.<sup>14</sup>

The effectiveness of law in legal action or reality can be known if someone states that a legal rule has succeeded or failed in achieving its objectives, then it is usually known whether its influence has succeeded in regulating certain attitudes or behavior so that it is in accordance with its objectives or not. Legal effectiveness means that the effectiveness of the law will be highlighted from the goals to be achieved, namely legal effectiveness. One of the efforts that is usually made to ensure that people comply with legal rules is to include sanctions. These sanctions can be in the form of negative sanctions or positive sanctions, the purpose of which is to create a stimulus so that people do not commit disgraceful actions or commit commendable action.<sup>15</sup>

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<sup>14</sup> Soerjono Soekanto, *Several Legal Problems in the Development Framework in Indonesia* (Jakarta: University of Indonesia, 1976), p. 40.

<sup>15</sup> Soerjono Soekanto, *Several Legal Problems in the Development Framework in Indonesia* (Jakarta: University of Indonesia, 1976), 48

Certain conditions are required that must be met for the law to have an influence on human attitudes or behavior. The conditions that must exist include, among other things, that the law must be communicable. Legal communication focuses more on attitude, because attitude is a mental readiness so that a person has a tendency to give a good or bad view, which then manifests in real behavior. If what is communicated cannot reach the problems directly faced by the target of legal communication, difficulties will be encountered. The result is that the law has no effect at all or even has a negative effect. This is because their needs cannot be met and understood, resulting in frustration, pressure, or even conflict.<sup>16</sup>

According to Hans Kelsen, when we talk about legal effectiveness, we also talk about legal validity. Legal validity means that legal norms are binding, that people must act in accordance with what is required by legal norms, that people must obey and apply legal norms. Legal effectiveness means that people actually act in accordance with legal norms as they must, that these norms are actually implemented and obeyed.<sup>17</sup>

## **2. Employee Rights and Protection**

Talking about worker/labor rights means we are talking about basic rights, as well as non-human rights. Human rights are rights that are inherent in the worker/laborer themselves and are born with them and if these rights are

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<sup>16</sup> Soerjono Soekanto, *Several Legal Issues in the Development Framework in Indonesia*, 50

<sup>17</sup> Sabian Usman, *Basics of Sociology* (Yogyakarta: Pustaka Belajar, 2009), 12.

released/separated from the worker, their status and dignity as a human being will be reduced.

Human Rights (HAM) are natural rights given by God to every human being, and without them it is impossible for humans to live as a true and dignified person. In other words, human rights are rights that a person brings into the world from birth as a gift from God, the Almighty Creator. Therefore, no power in the world can revoke it.

Based on several references that the author obtained, the author tries to provide an understanding of human rights referring to two ideas, namely:

1. Thoughts based on religious teachings, namely that humans are glorified creatures, occupying a higher position than other creatures. As is the teaching of Islam in the Qur'an Surah Al-Israa' verse 70 which means "And indeed We glorify the descendants of Adam, and We raise them on land and in the sea and We give them good fortune and We prefer them to most creatures that We have created with excellence and perfection." Then in Surah At-Tiin verse 4 it is stated that "Indeed We have created humans in the best form".
2. Thoughts that do not base themselves directly on religious teachings. This thinking is very diverse, some develop it based on the principle that in order for humans to survive under human values, they need a number of objective conditions. If these conditions cannot be met, then human values will be lost and humans will perish. The point is that the existence of human rights does not depend on or originate from humans, but from institutions that are higher than humans. Therefore, human rights must not be undermined and cannot be revoked by positive law that applies anywhere. Even with this principle, every positive law is directed to adopt and comply with the principles of Human Rights.

With the issuance of Law Number 39 of 1999 concerning Human Rights as positive law in Indonesia, the definition of Human Rights has become clearer,



where in Article 1 point (1) it is stated that Human Rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty and are His gifts which must be respected, upheld and protected by the state, law, government and every person, for the sake of honor and protection of human dignity.

Meanwhile, non-human rights are workers/laborers' rights which have been regulated in non-human laws and regulations.<sup>18</sup> Right Workers/laborers are basic rights inherent in workers when they have an employment relationship with an entrepreneur/employer which is protected and guaranteed in statutory regulations.

In the employment agreement, what is the employee's right becomes the employer's obligation, and vice versa what is the employer's right becomes the employee's obligation.<sup>19</sup>

Referring to Law Number 13 of 2003, workers' rights are regulated in many articles as follows:

Article 6 "Every worker/laborer has the right to receive equal treatment without discrimination from the employer".

Article 12 paragraph (3) "Every worker/laborer has the same opportunity to take part in job training in accordance with their field of work."

Article 80 "relates to the rights of workers/laborers to carry out worship as required by their religion".

Article 81 paragraph (1) "relates to the rights of female workers/laborers who feel sick during their menstrual period and do not work on the first and second day of menstruation."

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<sup>18</sup> Adrian Sutendi, Labor Law, (Jakarta: Sinar Graphics, 2009), 15

<sup>19</sup> Sehat Damanik, Outsourcing and Work Agreements, (Jakarta: DSS Publishing, 2006), 54

Article 82 paragraph (1) "Female workers/laborers have the right to rest for 1.5 months before giving birth and 1.5 months after giving birth."

Article 82 paragraph (2) "Female workers/laborers who experience a miscarriage have the right to rest for 1.5 months or in accordance with a certificate from an obstetrician or midwife."

Article 83 "relates to the right of female workers/laborers to breastfeed their children during work."

Article 84 "Every worker/laborer who uses the right to rest time has the right to receive full wages".

Article 85 paragraph (3) "relates to the right of workers/laborers to receive overtime wages when carrying out work on official holidays.

Article 86 paragraph (1) "Each worker/laborer has the right to obtain protection for:

- a. occupational Health and Safety;
- b. morals and ethics; and
- c. treatment that is in accordance with human dignity and religious values.

Article 88 "Each worker/laborer has the right to earn income that fulfills a livelihood worthy of humanity, in the form of:

- a. minimum wage;
- b. overtime pay;
- c. wages for not coming to work due to absence;
- d. wages for not coming to work due to carrying out other activities outside of work;
- e. wages for exercising the right to rest time from work.

Article 99 paragraph (1) "Each worker/laborer and his family have the right to obtain labor social security".

Article 104 paragraph (1) "Every worker/laborer has the right to form and become a member of a trade/labor union".

Regarding all these provisions, citing the opinion of Adrian Sutendi<sup>20</sup>, then these workers' rights can be realized effectively if the following matters are taken into account:

- a. Workers as rights holders can enjoy their rights without any obstacles or interference from any party.
- b. Workers as rights holders can make demands through legal procedures addressing.

In an expert opinion regarding legal protection for workers, Aristotle stated this<sup>21</sup> that humans are "zoon politicon", social creatures or creatures of society, because each member of society has a relationship with one another. As social creatures, consciously or unconsciously, humans always carry out legal acts (*legal act*) and legal relations (*legal relations*).

Legal acts are defined as every human action carried out intentionally/on his will to give rise to rights and obligations whose consequences are regulated by law. Meanwhile, legal relations are defined as relations between two or more legal subjects, which relations consist of ties between individuals and individuals, between individuals and society or between one society and another society. In this legal relationship, the rights and obligations of one party conflict with the rights and obligations of the other party.<sup>22</sup>

Every legal relationship certainly gives rise to rights and obligations, apart from that, each member of society certainly has different and conflicting interests. The presence of law in society is to integrate and coordinate interests

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<sup>20</sup> Adrian Sutendi, Labor Law, (Jakarta: Sinar Graphics, 2009), 18

<sup>21</sup> Soeroso, Introduction to Legal Science, Publisher: Sinar Graphics, Eighth Printing, 2006, 49

<sup>22</sup> Soeroso, Introduction to Legal Science, p. 269

that may conflict with each other. In this regard, the law must be able to integrate it so that conflicts of interest can be reduced to a minimum. Protection of certain interests can only be done by limiting the interests of other parties.

Protection of society has many dimensions, one of which is legal protection. Legal protection for every Indonesian citizen without exception, can be found in the 1945 Constitution of the Republic of Indonesia. Therefore, every legal product produced by the state and region must always be able to provide guarantees of legal protection for everyone, in fact it must be able to capture the aspirations for law and justice that develop in society.

In the opinion of Lili Rasjidi and B. Arief Sidharta<sup>23</sup> regarding the function of law to provide protection is that law is developed and needed by humans precisely based on the product of human judgment to create conditions that protect and promote human dignity and to enable humans to live a normal life in accordance with their dignity.

Meanwhile, Satjipto Rahardjo said that legal protection is an effort to protect a person's interests by allocating power to him to act in the context of his interests.<sup>24</sup>

Meantime, according to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship between values or rules which are

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<sup>23</sup> Lili Rasjidi and B. Arief Sidharta, *Madzab Legal Philosophy and Reflection*, (Bandung: PT. Teen Rosda Karya, 1994), 64

<sup>24</sup> Satjipto Rahardjo, *Other Sides of Law in Indonesia*, (Jakarta : Kompas, 2003), 121

manifested in attitudes and actions in creating order in social interactions between fellow humans.<sup>25</sup>

Meanwhile, according to Hetty Hasanah, legal protection is any effort that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those taking legal action.<sup>26</sup>

Departing from the definitions above, the author can simply formulate legal protection, namely an effort created or used by stakeholders to protect legal subjects through statutory regulations, religious norms and unwritten law.

According to Philipus M. Hadjon<sup>27</sup>, legal protection can be divided into two, namely preventive legal protection and repressive legal protection.

a. Preventive Legal Protection

Protection provided by the government with the aim of preventing violations before they occur. This is contained in statutory regulations with the aim of preventing violations and providing signs or limitations in carrying out an obligation.

b. Repressive Legal Protection

Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed. One of the characteristics and at the same time the aim of the law is to provide protection (guidance) to the community.

