

# LEGAL CULTURE OF RELIGIOUS CAPITALISM: SOCIO LEGAL APPROACH ON EMPLOYMENT RELATIONS BETWEEN MUSLIMAH EMPLOYERS AND BATIK WORKERS IN PEKALONGAN

SHINTA DEWI RISMAWATI

State School of Islamic Studies (STAIN) Pekalongan

## ABSTRACT

Pekalongan called as world's city of batik and religious city. The business of batik controlled by the women entrepreneurs. They are a good Muslim. But not in legal culture of the behaviors are of their business. Especially at the relationship with their workers. It doesn't reflect its identity as a good Muslim. They are ignoring Islamic values and regulation about worker (Act number 13 in 2004. In fact, the legal culture of the behavior of business is based on the values of capitalism. The behavior of them ended with the assumption of a new identity as a religious capitalist. They make accumulation their profit by exploited their labors. For example, always recruited inexperienced new workers so their paid with low wages; equating the standard wage for all workers, whether experienced or not; utilize resignation workers; majority of workers are women so the wages are lower; determine the wage unilaterally; reward by way of installments, the rest installed payment paid with the checks / demand deposits with maturities of retreat between 2 to 3 months and; doesn't provide health insurance, welfare and rights of the workers leave, or give them with a very low standard. Representation of religious identity as a Muslim, there is the level of new religious rituals not only in the identity business behavior

Keywords : Legal Culture, Relationship, Religious, Capitalist

## Introduction

Pekalongan is known as *Batik City* and *Santri* (Islamic Student) City. This image has given rise to typical social stratification that may not be found in other areas, namely the classes of Kyai (religious leader *Santri* (Islamic Student), *juragan* (employers) and workers. As *Santri* city, religious nuances have colored every aspects of life in the society, both in the economic, social and political choices. As *Batik city*, batik business has made most of the people rely on the informal sector. The number of batik entrepreneurs registered in Small-Medium Enterprises and Cooperatives Agency (*Disperindagkop*) Pekalongan is 3,402 entrepreneurs spreading over 4 (four) sub districts including 2471 females and 931 males in both the small and medium scale enterprises, medium and large, and those who are not registered are a lot because they do not have business licenses (*Disperindagkop*, 2012). In addition, from the available data, 95% of 3402 batik entrepreneurs people were Muslim, and the majority of the business was controlled by woman entrepreneurs (*Rita Rahmawati*, 2012). This fact is also supported by the research results of *Zuly Qadir* in *Pekajangan* area, Pekalongan, confirming that 80% entrepreneurs and traders in *Pekajangan* were female, even 80% was managed by widows and 100% of the female entrepreneurs and traders were Muslims (*Zuly Qadir* 2002). The quantitative data shows that, in fact, Muslim businesses have had significant role in mobilizing the economy at local level. Other facts show that female entrepreneurs actively control their batik business, and some of

them have the profession as Nyai/ustadah (female religious leader) and active in various social activities such as routine religious teaching, donations for orphans, social assistance, and so forth. Another thing that emphasizes the uniqueness of batik entrepreneurs and Muslim businesses in Pekalongan is the appellation given by the society to them. The *juragan* of batik and Muslim businesses in Pekalongan city are used to be called as "Kajine" or "Juragane". The connotation of both words for Pekalongan people give the same meaning that they are the rich and privileged. Each *Juragan* is inevitably called "Kajine" although they do not perform *Hajj* (Islamic Pilgrimage). This reality confirms that they are *solekhah* (religious) individuals in social life and ritual worship. They perform five-time prayers daily *Sunnah* (optional) prayers, fasting in Ramadan month and *Sunnah* fastings, always pay *zakat* (religious tax), *hajj* for more than one time, and others. However, in economic life, when they operate their businesses, they release their identity as Muslim figures and religious values are not represented in the reality of their business (Shinta Dewi Rismawati and Triana Sofiani, 2009). Socio-religious activities mentioned above suggests that Muslim businesses in socio-religious activities have led to their figure as the charity of figures in their community; it means that they care for people by contribute their income for religious social activities. It should be recognized that successful batik businesses have made them as "juragan" in the social strata recognized by public as the rich with abundant treasures from their batik business. On the other hand, the life of their batik workers remain poor, even poverty is passed down to their descendants. This phenomenon certainly raises further questions on why these conditions could occur, what went wrong with the working relationship that has been built between *juragan* and their workers. This paper was about to reveal on; how are he ideals set forth in labor relations regulated by Labor Law and Islamic Law? And how is the legal culture *Muslimah* entrepreneurs in establishing working relationships with workers and how are the effects of the legal culture?

