

# NURANI: JURNAL KAJIAN SYARI'AH DAN MASYARAKAT

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## Work Termination During The Covid-19 Pandemic in Indonesia Reviewed from Theory *Maşlahah Mursalah*

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https://doi.org/10.1910 9/nurani.v%vi%i.11008 Abstrack: This article aims to examine the impact of the Covid-19 pandemic on the sustainability of the economic sector in the form of the phenomenon of termination of employment (PHK) which is increasing in Indonesia. Departing from this phenomenon, this study proposes a problem formulation regarding what is the perspective of ma theory maşlahah, it's mursalah in viewing the termination of employment during the Covid-19 pandemic in Indonesia. This research is library researchby using the approach normative juridical, In answering research questions, thisstudy mathematical theory maslahah mursalah. The results of this study indicate that, tthe occurrence of layoffs (PHK) during the spread of the Covid-19 pandemic Judging from the theoretical objectives maslahah mursalah, The decision taken by the company in terminating the employment relationship has the aim of company efficiency in order to survive is a situation that occurs beyond the ability of both parties (force majeure). So, if analyzed using the theory of maslahah, this condition is at the level of division of maşlaḥah Hājiyyat . Because in this case the steps taken by the company in doing layoffs as an effort to avoid themselves from greater harm if the company is not able to survive but this situation does not have a significant impact on the survival of business actors as classified in the level of Hājiyyat.

## Introduction

Virus outbreak findings severe acute respiratory syndrome coronavirus 2 or SARS-CoV-2 then called the Covid-19 virus which was first discovered in Wuhan at the end of 2019 (Nurmasari, 2020). This virus spread so quickly from one country to another, until its spread throughout the world, including Indonesia. This virus has spread to more than 222 other countries with confirmed cases of 127,877,462 with a death toll of 2,796,561 so that WHO has declared COVID-19 as a pandemic (WHO, 2021). This virus is a

large family of Coronaviruses that can attack animals, transmission of this virus occurs if there is contact between humans. When attacking humans, the diseases caused by this virus are respiratory tract infections, such as flu, MERS (Middle East Respiratory Syndrome), and SARS (Severe Acute Respiratory Syndrome).

It was confirmed that the entry of the Covid-19 outbreak into Indonesia was first announced on March 2, 2020. The rapid spread of the Covid-19 outbreak has immediately changed the patterns and habits of people's lives almost all over the world. In addition to causing a health crisis, the biggest negative impact of this virus has also occurred in the economic sector.

The impact that has been felt by several economic sectors due to the Covid-19 virus in Indonesia began when the government issued regulations related to PSBB (large-scale social restrictions) and PSBB guidelines. This is the first step taken in an effort to break the chain of the spread of the Covid-19 outbreak. In the regulation, there are several articles that explain that some companies that have certain characteristics must close during the pandemic. There are also companies that can employ their employees at home or Work From Home (WFH).(Consuello, 2020)

The impact of the spread of the Covid-19 virus on workers as of Wednesday, July 1, 2020, the total number of workers affected in the formal sector was 1,500,156 people in 83,546 companies. Based on the results of the Ministry of Manpower survey, the company chose to lay off employees due to being affected by the Covid-19 pandemic. Among them, 13.9 percent of companies reduced the number of employees, 49.6 percent of companies decided to lay off some of their work without being laid off and 36.5 percent of companies did not add or reduce the number of workers. Furthermore, the Ministry of Manpower added that out of 15.6 percent of workers affected by layoffs, some of them received severance pay. However, not a few workers who have been laid off do not receive severance pay (Karunia, 2020)

Based on data that shows an increase in the number of workers who have lost their jobs due to the Covid-19 pandemic. This is a problemwhich is very crucial to find a solution immediately. About layoffsas contained in the Law No. 13 of 2003 as a reference to positive Indonesian law, it has been explained that workers and employers must try their best to avoid termination of employment. If layoffs cannot be avoided, then workers and employers must consult to find an agreement. If the negotiations do not find any other way apart from layoffs, then the layoffs can be carried out after a court decision is made (Ritonga. et al. 2016).

In addition to legislation as positive law in Indonesia, in principle, in Islamic legal theory, there is a theory called Ma'an theory maslahah. It is intended that in solving a problem before making a decision, first review the consequences that will be received from various parties so as to avoid a situation of greater harm. This is contained in the theory of maslahah mursalah as classified into three categories for consideration, these classifications include  $Dar\bar{u}riyy\bar{u}t$ ,  $H\bar{u}jiyyat$  or  $Tahsiniyy\bar{u}t$ . Darriyy t is a condition when humans cannot get their primary needs, then humans will be damaged and not prosperous.  $H\bar{u}jiyyat$  a condition when a person does not get

his needs (secondary needs) then it will not threaten his life. Tahsiniyy $\bar{\alpha}t$  is the fulfillment of tertiary needs whose context is to facilitate and add human value (Fauzia, 2016). This legal rule provides a concept that aims to review a particular problem in order to avoid greater harm (bad consequences) and harm one or even both parties.