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<sup>25</sup> Muchsin, *Legal Protection and Certainty for Investors in Indonesia*, (Surakarta: Master of Laws, Sebelas University Postgraduate Program, March, 2003), 14

<sup>26</sup> Hetty Hasanah, *Consumer Protection in Consumer Financing Agreements for Motor Vehicles with Fiduciaries*, <http://jurnal.unikom.ac.id/vol3/perlindungan.html>, 2004, 1

<sup>27</sup> Philipus M. Hadjon, *Legal Protection for the People in Indonesia*, (Surabaya: Bina Ilmu, 1987), 2

Therefore, legal protection for society must be realized in the form of legal certainty.<sup>28</sup>

### **3. Guarantee of Workers' Freedom of Worship in Legislation**

In theory, there is a legal principle which states that workers and employers have equal positions. According to labor terms, they are called work partners. Likewise, legally based on Article 27 of the 1945 Constitution, the position of workers is the same as that of entrepreneurs.

However, socio-economically, the position of the two is not the same, where the position of entrepreneurs is higher than that of workers. This high and low position in the work relationship results in a relationship that is at the top (*service ban*), giving rise to a tendency for employers to abuse their workers. Likewise, in practice, the positions of the two are not equal. Entrepreneurs as owners of capital have a higher position than workers. This is clearly visible in the creation of various company policies and regulations.<sup>29</sup>

Considering that the position of workers is lower than that of employers, it is necessary for government intervention to provide legal protection to workers against possible arbitrary actions from employers. Protection of workers is intended to guarantee the fulfillment of workers' basic rights and guarantee equality of opportunity and treatment without discrimination on any basis in order to realize the welfare of workers and their families while still paying attention to developments in the business world.

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<sup>28</sup> Shidarta, *Characteristics of Legal Reasoning in the Indonesian Context*, Dissertation, (Bandung: Parahyangan Catholic University Doctoral Program in Law, 2004), 112

<sup>29</sup> Sehat Damanik, *Outsourcing and Work Agreements*, (Jakarta: DSS Publishing, 2006), 102

The form of protection provided by the government is to make regulations that bind employees/laborers and employers, conduct construction, and implement industrial relations processes.<sup>30</sup>

Protection of workers is an inseparable part of the protection of citizens as a state obligation.<sup>31</sup> The government has taken many policies (*legislative and bureaucracy policy*) especially in statutory regulations, such as: Law no. 13 of 2003 concerning Employment, along with its implementing regulations PP No. 8 of 1981 concerning Wage Protection, Law no. 3 of 1992 concerning Statement on the Applicability of the Labor Inspection Law. All these regulations are intended to protect workers/laborers as weaker parties than entrepreneurs, to increase the living standards of workers/laborers and their families, to prevent declines in income,<sup>32</sup> and to increase human dignity, dignity and self-confidence in order to create a just and prosperous society, both materially and spiritually.<sup>33</sup>

According to Adrian Sutendi<sup>34</sup> there are only two ways to protect workers/labour. *First*, through labor law, because the law means there is a state guarantee to provide decent work, protect it in the workplace (health, work safety and decent wages) up to the provision of social security after retirement. *Second*, through trade unions/labor unions (SP/SB). Because through SP/SB

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<sup>30</sup> Chainur Arrasjid, *Basics of Legal Science*, (Jakarta: Third Printing, Sinar Graphics, 2004), 290

<sup>31</sup> Fatkhul Muin, *Legal Protection for Indonesian Workers*, Legal Cita Journal, Vol.3, 2015, 11

<sup>32</sup> Adrian Sutendi, *Labor Law*, (Jakarta: Sinar Graphics, 2009), print. 1, 17.

<sup>33</sup> Adrian Sutendi, *Labor Law*, 14

<sup>34</sup> Adrian Sutendi, *Labor Law*, 17

workers/laborers can express their aspirations, negotiate and demand the rights they should receive. SP/SB can also represent workers/laborers in making a Collective Labor Agreement (PKB) which regulates the rights and obligations of workers/laborers with employers through a general agreement which serves as a guideline in industrial relations.

According to Oemar Seno Adji and Muhammad Tahir Azhary<sup>35</sup>, in the Indonesian Legal State, there is a harmonious and close relationship between religion and the state. Therefore, freedom of religion in the Republic of Indonesia requires regulation of the relationship between the state and religious communities in carrying out their beliefs.

Furthermore, it has been explicitly stated in the Body of the 1945 Constitution that the regulation of the right to worship is regulated in Article 29 paragraph (2) which reads "The State guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs. ". Furthermore, after the Second Amendment to the 1945 Constitution, regulations were added through Article 28 E paragraph (1), which reads "Everyone is free to embrace their own religion and worship according to their religion..." Then through Article 28 I paragraph (1) which reads ".....religious rights.....are human rights which cannot be reduced under any circumstances."

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<sup>35</sup> Fatmawati, Protection of the Right to Freedom of Religion and Worship in the Indonesian Legal State, Constitutional Journal, Volume 8, No. 24, 2011, 504



Regarding this, Adam Muhshi<sup>36</sup> states that in Indonesia the guarantee of citizens' rights to embrace and worship according to their religion and beliefs shows that the 1945 Constitution was created based on the divine philosophy that animates the Indonesian nation.

Then, it is specifically regulated through Law Number 13 of 2003 concerning Employment, in Article 80, it is stated that "Employers are obliged to provide sufficient opportunities for workers/laborers to carry out the worship required by their religion".

In the Explanation, it is stated that What is meant by sufficient opportunity is providing a place to carry out worship that allows workers/laborers to carry out their worship properly, in accordance with the conditions and capabilities of the company.

Then, in Article 100 paragraph (1) along with its explanation, it is reaffirmed regarding the obligation of entrepreneurs/companies to provide prayer facilities, which reads: "To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities." Welfare facilities include prayer facilities.

Even now in Kendari City, Regional Regulation Number 1 of 2015 concerning Local Workers has been formed, where one of the articles regulates the opportunity to worship for workers in Kendari City, namely Article 29 which reads:

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<sup>36</sup> Adam Muhshi, *Constitutional Theology of Human Rights Law on Freedom of Religion in Indonesia*, (Yogyakarta: PT. LKIS Printing Cemerlang, 2015), 14

- (1) Employers/employers are obliged to provide a place of worship in the workplace, according to conditions and capabilities.
- (2) Entrepreneurs/employers are obliged to provide sufficient free time to workers and employees/labourers to carry out worship as required/sunnah by their religion.

#### 4. Maslahah Mursalah

##### a. Meaning of Maslahah Mursalah

Say "problem" in Arabic ( يصلح-صلح ) becomes ( صلحا ) which means everything that is beneficial to humans, such as attracting or producing, such as generating profit or good, and rejecting or avoiding, such as rejecting damage or evil. In terms of terms it is free, or in the meaning of (مطلق), the last word if connected with the word maslahah means "free or free where it can or cannot be done" The combination of two words becomes "maslahah mursalah" which means the principle of benefit (goodness) used to establish an Islamic law. It can also mean, a Actions that contain good or beneficial value. In this case, every beneficial thing can then be called Maslahah.

There are several definitions related to maslahah mursalah which when interpreted have close and similar meanings. One of them is<sup>37</sup> :

- 1) Imam Ash-Syaukani (W. 1281H) in the book "Irsyad al-Fuhul" defines:

الْمُنَا سِبْأَلْدِي لَا يَعْظَمُ أَنَّ الشَّارِعَ أَلْعَاهُ أَوْ اعْتَبَرَهُ

*"It is not known whether the Shari'ah rejects it or takes it into account."*

- 2) Imam Ibnu Qudamah (W. 630H) from the Hanbali scholars gave a

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<sup>37</sup> Amir Syarifuddin, Ushuf Fiqh Volume 2 (Jakarta: Prenadamedia Group, 2006), 370

summary:

مَا لَمْ يَشْهَدْ لَهُ إِبْطَالٌ وَلَا إِعْتِبَارٌ مُعَيَّنٌ

*"Maslahat that there is no evidence of a specific indication that cancels it and neither does anyone who notices it".*

- 3) Imam Abu Hamid Al-Ghazali (W. 505H) in the book "al-Mustasyfa" defines *maslahah mursalah* as follows:

مَا لَمْ يَشْهَدْ لَهُ مِنَ الشَّرْعِ بِإِبْطَالٍ وَلَا بِإِإِعْتِبَارٍ نَصٌّ مُعَيَّنٌ

*"Anything (mashlahah) for which there is no evidence from the Sharia' in the form of certain texts that cancel it and no one pays attention to it"*

- 4) Abdul Wahab Khallaf (W.1375H/1956M) provides the definition:

إِنَّمَا مَصْلَحَةٌ لَمْ يَرُدَّ عَنِ الشَّرْعِ دَلِيلٌ لِإِعْتِبَارِهَا أَوْ لِإِلْغَائِهَا

*"Mushlahah Mursalah is a mashlahat that has no evidence of syar' to accept it or reject it".*

- 5) Muhammad Abu Zahrah (W.1974M) gave the following definition:

*"Benefits that are in line with the objectives of Islamic law and certain instructions that prove its confirmation or rejection."*

In addition to the definition above, conclusions can also be drawn about the nature of *Maslahah Mursalah* as a product of Islamic law, that is, something that is good according to human reason with various considerations can create good or avoid evil for humans, as well as what is good is also consistent and in line with the purpose *syara'* in determining the law and what is good according to reason and in accordance with the purpose of *syara'* there is no *syar'i* guide specifically that rejects it, nor is there any

syara' guide that admits it.<sup>38</sup>

Maslahah Mursalah is a benefit that not only does not have a proof base but also does not have cancellation. If an event occurs where there is no sharia provision and there is no "evil that comes out of shari'a" that determines the clarity of the law of the event, then something is found that is in accordance with sharia law, that is a provision that aims to maintain harm or to expressing benefit, then the event is called maslahah mursalah. Benefit is its main purpose, protecting it from loss and maintaining profit.<sup>39</sup>

As explained above, maslahah in the sense of syara' determines the law not only based on considerations of reason alone in assessing the good and bad of something, not because it can bring pleasure and avoid damage, but what is considered good by reason must also be in line with the goal. syara' in establishing laws, namely maintaining the five basic principles of life (maintaining religion, soul, reason, offspring and property).<sup>40</sup>

b. All kinds of Maslahah

Ushul Fiqh scholars divide the various types of Maslahah from two aspects, namely:

1) Seen in terms of strength as an argument in setting the law, there are 3 as

follows:

a) Maslahah Dharuriyah Maslahah which is related to the primary needs

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<sup>38</sup> Mukhsin Nyak Umar, "Al-Mushlahah Al-Murlah (Study of its Relevance to the Reform of Islamic Law), (Banda Aceh: Turats, 2017)", 141

<sup>39</sup> Rachmat Syafe'i, Ushul Fiqh Science, (Bandung: Pustaka Setia, 2018), 117.

