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Minimum Wage Determination For Employees/Workers : A Principle of Legal Protection on Manpower

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Abstract: Indonesian workers are vulnerable to becoming victims of white collar crime, as the basic things they are entitled to are often not paid by the company. To minimize the losses experienced by Indonesian workers, the government has established several legal steps which are the core to this research. Using a normative juridical approach, this research focuses to find out the legal grounds and steps that workers can take to fight for justice. The results of the research show that: One, there are regulations in Article 27 paragraph (2) of the 1945 Constitution and Article 88 paragraph (1) of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law which protects workers from wage violations (one of which is minimum wage). Two, there are legal routes that workers can take if industrial relations conflicts continue: Bipartite, Mediation, and Industrial Relations Court.

Keyword: Employment, Legal Protection, Minimum Wage, Workers.

INTRODUCTION

Corporation, in the legal context, is understood as a legal entity (whether a legal person or a business) whose term is used in both criminal and civil law (Sjahdeini, 2017). The important existence of corporations and their tremendous impact on national development cannot be separated from two keywords: capital and modernization. Investment is one of the direct impacts provided by corporations. The capital that is invested to and managed in a country directly brings a positive impact, which one is employment. In addition to its direct impacts, corporations also contribute to indirect impacts as in modernization. The modernization brought by corporations has changed the citizen's lifestyles and needs in society. One actual example is the changing lives of communities around oil palm plantations and coal mines.

A corporation can run well if the supporting aspects within it are also well implemented. One of these supporting aspects is human resources (HR), or better known as workers. The definition of workers, seen from a legal perspective, can be found in Article 1 point 9 Law Number 13 of 2003 which has been amended by Law Number 11 of 2020, then revoked by Government Regulation in Lieu of Law Number 2 of 2022 and then enacted as Law Number 6

of 2023. According to this Law, a worker—also known as a laborer—is any individual who makes his or her contribution and then receives a wage or other form of compensation. Therefore, it can be concluded that wages are a form of compensation that must be given to workers if the company wants its business to run well. The National Wage Council describes wages as "An acceptance of work to serve as a guarantee of decent survival for humanity and production, expressed in accordance with the approval of Laws and Regulations and paid on the basis of a labor agreement between the employer and the employer (Naluria Utami, 2019)".

As wages become a suitable form of reward to stimulate the running of a business, corporations tend to use wages to boost workers' performance or even terminate their workers. Therefore, the concept of wages and their implementation were given a special attention by the government, especially from the National Wage Council (Isaura et al., 2023). According to the National Wage Council, there must be a proportion of justice applied in worker remuneration such as notification of wage structure and scale. However, even though there are provisions and guidelines, due to economic motives, corporations are often found to violate them. These violations can vary, and some of the most common are the unpaid Religious Holiday Allowance, overtime pay, and payment of wages below the Regional Minimum Wage (UMR).

The cases above can be categorized as criminal offenses, where the punishment for such acts is stated in Article 185 of Law Number 13 of 2003 concerning Manpower, which has undergone several changes until the enactment of Law Number 6 of 2023. This regulation, especially referring to Article 88A paragraph (3), is intended to deter corporations from violating the established wage regulations (Chamdani & Indradjaja, 2024). It is hoped that this regulation can serve as a legal basis that at least has two functions: providing protection for workers and consequences for corporations that violate the regulations. The implementation of this regulation is possible because corporations are legal subjects regulated by law, which can be held accountable on the basis of the law in conjunction with corporate criminal offenses (Muladi & Priyatno, 2010).

Although it has been explained above that there are regulations that can be used as a reference in handling corporate criminal cases, especially in cases of wage violations, this problem is actually quite complex to handle in the field. The complexity of this problem is influenced by the lack of standard regulations on corporate crimes and the lack of regulations on who can be held accountable. This problem also seems to be considered 'trivial' in the field because the Indonesian judicial system holds the attributive justice system that only provides deterrent sanctions, so most victims do not get the justice they need (Indradjaja & Chamdani, 2023).

In addition to the problems mentioned above, the prosecution of corporate crimes is also hindered by the limited ability of law enforcement to investigate, prosecute, and judge similar cases. Cases like this are considered difficult to handle, especially because corporations tend to hide their crimes through a well-organized delegation of responsibility (Amrani, 2016).

Based on the aforementioned problems, it can be concluded that in conflicts between workers and corporations regarding wages, there is a tendency for workers to be one disadvantaged party. Therefore, this research is conducted to find the appropriate legal protection for workers who are paid below the minimum wage set by the regency/city government. The results of this research are expected to further clarify the legal steps that can be taken by workers when facing corporate criminal acts.

