

The Punishment of Misbruik Van Omstandigheden as a Basis for Determining Workers' Wages

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Article history

Received : 2023-03-16
Accepted : 2023-08-25
Published : 2023-08-31

Keywords:

Labor, Minimum Wage, Criminalization

Abstract: Even though the employment relationship between workers and employers is regulated in the Labor Law regime so that it can be equal, in practice this is not the case. The superiority of employers as employers often places workers in an unfavorable situation. Sometimes it is very apparent that workers need more entrepreneurs to live their lives through the wages they receive, compared to employers who need workers to carry out their business. This could be a sign that wages are below the minimum wage set by the government. This research is legal research that examines this unequal reciprocal relationship in practice. Use legal, conceptual and case-based approaches to draw conclusions and determine penalties for employers who pay workers below the minimum wage.

Abstrak: Meskipun hubungan kerja antara pekerja dan pengusaha diatur dalam rezim UU Ketenagakerjaan sehingga bisa setara, dalam praktiknya tidak demikian. Keunggulan pengusaha sebagai pengusaha seringkali menempatkan pekerja dalam situasi yang tidak menguntungkan. Terkadang sangat jelas bahwa pekerja membutuhkan lebih banyak pengusaha untuk menjalani hidup mereka melalui upah yang mereka terima, dibandingkan dengan pengusaha yang membutuhkan pekerja untuk menjalankan bisnis mereka. Ini bisa menjadi tanda bahwa upah berada di bawah upah minimum yang ditetapkan oleh pemerintah. Penelitian ini merupakan penelitian hukum yang mengkaji hubungan timbal balik yang timpang ini dalam praktiknya, Menggunakan pendekatan hukum, konseptual dan berbasis kasus untuk menarik kesimpulan dan menentukan hukuman bagi pengusaha yang membayar pekerja di bawah upah minimum.



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<http://jurnal.unsyiah.ac.id/riwayat/>

INTRODUCTION

Many problems in the industrial world occur between workers and employers (employers). The problem does not only include the work and who does the work, also does not stop at who does the work and the amount of wages he receives. There are variables (guidance) that have been determined by the Government related to this

matter that must be well understood by both Workers and Administrators. Indonesia, which has an abundant amount of Human Resources (HR), poses its challenges because of these abundant human resources, there is certainly a tendency for the labor force to require a range of jobs that cannot be followed by the world of work as fast as the growth of the labor force.

The above problem has something to do with a very substantial thing in the field of employment, namely Work Wages (Salary). The abundance of existing human resources allows employers to be able to freely choose workers by their field of work while still using the principle of pursuing maximum profits at the minimum possible cost. Coupled with the current uncertain global economic conditions, This situation is exacerbated by the outbreak of the COVID-19 pandemic in Indonesia and globally, making Employers and Workers alike have to rack their brains so that each of their interests is facilitated.

The imbalance between the labor force and employment has the impact of high unemployment. It's the same with doing business using the notions of demand and availability. The availability of a high labor force that is not followed by the demand for labor, of course, some labor forces are not absorbed into workers. This does not only have an impact there, workers who already have jobs can also have an impact on the number of prospective workers needed by employers if the employer wants it.

Employers will automatically reduce the growth rate of costs incurred by these workers because the availability of the labor force is still very much.

This is what causes sometimes workers to work without getting a decent wage, even though the minimum wage has been determined by the Government. Not only there, the rights of workers that have also been regulated by the Government in various instruments of laws and regulations related to labor have been neglected. Of course, this needs to be taken seriously because this concerns the Rights and Justice that will be received by citizens which have been guaranteed in the constitution. Not only prioritizing workers, but labor law must also prioritize employers so that their businesses continue to run well and workers still get jobs in exchange for supporting their lives.

There are conflicting views in looking at the issue of wages in employment. The classical view suggests that Classical Economic Theory (wages relative to the cost of capital) through economic liberalization, would direct the allocation of factors of production using excess inputs, in this case labor. This Economic Theory is also, for

countries with abundant labor such as Indonesia, economic liberalization tends to increase the share of the marginal production value of labor relative to total output, while the share of capital factor (profit) remuneration tends to decrease. This increase in the share of marginal production value of labor will increase the level of real wages. In an increasingly free market, increases in labor productivity will always be followed by increases in real wages. Thus the establishment of a minimum wage does not mean much, in fact, it only creates new distortions in the economy.