Maşlaḥah mursalah is one of the many methods that can be used in the determination of the law. Even in establishing laws, both those originating from the Qur'an and Hadith, the goal is to achieve maṣlaḥah so it would not be an exaggeration to say that every rule and legal stipulation contains maslahah.

As one of the studies of Islamic law in responding to the increasing number of layoffs during the Covid-19 pandemic, this study formulates a research study with a focus on questions research how the theoretical perspective <code>maṣlaḥah</code>, it's mursalah in viewing the termination of employment during the Covid-19 pandemic in Indonesia. So, at This research aims to analyzetheory <code>maṣlaḥah mursālah</code> in the dynamics of layoffs during the Covid-19 pandemic in Indonesia.

#### Theory Maşlahah Mursalah

Maṣlaḥah mursalah according to language consists of two words, namely maṣlaḥah and mursala. Etymologically, the word maṣlaḥahtaken from Arabic According to the original language the word MAṢLAḤAHcomes from the word Salahu, Yasluhu, Salahan, صالحا, بصلح, سالحا, which means something that is good, appropriate, and useful. While the word mursalah means to be free, not bound by religious arguments (al-Qur'an and al-Hadith) that allow or forbid it (Khalil, 1984)

Meanwhile, in terms of terminology, there are several formulations of definitions given by the scholars, among these understandings, as explained by al-Ghazālī in the book of al-Mustasyfa, formulates *maṣlaḥah mursalah* that nothing (*maṣlaḥah*) for which there is no evidence for him from the syara' in the form of a certain text which invalidates it and no one pays attention to it. Furthermore, al-Ghāzlī explains that literally the purpose of maṣlaḥahis to take advantage and avoid loss. Meanwhile, according to Ibn Taimiyyah describes that *maṣlaḥah* is the mujtahid's view of actions that contain clear goodness and are not actions that are contrary to the syara' law (Anam, 2019).

Based on this understanding, a keyword can be drawn that the purpose of is a theory of legal considerations in bringing benefits and rejecting you. Maṣlaḥah is something that is good according to reason with the consideration of being able to realize good or avoid bad for humans. size maṣlaḥah must also be in line with what is the goal of syara', namely to protect religion, soul, mind, honor and progeny and property. That is, if a person performs an action that is intended to maintain the five aspects of the goals of syara' it is said to be maṣlaḥah. Furthermore Ash-Syatibi gives Ma .'s view maṣlaḥah In simple terms, it is interpreted as something that is good and can be accepted by common sense, with the meaning that the mind can clearly know the benefit.

#### a. The Legal Basis of Maşlahah Mursalah

The original source of the method *maṣlaḥah al-mursalah* is taken from the Qur'an and al-Sunnah, as in the following verses:

(i.e.) them He who listens to the words and then follows what is best of them. They are the ones whom Allah has guided and they are the people who have reason. (Surah Az-Zumar: 18)

The commentators interpret the above verse in two ways. When the words al qawl in the above verse is considered a word with the meaning of any word, then the clause will mean that pious and good people must listen to all that is said and must choose the best of goodness that prevails in general, as long as the words are in accordance with the spirit of Divine teachings. If the word al qawl in the verse above is interpreted as the word of God, it means that they must listen to the word of God with full ta'dzim. If other opportunities and alternatives are available for those who are not strong enough to follow a higher legal path, those who are equipped with a rational understanding must tend to seek through a higher legal path. The public interest is also seen as the legal basis in Shari' ral rules that strengthen the provisions in applying something as a legal basis for maṣlaḥah al-Mursalah, including the following:

الضرر لا يزال

"Prioritizing bigger interests over smaller interests" 57

Preventing the damage takes precedence over doing good

The leader's policy must be related to the interests of the people

What can't be achieved by all, don't leave it all

#### b. Ma Division Levels *maşlahah mursalah*.

As for what is used as a benchmark to determine the good and bad (benefits and mafsadat) of something that is done and which is the main goal of the main legal development is what is the basic need for human life. The demands of human needs are stratified, according to Ash-Syātibi there are 3 (three) categories of levels of needs, namely: dharuriyat (primary needs), Hājiyyat (secondary needs), and tahsiniyah (tertiary needs).

