

# The Right to Employment and Protection From Unemployment: A Theoretical and Practical Review of Article 23 Paragraph 1 of The 1945 Constitution From The Perspective of Islamic Law

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**Abstract:** This study aims to examine the normative dimension of the right to work and protection against unemployment as stipulated in Article 23(1) of the Universal Declaration of Human Rights (UDHR), and to explore its alignment with fundamental principles in Islamic law through the *maqāṣid al-sharī'ah* approach. The right to work is not merely an economic entitlement but a manifestation of human dignity and social justice. In this context, the state bears both constitutional and moral responsibilities to ensure equitable access to decent employment and adequate protection against unemployment. Employing a normative juridical method combined with conceptual analysis, comparative legal study, and statutory review, this research investigates the interplay between the international human rights legal framework and the ethical-legal constructions within Islamic jurisprudence, which prioritize values of protection, justice, and welfare. The study further evaluates the practical implementation in Indonesia, a country characterized by legal pluralism. Findings reveal a persistent gap between normative ideals and empirical realities, particularly in developing countries facing structural challenges such as high unemployment rates, labor market segmentation, and weak labor law enforcement. In this regard, the values of *ḥifẓ al-naḥs* (protection of life), *ḥifẓ al-māl* (protection of wealth), and *ḥifẓ al-ird* (protection of dignity) in *maqāṣid al-sharī'ah* offer a complementary and ethically grounded legal framework to strengthen the recognition and realization of the right to work. This study contributes conceptually to the advancement of labor justice discourse rooted in legal pluralism and serves as a normative reference for the formulation of inclusive and human-centered employment policies.

**Keywords:** Constitution, Maqashid Sharia, UDHR, Islamic Law

## Introduction

The right to work and protection from unemployment is a fundamental human right universally recognized under Article 23(1) of the Universal Declaration of Human Rights (UDHR). This provision asserts that every individual has the right to work, to freely choose their employment, to enjoy just and favorable conditions of work, and to be protected against unemployment (Universal Declaration of Human Rights, 1948). Beyond its economic function, the right to work is closely linked to human dignity and the realization of social justice, particularly through state-guaranteed mechanisms such as decent employment opportunities and inclusive social protection. Islamic law reinforces these values through the principles of *maqasid al-shari'ah*, which emphasize the protection of essential human interests including life (*hifz al-naḥs*) and wealth (*hifz al-mal*). The state, under Islamic jurisprudence, holds both legal and moral obligations to ensure that every citizen can access employment as part of fulfilling basic human needs and combating poverty (Majid, 2023). This aligns with the principle of *al-kifayah* (collective obligation) and *al-haqq fi al-'amal* (the right to work). However, various socio-economic challenges continue to undermine the implementation of this right in many developing countries, particularly Indonesia. These include persistent structural unemployment, informal labor markets, limited job availability, and weak enforcement of labor rights. Several scholars have addressed aspects of labor rights within either Islamic or positive law contexts.

Recent scholarly works have increasingly explored the intersection between Islamic law and national labor regulations in addressing the rights and protections of workers (Nurfainna Nasir, 2024). For instance, examine the legal safeguards afforded to female workers in Makassar City, focusing on maternity-related rights such as menstrual leave, maternity leave, and lactation facilities. Their analysis underscores the normative compatibility between Islamic jurisprudence and Indonesia's labor law in promoting gender-sensitive labor protections, suggesting that

Islamic legal norms can substantively contribute to the realization of equitable labor practices within Muslim-majority contexts. In a complementary vein, (Siti Kunarti, 2023) investigate the convergence and divergence between employment relations and wage regulation as conceptualized within Indonesian labor law and Islamic legal doctrines. Their findings affirm that both legal systems share foundational goals of ensuring justice, worker welfare, and the equitable distribution of economic resources, albeit grounded in distinct ontological and ethical frameworks.