<sup>40</sup> Hendri Hermawan and Mashudi, "Al-Maslahah Al-Mursalah in Legal Determination", Journal of Islamic Economic Sciences, no. 1 (2018), 55. <https://jurnal.stie-aas.ac.id/index.php/jei/article/view/140>

of mankind in this world and in the afterlife. This primary benefit must exist and must be maintained and maintained. If it is not fulfilled, humanity will be in danger, both in this world and in the afterlife.

b) Maslahah Hajiyyah Maslahah that is related to the secondary needs of mankind is to complete primary benefits, for example Eating is for human survival, buying and selling to get wealth, sharpening the brain for intellectual perfection.

c) Maslahah Tahsiniyah Maslahah which is related to tertiary (supporting/complementary) needs, maslahah which requires human life to it does not reach the level of dharuri, nor does it reach the level of hajj; however, these needs need to be fulfilled in order to provide perfection and beauty to human life. Mashlahah tahsiniyah in the form of tahsini, is also related to the five basic human needs.

2) Viewed from a direct and indirect perspective (dalil) regarding Maslahah, it is divided into three, namely:

a) Maslahah Mu'tabarah Maslahah is recognized by the texts (Al-Quran and Hadith) which are taken into account by syar'i. That is, there are instructions from Sharia, both directly and indirectly, which provide a pointer to the existence of Maslahah which is the reason for establishing laws. For example, it is forbidden for us to marry people of different religions.

b) Maslahah Mulghah Maslahah which is considered good by reason, but is not considered by the syara' and there are syara' instructions which

reject it. This means that reason thinks it is good and is in line with the objectives of the Sharia', but it turns out that the Sharia' stipulates laws that are different from what is guided by the Mashlahah.

- c) Maslahah Mursalah Maslahah that is considered good by reason is in line with the purpose of syara" in setting the law; but there are no 44 syara" guidelines that take it into account and there are no syar'i guidelines" that reject it, for example the Compilation of Al-Quran in one mushaf during the time of Caliph Abu Bakar Siddiq.

#### c. Conditions

The conditions to be able to perform ijihad by using maslahah mursalah are two, namely general conditions and special conditions.<sup>41</sup>

- 1) The general condition, namely maslahah mursalah , is only used when no nash is found as a reference material.
- 2) There are 4 special conditions, namely:
  - a) Mashlahah Mursale is Maslahah that is essential and general in nature, in the sense that it can be accepted by common sense that it really brings benefits to humans and avoids harm to humans as a whole.
  - b) What common sense considers to be a true Mashlahah is truly in line with the aims and objectives of the Sharia in establishing every law, namely realizing the benefit of mankind.
  - c) What common sense considers to be a true Mashlahah is truly in line

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<sup>41</sup> Al Yasa' Abu Bakar, *Istilahiah Method of Utilizing Knowledge and Ushul Fiqh* (Jakarta: Prenadamedia Group, 2016), 30

with the aims and objectives of the Sharia in establishing the law and does not conflict with existing Sharia arguments in the form of texts from the Qur'an and Sunnah, as well as the Ijma' of previous scholars.

- d) Mashlahah Mursalah is practiced in needy conditions, which if the problem is not solved in this way, then the people will be in the straits of life.

The majority of scholars are of the opinion that maslahah mursalah functions as a syariah argument that can be used to establish law. They make this claim for various reasons, among others:

- 1) Human benefit continues to develop along with the development of human needs. Many human benefits in various places and at different times cannot keep up with the development of human benefits if the benefits that are currently developing are not paid attention to and only benefits for which there are texts are considered. Nevertheless, the aim of sharia is to realize human benefit wherever and whenever
- 2) According to the research that the laws, decisions, rules and regulations produced by the companions, tabi'in and mujtahidin imams are to create mutual benefit. For example the Wisdom done by Abu Bakar ra. in collecting the Qur'an and writing all its verses on sheets, fighting those who oppose paying zakat and appointing Umar bin Khathtab r.a. to become caliph after him.<sup>42</sup>

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<sup>42</sup> Mukhtar Yahya, Fatchur Rahman, Basics of Islamic Fiqh Legal Development, (Bandung, : Al-Ma'arif, 1993), 107.

## CHAPTER III

### RESEARCH METHODS

#### A. Types of Research

In this research, what is used is field research or what is usually called juridical - empirical. Empirical juridical research is legal research regarding the application or implementation of normative legal provisions in *action* on every particular legal event that occurs in society.<sup>43</sup> In this case, this research was carried out by interviewing restaurant owners and their workers and data collection was carried out at the Kendari City Department of Manpower and Industry.

#### B. Research Approach

This research approach uses a juridical-sociological approach, namely an approach based on binding norms or regulations, so it is hoped that from this approach it can be seen how law, which is empirically a symptom of society, can be studied as a causal variable that gives rise to consequences in various aspect of social life.<sup>44</sup>

#### C. Research sites

The location of this research is Kendari City which is known to be developing, this refers to the many developments which are also starting to develop a lot of culinary tourism in Kendari City. As well as the many aspects that make the

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<sup>43</sup> Abdulkadir Muhammad, "*Law and Legal Research*", (Bandung: Citra Aditya Bakti, 2004), 134

<sup>44</sup> Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry* (Bandung, 1990), 34



city increase its competitiveness in the tourism sector, thus encouraging culinary or restaurant businesses in Kendari City to flourish. In this case, it is one of the factors in several conflicts related to fulfilling the right to worship for workers in the work environment in Kendari City which needs to be re-examined.

The 18 restaurants that the author studied provided permission and broad access to explore and conduct this research and provide information and field facts needed in processing this research data.

#### **D. Type and Source of data**

The source of research data is the subject of the data obtained. The types and sources of data used are:

- a. Primary Data is data obtained directly through interviews and observations of restaurant workers in Kendari City in fulfilling their right to the opportunity to worship.
- b. Secondary Data is data obtained from the 1945 Constitution of the Republic of Indonesia, the Employment Law, the Human Rights Law, Kendari City Regional Regulations, as well as books or written documents, which consist of books that discuss articles. employment as well as those related to this research.

#### **E. Data Mining Methods**

A process of procuring primary data for research purposes. Data mining is a very important step in the scientific method, because in general the data collected is used to test hypotheses that have been formulated.<sup>45</sup>

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<sup>45</sup> Moh. Nazir, *Research methods* (Jakarta: Ghalia Indonesia, 2003), 211

The data mining technique used in this research is the interview technique (*interview*), observation and documentation.

a. Interview Techniques

Interviews are a method for obtaining information by conducting questions and answers to parties related to this research. Interviews will be conducted by researchers with owners and workers at restaurants in Kendari City.

b. Observation Techniques

Observation techniques are the systematic observation and recording of the phenomena being investigated. Observation is a data collection technique that is carried out through observation, accompanied by notes on the condition or behavior of the target object.<sup>46</sup> In a broad sense, actual observation is not only limited to observations carried out either directly or indirectly.<sup>47</sup> Observation is a data collection method in which researchers or their collaborators record information as they witness it during the research.<sup>48</sup> From the definition above, it can be understood that the observation method is a way of collecting data through direct observation of situations or events in the field.

c. Documentation Techniques

Documentation is used to collect data and some information that will be obtained from research. Documentation is needed so that the preparation of the thesis is clearer and can be accounted for. In this research, documentation is

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<sup>46</sup> Abdurrahman Fatoni, *Research Methodology and Thesis Preparation Techniques* (Jakarta: Rineka Cipta, 2011), 104.

<sup>47</sup> Singarimbun Masri and Efendi Sofran, *Survey Research Methods* ( Jakarta: LP3ES, 1995), 46.

<sup>48</sup> mess, *Research methodology* (Jakarta: Grasindo, print.1,2002),116

carried out by collecting data related to the research problem, both from document sources, books, the internet, journals and others.

## **F. Data Analysis**

Data processing methods explain data processing and analysis procedures according to the approach taken. Because this research uses qualitative methods, the data processing method is carried out by describing the data in the form of regular, coherent, logical, non-overlapping and effective sentences, making it easier to understand and interpret the data. These include stages:

### a. Editing

At this stage the researcher will correct the written data which is the result of interviews with sources and other data, whether from written sources such as books, legislation or other sources, which will later be presented in the work. Paraphrasing the choice of words or sentences in writing is also included in this subchapter because in the editing process paraphrasing is also needed to avoid the possibility of plagiarism.

