

THE KAFALA SYSTEM AS ONE OF THE FIRST INSTRUMENTS OF SLAVERY AND IGNORANCE IN ISLAMIC VIEWS

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Abstract

This article aims to discuss the problems of kafala in dealing with labor. In Islam, the kafala serves a noble purpose: it ensures that less well-off people are financially secure in the face of legal issues. This article discusses the shift in the value of kafala in the Middle East because there has been a gap between kafala in Islamic Sharia and its practice in Saudi Arabia, Bahrain, Qatar, and the Arab Emirates. This study used a qualitative descriptive analysis approach based on a literature study supported by personal experience and found that the kafala existing in modern times was not the same as the kafala intended by Islam because it originated from different sources. The concept of kafala has devolved into modern slavery. The kafala was abolished amid much controversy, and little has changed. Thousands of migrant domestic workers are exploited and subjected to horrendous working conditions that, at worst, amount to modern slavery. The law does not protect female workers, and the government has no intention to change the current system. We find that kafala, which initially had a noble purpose, has turned into a device for exploiting workers against a background of abundant natural resources.

Artikel ini bertujuan untuk membahas permasalahan kafala dalam menangani tenaga kerja. Dalam Islam, kafala memiliki tujuan mulia: memastikan bahwa orang yang kurang mampu aman secara finansial dalam menghadapi masalah hukum. Artikel ini membahas tentang pergeseran nilai kafala di Timur Tengah karena telah terjadi kesenjangan antara kafalah yang ada dalam Syariat Islam dan praktiknya di negara

seperti Saudi Arabia, Bahrein, Qatar dan Emirat Arab. Studi ini menggunakan pendekatan analisis deskriptif kualitatif berdasarkan studi literatur yang didukung oleh pengalaman pribadi dan menemukan bahwa kafala yang ada pada zaman modern tidak sama dengan kafala yang dimaksud oleh Islam karena berasal dari sumber yang berbeda. Konsep kafala telah berubah menjadi perbudakan modern. Kafala dihapuskan di tengah banyak kontroversi, dan hanya sedikit yang berubah. Puluhan ribu pekerja rumah tangga migran dieksploitasi dan mengalami kondisi kerja yang mengerikan, paling buruk, menjadi perbudakan modern. Undang-undang tidak melindungi pekerja perempuan, dan pemerintah tidak berniat mengubah sistem yang ada. Kami mendapatkan bahwa kafala yang semula memiliki tujuan mulia dalam syariat Islam telah berubah menjadi alat untuk mengeksploitasi buruh dengan latar belakang sumber daya alam yang melimpah.

Keywords: Islamic, instrument, kafala, slavery

Introduction

In its fundamental principle, every Muslim has the right to enter and live in any Muslim country and engage in permissible activities. Muslims have the same rights as the original inhabitants of that country¹. They have what they owe unless the interest and the fair policy require that all the people of a country reside in their country to build it and defend it from those who conquer it. However, if their massive migration to a specific country will constitute a heavy burden on its original inhabitants or cause chaos whose effects cannot be controlled, in this case, the Muslim Guardian must act according to the interests and the legitimate policy of dealing with matters.²

No one is allowed to enter the country in this case, among other things unless the country needs him or the person requires that country. He finds a job where he lives, manages his affairs, and fulfills his necessary needs by himself to not burden others. We will achieve those advanced interests, control matters and prevent chaos, and it is permissible to require that the person coming should have a sponsor from the country's original inhabitants. There is also nothing wrong with the saying, "This is my sponsor (Kafil) and the sponsor of so-and-so." We must emphasize that the sponsorship system in some Islamic countries includes a great deal of unfairness and abuse of the guarantor's right, such as injustice and misuse, as well as delays in the rights of the sponsored, except for those who are merciful to God Almighty. Before conducting this research, we reviewed several

1 Ray Jureidini and Said Fares Hassan, *Migration and Islamic Ethics: Issues of Residence, Naturalization and Citizenship* (BRILL, 2020), <https://doi.org/10.1163/9789004417342>.

2 Adele Pastena, *Recognition of Kafala in the Italian Law System from a Comparative Perspective* (Newcastle upon Tyne, UK: Cambridge Scholars Publishing, 2020).

books and journals, including the book entitled *Hurriah Naqabiyah ala al-Ardh Mumarasah* (Geneva: International Labor Office), which highlights that the sponsors must beware of and fear God Almighty and understand that they have no authority over these people, except to the extent that the common interest, justice, and stability are achieved.³