While these contributions provide valuable insights into sector-specific labor rights, they do not systematically address the broader alignment between international human rights instruments particularly Article 23(1) of the *Universal Declaration of Human Rights* (UDHR) and the core normative structures of Islamic law concerning the right to work and protection against unemployment. This omission reveals a significant lacuna in the existing body of literature, particularly regarding the integrative potential of Islamic legal philosophy and universal human rights standards. In countries like Indonesia, where plural legal frameworks operate concurrently, a more holistic analytical approach is necessary to examine how Islamic legal norms can reinforce global human rights obligations, particularly in advancing decent work, social justice, and economic dignity for all.

This study aims to fill a notable gap in the literature concerning the realization of the right to work and protection from unemployment as stipulated in Article 23(1) of the *Universal Declaration of Human Rights* (UDHR), by analyzing it through the normative framework of Islamic law. Employing a normative juridical method and integrating conceptual, legislative, and comparative approaches, this research explores how Islamic legal principles can contribute to reinforcing international human rights standards in the domain of labor rights. The primary focus is directed toward the tension between normative legal guarantees and the socio-economic realities that obstruct the full realization of employment rights, particularly within the Indonesian context. As Rofiq and Syafi'ie have emphasized, "although formal legal guarantees of the right to work exist in both international and national legal instruments, implementation in Indonesia still faces structural barriers such as poverty, economic inequality, and limited access to vocational education." (Rofiq, 2023). This empirical gap between normative obligations and practical enforcement highlights the urgency of rethinking the intersection of legal theory and socio-political practice.

Indonesia is used as a case study due to the complexity of labor challenges that involve overlapping legal, economic, and religious dimensions. In this context, Islamic legal norms offer significant relevance, especially since Islamic teachings stress the principles of distributive justice, equitable access to employment, and protection of vulnerable groups. As noted by Amalia and Purnamasari, "Islamic law is not merely normative but also has a practical dimension in guaranteeing the rights of workers fairly." (Amalia, 2022). Accordingly, this study contributes not only theoretically by enriching the integrative discourse between Islamic law and international human rights but also practically by offering recommendations for strengthening labor-related legal and policy frameworks based on social justice and religious values. This integrative perspective becomes critical in bridging the divide between legal-formal mechanisms and the lived realities of communities facing structural employment vulnerabilities.

## Methods

This research adopts a normative juridical approach of a doctrinal nature, aiming to analyze the right to work and protection from unemployment as stipulated in Article 23(1) of the *Universal Declaration of Human Rights* (UDHR) from the perspective of Islamic law. This method is chosen because it enables an in-depth study of legal norms, textual interpretation, and the fundamental values contained within international legal instruments and Islamic teachings. As explained by Fatimah and Rahmat, normative legal research constitutes a systematic examination of legislation, legal doctrines, and other authoritative sources to interpret legal issues and assess their alignment with moral and ethical principles, particularly in the domain of socio-economic rights such as employment and social protection (Rahmat, 2023). This study employs three approaches. First, the conceptual approach is used to explore the theoretical foundations of the

right to work, both within the framework of the UDHR and the *maqāṣid al-sharī'ah*, particularly the principles of protecting life (*ḥifẓ al-nafs*) and wealth (*ḥifẓ al-māl*). Second, the statutory approach (statute approach) is applied to examine national and international legal instruments regulating employment, social protection, and the obligations of the state in ensuring access to decent work. Third, the comparative approach is employed to compare the normative content of Article 23 (1) of the UDHR with principles of Islamic law, in order to identify points of convergence and fundamental differences between the two legal systems. As noted by Wijayanti and Setiawan, such a multidimensional approach is highly effective in understanding the interaction between global and local legal norms, particularly in plural societies such as Indonesia (Setiawan, 2023). The data used in this study consists of primary sources, namely the full text of the UDHR, verses of the Qur'an, hadiths, and classical works of Islamic scholars. Secondary sources include legal literature, journal articles, books, and regulatory documents relevant to employment and unemployment issues. The data collection technique is library research and document analysis, which are then thematically classified and qualitatively analyzed to obtain a contextual and comprehensive understanding of the issues under study.