The Marginal Productivity Theory states that to maximize profits, entrepreneurs use factors of production in such a way that each factor of production used receives or is rewarded with the added value of marginal results from these factors of production. Employers employ several Workers to run their businesses so that the value of the marginal increase in a Worker's results is equal to the wages received by the Worker. This theory states that workers are paid according to their marginal productivity towards employers.

Based on the above, the concept of wages (salary), it become an essential factor in the world of work. Often by desperately needing a job, employers abuse the "urgent" situation by determining the standard of wages (salaries) for their workers is very minimal. There are still often found some workers who receive wages below the minimum standard set by the Government, these workers are also "willing" to continue to do a job ordered to them by the employer even though they receive wages that are far from decent to continue their lives. The matter of abuse of "urgent" circumstances will be discussed further and in detail in this legal research. It is a hidden crime for employers who abuse the situation (*Misbruik van Omstandigheden*) by providing wages below the minimum wage set by the government.

The term abuse of circumstances (*Misbruik van Omstandigheden*) or Undue Influence (in the Common Law System), abuse of these circumstances is based on an imbalance of bargaining position in an engagement (contract). Misuse of circumstances can be interpreted as a

defective will because it is more by the content and nature of the abuse of the state itself.

Van Dunne's opinion on this subject distinguishes between abuse due to economic advantage and psychiatric advantage as follows:

1. Requirements for abuse of economic advantage;
 2. One party must have an economic advantage over the other;
 3. The other party had to agree;
 4. Requirements for the presence of abuse of psychiatric advantages;
1. One party abuses relative dependencies such as special trust relationships between parents and children, husbands, wives, doctors, patients, pastors, and congregations, as well as relationships between workers and employers.

The main factor that indicates the abuse of circumstances in legal acts or contracts is the existence of agreed terms that are unreasonable or inappropriate or that are contrary to humanity (unfair contract terms).

Legal protection for workers is important because their status is lower than that of employers. It was mentioned by Zainal Asikin who said that the legal protection of workers from the power of employers will be implemented if laws and regulations in the field of labor that require or force employers to act as in the legislation have been implemented. All parties agree that legal firmness cannot be measured only from a juridical point of view, but from a sociological and philosophical point of view.

The Indonesian government in a modern and democratic country especially declares itself as a state of law based on Article 1 jo. Article 2 of the Constitution of the Republic of Indonesia Year 1945 (UUDNRI Year 1945) carries the duty and responsibility to prosper its citizens. The Indonesian government in its broad sense to prosper the citizens of the country is a continuous effort towards the realization of an advanced, creative, democratic, and just community life. Related to this, Work has a very important meaning.

Citizens need labor as a source of income to meet the necessities of life for

themselves and their families, besides that labor is also a means of self-realization. The right to work is an inherent human right in a person that must be upheld and respected. Efforts towards welfare will be difficult to achieve without an equitable socio-economic structure which from the aspect of relations between workers and employers is reflected in harmonious, dynamic, and proportional fair industrial relations. Therefore, it is necessary for Government intervention through comprehensive and comprehensive policies that include human resource development, increasing labor productivity and competitiveness, expanding employment opportunities (employment), and fostering industrial relations regulated in labor laws and regulations.

Government intervention in labor law is aimed at creating a fair working relationship, because if the relationship between workers and employers, who are so different socio-economically, is left entirely up to the parties, then the objective of justice in professional relations will be very difficult. with for. Because the strong always want to dominate the weak. On that basis, the government intervenes through regulations to guarantee the certainty of the rights and obligations of the parties.

METHODS

The approaches used in legal studies are statutory, case-based approaches, historical approaches, comparative approaches, and concept-based approaches. This legal research uses a statutory approach, then legal norms/rules are explained through applicable legal concepts, so this research also uses a conceptual approach, apart from that this legal research also examines court decisions that go wrong during judicial research in a case if legal research also uses a case by case approach.

RESULTS AND DISCUSSION

1. Wage System of Workers in the National Legal System

Labor Law used to be referred to as "Labor Law". Is a translation of the term "Arbeidsrechts". There are several opinions or limitations regarding the understanding of

Labor Law. Molenaar's opinion limits the meaning of *Arbeidsrechts* to the applicable legal framework which fundamentally regulate the relationship between workers and employers, between workers and workers, as well as between workers and the government (state). According to MG. Lavenbach, *Arbeidsrechts* as something that encompasses the law about the employment relationship, whereby the work is carried out under the leadership and with the conditions of livelihood directly related to the employment relationship. Furthermore, Iman Soepomo defines labor law as a set of rules, written and unwritten, concerning the fact that a person works for another person by receiving wages.