Before discussing this article, we have reviewed several articles, including those written by Faisal Hamadah in an article entitled “Kafala and Social Reproduction: Migration Governance Regimes and Labor Relations in the Gulf in an article for Bristol University Press, explaining the condition of domestic workers who are marginalized from the surrounding community and get unfair treatment from the employers. He also wrote about Kafala, which has been misrepresented in the journal Maastricht University which describes kafala, which is often understood as the policy of countries in the Gulf that regulate, monitor, and exploit migrant workers. In other words, Kafalah is a regulation that is always negative and has given a bad image to Islam. Ahmad Iftikhar has also written about workers who do not get justice in the Gulf countries under the title “Religion and Labor: Perspective in Islam” in the journal *Working USA*; he added about the money the sponsor (Kafil) took for no apparent reason. Among the articles reviewed is *Religion and Labor: in Perspective in Islam*, written by Ahmad Iftikhar. This is a non-comparative study which, without proving that Islam is the best system to follow, argues that to understand Islamic provisions on workers’ rights, one needs to look to sources, namely the Qur’an and Sunnah. This article explores the possibility of using Islam as a fundamental resource in making and adopting labor regulations in the Muslim world. This article also identifies the government’s role in working relations through the Hisbah institution. By comparing Islamic teachings on labor relations with the current situation in the world’s most Islamic countries, researchers of this study found that it is not the religion that suppresses individual and collective rights in the Muslim world; on the contrary, it is these rulers who interpret religion in such a way as to legitimize their un-Islamic rules.

The similarity of the article we compiled with the previous article is to discuss the injustice in the kafala system in the Gulf countries such as the United Arab Emirates, Saudi Arabia, Qatar, and other Gulf countries. They wrote extensively on human rights reviews on workers’ and workers’ issues. The article by Faisal Hamadah explained that the conditions of marginalized workers had brought a bad

3 Abū Ammār Yāsir ibn Amad ibn Badr al-Najjār Dimyāi, *Al-Jāmi Li-Akām al-Kafālah Wa-al-amānāt alā al-Madhābib al-Arbaah*, al-abah al-ūlā (al-Riyā: Dār al-umayī lil-Nashr wa-al-Tawzī, 2014).

picture of Islam. Meanwhile, Ahmad Iftikar's writings discussed the kafala system, a negative rule that significantly benefits the sponsor (Kafil). The kafil system was designed so that it was the influence of the invaders who came to the country and no longer adhered to the principles of justice. The difference between the article we compiled and the previous discussion is comparing the existing kafala system in Islam from the point of view of fiqh and Maqashed Sharia, where kafala aims to safeguard the benefit of Muslims. We review the existing kafala regulations in the Gulf countries regarding Maqashed Sharia and Islamic fiqh, which are relatively the same and tend to be burdensome for workers.

On the other hand, sometimes employers and owners of capital can be harmed by negligence and low productivity produced by unprofessional workers. Shari'ah has regulated the right to control in the chapter on financial transactions, and this is evidenced by the fact that the verse on debt in Surah Al-Baqarah, as determined by the Fuqaha, is not limited to debt contracts but include elements of contracts in general. Moreover, it regulates the rights of traders based on justice, as well as what is mentioned in the texts in this section and what was built by the Fuqaha.

Research Methods

This research is normative juridical research. The research approach is qualitative, which aims to understand the Kafalah that has been known so far in Islamic fiqh and the practices carried out by residents and governments of the Gulf countries of unification of perceptions in viewing kafala as a whole descriptively. The research conducted library research as a procedure that utilizes data, books, and journals with normative juridical steps. By conducting a literature study, the direction of this research was obtained, which was the result of the thoughts of the authors having been recorded, including those published and those that were still in the form of manuscripts, both in the form of books and journals. The results of similar previous studies help obtain a theoretical basis for the problem to be studied. In other words, the descriptive theoretical basis is used as a lens in existing research which has been taken from books related to Kafalah issues, especially the analysis of fiqh and useful fiqh (Maqashid Syariah). This conceptual foundation is used as a starting point for a framework for analyzing the Kafalah problem that prevails in the Gulf countries such as Saudi Arabia, Qatar, and the United Arab Emirates, which tend to be almost similar in practice in the field. The field practice of the Kafalah has been recorded by previous researchers and writers related to human rights, which also exist in Islamic Fiqh. This research was then analyzed

descriptively to solve the problems of the research.

Discussion

Kafala In Islam

The origin of guarantee permissibility is the Qur'an, the Sunnah, and consensus. From the Qur'an, the Almighty says Any guarantor: a guarantor. Moreover, the Almighty's saying "Ask them which of them is a leader" means a guarantor. Many Fuqaha have agreed on the permissibility of suretyship - even if they differed in some branches - because people need it and pay damages on the debtor's behalf. Al-Khattabi and others said: The leader is the sponsor, and the leadership is the sponsor.

As for the consensus:

Muslims have unanimously agreed on the permissibility of the guarantee. Imam al-Muwaffaq Ibn Qudamah, may God have mercy on him, said about the bail: Al-Shafi'i said in some of his sayings: Bail for the body is weak, and its owners differed, some of them said: It is correct in one statement, but he wanted it to be ineffective in analogy, even if it is proven by consensus and the effect. Due to the people's need for it and the payment of harm from the debtor, many jurists have transmitted an agreement on the permissibility of bail, though they differed in some branches.