## **Results and Discussion**

### **Conceptual Analysis of the Right to Work and Protection Against Unemployment**

The right to work and protection against unemployment represents a cornerstone of international human rights discourse, as explicitly articulated in Article 23(1) of the Universal Declaration of Human Rights (UDHR) and further reinforced in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This right is not merely limited to the availability of employment, but extends to the assurance of decent and meaningful work employment that provides fair wages, security, equal opportunities, and respects the inherent dignity of the worker. It also entails the responsibility of the state and society to establish frameworks that prevent arbitrary unemployment and provide social safety nets for those affected by labor market vulnerabilities (UDHR, 1948; ICESCR, 1966). In the Indonesian context, this normative principle is integrated into the national legal framework through Article 27(2) of the 1945 Constitution, which asserts that every citizen has the right to work and to a livelihood that is in accordance with human dignity. This constitutional guarantee reflects the state's commitment not only to uphold the economic rights of its people but also to ensure the moral and social dimensions of labor rights. It mandates the government to implement inclusive labor policies, facilitate access to employment through education and skill development, and protect workers from exploitation and unjust termination. By harmonizing international human rights standards with domestic legal instruments, Indonesia underscores its obligation to construct an economic order that is just, equitable, and human-centered (Santrianti, 2022).

The state bears the responsibility of ensuring the availability of decent work through policies such as vocational training, social security, and support for micro, small, and medium enterprises (MSMEs) (Chigbu & Nekhwevha, 2023; Endris & Kassegn, 2022; Prasannath et al., 2024; Rantanen et al., 2020; Torm & Oehme, 2024). The alignment between Article 23 of the UDHR and Article 27 of the Indonesian Constitution reflects the harmonization of universal and constitutional values in promoting citizens welfare. Unemployment negatively affects poverty levels and social inequality, thus requiring the state to design inclusive economic and labor policies to address labor market challenges (Karo, 2024). From John Rawls' perspective, the right to work aligns with the *principle of equal basic liberties*, the *difference principle*, and *fair equality of opportunity*. The state bears a fundamental responsibility to ensure that access to employment opportunities is fair, equitable, and free from all forms of discrimination, whether based on gender, ethnicity, religion, disability, or socioeconomic background. This obligation stems not only from international human rights norms, such as Article 23 of the Universal Declaration of Human Rights, but also from the broader principles of social justice and inclusive development. Governments must implement proactive measures to dismantle structural barriers that hinder marginalized populations such as persons with disabilities, women, ethnic minorities, and those living in poverty from participating fully in the labor market. Such efforts may include affirmative action policies, targeted vocational training, social protection schemes, and legal safeguards that

prohibit discriminatory hiring practices. By doing so, the state not only fulfills its moral and legal duties but also fosters a more cohesive and productive society where every individual has the opportunity to achieve economic self-sufficiency and dignity through decent work (Damanhuri, 2013).

Within the framework of Maqāṣid al-Sharī'ah, the right to work is intrinsically linked to the protection of the five essential objectives of Islamic law: religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), and wealth (ḥifẓ al-māl). Decent employment serves not only as a vehicle for economic stability but also as a vital safeguard for psychological and spiritual well-being, as well as for maintaining familial and social cohesion. In this regard, employment is considered a fundamental right that supports the realization of justice and social welfare within an Islamic legal framework (Siregar, 2021). From a comparative standpoint, both Rawlsian theories of justice and the objectives of Islamic law uphold the notion that equitable access to employment and protection against involuntary unemployment are foundational to establishing a just and prosperous society. These frameworks converge in emphasizing the role of the state in ensuring fair distribution of resources and opportunities, particularly in the domain of labor rights. Accordingly, the state bears a moral and legal obligation to provide equal access to employment and to protect individuals who are vulnerable to job loss due to economic or structural shifts (Robby Kurniawan, 2023).