#### 1) Maşlahah darüriyyat (Primary)

It is the benefit that is intended to maintain the five elements which are actually absolute and cannot be ignored, so that the achievement of the five main elements will give birth to a balance in religious and worldly life (Dahlan, 2010) needs darūriyyāt is primary level needs that must exist for human existence. According to Ash-Syātibi, human benefit can be realized if the five basic elements of human life can be realized and can be maintained, namely religion, soul, mind, lineage, and property. Benefit at this level includes the five universal basic principles of sharia or also known as the concept of Magasid ash-Shari'ah. If this is not realized then the life order will be lame, the happiness of the hereafter will not be achieved and even torment will threaten. Therefore, these five kinds of benefits must be maintained and protected (Khalaf, 1996). So within this framework, maghasid darūriyyāt is the basis of maghasid hājiyyat and maghasid taḥsiniyyāt. Damage to maqhasid ḍarūriyyāt will also bring damage to maqhasid *hājiyyat* and maqhasid tahsiniyat.

## 2) Maşlahah Hājiyyat (Secondary).

It is everything that according to the shari'a law is not intended to maintain the five main points, it is only intended to eliminate narrowness, or *ihtiyāth* (be careful) of the five main things. *Maṣlaḥah* this is lower level than maṣlaḥah *ḍarūriyyāt* If this benefit cannot be realized in life, it will not cause damage, it will only cause difficulties.

#### 3) Maşlahah Tahsiniyyāt (Complementary)

Maṣlaḥah This type is not in the context of realizing the five main benefits, nor is it in the context of ihtiyāth, but to maintain honor and protect the five main things above. This benefit refers more to beauty, its nature is only for goodness and perfection. If it cannot be realized or achieved by humans, it will not complicate or damage the order of their lives, but it is considered important and needed. Example taḥsiniyyāt trelating to property is the prohibition of counterfeiting goods. This act does not directly touch the property itself (its existence), but involves its perfection. It is clear that in this case it does not cause damage to the principal property, but conflicts with the interests of the person who spends his wealth, which may still be avoided by means of ihtiyāth. As well as the example of pensyari'atan ṭahārah before prayer, it is recommended to dress and look neatly and to prohibit bad food and other similar things.

#### c. Terms of Service Maşlahah Mursalah

## a. Maşlaḥah Mursalah According Jumhur Ulama

Jumhur scholars *Ushul Fiqh* agreed to state that *maṣlaḥah mursalah* In principle, it can be used as one of the reasons for establishing the law even though in the application and placement of conditions they have different opinions. According to scholars Ḥanafīyah, to make *maṣlaḥah mursalah* as evidence required *maṣlaḥah* it affects the law. This means that there is a verse, hadith or ijmā' which indicates that the characteristic designated as benefit is an illat (legal motivation) in the determination of a law, or the type

of law which is the motivational nature of the law is used by nāsh as a motivation for a law. Thus, according to Ḥanafīyah, eliminating harm is included in the concept of *maṣlaḥah mursalah* and can be used as a method of determining the law on the condition that the nature of benefit is contained in nash or ijmā' and the type of benefit is the same as the type of nature supported by nāsh or ijmā'.

According to the Ash-Syātibi (from the Mālikiyyah school) the existence and quality of a *maṣlaḥah mursalah* is qath'i although in its application it can be zanni. Therefore, Ash-Syātibi only made two criteria so that the benefit can be accepted as the basis for the formation of Islamic law. First, the benefit must be in line with the type of syara' action, because that's the benefit that is not in line with the syara' type of action or which is contrary to the syara' evidence (al-Qur'an, as-Sunnah and ijma') cannot be accepted as a basis in establish Islamic law. Second, the benefits such as criterion number one are not shown by special arguments. If there is a special argument that shows it, according to ash-Syātibi, it is included in the study of qiyās (Muhammad, 1996)

Ash-Syātibi think so because the istislah or ma . method *maṣlaḥah mursalah* in determining Islamic law is not based on certain texts, but only based on the benefit that is in line with the purpose of establishing sharia law. Meanwhile, regarding the operational scope of *maṣlaḥah mursala*,ash-Syātibi limits in the field of muamalah, and does not apply in the field of worship.