### **Data Sources and Methods**

The research was based on qualitative research tradition using socio legal approach. The data sources were primary data sources obtained directly from the field, *Muslimah* businesses, batik workers and relevant agency officials to the issues discussed, as well as secondary data obtained from documents, archives, books, and relevant references. The data collection techniques and the credibility of the data used to obtain primary data were in-depth interviews, focus group discussions (FGD) and observation. Interviews were conducted with key informants selected by purposive sampling, then developed following the snowball principle. To find such information, triangulation technique was used, both the source and the methods used. To obtain secondary data, documentation study was conducted by reading, studying, identifying and reviewing secondary data sources. In accordance with the characteristics of qualitative approach used in this study, the data analysis technique was an ongoing effort, repeatedly and conducted continuously, back and forth; during and after the data collection process took place. The analysis model used was interactive model by which it started from data collection, reduction, and presentation, to conclusion (Matthew B. Miles and A. Michael Huberman, 1984).

### **Results and Discussion**

#### **Ideal Values in Employment Relation: The Perspectives of State and of Islamic Law**

The existence of law in society is actually to provide a guarantee against any social interaction among individuals based on the needs for certain values. This social interaction is interpersonal need. There are three interpersonal needs of every human being, which include the need for inclusion, control and affection. The need for inclusion is the need for conducting

and maintaining satisfactory relationships with others. The need for control is the need for establishing and maintaining relationships with other parties to gain control or power, and the need for affection is everything needed to organize and maintain relationships with other parties to obtain and provide love, care and affection (Soeryono Soekanto, 1981). Fuller said that law is part of human life dimension and created to achieve certain goals (Lon C. Fuller, 1968). Juridical analysis of legal norms is stipulated in the Labor Law. Then, the existence of laws including Act No. 13, 2013 on Employment was made to meet human life dimensions, which are the need for inclusion, control and affection in the field of employment. Started from the mission, Labor Law serves as the tools of social control, social engineering tool, and integration mechanisms. As the tool of social control, labor law serves as an imperative norm that should not be overlooked in organizing everything related to employment, including on working relation between employer and employee. The imperative nature can be seen from the use of the terminologies "forbidden, obligatory, entitled, and responsible". This imperative nature is very dominant in the Labor Law substances which consists of 18 chapters and 193 articles.

Still in the same issue of labor relations, labor law as the tool of social engineering is, then, functioned to encourage a paradigm shift, ways of thinking and behavior in accordance with "the mandate and spirit " of ideal working relationship as stated in the Labor Law, namely the realization of *Pancasila* Industrial Relations as set forth in Article 1 paragraph 16, which says that an industrial relation system is a relation formed between the agents in production process of goods and / or services, which consist of employers, workers / laborers, and government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Pancasila Industrial Relation is actually the spirit of the ideal values of working relationship between employers and workers based on three (3) ideal values as follows: 1). The relationship directed towards the development of harmonious relation on the basis of equal and integrated partnership among the agents in the production process of goods or services based on the values contained in the principles of Pancasila and the 1945 Constitution; 2). In implementing the relationship, every employee is directed to have the sense of belonging and develop an attitude to maintain and sustain the business and 3) Every employer is required to develop an attitude of treating workers as human beings on the basis of equal partnership in accordance with the nature, dignity, honor, and self-esteem, and improving professionalism and welfare of workers and their families. Labor Law concretely encourages the change in paradigm, mindset and behavior of governments, employers and unions / workers to implement Pancasila industrial relation. The legal norms that encourage social change are in Chapter III on equal opportunity and treatment (Article 7-8), Chapter IV on workforce planning and employment information (Articles 9-30), Chapter VI on manpower placement (Article 31-38), Chapter VII on the expansion of employment opportunities (Article 39-41), Chapter XI on industrial relation (Article 102-149), Chapter XII on termination of employment (Article 150-172), Chapter XIII on Development (Article 173-175), Chapter XIV on supervision (Article 176-181) and Chapter XV on Investigation (Article 182). The ideal values in labor law, if implemented properly and comprehensively, will certainly build harmonious and equitable working relationship for both employers and employees.

