



LEGAL PROTECTION FOR WORKERS TOWARDS THE RIGHT OF WAGES FROM JUSTICE PERSPECTIVE

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Article's Information

Abstract

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Salaries have a significant impact and are indicative of a connection, specifically industrial relations. The government has been involved in addressing wage matters via different policies specified in laws and regulations, including the minimum wage. In private firms, the government has established the minimum wage regulations for the Regency or City (UMK) for employees or workers. Nevertheless, in reality, numerous workers' or laborers' rights remain inadequately addressed by companies or employers to ensure the welfare and feasibility for workers, particularly, rights to receive wages as stated on regulations of MSEs, which are frequently provided below the standards of MSEs. Meskipun ini pada prinsipnya bertentangan dengan nilai-nilai Pancasila, yaitu nilai keadilan, di mana hak pekerja untuk menerima upah sesuai dengan minimum Wages are unmet, thus, according to justice theory, the measures implemented by companies overlook the importance of justice. To address this issue, it is essential for the government to implement policies and legal solutions that safeguard workers' rights through suitable laws and regulations in employment relations.

A. Introduction

Legal protection is a constitutional right for citizens, including the right to workers' wages.¹ Wages are one of the tools workers use to improve their quality of life. The government has played a role in addressing wage issues through various policies stipulated in laws and regulations. Law Number 13 of 2003 about Manpower, Article 88, paragraph (1), states that all workers have the right to receive sufficient income for a decent living standard.

¹ Lalu Husni, *Hukum Ketenagakerjaan Indonesia*, Revisi (Rajawali Pres, Jakarta, hml.66, 2010).

To protect workers' salary rights, the government establishes wage policies. According to Law Number 13 of 2003 about Manpower Article 1, number 2 of, a worker or labourer is defined as any person who works and receives wages or other forms of remuneration.

One salary policy is the determination of the minimum wage established by the government. The government determines the minimum wage by considering reasonable living costs, economic growth, and productivity. The minimum wage can consist of:

- a. Minimum wage based on city, district, or province area
- b. The minimum wage is based on the sector within the city, district or province.

The minimum wage mentioned above is intended to ensure a decent living standard. Employers are not permitted to pay wages under the minimum wage measured. Salary arrangements determined through agreements between employers to employees, labor unions, or laborers must not fall below the wage provisions stipulated in applicable laws and measured regulations.

For workers, especially those in private companies, there are government-set minimum wage regulations at the district or city level. Recently, workers have faced the problem that many companies still pay salaries below the regional minimum wage measured by the government, making them non-compliant.

Meanwhile, the minimum wage remains far from meeting workers' basic needs, thus failing to create the desired industrial relations.² Violations of workers' wage rights constitute a violation of the value of justice enshrined in Pancasila. The value of justice should be applied to all levels of society, especially to workers who primarily support their livelihoods.

Based on the explanation above, greater worker involvement, represented by labour unions, is needed. Company transparency is paramount, as workers fully understand the circumstances and situation of their companies. The government also needs to be more assertive in addressing wage issues to establish harmonious industrial relations among the government, employers, and labours.

The research applied in this paper is normative legal research, encompassing legal principles, legal systematics, the level of legal synchronisation, legal history, and comparative law.³ The approaches applied in this paper include a historical approach, a conceptual approach, and a legal approach (the statute approach). The legal approach involves studying the laws and regulations relevant to the law being passed.

B. Discussion

1. Worker or Trade Union Involvement as an Ideal Concept in Wage Determination for Worker Welfare.

The number of jobs in Indonesia does not match the available workforce. This situation often leads employers to treat their workers indiscriminately. Employers can force workers to work beyond their capacity by paying them disproportionately low wages.

² Evy Savitri Gani, "Sistem Perlindungan Upah Di Indonesia," *Tahkim* 11, no. 1 (2015): 127–43, https://scholar.google.com/citations?view_op=view_citation&hl=en&user=AA0KYtcAAAAJ&citation_for_view=AA0KYtcAAAJ:d1gkVwhDpl0C.