METHOD

This research applies a normative juridical approach (Ibrahim, 2018), a method that analyzes the state or phenomenon related to criminal law regulations regarding criminal acts in the world of employment. The research stages include determining the research problem, data collection, data arrangement, data classification, analysis process and results presentations.

In the analysis process, the author attempts to apply a combination of conceptual, legislative, and case study approaches to unravel the existing problem formulation. During the process, the conceptual approach is used to analyze concepts related to the research problem; the legislative approach is used to analyze relevant legal products; and the case study approach is used as a comparison of issues related to wage violations.

RESULTS AND DISCUSSION

Workers' Position within the Protection of The Employment Law

Indonesia is a legal state that adheres to a democratic system and is based on Pancasila and the 1945 Constitution. This is emphasized in Article 1 paragraph (3) of the 1945 Constitution which states that "The Indonesian state is a law-based state". Thus, as a law-based state that is also founded on the rule of law (*rechstaat*), Indonesia fundamentally guarantees every citizen to have full legal security, along with the obligation to uphold the law and the fundamental functioning of the government system. One of these guarantees is uphold in protection through employment contracts.

Articles 1603, 1603a, 1603b, and 1603c of the Civil Code regulate the obligations of workers/workers, which in essence state that workers/workers are required to do work; doing work is the primary task of a worker that must be completed by himself, even if represented with the employer's permission. Workers/Workers are required to follow the regulations and directions of their employers/employers; When performing work, laborers/workers must follow the instructions issued by their employer. The guidelines that employees must follow should be established in the company's regulations so that the extent of the directive is apparent. Obligation to pay compensation and fines; if the worker/worker undertakes an act that is injurious to the company, either knowingly or carelessly, the worker is required to pay compensation and fines under the legal principle.

Wages are production costs that employers must keep to a minimum in order to keep the price of goods from rising too much. In other terms, it is done to increase profits. Wages are vital for workers/labor organizations to bargain with employers in order to receive an increase. Wages are the amount of money received by workers or laborers at a given moment, or, more specifically, the quantity of money that may be used to purchase living essentials for a given length of time.

To guarantee the welfare of workers, the government has established provisions that must be included in such contracts, one of which is the amount of wages. In this case, the agreed-upon amount of wages may not be violated, and if violated, the business owner can be sued based on labor laws and their implementing regulations. There are nine (9) workers' rights that are commonly violated by employers, including.

- (1) the right to decent work,
- (2) the right to be free from discrimination,
- (3) the right to a decent wage,
- (4) the rights of child workers,
- (5) the right to receive job training,
- (6) the rights of women workers,
- (7) the right to form unions,
- (8) the right to social security, and
- (9) the right to strike.

Moreover, in this context, the right to a decent wage refers to 3 (three) aspects, including technical, economic and legal aspects (Zulkarnaen, 2020). One of the parties obliged to ensure this protection is the state itself, and in this context is the Indonesian government and applicable legislation. The government, through legislation that regulates regulations and serves as the basis of law, has made efforts to protect workers' rights.

Legal protection is the provision of protection to human rights that have been violated by others, as well as to the community so that they can enjoy all of the rights granted by the law. In other words, legal protection is the various legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically, from interference and various threats from any party. Legal protection is one of the most crucial aspects of a legal system. It is seen as significant because, throughout the establishment of a country, rules governing each individual are created.

There are two sorts of legal protection facilities. The first is Preventive Legal Protection Facilities, which allow legal subjects to submit objections or opinions before a government decision is finalized. The idea is to avoid disagreements. Preventive legal protection is extremely important for government activities based on freedom of action because it encourages the government to exercise caution when making discretionary decisions. In Indonesia, there is no specific regulation governing preventive legal protection. Second, the goal of Repressive Legal Protection is to settle conflicts. This category of legal protection includes the way that Indonesia's General Court and Administrative Court handle legal protection. The idea of human rights recognition and protection is the foundation of the legal protection principle against government actions. This is because, according to Western history, the emergence of these concepts was focused on the boundaries and allocation of responsibilities between the government and the community. The state of law premise is the foundation for legal protection against government activities. The recognition and protection of human rights takes precedence and is linked to the aims of the state of law.

According to Abdul Khakim, labor protection can be classified into three types, namely:

(1) Economic protection

Worker protection in the form of enough remuneration, even when workers do not work against their will,

(2) Social protection

This is labor protection in the form of occupational health insurance, freedom of association, and protection of the right to organize, and

(3) Technical protection

Labor protection in the form of occupational health insurance.