Labor Law, as the tool of integration mechanism, is then functioned to accommodate the interests of employers, workers, government and other stakeholders in the working relationship. As the means of facilitating all the interests of the parties, labor law serves as preventive and repressive medium both before and after the conflict of the parties occurred. The provisions of the Labor Law signaling the function are in Chapter XI on industrial relations (Article 102-149), Chapter XII on termination of employment (Article 150-172), Chapter XIII on development (Article 173-175), Chapter XIV on supervision (Article 176-181) and Chapter

XVI on the provisions of penal and administrative sanctions (Article 183-190). The juridical analysis shows that the Labor Law, in fact, only gives the place to formal sectors. Therefore, the matters regarding the relationship of workers and employers are reachable in the concept of industrial relation as well as having a clear control mechanism because of the existing regulations. Ari Hernawan indicated that the relationship of workers and employers in formal sectors covered the aspects of: resources exchange; Rules concerning the right and obligation agreement; interests of each party and conflict management mechanisms; control mechanism, and so forth (Ari Hernawan, 2013). On the other hand, in informal sectors, they are apparently ignored by the labor law. Therefore, the control mechanism of worker and employer relation is not regulated. As a result, in informal sectors, the roles of state as the protector of informal labor groups are minimal. In other words, the legal protection promised by State is not in favor of the interests of workers in informal sectors. It is an ironic portrait; when State is busy in giving subsidies and incentives in formal sectors, informal sector workers must find their own way to survive. Yet their existence is no less powerful in sustaining economic development when the economic crisis hit this country.

Islam is a religion of *rahmatan lil alamin* (bless for the universe). Therefore, business activities deal with rules and ideals that should be adhered to by Muslim / Muslimah employers. Business in Islam can be understood as a series of business activities in its various forms not limited to the amount of asset ownership including profits. However, it is limited in the way of acquisition and utilization of asset because there are rules of *halal* (legal) and *haram* (illegal) (A. Hanafi, 1987). According to Syed Nawab Haidar Naqvi, there are eight (8) major pillars in the Islamic business ethics: the principle of *Tauhid* (Surah 62:10), the principle of balance and fairness (Surah 59 al-Hashr: 7), the principle of free will (Surah an-Nisa (4): 29), the principle of agreement (Surah al Maidah: 1), the principle of responsibility (Surah Al Mudassir (74): 38), the principle of honesty (Surah Al Baqarah: 267), the principle of no fraud element (Surah al-Maidah: 1), The principle of halal (Surah al Maidah: 87) (Muhammad Ismail Yusanto, 2002). Associated with working relation between employers and employees, the Quran and Hadith have set working relationship rooted in humanistic values (Surah al Maidah: 105), honesty (QS.al-Ahzab (33): 70), partnership-brotherhood (QS.16 an-Nahl: 90), the agreement of parties (Surah al-Maidah: 1 and QS. An-Nisa (4): 29) as well as justice in rights and obligations (Surah al-Maidah 5: 8 and QS. al A 'raf (7): 29). The prohibitions to exploit / perform *dholim* (unjust) workers are also delivered by Prophet Muhammad. The Prophet's hadith that prohibits employers to exploit their workers is in a hadith that says "Give wages before their sweat dries". Abi Hurairah from the Prophet Muhammad, said: "Allah says: three groups of people would be in my hostile in doomsday; they are the people who swear on my name but they renege; those who sell other people with the status of independent then the profit is eaten, and people who do not pay workers' wage after they do their job." Similarly, in a hadith, the prophet said that "workers are your brother authorized by God to you, then whoever has workers they should be fed as he eats, be clothed as he puts it, and not be forced to do something unable to do and if he should do it he should be helped." The exposure above confirms that the values of working relations under Islamic law is actually ideal because not only habluminanas dimension (human relations), but also habluminallah (relationship with God).