Elements of the guarantee

The guarantee, whether it is a debt or a body guarantee, has three pillars:

1. Shighat (contract)
2. Sponsor (Kafil): A person committed to bringing or paying the money.
3. The sponsored person (Makful Anhu) brought or paid money on his behalf.

Kafala is a language that applies to commitment as well as to annexation. His guarantee, i.e., guaranteeing it, and the legal guarantee is only complete with the "guarantor" pillar, which must meet several conditions, including that bail does not apply to an insane person. Likewise, puberty is not considered for a boy's bail, and it is unsuitable for an enslaved person to be a guarantor. The guarantor must have his command, freedom, and consent. Thus, the guarantor cannot be forced to guarantee.⁴

4 Y.J. al-Marāghī, M.A. Khusravī, and Sāzmān-i Awqāf va Umūr-i Khayrīyah, موسوعة الوقف في الفقه الاسلامي: مجموعة آراء فقهاء الامامية والحنبلية والحنفية والشافعية والمالكية وغيرهم في الالف سنة الماضية في احكام الوقف والحبس, Mawsū'at Al-Waqf Fī al-Fiqh al-Islāmī: Majmū'at Ārā' Fuqahā' al-Imāmīyah Wa-al-Ḥanbalīyah Wa-al-Ḥanafīyah Wa-al-Shāfi'īyah Wa-al-Mālikīyah Wa-Ghayrihim Fī al-Alf Sanah

Sponsorship (By self) is the sponsorship of one person (substantial sponsorship); 2- Money guarantee is the guarantee by paying money (financial guarantee); 3- In-kind guarantee is the guarantee of handing over something to its beneficiary; 4- The police guarantee is the guarantee by paying the price of the thing sold and handing it over or by the same sale if it is due.⁵ Without the sponsor's permission, the worker cannot renew his papers, change his job, resign, or leave the country.

“Kafala is an authoritarian system in the context of migration,” said Priyanka Motpartte, a human rights writer working on a book about migrant labor in the Gulf. This system allows governments to leave responsibility for migrants to citizens and businesses; it gives sponsors legal authority to control a worker's fate; without the sponsor's permission, the worker cannot renew his papers, change his job, resign, or leave the country. When the worker pursues his career without permission, the sponsor has the right to cancel his residency, putting the worker in an illegal situation inside the country. After the sponsor cancels the residence, the worker can only leave the country through deportation procedures, automatically subjecting him to imprisonment for weeks, months, or years.⁶

According to the Gulf Center for Development Studies, sponsorship is a guarantor's authority that exceeds the power of the guarantor. At the same time, “care” and “protection” refer to a responsibility the guarantor bears in exchange for the sponsor. This merging and contrasting of the principle of unequal power between two parties and the direction of the responsibility to care for and protect one party (who has this power) towards another (who does not have this power) play a significant role in shaping the perception and awareness of Gulf citizens about their relationship with migrant workers over the past decades, to the extent that this merger has become an axiomatic base upon which any thinking about the reality and fate of these relations can be built. According to sociologist Anh Nga Longva in her book “Walls Above the Sands: Migration, Exclusion, and Society in Kuwait,” the idea of sponsorship rose from the pearling trade, the economic

al-Māḍīyah Fī Ahkām al-Waqf Wa-al-Habs, v. 7 (2006, منظمة الاوقاف والشؤون الخيرية), <https://books.google.co.id/books?id=y9jakQEACAAJ>.

5 Şālih Ibn-'Abd-as-Samī' al-Ābī al-Azharī, Aḥmad Muṣṭafā Qāsim at-Taḥṭāwī, and 'Abdallāh Ibn-Abī-Zaid al-Qairawānī, *aṭ-Ṭamar ad-dānī 'alā Risālat al-Qairawānī fi 'l-fiqh al-mālikī maqrūnan bi-dīkr al-adilla* (al-Qāhira: Dār al-Faḍīla, 2007).

6 Max Lawson and Matthew Martin, “The Commitment to Reducing Inequality Index 2018: A Global Ranking of Governments Based on What They Are Doing to Tackle the Gap between Rich and Poor” (Development Finance International; Oxfam, October 9, 2018), <https://doi.org/10.21201/2018.3415>.

foundation in the Gulf region before the discovery of oil.⁷ The owners of the ships would guarantee the divers in each season by employing them in diving in exchange for covering the expenses of their families; the expenses would be deducted from the divers' wages at the end of the season. Divers were commonly trapped in a never-ending cycle of debt. The concept of sponsorship also dates back to another period in the Gulf's history when the population was much smaller, especially the number of foreigners. Hence, we found that the local population was caring for the new arrivals financially and legally. The sponsor was held accountable for their actions when the sponsored person committed a crime under the sponsorship system.⁸