In addition, there are protection for Occupational Safety Norms, Occupational Health Norms and Company Health Hygiene, Work Norms and Occupational Accident Norms (Khakim, 2009).

If there are violations to the above rights, the state itself should initiate protective measures. Indonesia, as a law-based state, has actually made efforts to provide legal protection through the laws that have been designed and implemented. Therefore, through the legal products that have been designed, and in this context referring to Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, the government has provided protection for the rights of workers. Therefore, citizens can feel safe because their rights and dignity as part of Indonesia and also as workers have been protected. This is also in line with the opinion of Philipus M. Hadjon who stated that legal protection manifested in the protection of dignity, honor, and recognition of human rights must be possessed by every legal subject because it is made possible by the concept of a law-based state and also Pancasila (Hadjon, 1987).

Based on the explanation above, it can be concluded that Indonesia, as a nation of law, has ensured the existence of instruments that can be used to guarantee legal certainty and protection for its citizens, especially for workers. This instrument takes the form of a law which implementation is manifested in two forms: the establishment of a minimum wage as safety net (the government's position as a policymaker) and the opportunity to fight for justice in industrial conflicts (the government's position as a law enforcer). Both forms of protection will be further elaborated.

Regency/City Minimum Wage Provisions as a Safety Net

Within an organizational business structure, positions are divided into several parts. However, simply put, this can be divided into two parts, namely the business owner and the worker. To ensure the relationship between the employer and the employee, there is a relationship known as an employment relationship. In Article 1, point 15 of Law Number 13 of 2003 which was amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, an employment relationship is defined as the relationship between an employer and a worker or employee, which is based on an employment agreement with the elements of: worker, wages, and command. Therefore, it can be concluded that an employment relationship begins with an employment agreement between two parties, namely the worker and the employer (Chamdani, 2022), which involves one important element: an agreement on wages.

Wages received by workers vary according to their skills, length of service, and position within a particular business. However, the government strives to ensure that the wages earned are not less than the amount of a proper living cost. Therefore, an instrument called the minimum wage was created. This minimum wage plays an important role in the life of a worker, considering that in the wage system, the government endeavors to ensure that workers as citizens can still have sufficient needs, be it for health, their children's education, or even for entertainment. The government even expects workers to be able to set aside their income for a decent future. This government's hope is also enshrined in Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023, which is then further supplemented by Article 27 paragraph (2) of the 1945 Constitution and Article 88 paragraph (1) of No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law on Wages, which states that all workers are entitled to a standard of living adequate for the dignity as a human.

Given the importance of the minimum wage, starting in 2000, the central government has been determining it in collaboration with the district/city governments, in which amount is adjusted to the cost of living in each respective city/region. The amount of this minimum wage is regulated by the authorized body: the Regional Wage Council. In an effort to set an appropriate figure, the Regional Wage Council conducts surveys on the cost of basic commodities in a region, as well as other primary needs such as food, housing, education, savings, recreation, and clothing. In addition, to ensure that the figure issued truly meets the needs, this council is equipped with parties who are experienced in their respective fields, ranging from representatives of local governments, departments/offices, labor union organizations, employer organizations, academics, and related agencies. After that, the agreed number will be submitted to the governor, and completed with recommendations from the regent or mayor of the local area (Chamdani, 2020).

As explained earlier, the minimum wage in each region differs based on the calculation of a decent living standard in that particular region or province. Therefore, it is understandable that there are differences in the calculation of UMP (Provincial Minimum Wage) and UMK (District/City Minimum Wage). The calculation of Provincial Minimum Wage is based on economic growth and inflation rate; on the other hand, District Minimum Wage is calculated based on economic conditions, such as purchasing power and employment related to labor absorption and the annual average. For example, there is a difference in Provincial Minimum Wage between DKI Jakarta and Central Java in 2023. In that year, the Provincial Minimum Wage in Jakarta was Rp 4,901,798, while in Central Java it was Rp. 1,958,169. This difference in UMP reflects the disparity in the cost of living between Jakarta and Central Java.