### b. Classification (*Classifying*)

The function of classification is to make it easier for researchers to analyze or process all the data obtained. In this section, the researcher groups all the data obtained both through written sources and from interviews based on their types. In the future, the form of the data will be as previously explained, namely in the form of primary and secondary data. The primary data in this research comes

from interviews with sources, which in this case can come from workers whose right to worship is not fulfilled.

c. Verification (*Verifying*)

The verification process can be said to be almost the same as the editing process, if in the editing process the researcher will double-check the data that has been obtained and paraphrase the correct sentence selection, then in the verification stage the researcher will check the data that has been edited to align it with the problem formulation that has been formulated. The initial steps have been determined. In the verification stage there is a method called the triangulation method. This method is used to synthesize or rearrange data that has been obtained from various sources. Apart from that, this method serves to test the validity of the overall data so that readers think that the research is credible.

d. Analysis (*Analyzing*)

This process can be said to function to transfer or redescribe the results of the interviews obtained from the sources to become a new narrative in descriptive form. At the analysis stage, what the researcher will carry out is to paraphrase all the data obtained from the interviews. Apart from that, the data will be linked to the laws and regulations that will be used, namely Article 29 of the Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers.

e. Conclusion (*Conclusion*)

Conclusion is the final stage of data processing, there is a conclusion to provide a final explanation that briefly answers the problem formulation. The preparation of this final stage must be carried out carefully because it is related to how to

answer the problem formulation that has been determined, because the answer to the problem formulation is a part that has a fairly high level of importance in the research.

## CHAPTER IV

### RESEARCH RESULTS AND DISCUSSION

#### A. General Overview of Restaurant / Restaurant Businesses in Kendari City

One type of tourism that is currently developing is culinary tourism. Tourists who visit a particular tourist destination look for or hunt for typical regional food. They do not hesitate to pay a high price to enjoy certain typical dishes. Changes in people's lifestyles have also occurred, not only to fill their stomachs but also they are looking for excellent atmosphere and service as part of the food they order. One type of business that is closely related to culinary tourism is the restaurant business.

The existence of restaurants began to be known since the 9th century in the Middle East before appearing in China. In the Islamic world in the middle ages, there were "restaurants where one could buy all kinds of food prepared". A restaurant like this was mentioned by Al-Muqaddasih, a geographer born in 945 AD who lived in the middle East At the end of the 10th century.<sup>49</sup>

Restaurant is a general term to refer to a housekeeping business have, which serves meals to the community and provides a place to enjoy the meal as well as set tariff particular to the food and service. Although restaurants generally serve food on site, there are also those that provide food delivery and buy take home as a form of service to consumers. Restaurants usually have specialization in the type of food

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<sup>49</sup> E-Commerce Information System at "Noon" Restaurants. accessed December 20, 2023 <http://jurnal.medicom.ac.id/index.php/merce/>.

it serves. For example, namely Chinese restaurant, padang restaurant, fast food restaurant etc.<sup>50</sup>

In the legal literature in Indonesia, the definition of a restaurant is found in Decree of the Minister of Health<sup>51</sup>, where in Article 1 the number 1 states that what is meant by restaurant is every commercial business place whose scope of activity is providing food and drinks to the public at its place of business.

Furthermore, it is also found in the Regulation of the Minister of Tourism and Creative Economy<sup>52</sup>, where in Article 1 paragraph (2) it is stated that a restaurant business is a business providing food and drinks equipped with equipment and supplies for storage and serving in a fixed place that does not move with the aim of making a profit and/or profit.

If you look closely at these two regulations, restaurants and eateries are defined differently, even though in fact they are in Indonesia, restaurants are also usually called restaurants. According to Marsum<sup>53</sup>, a restaurant is a place or building organized commercially, which provides good service to all its consumers in the form of food and drinks. Restaurant is a loan word that comes from French "*restore*" which was adapted by English "*restaurant*" which means to restore.

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<sup>50</sup> [https://id.wikipedia.org/wiki/Rumah\\_makan](https://id.wikipedia.org/wiki/Rumah_makan), accessed on November 27, 2023.

<sup>51</sup> Article 1 number 1 Decree of the Minister of Health Number 1098/Menkes/Sk/Vii/2003 concerning Hygiene Sanitation Requirements for Restaurants and Restaurants

<sup>52</sup> Minister of Tourism and Creative Economy Regulation Number 12 of 2014 concerning Restaurant Business Standards

<sup>53</sup> In Sugiyanto, Food Stall Management at Gajah Mungkur Reservoir Tourism in Improving the Welfare of the Community of Sendang Village, Wonogiri District, Wonogiri Regency, Lisyabab, Journal of Islamic and Social Studies, Volume 1, Number 1, June 2020, 122

In the legal literature in Indonesia, the definition of a restaurant is found in Article 1 number 2 Decree of the Minister of Health Number 1098/ Menkes/ Sk/ VII/2003<sup>54</sup>, Where It is stated that a restaurant is a food service business located in part or all of a permanent building equipped with equipment and supplies for the process of making, storing, serving and selling food and drinks to the public at the place of business.

Furthermore, in Article 1 number 2 Regulation of the Minister of Tourism and Creative Economy Number 11 of 2014<sup>55</sup>, it is stated that a restaurant business is a business providing food and beverage services equipped with equipment and supplies for the process of making, storing and serving in a fixed place that does not move with the aim of making a profit and/or profit.

However, with the enactment of Law Number 28 of 2009<sup>56</sup>, then the meaning of a restaurant and a restaurant is the same, where it is expressly stated in Article 1 point 23 that a restaurant is a facility that provides food and/or drinks for a fee, which also includes restaurants, cafeterias, canteens, stalls, bars, and the like, including services caterings.

From the descriptions above, the author simply defines a restaurant as a business place that serves visiting guests with the scope of its activities providing food and drinks of a commercial nature.

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<sup>54</sup> In Sugiyanto, Management of Food Stalls at Gajah Mungkur Reservoir Tourism in Improving Community Welfare in Sendang Village, Wonogiri District, Wonogiri Regency, Lisyabab, 122

<sup>55</sup> In Sugiyanto, 122

<sup>56</sup> Law Number 28 of 2009 concerning Regional Taxes and Regional Levies



This restaurant/restaurant business is quite popular because it is popular and sought after by tourists. Many people are willing to go to various places to try or look for food and drinks that they find delicious and famous. In fact, quite a few people are willing to sacrifice most of their money and time for types of food and drinks with a high taste that they have never tasted, even though the restaurant they are going to is relatively far from where they live, even far from their place of origin.

The increase in the number of eating houses/restaurants in a place is the result of market demand which is also increasing. At this time, restaurants/restaurants have become an inseparable part of modern society's life, so that the existence of restaurants/restaurants has become a necessity.

In big cities and developing cities such as Kendari City, which is quite dense and super busy, many residents like to look for restaurants to fulfill their desires for culinary tourism. After being busy working, most of them look for culinary tourism activities that can provide a comfortable and relaxed atmosphere.

Because of these customers' needs, the establishment of restaurants with various types of food and drinks packaged with unique and interesting concepts is increasingly emerging and is believed to be a form of economic business that has quite good prospects, even in times of crisis. This is an opportunity for a region to develop its economy through this business.

In Kendari City, based on data obtained from the Kendari City Government, it shows that there are quite a lot of types of restaurant businesses. The following is a list of restaurant businesses and the like in Kendari City.

Table 2: List of restaurants and the like in Kendari City

No	Type of Business	Number of Businesses
1	Restaurant	154
2	Restaurant	103
3	Food stalls	372
	TOTAL	629

Source: Kendari City Regional Revenue Agency Documentation Data for 2023

The data in table 1 above shows that the number of restaurant businesses and the like in Kendari City, specifically those registered as mandatory tax collectors, is 629.

The existence and sustainability of the restaurant/restaurant business is of course supported by workers who have the ability and expertise in accordance with the type of work given. The existence and sustainability of workers is of course supported by food establishments/restaurant entrepreneurs, who with legal awareness always fulfill the rights of their workers. One of them is fulfilling the right to worship of Muslim workers, especially during working hours. How it is fulfilled, whether it has been implemented completely or not, or perhaps not at all, will be explained in the next sub-chapter.

### **B. Fulfillment of Muslim Workers' Rights to Worship in Restaurants in Kendari City**

The presence of restaurants, restaurants and the like in Kendari City, involving workers and a large local workforce, is certainly able to provide welfare for people seeking work. However, on the other hand, it does not rule out the

possibility of causing legal or religious problems. Moreover, in today's world of reality, there are still many restaurant workers who do not understand their rights. Likewise with restaurant entrepreneurs, there are still many who abuse their obligations, so that with their power they suppress workers' rights which *may or may be necessary* do not understand their rights by dictating work agreements/company regulations to their workers, which must be accepted, as if they were a "fixed price".

In fact, regulations regarding work agreements and company regulations have been regulated in the Employment Law and Job Creation Law as well as various other regulations, but often the implementation is not in accordance with what is expected, for example; rest periods, the opportunity to perform the 5 Daily Prayers on time, and the provision of a place for the 5 Daily Prayers in the workplace are given less attention.

Restaurants generally have strict working hours as part of a company system that prioritizes effectiveness and efficiency with very high work discipline. As a result, workers become a kind of highly controlled "machine", in order to produce high performance. Strictly scheduled working hours of course have an impact on not carrying out prayers as one of the obligations of every Muslim worker. In fact, Muslim workers have the right to carry out their worship and beliefs and have the freedom to carry out their religious obligations like other individuals.

Apart from that, there are places for 5 daily prayers in several restaurants as *if* they have not received serious attention, although it must be acknowledged that the facts on the ground show that several restaurants have provided adequate prayer

places. However, it must also be acknowledged that there are still several restaurants that provide places for prayer, but they are felt to be less comfortable, both in terms of location and for women in particular. It is even possible that there are also restaurants that do not provide a place to pray at all, let alone prayer facilities for their workers.

Therefore, legal protection of these rights is very necessary considering the weak position of workers. Therefore, legal protection for workers can be implemented if labor laws and regulations require or force employers to act as stated in the legislation, including fulfilling workers' right to worship, either in the form of providing places of worship or providing free time to carry out worship.

Juridically, there are several regulations that regulate the fulfillment of the right to worship for workers. In general, it has been regulated through Article 29 paragraph (2) of the 1945 Constitution which reads: "The state guarantees the freedom of every resident to embrace their own religion and to worship according to their religion and beliefs." After the amendment to the 1945 Constitution, it was also regulated in Article 28E paragraph (1) of the Second Amendment to the 1945 Constitution, namely: "Everyone is free to embrace their own religion and worship according to their religion..."