However, in practice particularly in Indonesia various challenges remain. The labor market is still dominated by informal employment, where workers often lack adequate protection such as fair wages, social security, or safe working conditions. There remains a significant skills mismatch between the workforce and labor market needs. While policies such as the *Job Creation Law*, skills training programs, and social assistance exist, their impacts are often temporary and limited, especially for informal workers (Suharto, 2012). Moreover, persistent economic disparities between urban and rural areas, as well as across various industrial sectors, continue to exacerbate inequality in access to decent employment opportunities. Structural unemployment largely driven by educational deficits and the mismatch between workers' skills and labor market demands remains a critical challenge in many developing economies. To address this issue effectively, it is imperative for governments to prioritize the creation of sustainable employment through the development of labor-intensive sectors such as information technology, the creative economy, and environmentally sustainable (green) industries.

One of the critical dimensions in actualizing the right to work, as enshrined in Article 23 (1) of the Universal Declaration of Human Rights (UDHR), is the comprehensive expansion of social protection systems to include workers in the informal sector. In many developing countries, the informal sector accounts for a significant proportion of the labor force, yet remains largely excluded from formal labor protections and social security mechanisms. This exclusion perpetuates cycles of poverty, job insecurity, and vulnerability to economic shocks. Therefore, the integration of informal workers into national social protection schemes including access to health care, unemployment insurance, and pension systems constitutes a fundamental strategy for promoting inclusive labor markets and enhancing overall economic resilience. Such measures are essential not only for improving individual well-being but also for fostering macroeconomic stability and sustainable development.

In tandem with social protection, the advancement of vocational education and training systems is imperative for addressing the persistent skills mismatch and preparing the workforce for the evolving demands of the labor market. Enhancing the quality, relevance, and inclusivity of such programs requires a multisectoral approach that involves collaboration between the state, educational institutions, and industry stakeholders. Priority should be given to ensuring that disadvantaged and marginalized groups such as women, youth, persons with disabilities, and rural populations can access and benefit from these opportunities. Furthermore, the formulation of inclusive and equitable labor policies must be guided by normative frameworks that uphold principles of justice, non-discrimination, and equal opportunity. Collectively, these strategic interventions are integral to ensuring that economic growth translates into broad-based job creation and that all individuals are afforded the right to decent and meaningful employment.



Upholding this right not only reinforces social cohesion but also strengthens the moral legitimacy of the state in safeguarding the dignity and economic security of its citizens.

### **Theoretical and Practical Review of Article 23(1) of the 1945 Constitution: An Islamic Legal Perspective**

Article 23(1) of the 1945 Constitution of the Republic of Indonesia articulates a foundational principle of fiscal governance, stipulating that the state budget (*Anggaran Pendapatan dan Belanja Negara*, APBN) must be enacted annually by legislation and executed in a manner that is transparent, accountable, and oriented toward maximizing public welfare. This constitutional directive encapsulates the normative ideal that public finance should serve as a vehicle for the realization of distributive justice and democratic accountability. From a theoretical standpoint, this provision aligns with Rawlsian conceptions of justice as fairness, wherein state institutions are morally obligated to prioritize the needs of the least advantaged. Simultaneously, the constitutional commitment to prosperity and transparency finds resonance in the Islamic legal tradition, particularly within the framework of *maqāṣid al-sharī'ah* (higher objectives of Islamic law), which underscores *ḥifẓ al-māl* (preservation of wealth) as a central tenet. In this view, fiscal policy is not merely a technical-economic activity but a manifestation of ethical responsibility that mandates the just, transparent, and socially responsive allocation of national resources.

The Islamic conception of fiscal justice situates the state as both trustee and moral agent responsible for ensuring that wealth serves the collective good. Within this framework, *ḥifẓ al-māl* encompasses not only the protection of individual property rights but also the structural obligation of the state to mitigate economic disparities and to foster socio-economic inclusion. Accordingly, the APBN should be conceived as an instrument of ethical governance an expression of the state's commitment to the protection of fundamental socio-economic rights, including the right to work, social security, and human dignity. The budget's function thus transcends its procedural legal form and assumes a normative role in operationalizing social justice. Integrating constitutional and Islamic legal principles into budgetary governance provides a dual-layered legitimacy: one rooted in democratic constitutionalism, and the other in religious-ethical obligations. Such an integrative model holds significant potential for reinforcing the normative orientation of public finance, ensuring that fiscal policy not only complies with legal mandates but also advances inclusive and equitable development.