Once the Provincial Minimum Wage is ratified by the governor, it becomes a reference for employers to determine wages, pay wages as agreed upon each month, and pay compensation that workers are entitled to. In addition to the minimum wage as a safety net for

a decent living, there are several wage components that must be added to the salary, as regulated in Article 7 paragraph 1 of Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023. In this regulation, it is stated that wage components should include basic wages without allowances; basic wages and fixed allowances; basic wages, fixed allowances, and variable allowances; or basic wages and variable allowances. For example, for wages consisting of basic wages and fixed allowances, there is a rule that the basic wage must be at least 75% of the total basic wages and fixed allowances. In addition to the amount of wages, the regulation stipulated in Article 53 paragraph 3 of Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023 also stipulates that the payment of wages by employers must be carried out in accordance with employment agreements, company regulations and also collective labor agreements.

Despite the ideal regulations in place, unfortunately, many cases of wage violations, particularly regarding minimum wage violations, still occur. Many of these cases point to the greed of certain parties, and these violations are classified as white-collar crimes due to their perpetration by the upper class. The greed that drives these violations usually stems from the needs of each perpetrator, but interestingly, the "who" committing these acts will influence the motive. If the perpetrator is from the lower class, the motive is often to meet daily needs. However, when someone of higher status commits these acts, it is classified as a white-collar crime, which will have an impact on the failure to meet the living needs of those below the perpetrator.

Given the increasing number of similar cases, it can be concluded that the government has indeed made efforts to protect workers in Indonesia by creating a wage safety net known as District Minimum Wage/Provincial Minimum Wage. Therefore, if there are still parties who commit violations in this regard, they can be prosecuted based on criminal elements and become subject to criminal sanctions for their actions.

Settlement in Industrial Relations Dispute

The next step for the government is to ensure legal protection. Legal protection can be defined as the protection of human rights when those rights are violated by others. In this context, it can be understood that legal protection is created so that all members of society can enjoy all the rights guaranteed by law. Moreover, in the context of workers, legal protection allows workers to fight for the rights they deserve. Therefore, when discussing the protection of rights, it cannot be separated from the fact that this is a legal product that serves as a guide for the relationship between employers and employees, including the basis for behavior and decisions that are in accordance with the applicable law.

One of the legal products enacted to address this issue is wage protection as stipulated in Article 88 of Law Number 13 of 2003, which was amended by Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. If the Worker/Laborer feels that he or she does not get wages in accordance with the provisions of the applicable laws, it can be categorized as a dispute of rights. Rights disputes arise due to the non-fulfillment of rights, as well as differences in the implementation and interpretation of legal rules, irregularities in employment agreements, company regulations, and cooperation agreements. In detail, the key points in wage violations are as follows:

- (1) Administrative sanctions for companies as stipulated in Article 190 Paragraph (2),
- (2) The prohibition of wages below the minimum wage as stipulated in Article 88 E paragraph 2 of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, in conjunction with Article 23 paragraph (3) of Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023, which is always updated, such as through the Minister of Manpower Regulation Number 18 year 2023 concerning the Determination of the Minimum Wage for 2022.

The above legal product is one effort to ensure a legal protection shield. This is very important considering that, according to Phillipus Hadjon, this is an effort to ensure the protection of dignity and honor (of workers), and is also a form of recognition of human rights. As one of the subjects protected by law, humans are protected by law in accordance with the provisions of the law in the regulations and norms that govern them (Hadjon Philipus M, 1987). This must be implemented considering that the protection of labor aims to guarantee harmonious employment relationships, without any possibility for the strong party to oppress the weak.

Despite being equipped with appropriate legal protection, labor protection in the field often encounters obstacles. Disputes between employers and employees always occur due to differences in interests. One of the most common issues is the granting and obtaining of rights. Ideally, employers should provide employee rights as stipulated by law. However, if not, employees have several options provided by law to protect their rights. The legal actions that employees can take will be explained in the following paragraph:

a. Bipartite Negotiations

Bipartite protection, as defined in Article 1, paragraph 10 of Law No. 2 year 2004 regarding Settlement of Industrial Relations Disputes, can be understood as a negotiation involving two parties: the employer and the worker. This is an effort to resolve industrial relations disputes. This step is the first that must be taken before a case is brought to a dispute resolution board. In this initial step, both parties will try to discuss with each other to understand each party's desires, and then, in the next stage, both parties will try to find a middle ground so that both are satisfied with the decision as a result of the negotiation. However, to truly meet the needs of each party without any outside intervention, this negotiation should be limited to the parties involved, such as workers/labor unions and the company. In accordance with the regulations stipulated in Article 3 paragraph (2) of the Industrial Relations Dispute Law, the conflict resolution period may not exceed 30 (thirty) working days from the start of the negotiation. Then, this negotiation can be considered a failure if one of the parties is unwilling to negotiate within the 30-day period (Wijayanti, 2015). If this stage is unsuccessful, then the worker can use the option of mediation.

b. Mediation

Definition of mediation can be found in the Industrial Relations Dispute Settlement Law, specifically in Article 1, point 11. This regulation state:

“Mediation is the settlement of disputes over rights, interest disputes, termination of employment disputes, and disputes between trade unions within a single company through deliberations mediated by one or more neutral mediators.”