*“The kafala system was intended to be a good system that holds citizens responsible for caring for non-citizens, but it has now become an arbitrary tool of persecution and exploitation,” Azfar Khan, a migration specialist at the International Labor Organization, told Migrant Rights. Although sponsors are still legally responsible for the migrants under their sponsorship, they rarely face any legal consequences when they ignore this legal responsibility.*⁹

Kafala In Saudia Arabia

The sponsorship system in the Kingdom of Saudi Arabia was issued in 1371 AH/ 1952 M. The goal of the sponsorship system is to regulate the relationship between expatriate workers and their employers, which is done through the mediation of recruitment offices in the Kingdom of Saudi Arabia. The employer is theoretically responsible for the sponsored workers' social, security, and occupational well-being. The sponsorship system is detrimental to the workers. According to the workers in the economy inside the Kingdom of Saudi Arabia, the sponsorship system is the first thing Saudi citizens continuously harm. Citizens are alienated from these jobs due to the poor quality of work and low wages established by the sponsorship system in the Kingdom of Saudi Arabia. Furthermore, the expatriates are essential in increasing the employers' profits over the country's higher interest. As a result, a black market for visas has emerged.

Consequently, they will be sold without regard for the country's interest, spreading bulk labor within the Kingdom of Saudi Arabia. Opening various fields

7 Anh Nga Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Boulder, Colo: Westview Press, 02).

8 Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*, 1st ed. (Cambridge University Press, 2006), <https://doi.org/10.1017/CBO9780511610677>.

9 Angus Nurse, “Contemporary Perspectives on Environmental Enforcement,” *International Journal of Offender Therapy and Comparative Criminology* 66, no. 4 (March 2022): 327–44, <https://doi.org/10.1177/0306624X20964037>.

to companies, investors, citizens, and owners of small and medium enterprises and recruiting non-professional workers may cause a gap between the expatriate workers and the employer when the delegation arrives in the Kingdom of Saudi Arabia. It is worth noting that some used the sponsorship system to make personal gains at the expense of the country's overall interest. Regarding their rights and responsibilities, it may sometime lead to deportation, which involves them in the bargaining process. It may even raise detestation of the sponsor; he refrains from disbursing his salaries so that the expatriate workers' sponsorship is not transferred, resulting in the workers being trapped in a cycle between government agencies in the Kingdom of Saudi Arabia. This initiative of labor policies, which is undoubtedly influenced by the international practices regulating agreed-upon labor relations, will reduce labor disputes that occasionally arise as a result of the disagreement of the parties to the contractual relationship, thereby leading to the empowerment and development of Human capital and attracting talent to the labor market.

Qatar and Saudi Arabia will pass an exit permit to allow migrants to leave the country.¹⁰ When employees (whether low-paid workers or high-paid managers) wish to travel, they must first obtain permission from their employer. Sponsors often deny their employees permission to leave due to an employee-employer dispute. In one famous case, the French player Zahir Ballounis was banned from traveling for two years after a disagreement with the Qatari's club management in which he was a player. "This bail system is slowly killing me, and many others are exposed to such circumstances," Ballounis told the British newspaper, the *Guardian*, at the time.¹¹

In other countries, sponsors prevent employees from leaving the country without their consent. If they report them to the authorities as "absenteeism from work," the employee is liable to prosecution. Last November, the head of the Manpower Department in Kuwait stated that there were 12,000 pending cases of absenteeism registered against immigrants, as the authorities revoked their residencies automatically. The Kuwait Human Rights Society described these allegations of desertion as "a sword on the necks of workers being used to deprive them of their material rights." Those against whom missing reports have been registered are not allowed to leave the country until the charges against them are dropped through the intervention of their country's embassy or a solution

10 Geir Ulfstein, "Qatar v. United Arab Emirates," *American Journal of International Law* 116, no. 2 (April 2022): 397–403, <https://doi.org/10.1017/ajil.2022.14>.

11 Daisy Payling, "City Limits: Sexual Politics and the New Urban Left in 1980s Sheffield," *Contemporary British History* 31, no. 2 (April 3, 2017): 256–73, <https://doi.org/10.1080/13619462.2017.1306194>.

is reached with the sponsor. Many remain in prison for open periods until the charges are dropped. The authorities do not care if immigrants have valid reasons for leaving the job, such as deprivation of financial entitlements. In Bahrain, migrants can change careers without referring to their sponsor after one year of working. In the UAE, changing employment is permitted with the approval of the Ministry of Labor, which imposes conditions such as proof that the sponsor has abused them or because the sponsor has arbitrarily terminated the employment contract. The worker concerned needs the sponsor's approval with a «no objection» paper outside these limited exceptions. In the rest of the GCC countries, migrants cannot change jobs without the employer's permission, regardless of how long they have worked. Otherwise, workers must obtain special permission from the Ministry of Interior or file a case against the sponsor.¹²