Furthermore, it is specifically regulated through Law Number 13 of 2003 concerning Employment, namely Article 80, which reads: "Employers are obliged to provide sufficient opportunities for workers/laborers to carry out the worship required by their religion."

In the Explanation, it is stated that What is meant by sufficient opportunity is providing a place to carry out worship that allows workers/laborers to carry out their worship properly, in accordance with the conditions and capabilities of the company.

In line with the explanation of Article 80 above, Article 100 paragraph (1) and its explanation reiterate the obligation of entrepreneurs/companies to provide prayer facilities, which reads: "To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities." Welfare facilities include family planning services, child care, housing for workers/laborers, **prayer facilities**, sports facilities, canteen facilities, health facilities and recreation facilities.

These provisions were then followed up by the Kendari City Government through the establishment of Regional Regulation Number 1 of 2015 concerning Local Workers, which contains 31 articles. As the topic of the author's thesis study, of the 31 articles, 1 (one) chapter and 1 (one) article and 2 (two) verses were found, namely contained in Chapter XI Opportunities to Worship Article 29, which reads as follows:

- (1) Companies/entrepreneurs/employers are obliged to provide a place of worship in the workplace, according to conditions and capabilities.
- (2) Companies/entrepreneurs/employers are obliged to provide sufficient free time to workers and workers/labourers to carry out worship as required/sunnah by their religion.

Based on the provisions mentioned above, in the author's opinion, restaurant owners are required to fulfill the right to worship for Muslim workers in 3 (three) forms, namely:

1. Provide a place for prayer according to the conditions and capabilities of the restaurant owner
2. Providing prayer support facilities, such as prayer rugs, mukenas, sarongs according to the capabilities of the restaurant owner
3. Provide sufficient free time for workers to carry out the obligatory prayers, both the 5 daily prayers and Friday prayers, as well as sunnah prayers, including the Tarwih and Witr prayers in the month of Ramadhan.

Guided by these provisions, the author then conducted research in several restaurants in Kendari City, from the results of which the research obtained information which will be described as follows:

*First*, Sumber Aroma Restaurant on Jl. Ir. H. Alala, Kel. Deception District West Kendari. Based on information from the owner and one of the employees as well as the author's direct observations, information and facts were obtained that a place for prayer was available at the back of the restaurant, adjacent to the kitchen. I'm grateful *Alhamdulillah*, prayer mats and sarongs are also available, although the condition of the prayer area is very simple, with plywood walls. Free time to perform the 5 daily prayers at work has been given. Likewise, there is free time to perform Friday prayers for male workers as well as Taraweeh and Witr prayers at the nearest mosque. However, at certain times workers cannot perform the

obligatory prayers, Friday prayers or Taraweeh and Witir prayers., on the grounds that there is still work that has not been completed.

*"Sometimes when it's busy, we're given time to pray so we can change with other friends. But if there are no visitors, we can have more freedom because we can rest too."*<sup>57</sup>

**Second**, Padang Minang Jaya Restaurant on Jl. Drs. H. Abdullah Silondae, Mandonga District. Based on the results of the author's direct observations, it was discovered that a place for prayer was available next to the consumer's dining area. I'm grateful *Alhamdulillah*, prayer mats and ablution places are also available, even the condition of the prayer place is very good (concrete walls).

*"There is a prayer room and it is very suitable so those of us who work here are very comfortable when praying"*<sup>58</sup>

**Third**, Bebek Sakti Restaurant on Jl. Malacca Kel. Anduonohu District. Poasia. Based on information from one of the employees and the results of direct observations by the author, information was obtained that there was no place for prayer in this restaurant. Employees who wish to perform prayers are given the time and opportunity to perform prayers at the nearest mosque, and generally they perform them at the Kendari City Hospital Mosque which is opposite the restaurant, at a distance of  $\pm$  200 meters. However, based on the author's observations at prayer times, starting from Duhur prayer to Isha prayer, this restaurant is quite "crowded" with consumers and the menu service activities are still running.

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<sup>57</sup> Respondent 1, interview (Kendari City, 15 November 2023)

<sup>58</sup> Respondent 2, interview (Kendari City, 15 November 2023)

*"There's no prayer room or special place, Sis, we usually steal a little place in the back room to pray. When it's busy, it's usually a bit difficult because if you have to go to the mosque, the hospital will take a long time, so it will be a shame for those looking after it. Sometimes I even forget that I haven't prayed."*<sup>59</sup>

**Fourth**, Nyonya Restaurant on Jl. Dr. Sam Ratulangi Kel. Mandonga District. Mandonga. Based on information from one of the employees and the author's direct observations, a place for prayer is available on the 2nd floor of the restaurant, which is quite spacious, and prayer facilities are also available in the form of prayer mats. It is fortunate for Muslim workers because the restaurant owner carries out buying and selling activities in another shop he owns, so that he automatically has free time to perform the 5 daily prayers at work. Likewise, there is free time to perform Friday prayers for male workers as well as Taraweeh and Witir prayers at the nearest mosque. However, the problem is, sometimes during the Maghrib prayer time it is often crowded with customers so that "like it or not" the workers prioritize customer service rather than performing prayers. Likewise, with the implementation of the Taraweeh and Witr prayers in the month of Ramadhan, they can only perform them when the time is right.*off*.

*"We arranged to divide prayer times and rest, sis, but it's difficult during the fasting month because there are so many people ordering people to break the fast, so we rarely miss maghrib prayers. "Finally there are noodles which are pluralized because my friend said it's okay if he forgets"*<sup>60</sup>

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<sup>59</sup> Respondent 3, interview (Kendari City, 17 November 2023)

<sup>60</sup> Respondent 4, interview (Kendari City, 20 November 2023)



**Fifth**, Podoteko Food Stall on Jl. Abunawas Kadia District. Based on information from one of the employees and the results of the author's direct observations, a place for prayer is provided, only because the location is very close to the mosque ( $\pm 20$  meters), the restaurant often directs consumers to pray at the mosque, because apart from being more spacious, prayer facilities are also available needed.

*"Thank God, it's nice, sis, because once there was a rule that when prayers were temporarily closed, but over time we took turns praying at the mosque next door."*<sup>61</sup>

**Sixth**, D'Kings Socialite on Jl. Malik Raya Kel. Korumba District. Mandonga. Based on information from one of the employees (via WA), information was obtained that there was no prayer place available in this place. Employees who wish to perform prayers are given the time and opportunity to perform prayers at the nearest mosque, and generally they perform them at the nearest mosque at a distance of  $\pm 200$  meters. However, the problem is, sometimes at prayer time it is often crowded with consumers so they feel "uncomfortable" asking permission from the owner because the banquet menu service activity must continue.

**Seventh**, Bakau Village Restaurant, in Kel. Anduonohu District. Poasia. Based on information from one of the employees (via WA) and the author's direct observation, information and facts were obtained that a place for prayer was available at the restaurant location. I'm grateful *Alhamdulillah*, Mukenas and sarongs are also available. As for free time to perform the 5 daily prayers at work,

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<sup>61</sup> Respondent 5, interview (Kendari City, 21 November 2023)

they have been given, even during busy times for visitors, they are encouraged to take turns performing the prayers. A fact that deserves to be an example and receive appreciation.

***Eighth***, Begos Restaurant on Jl. Sao-Sao Kel. Bende District. Kadia. Based on information from the owner (via WA), information was obtained that at this restaurant there is a place for prayer and free time for praying 5 times a day at work is still provided.

***Ninth***, Solaria inside the Lippo Plaza Mall building on Jl. MT. Haryono, Kadia District. Based on information from one of the employees, data was obtained that prayer places were not available in the restaurant, but were available on the third floor of the mall building.

***Tenth***, Ramen, Ta Wan, Ichiban, Susi, Solaria in the Mall building *The Park* on Jl. Brigadier General M. Yoenoes By Pass Kel. Bende District. Kadia. Based on direct observations, it was found that prayer places were not available in the restaurant, but were available on the first floor of the mall building.

*"When you pray you also take a break, so we take an hour break to pray, eat and rest, sis. "The problem is that if you pray on the ground floor, it becomes a bit of a hassle going up and down."*<sup>62</sup>

***The eleventh***, Steak and Kebuli Restaurant on Jl. Sao-Sao Kel. Bende District Kadia. Based on information from the working supervisor, there is a place for prayer at this restaurant and free time to perform the 5 daily prayers at work is

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<sup>62</sup> Respondent 6, interview (Kendari City, 19 November 2023)

still provided. The available places of worship differentiate between prayer places for visitors and prayer places for workers.

*“There are breaks for eating and there is time for yourself to pray. “Well, our prayer place is also on the back basement floor, so it's closer and access is easier because it's not exposed at all, so it's more comfortable.”<sup>63</sup>*

**Twelfth**, Bang Awal Fried Chicken Restaurant on Jl. Sao-Sao Kel. Bende District. Kadia. Based on information from the management who works there, this restaurant has a place for prayer and even a distribution of free time has been arranged for praying 5 times a day.

**Thirteenth**, Srikandi Seafood Restaurant on Jl. Syech Yusuf . Based on information from one of the supervisors on duty, this restaurant has a place for prayer and has even arranged the distribution of free time for praying 5 times a day. As well as requiring male workers to perform Friday prayers at the nearest mosque and including this rule in the restaurant's SOP.

**Fourteenth**, Martabak Bang Awal on Jl. Syech Yusuf . Based on the worker's statement, there is no prayer place available at this restaurant and he advised the workers to pray at the nearest mosque or the restaurant's prayer room next to it.

Based on the description of the information and the results of the author's observations above, it is known that from the 18 (eighteen) restaurants/eating places in 14 (fourteen) locations, data was obtained that Providing a place for 5 daily

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<sup>63</sup> Respondent 7, interview (Kendari City, 13 November 2023)

prayers, is still not fully fulfilled, because in 1 (one) restaurant and 2 (two) places to eat information is still being obtained and the fact that prayer facilities are not yet available. This means that prayer facilities will automatically not be available.