³ Peter Mahmud Marzuki, *Penelitian Hukum* (KencanaPrenada Media Group ,Jakarta,hal.93, 2009).

Specific companies or entrepreneurs sometimes abuse the concept of the minimum wage. For example, employers set salaries solely at the applicable provincial minimum wage without considering the employee's work experience. Often, long-term employees receive only slightly higher wages than workers with less than one year of experience. The current minimum wage concept has not achieved the desired industrial relations. In accordance with Law Number 13 of 2003 Article 1, point 16, industrial relations are an interaction system between parties in the labor process. production of goods and/or services involving elements of workers or labourers, entrepreneurs, and the government, which is based on the sacred values of Pancasila and the 1945 Constitution of the Republic of Indonesia.⁴

Employing workers who can represent the labour union is one option. Company transparency is crucial because employees understand the company's situation and conditions. The company can present its audited financial statements to the labour union, and the labour union must be able to understand and analyse them. Ultimately, employees understand the company's situation, and management then appoints competent individuals to determine salaries. Afterwards, the two parties conduct negotiations.

Worker welfare can only be achieved through fair wages. In accordance with 1945 Constitution on Article 27, paragraph 2, which states that every citizen has the works rights and to a decent standard of living, this demonstrates that the state has guaranteed the people, or workers, a decent living standard. As a follow-up to of Article 27's mandate, 2nd paragraph of the 1945 Constitution, the government formulated Law Number 13 of 2003 of the Republic of Indonesia about Manpower.⁵

The government-set minimum wage serves as a safety net, ensuring that companies pay wages that are reasonably affordable for workers' basic living needs. In reality, many companies still do not comply with the minimum wage. The government should be more proactive, providing outreach, guidance, and supervision to support the implementation of the minimum wage in companies. Companies that do not obey the minimum wage measurements should be reported to the government so it can take immediate action in accordance with existing labour laws and regulations.

Workers' support is undoubtedly crucial to the government's efforts to address this wage issue. Therefore, it is hoped that in the future, every company will implement the minimum wage more effectively, enabling them to be more prudent and to comply with the government's efforts to ensure workers' welfare. Once sound labour laws and regulations are in place, their implementation must also be effective. Without effective implementation, even the best laws will be useless.

2. Legal Protection for Workers That Receiving Wages Below the Minimum Wage and Prohibition on Employers

Every worker or labourer has the right to live a life that worthy of human dignity. This right is guaranteed in 1945 Constitution Article 27, paragraph 2, in coordinate with Law Number 11 of

⁴ Luthfi Novansa Putra, "Pengaturan Tentang Upah Minimum Pekerja Berdasarkan Peraturan Di Bidang Ketenagakerjaan," *Jurnal Kertha Wicara* 10, no. 11 (2021): 927–36.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*. Jakarta: Citra Cetak, 2002, hlm. 25.

2020 about Job Creation Article 88, paragraph 1, which affirms that every citizen has the right to work and to a life worthy of human dignity.⁶

A prosperous life has various meanings. Because the need for a decent living varies from province to province, a minimum wage for provincial area (UMP) is established. Furthermore, the fulfilment of a decent living varies from district to district or city, hence the establishment of a city or district minimum wage, the UMK.

The basis for calculating the UMP and UMK differs. The UMP is calculated based on economic and employment conditions, including labour absorption rates, purchasing power, and wage rates, which are annually adjusted. In the other hand, the UMK calculation takes into account of inflation and economic growth in the relevant region.

The UMK is determined after the UMP is established. The UMP is decided through a gubernatorial decree and announced in prior than November 21 of the same year. The UMK is determined through a gubernatorial decree based on a proposal from the regent or mayor and announced in prior than November 30 of the relevant year.