The Change of the Kafala System into Modern Slavery

We can, through general extrapolation of the texts and Maqashed al-Shariah, stand on a set of legal purposes for action as follows:

Achieving self-sufficiency:

One of the purposes of the law is that a person suffices his needs and does not serve as a burden on others. God has facilitated a person in a way that if he takes them, he acquires what fills his needs and the needs of his dependents, but rather, he can help others who are eligible for help with the result yielded from his work. Therefore, work was one of the three principles of earning, as Sheikh Muhammad Al-Taher bin Ashour says: "As for earning, it is the treatment of finding what fills the need, Either by physical work or by mutual consent with others. The sources of earning involve: land, labor, and capital"¹³ The required self-sufficiency is sufficiency at the level of the individual and the level of the nation, as mentioned by Sheikh Yusuf Al-Qaradawi in his saying: «Among the purposes of the Sharia in the production of money, two essential purposes, the first is achieving complete sufficiency for the individual in his life, and the second is achieving self-sufficiency for the nation to dispense with other nations, especially during crises and conflicts. We all expect to realize the benefits of Maqashed Sharia, and regulations should be put in place to prevent tyranny against the rights of workers and their employers.¹⁴ The legislator's prohibition of disposal leads to the

12 Jureidini and Hassan, *Migration and Islamic Ethics*.

13 (ابن عاشور, محمد الطاهر, مقاصد الشريعة الإسلامية (دار السلام, 2005), <https://books.google.co.id/books?id=pCCQAAAAMAAJ>.

14 Faisal Hamadah, "Kafala and Social Reproduction: Migration Governance Regimes and Labour Relations in the Gulf," in *The South Asia to Gulf Migration Governance Complex*, ed. Crystal A. Ennis and Nicolas Blarel (Bristol University Press, 2022), 173–89, <https://doi.org/10.51952/9781529221510.ch008>.

opposite of the legislator's intention. Izz al-Din ibn Abd al-Salam, may God have mercy on him, said "Every disposal that is distracted from achieving its intention is invalid."¹⁵ Instead, wages were imposed on business owners before they were hired to issue documents guaranteeing the rights according to the current Law of the state where they worked. The wage is a sum of money the worker seeks to fulfill his living and social necessities. Moreover, whoever delays giving the worker his right or procrastinates has sinned because he received his benefit without compensation. Hence, his consumption was invalid, and his use of the workers without wages was enslavement.

Migrant labor constitutes a considerable proportion compared to the population in the Gulf states, where nearly 17 million expatriates and their families live, led by Saudi Arabia, with 9 million expatriates. The sponsor usually confiscates the migrant worker's travel document to force him to work and intimidate him from leaving without the sponsor being held accountable. The sponsorship system does not guarantee workers the right to file a complaint if they violate their righteousness. For example, in the case filed against him by a worker, the sponsor can register his absence or cancel the residence, which leads the worker into a cycle of imprisonment and deportation from the country due to the illegality of his stay without Accommodation. Even if the worker is permitted to stay until the complaint is resolved, he will be burdened beyond the worker's financial capacity.

As a form of oppression in the abused kafala system, companies that trade in the residencies of thousands of immigrant workers benefit significantly from this system. We talked with a Saudi Arabian worker who had long suffered because of his employer and because he was forced to work to support his family. Sponsoring problems have been discovered in some Gulf countries, such as sponsors verbally or physically abusing their sponsored employees. Furthermore, some tyrannical sponsors deny employees their full rights and do not pay them well. The world is experiencing inflation, sponsors are in good financial standing, and sponsorship income is as high as desired. This results from employees' hard work, but they accuse them of being lazy at work and not producing as much as they should.¹⁶

Who are the beneficiaries of the kafala system?

This system significantly benefits companies that trade in the residences of thousands of immigrant workers. Citizens who take advantage of this by violating the

15 عبد الرحمن. عبد اللطيف حسن. قواعد الأحكام في مصالح الأنام، الطبعة الأولى، سلمى. عز الدين عبد العزيز بن عبد السلام (Bayrut: Dar al-Kutub al-'Ilmiyah, 1999).

16 Kondisi Tenaga Kerja di Saudi Arabia dan Negara Teluk, April 4, 2017.

rights of domestic workers are also beneficiaries. In most cases, workers' residencies are terminated, and an absenteeism file is registered, regardless of whether they have obtained financial rights. It is done with the understanding that leaving the work, known as "absconding," can be reported to the police station as a case of absenteeism.¹⁷ The sponsorship law has the most significant impact on domestic workers. Many workers, except domestic workers, are included in amended labor laws to improve working conditions in Arab Gulf states.