Regulation regarding wages for workers began to be seriously regulated in Indonesia through the Regulation of the Minister of Manpower (Permenker) No. 05/Men/1989 concerning Minimum Wage which was announced on 29 May 1989. The determination of wages for workers at that time was carried out for years through a series of long processes. As a first step, the Regional Payroll Council (DPD), which consists of academics, held a meeting, formed a committee, and went directly to the field to find out the number of needs needed by employees, employees, and workers (workers). After conducting surveys in several cities in the province that are considered representative, a figure known as the Decent Living Needs (KHL) figure was obtained which was formerly known as the Minimum Living Needs (KHM).

Based on the KHL, the DPD proposes a Regional Minimum Wage (UMR) to obtain approval from the Governor. The component of living needs with dignity is used as the basis for determining the minimum wage based on the living needs of workers. At present, the UMR is also called the Provincial Minimum Wage (UMP) because it usually covers only one province. In addition, after being applied to all regions of Indonesia, it is known as the City/Regency Minimum Wage (UMK).

Labor tug-of-war has finally enacted a law that regulates the relationship between workers/employees and employers (employers). Birth of Law No. 13 of 2003 concerning Manpower (LN.2003/No.39, TLN No.4279 hereinafter referred to as UU

13/2003). Law 13/2003 is currently not completely abolished, but some of its provisions have been changed with the issuance of Law Number 11 of 2020 concerning Job Creation (LN.2020/No.245, TLN No.6573 hereinafter referred to as Law 11/2020).

The legal basis for the technical implementation of wages based on Law 11/2020 is currently regulated in Government Regulation Number 36 of 2021 concerning Wages (LN.2021/No.46, TLN No.6648 hereinafter referred to as PP 36/2021), the definition of wages according to PP 36/2021 is the right of workers/employees to receive and declare in the form of money in the form of social benefits from employers or employers to designated workers/employees and pay according to work agreements, agreements or laws and regulations, including compensation to workers/employees and their families for work and/or services performed or to be performed.

The enactment of Law 11/2020 has made the wage standards for workers in Indonesia change. The wage component policy as stipulated in PP 36/2021 was then revised through Regulation of the Minister of Manpower Number 18 of 2022 concerning Minimum Wage Determination (BN.2022/No.1165 hereinafter referred to as Permenaker 18/2022), based on Article 4 paragraph (1) jo. Article 5 of Permenaker 18/2022 stipulates the minimum wage that applies to workers/employees who have worked for less than 1 (one) year at the company concerned, the determination of The minimum wage is determined according to economic conditions and employment.

The formulation of the Minimum Wage calculation according to Permenaker 18/2022 is calculated by considering variables of economic growth, inflation, and certain indices. Permenaker 18/2022 was issued at a time when Indonesia and the world were in a state of the COVID-19 pandemic. The formulation of calculating the Minimum Wage according to Permenaker 18/2022 is as follows:

$$\mathbf{UM(t+1) = UM(t) + (Value\ Adjustment\ UM\ x\ UM(t))}$$

Keterangan:

UM (t+1): Minimum wage to be set;

UM (t): Minimum Wage for the current year;
UM Value Adjustment: Minimum Wage adjustment which is the sum between inflation and economic growth multiplication and a.

Adjustment to the value of the minimum wage in the formula for calculating the minimum wage as referred to in Article 6 paragraph (3) of the Minister of Manpower 18/2022 is calculated as follows:

UM Value Adjustment = Inflation + (PE x a).

Information:

Adjustment: The minimum wage adjustment is the sum of inflation and the multiple of economic growth;

Inflation: Provincial inflation calculated from September last year to September this year (in percentage);

PE: Economic growth is calculated as follows:

a. For Provinces, calculated from changes in provincial economic growth in the first quarter, second quarter, third quarter of the current year, and fourth quarter of the previous year against the economic growth of the province in the first quarter, second quarter, third quarter of the previous year and fourth quarter in the previous 2 (two) years;

b. For Districts/Municipalities, economic growth is calculated from changes in the economic growth of Districts / Regions in the first quarter, second quarter, third quarter and fourth quarter of the previous year were compared the economic growth of Districts / Municipalities in the first Quarter, Second Quarter, Third Quarter and IV Quarter in the previous 2 (two) years.