Apart from that, at 6 (six) eating places in 2 (two) locations (in the mall) there are also no prayer facilities available inside, but outside, only in the same building. However, prayer facilities are available.

So basically it's the same as a restaurant that doesn't have a prayer room but there is a mosque/prayer room nearby, because workers who want to perform prayers have to leave the restaurant building where they work. *Maybe* space efficiency reasons, but for the author it still injures workers' rights and employers ignore their obligations, as mandated by law and regional regulations.

The author imagines with feelings of sadness and regret that only 18 (eighteen) research objects in 14 (fourteen) locations have found violations of labor law. What if data collection was carried out on all the restaurants/dining places in Kendari City, the number of which has reached hundreds and the workforce will definitely reach over thousands of people?

This phenomenon illustrates that several restaurant/eating place entrepreneurs have clearly ignored the orders of Explanation 80 and Article 100 of the Manpower Law as well as the orders of Article 29 paragraph (1) of the Local Manpower Regulation, where it is emphasized that "companies/entrepreneurs are obliged to provide a place for /worship facilities in the workplace." This shows evidence of the weak knowledge and understanding of the law of some restaurant/eating place entrepreneurs or perhaps "deliberately" ignoring it, as well

as evidence of workers' helplessness in implementing and defending their religious rights.

Furthermore, regarding free time to carry out the 5 daily prayers, Friday prayers for men as well as Taraweeh and Witr prayers, it can be said that restaurant/eating place entrepreneurs have carried out their obligations in providing opportunities and time for their workers to carry out these prayers. In other words, the employer has fulfilled the worker's right to worship. This means that the provisions of Article 80 of the Manpower Law and Article 29 paragraph (2) of the Local Employment Regulation have actually been implemented by employers.

However, in 2 (two) restaurants and 2 (two) restaurants, hidden irregularities were still found. The reason is that there is still work that has not been completed, so that at certain times workers cannot perform the Obligatory Prayers, Friday Prayers or Taraweeh and Witr Prayers. It is very "unfortunate", despite the glory and rewards of giving free time, it turns out that it is still "tainted" by "veiled obstacles". The second reason is the density of consumer visitors, so they are forced to prioritize service rather than performing the 5 daily prayers or implementing a system shift (alternately), so that the value content of congregation and punctuality is difficult to fulfill.

It is very unfortunate, for reasons of work and service during working hours, tens and perhaps hundreds of Muslim workers in restaurants/eating places in Kendari City, have neglected to fulfill their right to worship and become "victims" of helplessness.

However, the author believes that if the workers were truly people who were obedient to praying, this would not happen. For workers, refusing workers in asking for permission to pray is just one worry. So it is time for Muslim workers to have the courage to show their religious identity, which is very visible when it comes to prayer time. The author is very confident that restaurant/eating place entrepreneurs will provide this free time, because recently the issue of SARA is a very frightening specter for everyone, including entrepreneurs, especially those who are non-Muslim. Even the author is very confident that consumer visitors will understand The delay in serving their orders (in a matter of minutes) is to respect the workers' right to worship, because in plain view, many Muslim consumers also visit during prayer time. It could be a place for "Prayers" carried out by workers. *Why not ?*

But of course, legal awareness must go hand in hand between employers and workers, even if necessary with the help of trade unions or the like, which emphasizes that at every restaurant/eating place there is at least a notification via a BANNER displayed inside or outside the building that says SERVICES DURING PRAYER TIMES WILL BE STOPPED / DELAYED / EXPERIENCE TEMPORARY DELAYS (in order to maintain consistency on time and in congregation, or especially during the Maghrib Prayer because the time is very short). The next sentence on the banner reads: SERVICE WILL BE CLOSED AT 11.30 AND WILL REOPEN AT 13.00 (applicable only on Fridays, provided that there are no or very few female workers, because this has an impact on the menu service).

In this way, entrepreneurs are slowly becoming aware of respecting the importance of the 5 daily prayers and Friday prayers, as well as educating consumers to be patient when visiting the place during the 5 daily prayers and also not to carry out the buying and selling process during prayer times. Friday. Apart from that, of course it can create religious awareness among workers to perform the 5 daily prayers and Friday prayers on time, because in this way the author feels confident that individual workers' awareness of performing the 5 daily prayers and Friday prayers will emerge and be raised.

**C. Effectiveness of Implementing Article 29 of Kendari City Regional Regulation Number 1 of 2015 in Restaurants in Fulfilling Workers' Rights and Facilities for Worship in Kendari City Perspective**  
*Maslahah Mursalah*

One discussion regarding the effectiveness of law is often related to the influence of law on society. The essence of the influence of law on society is to create behavior among citizens that is in accordance with applicable or decided laws. If the objectives of the law are achieved, that is, if citizens behave in accordance with what is expected or desired by the law, this is called effective law. In other words, if legal rules are obeyed or used, then the law has a positive influence. This positive influence is called legal effectiveness.<sup>64</sup>

In the literature, it is stated that the effectiveness of the law is determined by 5 (five) factors, one of which is the law enforcer, for example whether they have actually carried out their duties and obligations as outlined by the applicable law.

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<sup>64</sup> Rusli Effendy, et al, *Legal Theory*, (Ujung Pandang: Hasanuddin University, 2001), 76

In relation to fulfilling the right to worship of Muslim workers in restaurants, in principle the Employment Law and Local Employment Regulations mandate employment agencies to implement and enforce employment laws in their implementation.

In terms of legal factors, Regional Regulation Number 1 of 2015 concerning Local Workers, one of the articles of which regulates the opportunity to worship for workers in Kendari City. This proves that there have been repressive measures to protect workers' right to worship so that the first factor has been fulfilled.

Then in connection with this, through Kendari City Regional Regulation Number 5 of 2016<sup>65</sup> The Department of Manpower and Industry was established, which was then followed up through Kendari Mayor Regulation Number 76 of 2018.<sup>66</sup>

The organizational structure consists of the Head of Service, Secretariat, 4 Sectors, Service Technical Implementation Unit and Functional Position Groups. One of the fields related to the material of this thesis is the Field of Industrial Relations Development and Social Security for Workers, whose functions are described as follows:

- a. Verification of company regulatory documents and collective work agreements with the scope of operations in the Kendari City area;
- b. Providing registration services for collective work agreements within the scope of operations in the Kendari City area;
- c. Coordination of the ratification process for company regulatory documents with the scope of operations in the Kendari City area;

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<sup>65</sup> Kendari City Regional Regulation Number 5 of 2016 concerning the Formation and Composition of Kendari City Regional Apparatus

<sup>66</sup> Kendari Mayor Regulation Number 76 of 2018 concerning Position and Organizational Structure, Duties and Functions of the Kendari City Manpower and Industry Service



- d. Implementation of early detection of potential disputes in companies with operational scope in the Kendari City area;
- e. Implementation of facilitation for the formation and empowerment of Bipartite Cooperation Institutions in companies with operational scope in the Kendari City area;
- f. Coordination of the implementation of mediation regarding potential and mediation of disputes in the company, work strikes and company closures within the scope of operations in the Kendari City area;
- g. Carry out other tasks assigned by the head of service in accordance with his duties and functions.

Meanwhile, there are 3 (three) sections below, 2 (two) of which can also be described as follows:

1. The Working Conditions and Industrial Relations Institutional Building Section has the following functions:
  - a. Preparing human resources who understand the rules for making Employment Agreements, Company Regulations and Collective Labor Agreements;
  - b. Prepare company profiles that are required to create Company Regulations, Collective Work Agreements, Bipartite Cooperation Institutions and Worker Unions/Labour Unions;
  - c. Carry out technical guidance on drafting Work Agreements, Company Regulations, Collective Work Agreements and the formation of Bipartite Cooperation Institutions as well as procedures for forming Worker Unions/Labour Unions;
  - d. Facilitate the establishment of a Tripartite Cooperation Institution at the Kendari City level;
  - e. Recording Work Agreements, ratifying Company Regulations, registering Collective Work Agreements and ratifying Bipartite Cooperation Institutions in the Kendari City area;
  - f. Prepare materials for the development and establishment of institutions in the company through Work Agreements (PK), Company Regulations (PP), Collective Work Agreements (PKB) and Bipartite Cooperation Institutions;
  - g. Providing registration services for workers' organizations and employers' organizations and verifying membership;
  - h. Carrying out worker/labor cooperative development in the company;
  - i. Carry out other tasks given by superiors/leaders in accordance with applicable regulations.
2. The Industrial Relations Dispute Prevention and Resolution Section has the following functions:
  - a. Preparing human resources who understand procedures for preventing and resolving industrial relations disputes;
  - b. Carry out guidance and prepare Company Vulnerability Maps;
  - c. Carry out early detection of companies that are prone to industrial relations

- disputes;
- d. Carry out guidance on procedures and procedures for resolving industrial relations disputes outside the court as well as procedural procedures at the Industrial Relations Court;
  - e. Carry out guidance on procedures for legal, orderly and peaceful strikes as a result of failed negotiations;
  - f. Prepare mediation hearing materials for parties in the context of resolving industrial relations disputes;
  - g. Assist the parties in making a collective agreement if the parties agree and assist the parties in making a letter of recommendation if the parties do not agree;
  - h. Providing facilities and infrastructure in efforts to resolve industrial relations disputes;
  - i. Carry out monitoring, evaluation and reporting on the prevention and resolution of industrial relations disputes, work strikes and company closures;
  - j. Carry out other tasks given by superiors/leaders in accordance with applicable regulations.<sup>67</sup>

In terms of enforcement, the author finds that the Manpower Service has a very important role as a mediator in handling various aspects of employment, such as coaching and socializing related regulations, resolving disputes between workers and employers, as well as developing and improving the regulatory side of the industry. Apart from that, this agency is also responsible for managing the determination of minimum wages based on the results of surveys conducted.