To ensure that the mediation process runs smoothly, there are government officials who are appointed and meet the requirements for mediation, namely mediators. In this process, the conflicting parties will be accompanied by mediators to mediate the mediation process. In carrying out their duties, mediators are not allowed to intervene or take sides with either party (Rachmadi, 2012).

c. Industrial Relations Court

The final stage that can be taken in resolving industrial conflicts is the Industrial Relations Court. The Industrial Relations Court is a special court within the District Court that is tasked with resolving conflicts that often occur in industrial relations. Before a case can be accepted for handling through the District Court, a judge must carefully decide to place the dispute in the context of industrial relations. However, if in a case there is a dispute regarding rights, the judge must immediately examine, judge, then decide the case immediately. The Industrial Relations Court is expected to be the right institution to resolve existing conflicts, while also considering whose rights should be fought for to obtain justice. This is in line with what Alan Boulton said, where according to him, Industrial Relations Court judges should have

a sufficient understanding of international labor law so that there is a reference and comparison for judging labor cases domestically (Wijayanti, 2015).

The discussion above has elaborated both the situation and regulations of industrial relations in Indonesia, especially in the context of workers and employers. Therefore, it can be understood that there are two important points that underline this analysis: first, the availability of a safety net for wages; second, the ensurement of legal efforts that can be taken to address industrial conflicts. Broadly speaking, the central government, together with local governments, has ensured the availability of a justice shield through legal products, namely the Job Creation Law, which ensures that labor law has included criminal elements that can be used in judging cases. With this, it is hoped that the justice needed by workers, especially those related to the fulfillment of rights (wages), can be protected

Furthermore, to prevent abuse of power by the stronger party (employers), it is also ensured that there are sanctions for perpetrators. These sanctions can be in the form of administrative sanctions, fines, detention, and even imprisonment. On the other hand, the government also regulates what obligations workers must fulfill before receiving rights, so that workers cannot arbitrarily sue the company without a clear basis. However, if prolonged conflicts still occur, the government provides stages for resolving problems in industrial relations through litigation and non-litigation channels. And, the discussion above has also covered what stages can be used in both channels before filing a criminal lawsuit. Through the availability of these regulations and channels, it reflects the government's intervention in efforts to guarantee the human rights of workers, which includes all nine rights and their criminal legal protection.

CONCLUSION

Indonesian law clearly discusses the rights that workers deserve to receive as compensation for the work done. Two of the most important rights are the right to obtain employment and a decent wage. Wages, as defined above, are a fair return that workers should receive for their contributions (production of goods or services) to the company. Therefore, the concept of wages cannot be separated from the two parties directly involved, namely employers and workers. For workers, this is important because wages are used to meet basic needs, both primary and secondary needs. For employers, wages will be given as long as the worker's obligation to help smoothen production of goods and services is fulfilled. Unfortunately, not all employers have a good sense of justice, so the law is needed.

To ensure that workers receive a decent wage to meet their needs, legal protection is regulated by considering several related factors such as the surrounding area and the prices of basic commodities. Some related legal products are Article 77 of Law No. 6 year 2023, Articles 22 and 31 of Government Regulation No. 35 year 2021 juncto Government Regulation No. 51 year 2023, and Article 39 of Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023, whose function is to ensure that wages are paid according to needs. Factually, there are still many employers who do not fulfill the workers' rights regarding the wage standards that have been recommended in Articles 90, 190 paragraph (2) of Law No. 6 year 2023, Article 81 number (63) of Law No. 6 year 2023, and Article 23 paragraph (2) of Government Regulation No. 36 year 2021 juncto Government Regulation No. 51 year 2023.

Regarding the issues above, Indonesia, as a state of law, has established regulations to ensure that employees are legally protected through two actively pursued efforts: the formulation of minimum wages (in lawmaking) and the enforcement of sanctions and executions (judicial) in wage violations. One much-needed legal product is the formulation of the Provincial Minimum Wage and District Minimum Wage whose purpose is to meet the basic needs of employees. Law enforcement and sanctions also play a major role in ensuring that employees' rights as human to obtain justice are properly upheld. If all of this is not enough, there are still criminal regulations that can be used to seek justice.

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