### **Legal Culture with Religion-Capitalistic Pattern**

Legal culture is an accurate and commensurate legal element with the objective to address the operation of law in society. Legal culture plays an important role in determining the effectiveness of law because it is related to ideas, moral values, beliefs, habits, expectations

and behavior of a person associated with legal norms prevailing in society. Satjipto Rahardjo saw legal culture as a basis for the implementation of positive law in society because the implementation of positive law is determined by attitudes, beliefs and values comprehended. Legal culture is one of the components to understand the operation of legal system as a process, in which the legal culture serves as gasoline of engine's justice. Thus, without the support of conducive legal culture, a rule or law necessarily cannot be realized as expected either by law makers and community as the targets of law (Satjipto Rahardjo, 1980). Thereby, legal culture serves as a normative framework of human life that will determine a person's behavior towards rule of law, therefore, legal culture is subjective. Subjective nature here refers to a person's legal obedient / disobedient that depends on the legal culture he comprehend. Therefore, it is normal if legal culture is identified as fuel in the functioning of law in society. The gap of the Labor Law substance that does not support informal sectors is often utilized by some Muslimah businesses when they make working relationship with workers. The constructions of understanding, mental and Muslimah businesses' belief ultimately converge on the highest value to gain profit as much as possible. This confirms Withers's opinion suggesting that business is basically based on greedy and solely guided by earning for profit (Mustaq Ahmad, 2002). These conditions gradually form the legal culture of Muslimah businesses which is negative and not oriented to workers. Dawam Rahardjo asserts that entrepreneurs often ignore religious ethics (Dawam Rahardjo, 1999) due to tolerance, loyalty, trust, equality; religiosity is only held by the business people who are less successful in business. Businesspeople are successful if they hold unscrupulous businesses principles, such as profit maximization, aggressiveness, individuality and spirit of competition. The matters above was in fact found in batik business activities controlled by Muslimah businesses. Analysis of the legal culture of Muslimah entrepreneurs in creating working relationship with workers include:

### **Working Relation System Based on Sanggan Model (Putting Out System)**

Working relationship system with the majority of workers uses sanggan models or putting out system. ILO Convention No. 177, 1996 in The Homework Convention defines putting-out system which is a production system that some or most of the production processes are out of company or at home or at a place chosen by workers. This production system brings forth the term of home-workers or home-based work). Home-workers are different from factory workers in various important aspects because it is a form of centralized production, generally receive little or no supervision or control over the workings of entrepreneur / employers. Home-workers are also different from home industry; it is not a form of independent production. They can work on more than one employers for wages. They are not free to determine what is produced and do not market their works (product). They depend on work orders given by employers /businesses. All raw materials and auxiliary materials partly are from employers / juragan (Ken Surtiyah, 1990). Model sanggan is a historical phenomenon existed since Mataram kingdom in 18<sup>th</sup> century with the King of Panembahan Senopati (Pekalongan Batik Museum, 2012). There are two Sanggan model developed in Pekalongan; Putting Out System (POS) and Self Employed (SE). POS model is by taking the work from Juragan brought directly to workers' homes, while SE model is by getting orders taken from Juragan to be distributed to the POS. Both models make workers' position vulnerable to exploitation of Juragan and makloon (broker). Workers do not have strong bargaining position, because their works are considered as side job so that their wages are low. Sanggan models require workers to bear the cost of batik work, namely the cost of transport to take and give batik (by rickshaws, motorbikes, etc), operational costs such as pans, kerosene, canting, wax (batik wax material), etc. If there is an error in making batik, batik should be sagged again (put into a certain chemical

liquids so that existing batik can be lost again or plain), so the time and operational costs incurred can be in vain and not paid. Sanggan Model is highly profitable for Juragan (skipper) because they do not need to provide special place for their workers to make batik. Besides, they are spared from the effects-risk of batik produced (ISPA, itching skin disease caused by batik dyes, and contaminated air and water in homes) because all of batik productions are done in workers or brokers' houses. This is similar to Fernand Braudel's thesis stating that capitalists are speculator and monopoly holder who are in a position to earn huge profits without incurring much risk (Yoshihara Kunio, 1990).