However, based on the description of the research results in the previous sub-chapter where data was obtained that there are still restaurants/eating places that do not provide prayer places and/or prayer facilities, of course this shows the weak legal awareness of the owners, it could be that they do not know that these regulations exist or are allowed to do so. So they do not understand the contents of these regulations, so their legal attitudes and behavior deviate from the obligations

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<sup>67</sup> data source: Kendari Mayor Regulation Number 76 of 2018

expected by labor regulations, namely not fulfilling the provision of prayer places in restaurants/eating places. So it is not surprising for the author that a handful of them feel innocent, because it is not seen as an obligation, especially because there is a mosque near their place of business which is actually quite far to reach on foot. This means that facilities or facilities that support law enforcement have not yet been implemented.

This phenomenon is evidence of the still weak performance of supervision, monitoring and evaluation of the Kendari City labor apparatus, as well as evidence of the "blunt" law enforcement of the Local Labor Regulations in Kendari City. It could even be that they argue that up to now there have been no reports of complaints regarding the problem of the availability of prayer places or the problem of limiting free time for praying.

Weak enforcement of labor laws means reopening the gloomy history of labor relations, for example *prey in the middle of the jungle that is ready to be eaten by the king of the jungle at any time*. Kendari City Manpower Service officials do not realize that their attitudes and behavior are not firm and half *hearted* in law enforcement, will educate restaurant/eating place entrepreneurs in Kendari City to become apathetic entrepreneurs who do not obey the rules of the law.

If all labor officials have this principle, why are the Manpower Laws and Local Manpower Regulations promulgated? If entrepreneurs are allowed to do this continuously, it certainly opens up opportunities for other entrepreneurs to follow suit footsteps-his. How long will this neglect continue and "still be forgiven"? Where is the evidence from the results of the implementation of the monitoring and

evaluation function of the Kendari City Manpower Service? This is very unfortunate because it causes law enforcement factors to become an obstacle in effectively enforcing the fulfillment of the right to worship for workers.

However, if the supervisory function and enforcement duties are carried out consistently, it is very clear that the "fangs" of legal sanctions await the entrepreneur. In Article 30 paragraphs (1) and (2) of the Local Employment Regulation, explicitly states that violations of the provisions of Article 29 (employers do not provide places of worship), then the entrepreneur is threatened with administrative sanctions in the form of:

- a. verbal warning;
- b. written warning;
- c. revocation of certain rights;
- d. revocation of business/operational permits; and/or
- e. termination or closure of business operations.

Likewise with the sanctions contained in Article 185 of the Manpower Law, it has been emphasized that "Anyone who violates the provisions as intended in Article 80 (obligation to provide places of worship), shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine a minimum of IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR. 400,000,000.00 (four hundred million rupiah)".

The imposition of sanctions must be correct or commensurate with the form of the violation, so that it is felt to be fair and as a form of guidance. This concept is very reasonable which according to Anwarul Yaqin,<sup>68</sup> Modern society has a

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<sup>68</sup> Achmad Ali, *Exploring Empirical Studies of Law*, (Jakarta: Yasrif Watampone, 1998), 180

government that is organized by court institutions and administrative machines, because compliance with the rule of law is guaranteed through the threat of sanctions. So, labor law violators will feel "educated" if they are punished quickly and punished appropriately.

Imposing disproportionate sanctions can also deter restaurant/eating place entrepreneurs who violate labor law. Such conditions will also encourage the emergence of new violators because they consider that the sanctions imposed are still not enough, for example, considering the value of the profits they get. Apart from that, sanctions that are not appropriate will cause dissatisfaction among Muslim workers who feel disadvantaged. In this case, it will definitely open up the public's perspective on a new culture where at certain hours related to prayer time, production time will be slightly slowed down because the employees of the restaurants they visit implement the rights of their workers to pray alternately.

Departing from the description above, the author states that Article 29 of Kendari City Regional Regulation Number 1 of 2015 on Restaurants, **has not been implemented effectively** by the Kendari City Department of Manpower and Industry.

Then when analyzed with the perspective of *maslahah mursalah*, the results of the author's analysis are as follows:

By considering the definition of *Maslahah Mursale* as a product of Islamic law which emphasizes benefit which has no basis in argument but also does not have cancellation, and paying attention that benefit must be in

line with the objectives of sharia' in establishing the law. As for the discussion:

1) The role of the Manpower Department as a mediator:

In this context, the role of the Manpower Office in mediating between workers and entrepreneurs can be considered Maslahah Mursalah if the arrangement of balanced and fair work relations results in benefits for society in general. However, this should be strictly observed so as not to violate the principles of Sharia, such as justice and obedience to religious rules.

2) Limitations of prayer facilities in restaurants/eating places:

The lack of prayer facilities in public places can be seen as an event where there are no specific sharia provisions, but something is found that is in accordance with sharia law to maintain the public benefit. In this case, providing prayer facilities in restaurants/eating places can be considered an effort to maintain the principle of maintaining religion and general social interests.

3) Weak supervision and law enforcement by the Manpower Department:

Indecisiveness in law enforcement by the Manpower Service can be seen as a violation of Maslahah Mursalah because it can result in losses for society in general, especially in terms of protecting workers' rights and compliance with applicable legal regulations.

4) The influence of apathy and disobedience to the rule of law:

Apathetic attitudes and disobedience to the rule of law, both by officials and entrepreneurs, can be considered contrary to Maslahah Mursalah because it can disrupt social order and justice in society.

Thus, this analysis highlights the importance of considering the public benefit and the principles of Islamic law in evaluating the role and actions of institutions and individuals in society.

Therefore, in the author's opinion, it is time for confirmation and commitment from the Kendari City Department of Manpower and Industry to always communicate - socialize, especially with the current advances in the IT world. So there's no need to bother going out into the field *face to face* because all the business place data has been pocketed in a computerized system.

The next step and action should be to imitate the work pattern established by the Regional Revenue Agency for tax arrears, where in front of their place of business a large banner is displayed as a tax arrears, *shock therapy for those who* are qualified according to the author. So for restaurants or similar business places, which do not yet provide a place for prayer inside, such banners will also be put up, provided that the socialization stage has been carried out, but the business actors are still "stubborn".

In this way, legal awareness is slowly being created by restaurant business actors and the like to realize respect for the importance of the obligation to perform the 5 daily prayers and Friday prayers for Muslim workers, while at the same time educating consumers not to carry out the buying and selling process at the business premises at the same time. Friday prayer times and be patient in waiting for buying

and selling transactions when the 5 daily prayers arrive. Apart from that, it can also create religious awareness among workers to perform the 5 daily prayers and Friday prayers on time.



## **CHAPTER V**

### **CLOSING**

#### **A. Conclusion**

Based on the description of the research results and discussion, a conclusion can be drawn as an answer to the problems in this research and writing, namely:

1. The fulfillment of the rights to worship facilities for Muslim workers in Kendari City has not been fully implemented by restaurant/eating place owners. This is proven by the results of research conducted at 18 restaurants in Kendari City, 3 of which show that there are still restaurant/eating place owners who have not provided prayer places and/or prayer facilities at their places of business. Apart from that, regarding the provision of free time for praying, violations were still found which appeared to be hidden.
2. The provisions of Article 29 of the Kendari City Regional Regulation Number 1 of 2015 regarding restaurants have not been effectively implemented by the Kendari City Manpower and Industry Service. This is proven by research results which show that supervision through monitoring mechanisms in restaurants/eating places has not been implemented optimally and enforcement of violations of the provisions of Article 29 has not been implemented. The proof is that there are still restaurants/dining places that do not provide prayer places and/or prayer facilities at their place of business, in fact one of them is a favorite restaurant which is very crowded with buyers from various circles, including state civil servants. In view of legal effectiveness, it can only fulfill

legal factors because it still does not meet the factors of law enforcement, facilities, society and culture. So that is one of the reasons for the importance of considering the public benefit and the principles of Islamic law in evaluating the role and actions of institutions and individuals in society.

### **B. Suggestion.**

Based on the conclusions above, the author provides the following suggestions:

1. Workers in restaurants/eating places should have the courage to openly convey to the owner to request that a place for the 5 daily prayers be provided for them, as well as request that they always be given free time to perform prayers, both the 5 daily prayers and Friday prayers during working hours. . If the request is not or cannot be fulfilled, then the workers should ask for help from other people (to maintain the confidentiality of the identity of the reporter) to immediately report it to the Kendari City Department of Manpower and Industry for further legal action.
2. Kendari City Manpower Service officials should be braver and firmer in implementing the provisions of Article 29 of Regional Regulation Number 1 of 2015 according to the main tasks, functions and authority they carry out, so that there are no further violations of the obligation to fulfill workers' right to worship. Even more than that, the Department should propose the establishment of a Kendari Mayor's Regulation regarding the implementation of prayers during working hours, both the 5 Daily Prayers, especially the Maghrib Prayer

which has a very short time, and Friday Prayers, as well as the implementation of the Taraweeh and Witr Prayers as well as the time to break the fast.

