



Legal Protection for Waged Workers Under the Minimum Wage at the Regency/Municipality Level

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ABSTRACT

Wages have always been a common issue between workers and businesses because it involves a civil legal relationship that is regulated through an employment contract. The government mediates between the two parties by regulating the minimum wage, which is the responsibility of the governor in each province. Contravention of minimum wage provisions is considered a criminal offense, even though the relationship was originally intended as a civil one, and this research examines whether the policy is appropriate. This research finds and describes the provisions of the labor agreement and the ideal policy regarding the payment of wages under the minimum wage. This research uses a normative legal approach that focuses on the concepts of decriminalization and depenalization related to the payment of wages under the minimum wage. The approach used includes conceptual and statutory approaches, connecting labor law with criminal law and agreements. The sources of legal materials used include labor-related laws and legal literature, with analysis based on relevant articles. Therefore, employers, both civil legal entities and individuals, are prohibited from paying wages under the minimum wage according to Article 88E (2) of Law No. 6/2023. If violated, employers may be subject to imprisonment of up to 4 years and a fine of IDR 400 million under Article 185. This provision aims to protect workers' rights to a decent wage in each regency/municipality.

Keywords: *Legal Protection, Minimum Wage, Worker Rights*

INTRODUCTION

The issue of wages is often a common issue between workers and businesses, as wages are a payment derived from the employment relationship, irrespective of the type of work. This issue can cause inconsistencies in the relationship between workers and businesses. Therefore, effective regulations are needed to reduce legal conflicts between the two parties. This regulation aims to synchronize the interests of workers and employers in industrial relations. The regulation is expected to prevent legal issues related to wages (Husni, 2019).

The legal relationship between workers and businesses usually involves a work agreement in the context of civil law. Workers do work, while businesses pay wages in return. Conflicts often occur between employees and businesses in this relationship. Therefore, the government has enacted a regulation that guarantees workers' right to a decent livelihood (Megawati Soekarnoputri, 2003). The minimum wage stipulated in this regulation must be paid by employers to workers.

Determining the minimum wage is the responsibility of the governor in each province and is related to civil and administrative legal relations. The civil legal relationship is initially established between workers and employers, with the government as an intermediary to set minimum wage regulations. However, the law also includes minimum wage violations as a criminal offense. Paying wages under the minimum is considered a violation of criminal law.

Local government controls over minimum wage laws often failed, especially when compared to maximum wage laws. This disparity can be related to various factors, including compliance challenges and the socio-economic context of the labor market. Whereas in many areas, especially developing countries, a large proportion of workers earn under the legal minimum wage due to inadequate enforcement mechanisms (Bhorat, 2014). Local governments may lack the resources or political will needed to effectively track compliance, leading to widespread violations. Studies show that minimum wage laws disproportionately affect low-wage workers in these sectors such as small businesses and consumer services, where compliance is often less stringent (Reich et al., 2014). While local governments strive to implement minimum wage laws, the effectiveness of these efforts is often undermined by systemic challenges and socioeconomic dynamics, leading to gaps in enforcement compared to maximum wage regulations. This research aims to evaluate whether the regulation categorizing minimum wage violations as a criminal offense is appropriate, given the initial civil relationship.

LITERATURE REVIEW

Legal Protection

Legal protection is one of the main pillars in a state of law. Its existence is very important because the state is formed with a set of legal rules that regulate the rights and obligations of every citizen. The relationship between citizens and the state creates reciprocal rights and obligations that require legal protection in order to be fulfilled fairly and balanced. According to experts, legal protection means providing certainty and justice through legal mechanisms aimed at protecting certain interests by making them legal rights. In a legal context, such rights are referred to as subjective law, which is the active aspect of the legal relationship provided by objective law.

According to research from Mertokusumo (2014), legal protection is an effort to provide legal certainty and justice through legal instruments aimed at protecting certain interests by making them legal rights. It includes mechanisms that allow individuals or groups to claim their rights that have been guaranteed by law. Another study by Sabri et al (2023) also states that legal protection not only guarantees certainty, but also aims to provide insecurity and justice in exercising these rights. The research is in accordance with the perspective of HR (2018) which emphasized that legal certainty is crucial element in legal protection, because without legal certainty, legal rights cannot be implemented effectively.