Practically, the implementation of Article 23(1) requires a synergistic approach between fiscal policy and social protection mechanisms, particularly in addressing unemployment and promoting decent work opportunities. The government must design a state budget that is responsive to socio-economic challenges by allocating funds to labor empowerment programs, vocational education, and social safety nets for the poor and vulnerable. In this context, an integrative approach between positive law and Islamic ethical values becomes essential to ensure that budgetary policies truly reflect a commitment to social justice and the public good. As argued the management of the national budget should be directed towards "justice-oriented budgeting," representing a concrete manifestation of the state's responsibility to uphold citizens' economic rights (Nurdin, 2023). Hence, the integration of constitutional mandates and Islamic legal principles in the governance of the national budget not only reinforces the ethical legitimacy of the state but also establishes a normative framework through which fiscal policies can be evaluated in terms of their alignment with justice, transparency, and public welfare. This integrative approach ensures that state budgeting transcends mere compliance with legal procedures and instead functions as a moral commitment to fulfilling citizens' fundamental economic rights, reducing inequality, and promoting inclusive development grounded in both constitutional ideals and religious-ethical values.

### **The Islamic Legal Perspective on the Right to Work and Protection from Unemployment**

Islamic law articulates a comprehensive normative framework known as *al-aḥkām al-khamsah* the five legal rulings which include obligations (*wājib*), recommendations (*sunnah*),

prohibitions (*ḥarām*), disliked acts (*makrūh*), and permissible acts (*mubāh*) (Fuad, 2020). These classifications provide ethical and legal guidance for all human actions, encompassing not only devotional practices but also socio-economic activities, such as labor rights and protection from unemployment. Within this framework, work is categorized as an obligation due to its fundamental role in ensuring individual well-being and social welfare. This notion is reinforced by Qur'anic injunctions, such as in *Surah Al-Baqarah* (2:43) and *Surah Al-Hashr* (59:7), which emphasize equitable economic distribution and proactive engagement in productive activities (Rauf, 2020).

This notion is reinforced by Qur'anic injunctions, such as in *Surah Al-Baqarah* (2:43) and *Surah Al-Hashr* (59:7), which emphasize the foundational principle of distributive justice by ensuring that economic resources do not remain concentrated within a privileged minority, but are circulated widely across social strata to promote equity and social cohesion. These injunctions also advocate for a dynamic ethic of productivity, wherein economic participation is not only encouraged but framed as a moral and spiritual imperative. Individuals are thus called upon to engage in lawful and purposeful labor that contributes to both personal sustenance and collective well-being. Furthermore, such engagement serves as a mechanism for poverty alleviation, reduces structural dependency, and empowers individuals to uphold their dignity through self-reliance and meaningful economic contribution. In this view, economic productivity becomes a form of social responsibility that aligns with the broader objectives of Islamic law in safeguarding wealth (*ḥifẓ al-māl*), life (*ḥifẓ al-nafs*), and human dignity (*ḥifẓ al-'ird*).

The Prophet Muhammad (peace be upon him) declared that “No one has ever eaten food better than that earned by the labor of his own hands” (Sahih Bukhari, no. 2072), thereby establishing the theological legitimacy of work. In Islam, work is not merely a worldly pursuit but a spiritual obligation that integrates both vertical (toward Allah) and horizontal (toward society) dimensions. Consequently, employers are religiously mandated to uphold workers' rights, as exemplified by the Prophet's saying: “Give the worker his wages before his sweat dries” (Sunan Ibn Majah, no. 2443) (Nasih, 2021). The right to work is closely linked to *maqāṣid al-sharī'ah* the higher objectives of Islamic law which seek to protect religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Suhaimi, 2023). Unemployment may jeopardize both life and property, and by extension, threaten social cohesion. The Prophet warned of this danger, stating, “Poverty brings one closer to disbelief” (HR. Baihaqi) (Nasih Mudzakkir, 2021), highlighting the socio-spiritual risks of economic deprivation.