As for the number of scholars agreed to formulate *maṣlaḥah mursalah* as a method of determining the law with the following arguments:

- 1) The results of the induction of a verse or hadith which shows that every law contains benefits for mankind.
- 2) The benefit of humans will always be influenced by the development of their own place, time, and environment. If Islamic law is limited to existing laws, it will certainly cause difficulties.
- 3) Practice friends who have used *maṣlaḥah mursalah* including: Abu Bakr on the advice "Umar bin Khattab collected the Qur'an into several manuscripts on the grounds of keeping the Qur'an from becoming extinct or losing its credibility. 'Uthman bin 'Affan who recorded the Qur'an in one language in order to maintain that there are no differences in the reading of the Qur'an itself. "Umar bin Khattab ordered the rulers (civil servants) to separate between personal assets and assets obtained from his power, 'Umar bin Khattab did not give zakat to converts because according to Umar the benefit of many people demanded it (Amin, 2008).

Nevertheless, to receive *maṣlaḥah mursalah* as a method of determining the law, certain requirements must be met, including:

- 1) *maṣlaḥah mursalah* it is *maṣlaḥah* which are essential and not conjectural, acceptable to common sense and actually bring benefits to humans or avoid harm to humans as a whole.
- 2) This benefit is general and not personal, so that it provides benefits/avoids harm for everyone and is not for the benefit of a few people or a group of rulers/authorities.

3) Something that is considered *maṣlaḥah* by common sense it must be in line with the intent and purpose of shara'. That is to realize the benefit for humans and not conflict with the existing syara' arguments, namely the Qur'an, Sunnah and ijma' (Khalaf, 1996).

## Object of Study maşlahah mursalah

Scholars who use *maṣlaḥah mursalah* determine the boundaries of the area of use, which is only for problems outside the area of worship, such as muamalat and adat. On matters of worship (in a special sense) absolutely nothing *maṣlaḥah mursalah* cannot be used in its entirety. The reason is because maslahat is based on reasoning about the good and bad of a problem, while reason cannot do that for matters of worship. All forms of worship are ta'abbudi and tawqifih, meaning we only follow what is according to the syar'i instructions in the texts and reason cannot know why this is so. For example, regarding the four rak'ahs of the midday prayer and it is done after the sun has slipped, it cannot be judged by reason whether it is good or bad.

In addition to the area of worship, although some of them cannot be known for their legal reasons, in general they are rational and therefore can be judged as good or bad by reason. For example, drinking alcohol is bad because it destroys the mind. The determination of sanctions for violators of the law is good because then the people are free from damage to reason that can lead to acts of violence. In summary, it can be said that maṣlaḥah mursalah it is focused on field problems that are not contained in the texts, both in the Qur'an and sunnah which explain the laws that have reinforcement through an i'tibar. It is also focused on things for which there is no ijmā' or qiyās associated with the incident. There are several examples of problems that use legal provisions based on the law maṣlaḥah among others:

- a) The Companions collected the Qur'an in one manuscript for the sole reason of benefit, namely protecting the Qur'an from extinction or losing its mutawatir due to the death of a large number of memorizers of the Qur'an from the generation of friends.
- b) Khulafāur rāsyidn stipulates the obligation to pay compensation to the builders. Whereas according to the original law, their power is based on trust. However, it turns out that if they are not burdened with the responsibility to compensate, they will be careless and do not fulfill their obligations to protect the property of others who are under their responsibility.
- c) 'Umar bin Khattab deliberately spilled milk mixed with water to teach those who do mix milk with water a lesson. Umar's attitude belongs to the ma category *maşlahah*, so that they do not do it again.
- d) It is permissible to appoint a mafdhul ruler (not the best). It is feared that the refusal of allegiance will result in future hope, damage, shock and government vacuum.
- e) If the state treasury is in a deficit, and is not sufficient to meet the financing needs of the army, then the government is allowed to collect mandatory levies on the rich to cover their urgent needs, until the baitul mal gets money input or their needs are fulfilled.

f) If conditions are completely forbidden throughout the world or in a certain area where the population is experiencing obstacles to moving to other areas, they are difficult to find good jobs (halal) and are pressured by needs that go beyond just survival, then they are forced to enter and accepting poor job opportunities in order to resist emergencies and cover their needs (needs).

#### Research Methods

This type of research in this research is library research (Ibrahim, 2005) Meanwhile, this research approach uses a normative juridical approach (Muslan, 2009). This approach aims to analyze the occurrence of layoffs during the Covid-19 pandemic which will be reviewed using the theory of theory maṣlaḥah mursalah. The data obtained on the occurrence of layoffs after the Covid-19 pandemic is empirical evidence in normative research, the problem is aimed at obtaining an overview of the impact of a dimension of legal rules and practice. So that the results of the analysis can be obtained as input for legal explanations related to the reasons and steps for legal considerations taken in the decision-making process (Ibrahim, 2005).