Minimum Wage

Minimum wage is an important variable in protecting workers' welfare and ensuring a decent standard of living. The minimum wage is legally set as the lowest limit to be received by workers based on a particular region or sector. This determination aims to prevent labor exploitation and reduce economic inequality. According to Rosita & Waluyo (2023), minimum wage serves an important role in creating social and economic justice, as it protects workers from being paid inadequately by employers. In addition, setting a minimum wage is also a form of state intervention in maintaining the balance of the labor market so that workers' rights are protected.

Thooriq (2023) emphasized that minimum wage is not only about nominal amount, but also part of workers' human rights that must be guaranteed and protected by law. This protection is important to anticipate violations of workers' rights that can occur if there is no clear regulation of minimum wage standards. This perspective is supported by the research of Rohmah & Sastiono (2021), which indicates that the implementation of minimum wages can increase productivity and worker welfare, and reduce social inequality in society.

Worker Rights

Workers' rights are fundamental elements in employment relations that ensure the welfare, equity and dignity of workers in the workplace. These rights include the protection of fair wages, safe working conditions, humane working hours, and social security. According to Trixie et al (2023), workers' rights include not only economic rights such as wages, but also social and legal rights that ensure fair treatment and protection against exploitation in the workplace. Simanjuntak confirms that these rights are part of human rights that every employer must obey.

Budiono (2016) also states that workers' rights include the right to freedom of association and collective bargaining, which are important instruments in fighting for workers' interests collectively. This is supported by Pranedyta et al (2024), who argues that workers' rights must be protected by strong laws and an effective monitoring system, because without legal protection, these rights are vulnerable to being violated by stronger parties in the employment relationship.

RESEARCH METHODOLOGY

This research uses normative or doctrinal legal research, focusing on the concepts of decriminalization and depenalization related to the crime of paying wages below the minimum wage. The analysis is carried out on various laws and regulations, such as the Manpower Law, the Industrial Relations Dispute Resolution Law (PPHI), and the Law on the Formation of Legislation. The approach used is a conceptual approach, which relates the concept of criminal law to the crime of substandard wages. In addition, a statutory approach is also applied to analyze relevant legal norms. The legal materials used in this research include primary legal materials, such as relevant laws, and secondary legal materials from literatures on labor law, industrial relations, and agreement law. The technique of collecting legal materials is conducted by obtaining various laws and related literature, which are then analyzed methodically based on the topic to be discussed. The legal materials were analyzed to find the relationship between labor law and criminal law, and the concept of treaty law, in order to produce relevant conclusions and suggestions.

RESULT AND DISCUSSION**Legal Protection for Waged Workers Under the Minimum Wage by Employers**

The principle of legal protection in Indonesia is based on Pancasila as the ideology, basic norms, and ideals of state law. Pancasila is normative because it is the basis of positive law, and constitutive because it refers the law to the desired goal. Pancasila characterizes the Indonesian legal system because it contains values inherited by the ancestors and reflects the spirit of the nation. In addition,

Pancasila is referred to as prismatic law because it is able to integrate various elements from other legal systems into a cohesive entity. The Preamble of the 1945 Constitution is the noble agreement of the Indonesian people to work together in diversity. It also symbolizes the existence of the nation, contains the proclamation of independence and national purpose.

Pancasila as the basis of the Indonesian state is the source of all laws and characterizes the Pancasila rule of law (Bo'a, 2018). First, the state is theistic, which means that it is not secular or theocratic, but based on belief in God Almighty. Freedom of religion is guaranteed, but atheism and communism are prohibited. Second, Pancasila combines the principles of legal certainty with justice, including elements of Rechtsstaat, Rule of Law, customary law, and religious law. Third, the Pancasila rule of law is familial, respecting individual rights and human rights, but prioritizing national interests. This balances traditional and modern values in Indonesian society. Fourth, law is used as a means of change and a cultural mirror, with the positivization of living law to direct society towards progress according to the principles of Pancasila. Fifth, national lawmaking must be neutral, universal, and consider mutual cooperation, tolerance, and a common perception, regardless of privileging certain groups. The principles of pluralism and Bhinneka Tunggal Ika become the basis for developing an inclusive national legal system.