Before employees or workers begin work at a company, it is important to draft an employment agreement that outlines important matters such as employment rights, requirements, and obligations of each and every party. In an employment agreement, matters that must be considered are based on Law Number 13 of 2003 about Manpower Article 124 paragraphs 1 and 2, including that the collective labour agreement must at very least, cover the obligation and the rights of the employer, the labour union, and the workers or labourers. Workers or labourers who join an employer or company are entitled to the wages, and every employer is obliged to provide wages to their workers or labourers in accordance with the agreement. Provisions regarding wages are regulated in Government Regulation Number 36 of 2021 about wages.

Policies on Wage are designed to achieve an income that supports a decent rate of living. One of such wage policy is the minimum wage, which is the lowest monthly salary possible to be given that includes a basic salary and fixed allowances determined by the governor for protection.

Article 7 paragraph 1 of Government Regulation Number 36 of 2021 regulates the components of wages, which consist of:

- a) Wages but without allowances
- b) Main wage and fixed allowances
- c) Main wage, fixed allowances, and variable allowances, or
- d) Main wage and variable allowances.

e) If the salary component consists with a main salary and fixed allowances, the base salary must be at the very least 75% of the total base salary and fixed allowances. Provisions regarding salary payments are stipulated in Article 53 paragraph 3 of Government Regulation Number 36 of 2021, which stipulates that employers must pay salaries based on collective bargaining agreements, employment agreements, or company regulations.

Of Indonesia's 34 provinces, 11 have average real net wages below the established minimum wage standard. For example, the minimum wage in Aceh in 2021 was IDR 3,165,030, but the

⁶ Abdullah sulaiman, *Upah Buruh Di Indonesia* ((Palu Yayasan Masyarakat Indonesia Baru, 2007), hlm.106, 2007).

average net wage was IDR 2,317,419. A similar situation occurred in South Sumatra, with a minimum wage of IDR 3,043,111 and an average net wage of IDR 2,348,034. In Lampung, for example, companies are still frequently found paying wages way below the minimum standard. Over the past four years, employer compliance with minimum wage standards has remained between 49 and 57 percent.

By the implementation of Law Number 11 of 2020, employers are essentially prohibited from paying wages of their workers lower than the minimum wage, as stipulated in Law Number 11 of 2020 Article 88e paragraph 2 in conjunction with Government Regulation Number 36 of 2021 Article 23 paragraph 3, which states: "Employers are prohibited from paying wages below the minimum wage."

As so, the employers must pay workers according to the agreement, which cannot be less than the amount that stipulated and stated on the law. The Governor is obliged to set the Provincial Minimum Wage (UMP) and can determine the Regional Minimum Wage (UMK) under some certain conditions. The minimum wage applies to employees who have worked for the company for less than one year. The minimum wage is calculated through an agreement between workers and employers. This minimum wage does not apply to micro and small businesses. The minimum wage for micro and small businesses is determined by an agreement between the employer and the workers or labourers within the company, with the following provisions:

1. 50% of the average community consumption at the provincial are for the minimum, and
2. The agreed wage value is at least 25% above the provincial poverty line.

If a company sets the minimum wage below the statutory requirements, it has substantially violated its obligations. This clearly contradicts the values enshrined in Pancasila, namely justice. Therefore, employers must be aware that the minimum wage is a constitutionally enshrined right for workers. Violations of the Constitution must be resolved through both penal and non-penal channels.

3. Legal Consequences and Remedial Measures for Workers or Laborers that Waged Below the Minimum Level

Under minimum wage measurements laws, employers must pay workers the agreed wage. Employers are not permitted to pay the wages below the minimum level. Therefore, the wage agreement between the employer and the worker, or the labor union, may not fall below the wage provisions stipulated measured in laws and regulations. If the agreement is lower or contradicts applicable law, it is legally void, and the employer must pay the worker's wages in accordance with the applicable regulations and laws.⁷

Employers who pay wages below the minimum wage will face sanctions of criminal which at least one year and up to four years in prison or a fine of at least 100 million rupiah to 400 million rupiah.