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## **B. LEGISLATION**

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- Law Number 28 of 2009 concerning Regional Taxes and Regional Levies
- Kendari City Regional Regulation Number 1 of 2015 concerning Local Workers
- Decree of the Minister of Health Number 1098/Menkes/Sk/Vii/2003 concerning Hygiene Sanitation Requirements for Restaurants and Restaurants
- Minister of Tourism and Creative Economy Regulation Number 12 of 2014 concerning Restaurant Business Standards

## **C. INTERNET**

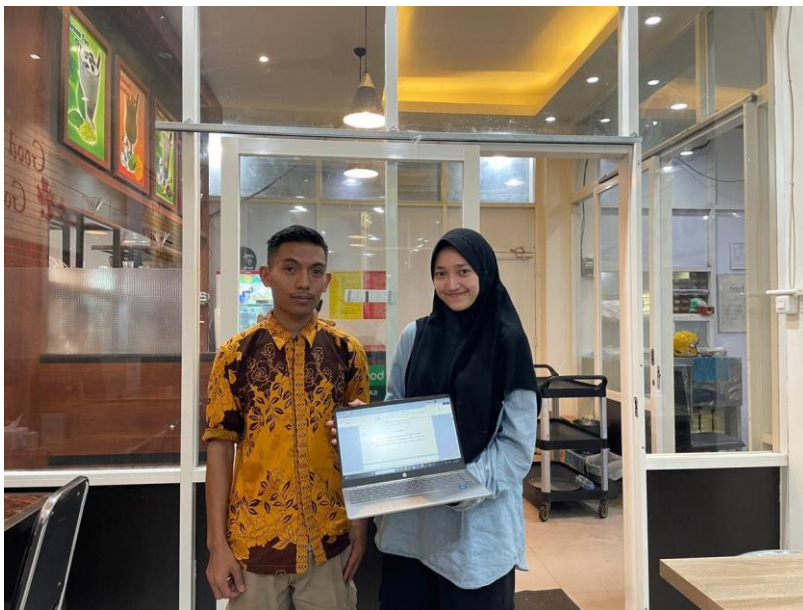
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## APPENDIX LIST

### Appendix 1: Some places of worship in restaurants



**Appendix 2: Interview process with several respondents**





### Appendix 3: Interview Process with the Kendari City Manpower and Transmigration Service





## **Appendix 4: Interview Transcript**

### **I. Interview with the Department of Labor and Industry**

3. Since when did Kendari City Regional Regulation Number 1 of 2015 be implemented by the Kendari City Department of Manpower and Industry, especially **Article 29 which regulates the Opportunity/Right to Worship Workers** ?
4. What is the work pattern applied by the Kendari City Department of Manpower and Industry in implementing Article 29?
5. Are there any complaints from workers or other parties or cases/facts related to the unavailability of prayer places in the workplace?
6. If so, what sanctions are given?
7. Are there any complaints from workers or other parties or cases/facts regarding **OBSTACLES/LIMITATIONS/PROHIBITIONS** from carrying out prayers at work?
8. If so, what sanctions are given?
9. In your opinion, what is the best solution so that the implementation of the **Right/Opportunity to Worship** in accordance with the provisions of Article 29 can be implemented effectively?

## II. Interview with workers at the restaurant

1. Please ID your brother/sister  
Gender :  
Age :  
Religion :
2. When did you start working at your current workplace?
3. What is the process for you being accepted to work at your current workplace?
4. When you are accepted for work, do you use a written agreement or only an oral agreement (delivered verbally)?
5. If you know, please mention:  
NUMBER OF MALE EMPLOYEES = people  
Monthly employee = people  
Day laborer = people  
TOTAL FEMALE WORKERS = people  
Monthly employee = people  
Day laborer = people  
AVERAGE AGE OF WORKERS =
6. How many days do you work in 1 week?
7. What are the working hours at your workplace?
8. From what time to what time do you work?
9. During a day's work, is there rest time given?
10. How long is the rest period?
11. What is the rest time used for?
12. Do you always perform the 5 daily prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
13. Do you always perform Friday prayers? (For Men)  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
14. Do you always FAST in Ramadan?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
15. Do you always perform the Taraweeh and Witr prayers during the month of Ramadan?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
16. Do you always read the Qur'an during the month of Ramadan?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
17. Do you always/often participate/attend religious activities such as the Birthday of the Prophet Muhammad SAW, Isra' Mi'raj, etc.?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
18. Is there a place for prayer at your workplace?

YES NO ( select one )

19. If provided, where is the location of the prayer room at your workplace?  
IN THE WORKPLACE BUILDING / OUTSIDE THE WORKPLACE BUILDING  
( select one )
20. If provided, in what form is the place of prayer at your workplace?  
MOSQUE/MUSHOLLA/ROOM/ROOM/SPACE IS EMPTY  
(choose one or two)
21. If provided, is your workplace provided with prayer support facilities?  
( SELECT ONE )
- |                |                             |
|----------------|-----------------------------|
| PLACE OF WUDHU | = THERE ARE / THERE ARE NOT |
| misbegotten    | = THERE IS / THERE IS NOT   |
| CARPET ALAS    | = THERE ARE / THERE ARE NOT |
| MUKENA         | = THERE ARE / THERE ARE NOT |
| Glove          | = THERE ARE / THERE ARE NOT |
| OTHER          | = .....                     |
22. If provided, does the owner/person in charge of your workplace provide free time to perform the 5 daily prayers during working hours?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
23. If there is no place for prayer at your workplace, where do you pray?
24. How far is the prayer place from your place of work?
25. At the prayer place, does the owner/person in charge provide free time to perform the 5 daily prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
26. At the prayer place, does the owner/person in charge provide free time to perform Friday prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
27. To your co-workers who are of other religions (Christian/Hindu/Buddhist), does the owner/person in charge of your workplace give you free time to worship at their place of worship during working hours?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
28. During working hours, have you ever / often experienced a situation where you were unable to perform the 5 daily prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?

29. During working hours on Fridays, have you ever/often experienced a situation where you were unable to perform Friday prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
30. During working hours during the month of Ramadan, have you ever/often experienced a situation where you were unable to fast?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
31. During working hours during the month of Ramadan, have you ever/often experienced a situation where you were unable to perform the Taraweeh and Witr prayers?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?
32. During working hours, have you ever / often experienced a situation that prevented you from participating in / attending religious activities such as the Birthday of the Prophet Muhammad SAW, Isra' Mi'raj, etc.?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF YOUR ANSWER IS NO OR SOMETIMES, WHAT IS THE REASON?

### III. Interview with the restaurant owner

1. Please ID Mr/Mrs  
Religion :  
Business Name :  
Business Place Address : Since when has your business been established/operated in Kendari City?
2. What are the requirements to be able to work at your place of business?
3. When accepting workers, do you use a written agreement or only an oral agreement (delivered verbally)?
4. What is the total number of employees at your father's / mother's place of business?

#### NUMBER OF MALE EMPLOYEES

Monthly employee = - people

Day laborer = - people

Muslim = people

#### TOTAL FEMALE WORKERS

Monthly employee = - people

Day laborer = people

Muslim = people

5. What is the average age of workers at your place of business?
6. How many days does your business work in 1 week?
7. In working 1 week, how many days of rest are given to workers?
8. What are the working hours at your place of business?
9. Workers at your place of business, work from what time to what time?
10. In a day's work, are there breaks given to workers?  
THERE IS / THERE ISN'T ANY ( select one )
11. How long is the rest period?
12. What is the rest time used for?
13. According to your observations, do workers always perform the 5 daily prayers at work?
14. According to your observations, do workers always perform Friday prayers during working hours? (For Men)
15. Is there a place for prayer at your place of business?
16. If provided, where is the location of the prayer place?  
IN THE WORKPLACE BUILDING / OUTSIDE THE WORKPLACE BUILDING  
( select one )
17. If provided, in what form is the prayer place?  
MOSQUE/MUSHOLLA/ROOM/ROOM/SPACE IS EMPTY  
(choose one or two)

18. If provided, are prayer support facilities provided?
- |                |   |                           |
|----------------|---|---------------------------|
| PLACE OF WUDHU | = | THERE ARE / THERE ARE NOT |
| misbegotten    | = | THERE ARE / THERE ARE NOT |
| CARPET ALAS    | = | THERE ARE / THERE ARE NOT |
| MUKENA         | = | THERE ARE / THERE ARE NOT |
| Glove          | = | THERE ARE / THERE ARE NOT |
| OTHER          | = |                           |
19. If provided, do you provide free time to perform the 5 daily prayers during working hours?
- YES / NO / SOMETIMES – SOMETIMES (choose one or two)
- IF NOT or SOMETIMES, WHAT IS THE REASON?
20. If your place of business does not provide a place for prayer, where do the workers pray during working hours?
21. How far is the prayer place from your place of business?
22. During working hours, do you allow workers to perform the 5 daily prayers at that place?
- YES / NO / SOMETIMES – SOMETIMES (choose one or two)
- IF NOT or SOMETIMES, WHAT IS THE REASON?
23. During working hours, do you allow male workers to perform Friday prayers at that place?
- YES / NO / SOMETIMES – SOMETIMES (choose one or two)
- IF NOT or SOMETIMES, WHAT IS THE REASON?
24. According to your observations, what is the reason why workers do not perform the 5 daily prayers during working hours? (there can be more than one answer)
- DON'T KNOW / LAZY / STILL HAVE WORK / OBSTACLES (for women)
25. According to your observations, what is the reason why male workers do not perform Friday prayers during working hours?
26. During working hours, for workers who are Christian / Hindu / Buddhist, do you allow the father / mother to perform worship at their place of worship?
- YES / NO / SOMETIMES – SOMETIMES (choose one or two)
- IF NOT or SOMETIMES, WHAT IS THE REASON?
27. According to father's / mother's observations during the month of Ramadan, do the workers FAST during working hours?
- YES / NO / SOMETIMES – SOMETIMES (choose one or two)
- IF NOT or SOMETIMES, WHAT IS THE REASON?
28. According to your observations during the month of Ramadan, what are the reasons why workers DO NOT FASTING during working hours? (there can be more than one answer)
- DON'T KNOW / LAZY / UNABLE / OBSTACLES (for women)

29. According to your observations, do workers perform Tarwih and Witr prayers in the month of Ramadan at work?  
(if the father's / mother's place of business does work at night)  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF NOT or SOMETIMES, WHAT IS THE REASON?
30. According to your observations, what is the reason why workers do not perform Tarwih and Witr prayers during the month of Ramadan? DONT KNOW / LAZY / STILL HAVE WORK / NO PRIEST / NO PRAYER PLACE (more than one answer)
31. According to your observations, do workers always/often read the Qur'an in the month of Ramadan at work?  
YES / NO / SOMETIMES – SOMETIMES (choose one or two)
32. During working hours, have you ever allowed employees to attend religious activities such as Maulid Nabi Muhammad SAW, Isra' Mi'raj, etc.?  
CAN / NO / SOMETIMES – SOMETIMES (choose one or two)  
IF NOT or SOMETIMES, WHAT IS THE REASON?

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