Alpha (a): The form of a certain index that describes the contribution of labor to economic growth with a certain value in a certain range, namely 0.10 (zero point one zero) to 0.30 (zero point three zeros).

Under Article 13 jo. Article 15 of Permenaker 18/2022 states that the Governor must set the 2023 Provincial Minimum Wage no later than November 28, 2022. Furthermore, the Governor can set the District/City Minimum Wage in 2023 and it will be announced no later than December 7, 2022. Minimum Wage as stipulated under Article 13 paragraph (2) jo. Article 15

paragraph (2) of Permenaker 18/2022 will become effective on January 1, 2023.

The tug-of-war over wages in Labor Law is further complicated between Worker-Employer-Government. The latest Permenaker 18/2022 as a derivative of Law 11/2020 is considered problematic and contrary to PP 36/2021, currently, Permenaker 18/2022 is being sued by the Indonesian Employers Association (Apindo) and is in Review Process at the Supreme Court Case Number 72P/HUM/2022. Previously, the Constitutional Court Decision Number 91/PUU-XVIII/2020 dated November 3, 2021, issued the following decision:

1. Declare that the Job Creation Law Number 11 of 2020 (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) remains in effect until these improvements are implemented. Show for training with permission. . a period of 2 (two) years as specified in the decision;
2. Announcement of the termination of all strategic actions/policies that have wide-reaching impacts, as well as the issuance of new implementing regulations that are not mandatory related to the Job Creation Law No.11 of 2020;

The fierce bargaining process between Workers-Employers-Government regarding Labor Law makes the polemic over wage regulation and other labor matters even more complicated. On the other hand, implementation of the decision of the Constitutional Court Number 91/PUU-XVIII/2020 it is stated that it is necessary to make improvements through the replacement of Law 11/2020. Therefore, the Government has recently issued Government regulations replace law number 2 of 2022 concerning job creation (LN.2022/No.238, TLN No.6841 hereinafter referred to as PERPU 2/2022) on December 30, 2022.

The issuance of PERPU 2/2022 was issued by President Joko Widodo. PERPU 2/2022 is the embodiment of Article 22 paragraph (1) of the NRI Constitution of 1945

jo. Article 1 Number 4 of Law Number 12 of 2011 as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Law Making (LN.2022/No.143, TLN No.6801 hereinafter referred to as Law 13/2022) which states that In the event of an urgent interest, the President has the authority to stipulate Government Regulations in Lieu of Legislation.

PERPU 2/2022 also fulfills the formulation of Constitutional Court Decision Number 003/PUU-III/2005 and Constitutional Court Decision Number 138/PUU-VIII/2009 which defines "force majeure", which should not be equated with the existence of a state of danger with the level of civil, military or war emergency, but rather the compelling urgency becomes the Subjective Right of the President to determine which will then become the Objective Right of the House of Representatives of the Republic of Indonesia (DPR RI) to be designated as Law. In addition, PERPU can be established due to urgent circumstances to resolve legal issues quickly based on the Undang-Law. This is due to the occurrence of a legal vacuum (*vacuum of the norm*) in which the problem cannot be overcome by procedurally making new laws. The presence of PERPU 2/2022 which was just set on December 30, 2022, immediately there were several rejections of PERPU 2/2022. This is evidenced by the filing of a Formil and Material Test Lawsuit to the Constitutional Court through Case Number 5/PUU-XIX/2023 (Masrul et al., 2020) and Case Number 6/PUU-XIX/2023 in the PERPU 2/2022 Testing case concerning Job Creation (Sidauruk, 2011) (Ancel, 1998).

The differential wage system causes the quantity of wage levels, especially in determining the Minimum Wage, to have several differences. Sectoral and regional policies are based on the selection of regions/regions and their potential economic sectors by considering several aspects that

influence, among others, as follows (Febrianti, 2017):

1. **Aspects of the condition of the company;** concern the type of company in which the Worker works. Consists of small companies (*startups / MSMEs*), medium companies as well as large companies and regions and regions. This is because it concerns the capital and business activity units of each company along with the production and productivity of workers (Soepomo, 1985).
2. **Aspects of workforce skills;** Increased production and productivity are determined by the *skills* of workers both at the lower level, namely skilled workers/workers up to the managerial level who can be a driver of workers to be able to work with high productivity.
3. **Aspects of living standards;** This is determined by the minimum Decent Living Needs (KHL) which includes the basic (primary) needs of the worker concerned by the economic pace in the place or area where the worker works. KHL as intended not only covers clothing, food, and shelter, but also includes education, health, and other social security (Sutantio & Oeripkartawinata, 2009).
4. **Aspects of types of work,** Different types of work are of course followed by different types of wages. Job load and job responsibilities become essential factors in wages. Wages in industrial companies are different from the hospitality sector, and also different from the agricultural sector, and so on.