### **Oral Employment Agreement**

Working relationship between juragan (skipper) and their workers are usually in the form of oral agreement. Batik skippers have a major role in determining the rights, duties and wages of their workers. The dimensions of obligations and sanctions are more emphasized than the rights accepted by workers. Thus, even if the employment relationship is based on mutual agreement, but in reality, workers do not have strong bargaining power, and they even tend to let it go, especially if it is accompanied by "threats" from their skippers (e.g.: skippers will not pay if the batik is not appropriate to the orders, fired / will find other workers who would be paid cheaply, workers should still be grateful for the work despite low wages). The reality eventually brings forth to the concept of worker -skipper relation which is vulnerable to injustice. Injustice is wrapped by social stratification between skipper-workers, supported by the transformation of religious teaching values constructed by Kyai / Ustadz-ah. For example, it is reflected in the saying "If you work with clean intention, if you *nyolet* (giving color to batik cap) say Basmallah for each breath in order to be blessed. *Rizki* (wealth) has been arranged, if the intention of working is for Allah, God willing, we will willingly receive the reward given by *kajine* although it is a little, we should remain grateful ". (Shinta Dewi Rismawati and Rita Rahmawati, 2012). The working relationship based on oral agreement causes labor positions vulnerable to unilateral termination of employment, as it is more based on subjectivity of skippers over their workers' job performance.

### **Differentiation Type of Work by Sex**

Skippers distinguish the types of their batik workers' work based on their sexes. Female workers are dominant with complicated works (*jlimet*) that require high level of patience and perseverance, while male workers are dominant with works that require big and powerful strength. The works of female workers are *mengelengreng* or *molo*, *Isen-Isen*, *nyumik-I*, *rentesan*, *nembok*, and *nonyok* which takes a long time. The works of male workers are *ngeyos*, *nyolori*, *nyinar*, *nyolet*, *mbabar* and *nyemok* that need strength in completing the work. Many batik processes require skilled hands of female, so batik works are stereotyped to female workers.

### **Wage Differentiation**

The type of work distinction based on sexes brings the impact on wage discrimination. The works of female workers constructed identical to the hands of female are considered not requiring skill and power, then the wage is cheaper than men's work. Batik skippers often view the work done by female workers (especially the POS system) is very light in accordance with the nature of female, so it is common if the "reward" is small. Skippers use the term "reward" instead of "wages", because they think their works are not the works that should be paid and

adjusted with the minimum wage because batik work can be done at home and it is a part-time job. Wage system for batik workers in Pekalongan, such as: *pocokan* / daily (given every 6 days) and *borongan* (based on the volume of works given). Capitalism system is the economic system which is not human. Oppression and slavery are enforced and legalized as much as possible against workers. For capitalist society, the role of capital is very large, even the owners of capital can dominate the market and set prices in order to rake in huge profits. The thought of Karl Marx in the context of the relation between workers and entrepreneurs in capitalism system is that capitalism system is an economic system which is not human because it exploits workers, and workers (manpower) are paid cheaply, far from the production value produced. It is immoral because it only exploits others to enrich them. The behavior of Muslimah entrepreneurs in their business, especially in relation to their workers, shows the legal culture of client-patron nature and is characterized by religious capitalism pattern. This legal culture shows Muslimah figures that has turned into very dominant and exploitative against workers. The impact of the legal culture apparently contributes to perpetuate the legacy of poverty for batik worker's families from generation to generation (Shinta Dewi Rismawati, 2009).

### Conclusions

Although the reality of their legal culture is not to test and break the theories of Marx and Weber, but what was said by Marx and Weber on capitalist society in their theories, in fact was different from the reality of Muslimah entrepreneurs. Muslimah entrepreneurs have their own locality characteristics that they are "split" personal figures. On the one hand, in non-economic context, they behave according to the values of religion (Islam), but in economic context they take off their religious dress and wear capitalist clothes. Therefore, the legal culture in the working relationship between juragan (skippers) and workers tend to have the pattern of client-patron and religious capitalism.

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