Indonesia's national legal system is expected to be based on the principles of Pancasila, in accordance with the state objectives in the Preamble of the 1945 Constitution. However, the development of the national legal system after reformasi faced various internal and external constraints. Internal constraints include the feudalistic and paternalistic culture of society, and the lack of national political awareness among state officials. External constraints include the impact of globalization that has led to foreign ideologies and foreign political pressure from superpowers. These constraints affect the development of a national legal system that should be based on national interests.

Pancasila law prioritizes the principle of Unity in Diversity, where the powerful protect the weak and the many protect the few (Pertiwi & Dewi, 2021). One of the problems left over from Dutch colonialism was slavery, where slaves had no rights over their lives. Slaves worked under the orders of their owners without the freedom to refuse or choose work. The slave owner had complete control over the slave's working time and other rights. The kindness a slave received depended entirely on the kindness of the owner.

After Indonesia proclaimed its independence on August 17, 1945, there was no legal regulation related to employment issued by the government. The main focus of the government was maintaining independence, while labor issues were not considered a priority. In order to overcome the legal gap, the regulations applicable during the Dutch colonial period were still applied, as stipulated in Article II of the Transitional Rules of the 1945 Constitution. Under this provision,

existing legislation remains valid until there is a new regulation, including the provisions of the Civil Code governing employment.

The transformation in labor arrangements began in 1948 with the enactment of Law No. 12/1948 on Manpower, which was strengthened by Law No. 1/1951. This law regulates various aspects of employment, including working hours and protection for workers, and refers to the history of workers' misery in the colonial era. These efforts aim to provide protection for laborers as an important part of the Indonesian economy, considering that many of them already have skills that have been passed on for generations. The Preamble of the 1945 Constitution emphasizes the importance of promoting the general welfare, in accordance with the Pancasila principle of social justice (Putra et al., 2024). The state is required to be responsible for ensuring public welfare through intervention in the economy and development. Legal protection for workers is important to prevent social inequality and safeguard human rights. Fair and balanced labor arrangements are expected to support economic democracy and legal protection based on Pancasila. In later developments, the relationship between employers and workers became important, especially in the context of fairness and balance of rights. When employers experience economic difficulties, they may not be able to pay wages as expected, but are still obliged to pay the minimum wage. This is regulated in Article 90 of the Labor Law, which confirms the prohibition of paying wages below the minimum standard. Thus, employers and workers have equal rights in legal protection, essential for creating a healthy investment climate in Indonesia.

The history of labor relations in Indonesia is affected by the colonial period, where the practice of slavery and forced labor became common. During this time, labor was exploited without being granted basic rights, including the right to life. After independence, the prevailing labor law was the Civil Code, which was considered incompatible with the human values and social justice of the Indonesian nation. It treated workers like chattels who were only entitled to wages if they worked, thus putting them in a weak position against their employers. In the social context, although laborers cannot legally be subjected to slavery, many workers are forced to accept unfair working conditions due to lack of choice. The imbalance between the number of workers and jobs makes workers vulnerable to exploitation, where they often receive low wages, inadequate rest hours, and lack of safety guarantees. Therefore, the government has an important responsibility to protect workers' rights through regulations that ensure justice and human dignity. Indonesia, as a country that adheres to Pancasila, is committed to improving the welfare of its citizens through the development of labor law from private law to public law to protect workers from employer domination. The implementation of the "Socialization Process" reflects a paradigm shift where the state takes an active role in regulating employment relations, strengthening protection for workers. The government has issued various laws, such as the Law on Payment of Compensation and Government Regulation No. 8/1981, which emphasize the

importance of living wages for workers. In addition, the government functions as a supervisor to ensure the implementation of regulations, making labor relations tripartite between workers, employers, and the government. Emphasizing the principles of accountability, transparency, and collaboration, the government also gathers information on labor law developments to draft new regulations that are more responsive to community needs.

Wage protection policy in Indonesia is an integral part of labor law that aims to protect workers/laborers from economic exploitation. This protection is realized through various laws and regulations that have developed from the Old Order to the Reform Order. Since the beginning of independence, laws such as UUK 1947 and UUK 1948 began to guarantee workers' rights to wages, including guarantees of wage payments even if workers were unable to work due to accidents. This policy became more concrete with the issuance of Government Regulation No. 8/1981 and Law No. 13/2003, which emphasized the principle of non-discrimination and established minimum wage as a safety net for workers. The government also has an active role in protecting the welfare of workers, especially during the Covid-19 pandemic, by establishing a policy that requires the provision of full salary for workers who are forced not to work. In addition, the era of the industrial revolution 4.0 presents new challenges, such as layoffs due to efficiency implemented by businesses. To address these issues, the government responded by passing Law No. 6/2023 or the "omnibus law," which aims to facilitate investment while maintaining protection for workers. In general, government intervention in wage setting has shown significant improvement, with a focus on broader legal protection for workers in the labor sector.