The Influence of the Kafala on domestic helpers

Human Rights Watch published a report entitled "I have already bought you," mentioning numerous violations against domestic workers in the UAE. It stated in its report that "the UAE authorities have introduced reforms in some aspects of the sponsorship system in recent years. The labor law provides protections for some categories of migrant workers but not for domestic workers. More than 20 domestic workers told Human Rights Watch that their employers abused them physically or sexually, including one reporting that her employer violently twisted her arm to the point of breaking it. Another claim is that her employer raped the employee."¹⁸

The sponsorship system deprives workers of freedom of movement and makes them owned by the sponsor

Most domestic workers interviewed by Human Rights Watch alleged that their employers verbally abused them by shouting at them and insulting them with descriptions such as "donkey" and "animal." In extreme cases, almost all domestic workers who spoke to the organization complained about long working hours, which amounted to 21 hours per day. Many said their employers did not allow them to take breaks or days off. In contrast, many workers worked for large and extended families and were required to perform numerous chores such as cooking, cleaning, caring for children or the elderly, and gardening. Many also complained about the failure of their employers to pay salaries on time or in full, while some said that they did not receive any salaries at all for nearly three years in one case.

17 Anggita Doramia Lumbanraja and Yusriyadi Yusriyadi, "The Urgency to Reform the Kafāla System in the Sake of Human Rights of Indonesia Domestic Workers," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 213–30, <https://doi.org/10.18326/ijtihad.v21i2.213-230>.

18 ترتيب الدرويش, "خصوصية الجرائم ضد الإنسانية و جرائم الحرب في نظام المحكمة الجنائية الدولية (نظام روما)", *المجلة الدولية للفقہ والقضاء والتشريع* 0 (December 5, 2021): 0–0, <https://doi.org/10.21608/ijdj.2021.80179.1088>.

Employment Renewal of Labor Regulations

Amid international calls to abolish the enslavement system, some Gulf countries have made amendments to the design and issued new laws that provide some rights for workers, but these are insufficient and do not yet reach the level of rights that provide a decent living; the kafala system itself has flaws that give the sponsoring power over the life of the workers. The Domestic Workers Act did not introduce enforcement mechanisms such as workplace inspections.¹⁹

In its 2016 global report on reforming the status of domestic workers in Kuwait, Human Rights Watch states that “in June 2015, Kuwait passed a new law that gave them labor rights. For the first time, the law grants domestic workers the right to a weekly rest day, 30 days of paid annual leave, 12-hour work days with a break, end-of-service compensation of one month’s salary for each year of work at the end of the contract, and several other benefits. The organization added: “However, the law talked about hours of rest without specifying them, and it also lacked other essential protection issues found in the general labor law, such as working eight hours a day, having one hour of rest for every five hours working, and detailed provisions about vacations. Sickness, including obtaining 15 days of paid leave, and the Domestic Workers Law did not provide enforcement mechanisms, such as workplace inspections. The law prohibited employers from confiscating or assaulting workers’ passports, but it did not specify penalties, and the new law does not include the right to form unions.”²⁰

Human Rights Watch praised the draft law issued by the Shura Council for domestic workers in Saudi Arabia. However, it warned of its shortcomings concerning obedience to the sponsor contained in the law, especially the presence of a large number of violations against domestic workers in the Kingdom, which were reported in a special report on that under the title “As if I am not a human being.” Despite promises to abolish the sponsorship system by the Gulf countries, the system is still in force, and it is the door through which all violations against migrant workers occur.²¹

19 Abdulhadi Khalaf, Omar AlShehabi, and Adam Hanieh, eds., *Transit States: Labour, Migration and Citizenship in the Gulf* (Pluto Press, 2015), <https://doi.org/10.2307/j.ctt183p1j8>.

20 J. S. Birks, I. J. Seccombe, and C. A. Sinclair, “Labour Migration in the Arab Gulf States: Patterns, Trends and Prospects,” *International Migration* 26, no. 3 (July 1988): 267–86, <https://doi.org/10.1111/j.1468-2435.1988.tb00649.x>.

21 Sara Ahmed, “Migrant Labour in the Persian Gulf: Causes and Consequences,” *Cambridge Review of International Affairs* 1, no. 1 (September 1986): 37–40, <https://doi.org/10.1080/09557578608400005>.

Protection of Workers in Islam

Job description and identification

In the chapter on transactions, the Sharia emphasized clarity and warding off ignorance and the causes of deception in what is contracted between dealers, and this requires a good description of the required work, the period allotted for it, and the wage due on it, which is usually determined by work contracts so that it is the reference that is referred to in the event of a dispute between dealers: “the basic principle in financial exchange contracts is clarity and knowledge of every matter for which there is a consideration. Based on this, it is said, “If the lease is for a period, then it must be known, such as a month or a year, and there is no dispute about this according to any of the scholars because the period is the determining factor for the contracted party. It is not permissible to rent for an unknown period because contract ignorance invalidates them.”²²

The Work Required Should be Within the Capacity of Workers

The work required should be within the capability of workers, and workers should not be obliged to do more than what their capacity allows. If God Almighty does the legal duties within the capacity of human beings, this establishes a general principle in all aspects of life, and the legal principle states “There is no assignment except with what is able” based on the words of God Almighty:

God does not burden any soul beyond its capacity

Sheikh Ibn Ashour said in his talk about the legal purposes of physical transactions: “Beware of what burdens workers in these contracts, so that the owner of the money does not take advantage of the workers forced to contract for work, and he takes advantage of that to exceed his profits.”²³ Moreover, the ability to perform the required work must take into account the time to continue to achieve it without risking their health. This requires providing immediate and long-term health protection terms and conditions for working.²⁴

22 Iftikhar Ahmad, “RELIGION AND LABOR: PERSPECTIVE IN ISLAM: AHMAD: LABOR IN ISLAM,” *WorkingUSA* 14, no. 4 (December 2011): 589–620, <https://doi.org/10.1111/j.1743-4580.2011.00363.x>.

23 2005 (ابن عاشور، محمد الطاهر، مقاصد الشريعة الإسلامية (دار السلام، 2005), <https://books.google.co.id/books?id=pCCQAAAAMAAJ>.

24 Marc Jegers, *Managerial Economics of Non-Profit Organizations*, Routledge Studies in the

Workers' Right to Continuous Training

The workers' interest is to be proficient and productive in their work. It is in the interest of the employer to obtain what workers can yield in return for the wages paid to them, and what helps in this is that the workers receive continuous training to raise their efficiency and enable them from the new means in their field of work, particularly in our time, with its ever-changing work methods and techniques.²⁵ Many of these innovative means help alleviate the workers and improve the quality of their production. This comes under the heading of the employer's assistance to the workers, and it falls within the framework of the Prophet's guidance, as in his saying about the employees: "Do not burden them with what is more than they can bear, and if you cost them, help them."²⁶

Proper Remuneration for Work

The proper wage is the right of the worker, and the Prophet stressed the fulfillment of the right of the wage earner and fulfilling it to the extent that he said:

Pay the worker his dues before his sweat dries up²⁷

A man who gave a promise in my name then acted faithlessly; a man who sold a free man and enjoyed the price he received for him; and a man who hired a servant and, after receiving full service from him, did not give him his wages."

Providing Incentives to Workers

Workers need stimuli that make them more eager and dedicated to work. Among these motivators is that workers participate in some of the fruits of the labor; Sheikh Ibn Ashour says: "It is permissible to offer employment in these contracts with benefits that exceed what the position requires. It is also motivating to consider the needs of workers in addition to rewarding them for the effort that they deserve, which was decided by the second Caliph Omar Ibn Al-Khattab when he set a criterion for determining the wages for workers; he said "A person and his affliction and a person and his need", which is what modern

Management of Voluntary and Non-Profit 9 (London ; New York: Routledge, 2008).

25 Meirison Meirison and Zerly Nazar, "Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence," *Al-Ahkam* 31, no. 1 (April 29, 2021): 49–68, <https://doi.org/10.21580/ahkam.2021.31.1.6656>.

26 Musafa Zarqa Ahmad, *Madhal Ila Nazaria Al-Itizam al-Amah Fi al-Fiqh*, Fiqh Al-Islami Fi Saub al-Jadid (Dar al-Qalam, 1999), <https://books.google.co.id/books?id=sekZnQAACAAJ>.

27 Muḥammad ibn Yazīd Ibn Mājāh and Muhammad Tufail Ansari, *Sunan Ibn Mājāh = Sunan Ibn-e-Majāh: with Arabic text* (New Delhi: Kitab Bhavan, 2013).

social systems take, covering workers what they cannot fulfill their wages through social compensation.²⁸

Ensuring the Rights of Workers

Workers' rights must be guaranteed, especially what they deserve from special grants in cases of illness or when they are exposed to unemployment, as well as their rights to social solidarity and their freedom to a retirement grant, all of which are established in modern labor laws.²⁹ Sheikh Ibn Ashour says "Avoiding any condition or a contract that resembles the enslavement of workers, that they continue working throughout their life or for a very long period so that they do not find a way out for themselves."³⁰ The Islamic endowment systems covered broad fields covering these and other aspects, and each field had official and private specialized institutions. Regarding endowment institutions in the history of Islamic civilization, Mustafa al-Sibai said "These institutions were of two types: a type established by the state and upon which extensive endowments depended, and a type established by individuals."³¹

Syndicate Attribution

To ensure and defend their rights, workers may need the support of those more familiar with workplace issues and their laws to improve working conditions and negotiate with employers; there have been gatherings of people of different professions in the history of Islamic civilization to take care of workers' rights. Some researchers have rooted union work in the Islamic curriculum.³²

Among the verses supporting this issue, the following is the word of God Almighty in the religion verse.

If a debtor is a person who is weak in mind, weak (condition), or unable to dictate, then let his Guardian dictate honestly.