The source of data as the primary legal material in this study comes from the theory of maṣlaḥah mursalah (darūriyyāt, Hōjiyyat and ṭaḥsiniyyāt) as a study of Islamic law. While secondary legal materials come from additional library sources that refer to primary data in the form of comments and summaries/quotations, books and journals that have a correlation with the main theme of the research discussion (Bisri, 2003). The secondary data source in this study aims to review more extensive data and information related to the occurrence of layoffs during the Covid-19 period in Indonesia.

While the analytical method in this research study uses qualitative data analysis in the form of deductive and inductive rationalization (Singarimbun, 1989). The deductive form is a process of thinking with rational methods to obtain individual truths and conclusions from general statements (Sudarsono, 2007). The inductive form is a way of thinking that is based on specific facts, concrete events, then generalizations are drawn from these statements.

#### Results and Discussion

As purpose *maṣlaḥah mursalah* is an effort to maintain the syar'i intention in five matters, namely maintaining religion, soul, mind, lineage, and property. Everything that can realize this purpose is declared as benefit, while everything that hinders the achievement of that purpose is considered as mafsadat. Islam is a religion that pays great attention to protection for each individual, namely through protection for all individual affairs that are material and moral.20 To realize and maintain these five elements, al-Syatibi divides them into three levels, namely: <code>darūriyyāt</code>, Hājiyyat and <code>taḥsiniyyāt</code> which will then be used as an analytical knife in this study.

## 1. Darūriyyāt

Al-  $dar\bar{u}riyy\bar{a}t$  (primary) is something that is indispensable in human religious and worldly life in the sense that if it does not exist, then human life will be damaged and will cause torment in the

hereafter. If there is no benefit, there will be instability, damage, and misery in this world and the hereafter *darūriyyāt* It is intended to maintain the five basic elements in human life. According to al-Syatibi five things are included in this group, namely maintaining religion, soul, mind, lineage, and property. Every legal verse when examined will find the reason for its formation which is none other than to maintain these five points

If we look at the phenomenon of layoffs that occurred during the Covid-19 period in Indonesia, this is a situation that forces companies to take layoffs so that the company can survive and be able to employ some other employees, but this is not included in the condition. darūriyyāt. Because in principle the Covid-19 pandemic does not directly threaten the safety of the lives of business actors, so they have to lay off some of their employees. However, if the layoffs are not carried out, this condition can threaten the continuity of the company's activities to survive in the Covid-19 outbreak that is currently sweeping the world.

## 2. Hājiyyat

Hājiyyat is something that is needed by humans to get rid of difficulties and avoid the hardships of life. If this is ignored, the convert will encounter difficulties in his life, but not to the point of endangering his life.

The decision to lay off during the Covid-19 pandemic is a decision that can be categorized as: Hājiyyat because the decision to lay off is an effort by the company to avoid confinement and still be able to survive in the midst of the Covid-19 outbreak. This decision was taken so as not to endanger the company's condition, which has been unstable since the Covid-19 outbreak entered Indonesia.

#### 3. Tahsinivyāt

Meaning of al-taḥsiniyyāt that is to take the best of the good. This is intended so that they can do their best in perfecting the maintenance of the five basic elements of human life. If viewed from the taḥsiniyyāt namely taking the best decision from a situation, then the company's decision to lay off is the best consideration. Efforts made by the company to survive and avoid an even greater number of layoffs when the company is unable to survive are the only options in order to avoid things that are even worse for the company's survival and this decision is also a step to prevent further layoffs. big again.

From this explanation, it can be understood that from the point of view of maslahah mursalah proposed by al-Syātibi in realizing benefit by using the theory, namely:  $dar\bar{u}riyy\bar{a}t$ ,  $h\bar{a}jiyyat$ , and  $tahsiniyy\bar{a}t$ . If viewed from the theory maslahah mursalah This condition belongs to the level of  $h\bar{a}jiyyat$ .  $H\bar{a}jiyyat$  is something that is needed by humans to eliminate difficulties and avoid the narrowness of life. This can be seen from the layoff decision taken as a step for the company to survive, but has not reached a situation that endangers the survival of business actors.

#### Conclusion

From the point of view of theory maṣlaḥah mursalah termination of employment (PHK) during the Covid-19 pandemic in Indonesia if it is oriented as intended maṣlaḥah. The decision taken by the company in carrying out layoffs under these conditions is at the level of the distribution of malaḥah  $h\bar{a}jiyyat$ . Because in this case the steps taken by the company in doing layoffs as an effort to keep the company alive, but the decision was taken to avoid themselves from greater harm if the company was not able to survive. because this situation can have a more significant impact on layoffs and can affect the existence of the company.

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