In essence, the wages given to workers must meet the standard of Decent Living Needs (KHL) considering that a person works to maintain and improve the quality of his life and family life (Marzuki, 2008).

1. **Criminal sanctions for abuse of wage conditions below the minimum wage standard**

Based on Article 90 of Law 13/2003, employers are strictly prohibited from paying wages lower than the minimum wage specified in Article 89 of Law 13/2003. For entrepreneurs who are unable to pay the minimum wage as referred to in Article 89 of Law 13/2003, a suspension can be made which is regulated by a ministerial decree (Lestari & Cahyono, 2017).

Under Article 88E paragraph (2) jo. Article 185 paragraph (1) and paragraph (2) of Law 11/2020 jo Article 88E paragraph (1) of PERPU 2/2022 stipulates that the Minimum Wage applies to Workers / Workers with a working period of less than 1 (one) year at the company concerned, in paragraph (2) it is stated that Employers are prohibited from paying wages lower than the Minimum Wage (Paparang, 2016).

The regulation of criminal sanctions in the Manpower Law because the Criminal Law according to Barda Nawawi Arif regulates criminal acts which are a form of deviant behavior carried out by society which is a real threat or threat to social norms that underlie life or social order, causing individual tensions and social tensions (Arief, 2000). Then by Marc Ancel called it "a *human and social problem*" and Seichiro Ono called it (Supriyadi, 2016) "a universal phenomenon" because deviant behavior (criminal acts) is also a problem in the global community (international) (Supriyadi, 2016).

The regulation of criminal sanctions for criminal acts in the Labor Law (Special Law) by Beire and James Messerschmidt said that the criminal act or criminal act is referred to as the "*legal definition of crime*" which can be divided into *mala in se* and *mala in prohibited*. *Mala in se* is called a crime. It is an act that from the beginning was felt as an injustice because it was contrary to the rules in society before it was determined by law as a criminal act (Hiariej & Pidana, 2014). *Mala in Prohibita* is identified as offenses which are acts determined by the Act to be an injustice (Supriyadi, 2016).

The application of criminal sanctions for violations of the Minimum Wage provisions as stipulated in the above laws and regulations greatly makes employers have to recalculate the business they run. On the one hand, meeting the Minimum Wage provisions is considered burdensome amid tight business competition and declining work productivity due to the outbreak of the COVID-19 pandemic. For the Government, the Minimum Wage is one way to realize public welfare in the COVID-19 pandemic and *New Normal situations*. The compliance of the Government to pay wages on time and by the provisions of the Minimum Wage for its workers is the Government's top priority to maintain the level of people's purchasing power, but on the other hand, business growth and development must remain protected to increase economic growth amid economic conditions that have been slumped due to the Covid-19 outbreak (Chamdani, 2022).

CONCLUSION

Regarding the non-payment of the wage by the Minimum Wage the Employer is unable or the Employer takes advantage of the situation of the Worker who needs work. Law 13/2003 has been amended by Law 11/2020 with PP 36/2021 as its implementing regulation. Regarding wages, there are differences between Law 13/2003 and Law 11/2020. There are different variables and components to calculating the Minimum Wage. Permenaker 18/2022 which regulates this matter is considered contrary to PP 36/2021 in terms of the hierarchy of the statutory system, therefore a judicial review was challenged in the Supreme Court. Due to the disallowed Law 11/2020 by the Constitutional Court and a legal vacuum, the Government in this case the President issued PERPU 2/2022 as an answer to the vacancy that occurred, but PERPU 2/2022 was inseparable from the problem, as evidenced by being directly challenged by the Judicial Review to the Constitutional Court within 1

(one) month since its launch. Employers' wages must not be below the stipulated Minimum Wage (Asikin, 1994).

Several provisions in Law 13/2003, Law 11/2020, PP 36/2021, and Permenaker 18/2022 both regulate criminal sanctions against employers who do not pay the Minimum Wage to Workers. The criminal sanctions are in the form of imprisonment and confinement. Not providing wages by the Minimum Wage standards set qualifies as a criminal offense, because wages are one of the reasons a person works to meet his needs (Missasi & Izzati, 2019).

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