Islam offers a multi-layered approach to tackling unemployment and poverty. Compulsory almsgiving (*zakāt*), along with voluntary acts of charity (*infaq* and *ṣadaqah*), serve to redistribute wealth and alleviate social inequality (QS. At-Tawbah: 103) (Rauf, 2020). In addition, Islam extols the value of hard work and self-reliance, as expressed in the hadith: “The best income is that which a person earns from the labor of his own hands” (Musnad Ahmad). (Nasih, 2021). Furthermore, Islam condemns exploitative economic practices such as *ribā* (usury), monopoly, and unjust labor conditions, as these contradict the principles of justice and human dignity (Bachri, 2021). From a governance perspective, the Islamic state bears the moral and institutional responsibility to ensure citizens' welfare by establishing an equitable and balanced socio-economic system. Historical precedent can be found in the leadership of Caliph 'Umar ibn al-Khaṭṭāb, who institutionalized social welfare mechanisms such as *Bayt al-Māl* to serve public interests (Rakhmawan Suherli, 2024). His policies emphasized redistribution, universal access to basic needs, and care for vulnerable populations, aligning with Qur'anic principles and prophetic traditions.

The Qur'an, in *Surah Al-Qasas* (28:77), commands believers to seek the Hereafter while not neglecting their share of worldly life, and warns against spreading corruption (Rauf, 2020). This verse affirms the necessity of economic participation as a form of social responsibility and spiritual discipline. Accordingly, Islam not only affirms the individual's right to employment but also encourages collective efforts by the state and society to foster a just environment where access to decent work is a reality for all. In conclusion, the right to work holds a fundamental

place in the structure of Islamic socio-economic justice, serving as both an individual obligation and a collective imperative. Rooted in the holistic objectives of *maqāṣid al-sharī'ah*, work is not merely instrumental for economic survival, but is regarded as an act of *'ibādah* (devotion) that affirms human dignity, sustains livelihoods, and contributes to the broader prosperity of society. Within this framework, the pursuit of lawful employment is closely tied to the realization of several key *maqāṣid*, particularly *ḥifẓ al-naḥs* (preservation of life), *ḥifẓ al-māl* (preservation of wealth), and *ḥifẓ al-'ird* (preservation of honor and dignity), which together constitute the ethical foundation of Islamic law.

Accordingly, the Islamic legal tradition mandates that states and societies bear a moral and legal responsibility to protect labor rights, eliminate barriers to employment, and implement proactive measures to prevent unemployment. Ensuring access to decent work is not seen solely as a matter of economic management or welfare policy, but as an intrinsic part of fulfilling the ethical contract between the state and its citizens. This normative orientation places the right to work within the broader goal of social justice, making it a key indicator of a society's commitment to equity, human development, and the moral values underpinning the *sharī'ah*. As such, employment policies in Muslim-majority contexts must be guided not only by efficiency or growth imperatives, but also by deep ethical commitments to human welfare and communal well-being.

### Conclusion

The right to work and protection against unemployment is a fundamental human right, enshrined in Article 23 (1) of the Universal Declaration of Human Rights and affirmed in Article 27(2) of the 1945 Constitution of Indonesia. This right entails not only access to employment but also the assurance of decent, safe, and dignified work. The state bears a central role in realizing this right through inclusive policies such as vocational training, social protection, and support for the informal sector although practical challenges persist, including skill mismatches, informal labor dominance, and regional disparities. From the Islamic legal perspective, the right to work aligns with the objectives of *maqāṣid al-sharī'ah*, particularly in safeguarding life (*ḥifẓ al-naḥs*), wealth (*ḥifẓ al-māl*), and dignity (*ḥifẓ al-'ird*). Work is not only a means of economic survival but also a spiritual obligation and social responsibility. Islamic teachings emphasize fair labor practices, wealth redistribution through zakat, and the duty of the state to ensure economic justice. The integration of constitutional values and Islamic legal principles strengthens the normative foundation for labor-related policies, including national budgeting. This ethical alignment reinforces the role of the state not merely as a legal actor but as a moral agent responsible for fulfilling citizens' right to decent work and reducing socio-economic inequalities.

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