Furthermore, if a company pays wages, for example, 80% of the wages minimum level, workers have the total right to claim the unpaid minimum wage difference through the dispute resolution mechanism stipulated in Law Number 2 of 2004 (UU PPHI) about the Settlement of Industrial Relations Disputes.

⁷ Henry Kristian Siburian, "TINJAUAN PENGUPAHAN DALAM HUKUM KETENAGAKERJAAN REPOBLIK INDONESIA INDONESIA," *Journal Evidence of Law* 2, no. 2 (2023): 209–18.

Under PP number 36 of 2021 Article 23, paragraph 1, employers are prohibited from paying wages below the wage minimum level. The provisions on sanctions for employers who pay wages below the minimum wage are set out in Law Number 6 of 2023. This law also confirms the same provisions prohibiting wages below the minimum wage. If this is violated, the company's sanctions for paying wages below the UMR or UMK are subject to imprisonment for a minimum of 1 year and a maximum of 4 years and/or a fine of at least IDR 100,000,000 (One hundred million rupiah) and a maximum of IDR 400,000,000 (four hundred million rupiah) where this sanction is regulated in Article 81 number 66 of Law Number 6 of 2023 which has amended PP number 36 of 2021 Article 185 paragraph (1).

According to data from the BPS statistics centre at the beginning of 2022, around 50.61% of workers or labourers received monthly wages below the UMP.

Based on Law Number 2 of 2004 about the resolution of industrial relations disputes, workers or labourers can use the following dispute resolution processes:

a) Holding bipartite negotiations (between workers or labour unions and employers) to reach a consensus through deliberation.

b) If an agreement is not reached within 30 days of negotiations, one or both of the parties must register the dispute with the local labour agency responsible for employment. At this stage, evidence must be submitted that bipartite negotiations were held but failed to reach an agreement.

c) After registration with the labour agency, mediation will take place.

d) Either party may file a lawsuit with the Industrial Relations Court if mediation fails to reach an agreement.

In addition to resolving the dispute through a way by lawsuit in the Industrial Relations Court, workers or labourers can also pursue criminal action, namely by reporting the dispute to the police. In Article 185 of Law Number 11 of 2020, criminal actions for employers who pay wages lower than the minimum wage are subject to sanctions of criminal in the form of a minimum of 1 year and a maximum of 4 years of imprisonment and/or at least IDR 100,000,000.00 and a maximum of IDR 400,000,000.00 fine. Labour inspectors carry out supervision of walabourges at the ministry responsible for government affairs in the field of labour and/or labour, rovat incial government agency responsible for government affairs in the field of labour.

The folabourllowing are the legal steps workers can take if their employer pays wages lower than the minimum wage:

1) Bipartite Means

Bipartite negotiations are a path of negotiations between employers or a group of employers and workers, a labor union, or between labor unions within a single company in dispute. A collective agreement is drawn up and signed by the parties if a settlement agreement is reached during the bipartite negotiations,

2) Tripartite Means

Tripartite negotiations can be conducted through mediation, facilitated by one or more neutral mediators if bipartite negotiations fail to resolve the dispute. If the agreement is reached, it is formalized in a collective agreement that signed by the parties, witnessed by a mediator, and

registered with the Industrial Relations Court within the jurisdiction of the parties to the collective agreement, thereby obtaining a deed of registration.

3) Industrial Relations Court Route

The Industrial Relations Court route is the path taken by workers or employers through a lawsuit filed with the Court. This route is taken if negotiation efforts fail to reach a settlement agreement.

Based on these three efforts, workers' rights to receive wages must be fulfilled. Fundamentally, the right to wages is a constitutional right related to workers' human rights. This is also related to the value of justice enshrined in Pancasila.