Moreover, workers - by analogy with debtors – may not be sufficiently familiar with all the legal details of the contract they sign. Hence, they need knowledgeable

28 Stephen P. Heyneman, ed., *Islam and Social Policy* (Vanderbilt University Press, 2004), <https://doi.org/10.2307/j.ctv17vf6q5>.

29 Serhat Yalçın, "Social Forces and the Making of Policies towards the International Mobility of Capital and Labour in the Gulf States Capital, Labour & the State in the Gulf," 2022, <https://doi.org/10.17170/KOBRA-202202245803>.

30 الطاهر، مقاصد الشريعة الإسلامية، 2005، 188.

31 (مصطفى السباعي/-/-، من روائع حضارتنا (دار الوراق للنشر والتوزيع، 1999 <https://books.google.co.id/books?id=z6dBDWAAQBAJ>.

32 الحرية النقابية على أرض الممارسة الدروس المستخلصة: التقرير العالمي بموجب متابعة إعلان منظمة العمل الدولية بشأن (البيدائ والحقوق الأساسية في العمل 2008 (جنيف: مكتب العمل الدولي، 2008).

people to take over on their behalf to guarantee their rights.³³

However, defending workers' rights should not lead to prejudice against employers' rights because the balance between rights is in the interest of all. For the work to survive, benefit from its fruits, and reach absolute justice in transactions is complicated. The slight Gharar is forgiven so that the interests are not disrupted, and the pursuit of justice remains required.

The methods used by labor bodies to demand rights, such as work strikes, are matters that require the controls and legalization that social systems usually take to protect the rights of institutions and users of public and private facilities, with an emphasis on consolidating the culture of social negotiation leading to the agreement and not resorting to acts that disrupt the productive cycle and the tension of social relations, and this is included in the principle of preventing the causes of conflicts and disputes from occurring and working to resolve them. The Sharia and the favorable laws came to emphasize this principle and strengthen the basis of consent in transactions. This consent results from negotiation based on cooperation and balance between private and public interests.³⁴

Conclusion

The situation for migrant workers is unlikely to improve until the kafala system is reformed, in which workers are beholden to employers who guarantee their visas. The system prevents local competition for foreign workers in the Gulf states. The fundamental principle is that every Muslim can enter any Muslim country, live in it, and engage in permissible actions. Muslims have what the original inhabitants of that country have. They have what they owe unless the interest and the fair policy require that all the people of the country reside in their country to build it and defend it from those who conquer it or if their migration in abundance to a specific country will constitute a heavy burden on its original inhabitants, or cause chaos whose effects cannot be controlled, in this case, the Muslim Guardian must act according to the interests, and the legitimate policy of maintaining matters. Among other things, no one is permitted to enter the country unless the country needs him or the coming one requires that country. He finds a job to live in, manages his affairs, and fulfills his necessary needs so that he is not a burden on others to achieve such advanced interests, control matters, and prevent chaos. There is nothing wrong with requiring that the person coming to have a sponsor from the country's original inhabitants. There is also nothing wrong

33 Ahmad, "RELIGION AND LABOR."

34 Jawad Syed and Abbas J. Ali, "Principles of Employment Relations in Islam: A Normative View," *Employee Relations* 32, no. 5 (August 17, 2010): 454–69, <https://doi.org/10.1108/01425451011061630>.

with someone saying this is my sponsor and the sponsor of so-and-so. We must point out that the sponsorship system in force in some Islamic countries includes a great deal of unfairness and abuse of the right of the guarantor, to what some guarantors practice in addition to that of injustice, abuse, and delays the rights sponsored, except for those for whom God Almighty has mercy. Therefore, the sponsors must beware of and fear God Almighty and know they have no authority over these people except to the extent that the common interest, justice, and stability are achieved. As for the money that the sponsor takes, if it is in exchange for fees and efforts, there is nothing wrong with that, but if it is for something other than that, it is not permissible. Does this imply that all immigrants have a terrible experience under this system? Certainly not; many employers pay their employees on time and other rights. For example, a wealthy resident can invest in the country and become a legal guarantor for himself. However, immigrants who do not have good relationships with their sponsors face problems with the sponsorship system. Without the sponsor's consent, they cannot change their jobs for a better one, even if they have worked for the same sponsor for years. This means they may continue to receive low wages because employers are not required to raise them despite rising living costs. Domestic workers face the most restrictions among the migrant labor sectors, according to the region's laws and labor conditions, as they are exempt from labor laws in the Gulf, Lebanon, and Jordan. It means they have neither fixed working nor minimum wages and are excluded from state programs. The labor ministries exclude domestic workers from filing complaints against their sponsors. The labor ministries' inspectors do not visit their workplaces to ensure payment of their salaries and living conditions. Many immigration reforms that have taken place in recent years exclude domestic workers from their benefits, especially the possibility of changing the sponsor, even if they are victims of physical or other violations. The workers spend months and sometimes years in court cases such as sexual assault or torture without reaching solutions, and the decisions are often inappropriate.

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