Before independence, the labor system in Indonesia was significantly affected by slavery, where slaves worked under the orders of their owners with no rights over their lives. Slave owners had full power, including setting working hours, and there were no time limits. While customary law regulated the employment relationship between indigenous laborers and employers of European descent, in 1927 regulations on the payment of wages were introduced, stating the employer's obligation to pay laborers. However, the employment relationship was considered private and there was no government intervention in wages, so there was no balance between employers and workers.

After independence, the government began to pay attention to wage issues with the enactment of the Work Accident Act in 1947 and other regulations that further clarified labor rights. Law No. 80/1957 became an important milestone in wage regulation, with the principle of equal pay for equal work. A significant change occurred with the enactment of Government Regulation No. 8/1981, which marked a shift from Private Law to Public Law in wages, so that the government began to intervene in setting minimum wage policies. Over time, more and more government regulations governed aspects of wages, making wages

part of the public interest and strengthening the dominance of Public Law in labor relations.

Legal Liability for Employers Who Pay Wages Under the Minimum Wage

Employers in Indonesia have a legal responsibility to pay workers no less than the minimum wage set by the government. The relationship between workers and employers is regulated by Law No. 13/2003 on Manpower, which emphasizes the importance of protection for workers in terms of wages. Employers are prohibited from paying wages below the prescribed minimum wage, and violations of this provision are subject to criminal sanctions. The government, through relevant agencies, has a significant role in ensuring that labor regulations are applied equitably, with the aim of protecting workers and ensuring economic prosperity.

The minimum wage serves as a safety net for workers, especially those new to the workforce, with limited education and experience. However, despite being regulated in legislation, the minimum wage is still often far from the basic needs of workers, thus creating an imbalance in industrial relations. This labor issue is not only limited to aspects of the relationship between workers and employers, but also involves aspects of criminal law, especially in the context of corporate criminal liability. Therefore, the fair and effective application of labor law is essential to create good and safe working conditions for all workers in Indonesia.

Labor inspection in Indonesia is implemented in an integrated and coordinated manner to ensure the implementation of laws and regulations in the workplace. This supervisory system aims to convince social partners of the importance of complying with the law and protecting all workers and their families. Prevention is the main focus, where efforts are made to avoid the risk of accidents, occupational diseases, and unfair treatment to workers. This supervision is based on Law No. 3/1951, Law No. 13/2003, and other relevant regulations governing labor aspects.

The implementation of supervision is conducted by Labor Inspectors whose task is to ensure compliance with regulations, provide technical information, and collect data for regulatory improvement. Supervision is not only preventive and educative, but also includes repressive actions, both non-judicial and judicial. Preventive measures include counseling and mentoring, while repressive measures include warnings and legal action through the courts if norms are not complied with. Labor inspectors are authorized to enter work sites and request information related to suspected violations.

Norms regulated in labor legislation include training, employment, occupational safety and health, and labor relations. The objects of supervision include companies, workers, as well as equipment and the work environment. Thus, labor inspection aims not only to ensure legal compliance, but also to improve workers' welfare and create a safe and fair working environment.

CONCLUSION AND SUGGESTION

Conclusion

The basis for the liability of employers, both in the form of civil legal entities and individuals, in providing wages below the minimum wage is regulated in Article 88E (2) of Law No. 6/2003. This provision prohibits employers from paying wages lower than the minimum wage in each district or city. In addition, the form of legal liability of employers for this violation is also regulated in the same article, which provides legal consequences for anyone who violates the provision. According to Article 185, violation of this provision may result in imprisonment for four years and a fine of IDR 400,000,000 (four hundred million rupiah).

Suggestion

Employers should pay more attention to labor aspects, especially in terms of wages, and apply efficiency in the use of resources, especially labor. If employers experience difficulties in meeting the stipulated wage standards, they may apply for relief by requesting a wage suspension through the Manpower Office in each province.

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