The value of justice enshrined in Pancasila must serve as the basis for workers' rights in accordance with their obligations. Therefore, within the concept of justice, the right to wages must be guided by distributive justice, meaning it must align with the provisions of district/city policies. Therefore, this concept of justice deserves special attention and must be formulated by every employer to ensure the best possible care for its employees. Broadly speaking, achieving justice is inseparable from government efforts to encourage companies to fulfil workers' rights without violating statutory provisions and the principle of justice. This is regulated by the theory of justice, which states that every action against an individual must comply with statutory provisions and must have clear sanctions. Therefore, companies must be accountable to workers for rights denied due to violations of this value of justice.

Wage equity can be understood from two perspectives: first, internal equity, which reflects equal pay based on effort or thought. This means salaries must account for all types of employee performance and responsibilities. Therefore, a company's salary may be higher than the minimum wage in a district/city, but is prohibited by UMK regulations.

Second, external equity refers to remuneration fairness, referring to comparisons between the wages of other workers within the company. This equity means that in determining wages, companies must consider the comparative conditions of one worker with another, based on the type of work and responsibilities. This wage equity should be implemented by every company that has a legal entity that promotes various forms of worker rights protection.

C. Conclusion

Based on the explanation above, it can be concluded that to create welfare for workers or labourers in the context of wages, steps that can be taken include transparency from companies through worker participation or labour unions, which can be achieved through negotiations. In addition, there needs to be socialisation, guidance, and supervision of the UMK's implementation in government-run companies. To protect workers' wage rights under UMK provisions, several legal steps are necessary to ensure their welfare. In addition, legal protection and the enforcement of strict sanctions in accordance with the law are needed for parties who fail to fulfil their rights or obligations in the employment relationship

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References

- Abduh, Rachmad. "Sistem Hukum Pengupahan Tenagakerja Nasional Dalam Perspektif Peningkatan Kesejahteraan Pekerja Di Indonesia." *Sanksi*, 2023, 106–14.
- Abdullah sulaiman. *Upah Buruh Di Indonesia*. (Palu Yayasan Masyarakat Indonesia Baru, 2007), hal. 106, 2007.
- AsriWijayanti. *Hukum Ketenagakerjaan*. PascaRefor. Sinar Grafika, Jakarta, hal. 76, 2010.
- Chadijah, Febrianna, and Roy Valiant Salomo. "MINISTRATE Analisis Kebijakan Pengupahan Pada Undang-Undang Cipta Kerja (Studi Analisis: Kebijakan Pengupahan Negara Indonesia Dan Australia)." *Jurnal Birokrasi & Pemerintahan Daerah* 5, no. 2 (2023): 243–55.
- Gani, Evy Savitri. "Sistem Perlindungan Upah Di Indonesia." *Tahkim* 11, no. 1 (2015): 127–43. https://scholar.google.com/citations?view_op=view_citation&hl=en&user=AA0KYtcAAAAJ&citation_for_view=AA0KYtcAAAAJ:d1gkVwhDpl0C.
- Lalu Husni. *Hukum Ketenagakerjaan Indonesia*. Revisi. Rajawali Pres, Jakarta, hal. 66, 2010.
- Novansa Putra, Luthfi. "Pengaturan Tentang Upah Minimum Pekerja Berdasarkan Peraturan Di Bidang Ketenagakerjaan." *Jurnal Kertha Wicara* 10, no. 11 (2021): 927–36.
- Peter Mahmud Marzuki. *Penelitian Hukum*. Kencana Prenada Media Group, Jakarta, hal. 93, 2009.
- Siburian, Henry Kristian. "TINJAUAN PENGUPAHAN DALAM HUKUM KETENAGAKERJAAN REPUBLIK INDONESIA INDONESIA." *Journal Evidence of Law* 2, no. 2 (2023): 209–18.
- Suhartoyo. "Perlindungan Hukum Mengenai Pengupahan Terhadap Pekerja/Buruh Dengan Perjanjian Kerja Waktu Tertentu." *Administrative Law & Governance Journal* 3, no. 3 (2020):