PUNISHMENT AGAINST ABUSE OF CIRCUMSTANCES AS THE BASIS FOR DETERMINING WORKERS' WAGES

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ABSTRACT

Theoretical framework: This complex legal scenario provides a fertile ground for the application of various theoretical frameworks, shedding light on the intricate interplay of legal systems, policymaking, and the socio-economic implications of non-payment of minimum wages.

Purpose: This research aims to know the regulation regarding Wages in current laws and regulations related to Manpower in Indonesia and the criminal mechanism for Employers who abuse the condition of Workers by providing wages below the minimum standard.

Design/methodology/approach: This type of legal research is a type of normative legal research that aims to examine positive legal provisions, in this case, criminal law as a source of law. In legal research, there are several approaches. With this approach, researchers will get information from several aspects regarding the issue being tried to find answers. The approaches used in legal research are statutory, case approach, historical approach, comparative approach, and conceptual approach.

Findings: In essence, the remuneration given to workers must meet the standards of Decent Living Needs, considering that a person is working to maintain and improve the quality of his life and that of his family. The application of criminal sanctions for violations of the Minimum Wage provisions as stipulated in the laws and regulations above really makes Entrepreneurs have to recalculate the business they are running.

Research, Practical & Social Implications: This legal landscape underscores the need for ongoing research to analyze and address inconsistencies between laws governing minimum wage and their practical implications. The legal complexities and disputes highlight the challenges faced by both employers and workers in complying with minimum wage regulations. Ensuring that workers receive at least the minimum wage is crucial for their well-being and dignity. The existence of criminal sanctions sends a strong message about the importance of fair compensation.

Originality/value: This legal context presents a unique and valuable perspective on the challenges surrounding minimum wage regulations, their amendments, and enforcement. This analysis holds relevance not only for legal scholars but also for policymakers, employers, and worker advocacy groups seeking to enhance labor law effectiveness and worker protection.

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Keywords: labor, minimum wage, criminalization

Resumo

Quadro teórico: Este complexo cenário jurídico proporciona um terreno fértil para a aplicação de vários quadros teóricos, lançando luz sobre a intrincada interação dos sistemas jurídicos, da formulação de políticas e das implicações socioeconômicas do não pagamento de salários mínimos.

Objetivo: Esta pesquisa visa conhecer a regulamentação relativa aos salários nas leis e regulamentos atuais relacionados a mão de obra na Indonésia e o mecanismo criminal para os empregadores que abusam da condição de trabalhadores, fornecendo salários abaixo do padrão mínimo.

Design/metodologia/abordagem: Este tipo de pesquisa jurídica é um tipo de pesquisa jurídica normativa que visa examinar disposições legais positivas, neste caso, o direito penal como fonte de direito. Na pesquisa legal, há várias abordagens. Com essa abordagem, os pesquisadores terão informações de vários aspectos sobre a questão em busca de respostas. As abordagens usadas na pesquisa legal são estatutárias, abordagem caso, abordagem histórica, abordagem comparativa e abordagem conceitual.

Constatações: Em essência, a remuneração dada aos trabalhadores deve atender aos padrões de Necessidades de Vida Dignas, considerando que uma pessoa está trabalhando para manter e melhorar a qualidade de sua vida e a de sua família. A aplicação de sanções penais por violações das disposições relativas ao salário mínimo, conforme estipulado nas leis e regulamentos acima, faz com que os empresários tenham de recalcula o negócio que estão a gerir.

Investigação, Implicações Práticas e Sociais: Este cenário jurídico sublinha a necessidade de investigação em curso para analisar e resolver as incoerências entre as leis que regem o salário mínimo e as suas implicações práticas. As complexidades e os litígios jurídicos destacam os desafios enfrentados tanto pelos empregadores como pelos trabalhadores no cumprimento da regulamentação relativa ao salário mínimo. Garantir que os trabalhadores recebam pelo menos o salário mínimo é crucial para o seu bem-estar e dignidade. A existência de sanções penais envia uma mensagem forte sobre a importância de uma compensação justa.

Originalidade/valor: Este contexto jurídico apresenta uma perspectiva única e valiosa sobre os desafios em torno da regulamentação do salário mínimo, suas alterações e aplicação. Esta análise tem relevância não só para os juristas, mas também para os decisores políticos, empregadores e grupos de defesa dos trabalhadores que procuram melhorar a eficácia da legislação laboral e a proteção dos trabalhadores.

Palavras-chave: trabalho, salário mínimo, criminalização.
1 INTRODUCTION

There are many problems in the industrial world that occur between workers and employers. This problem does not only cover work and who does the work, nor does it stop at who does the work and the amount of wages they receive. There are variables (guidance) which have been stipulated by the Government regarding this matter which both Workers and Employers should understand very well. Indonesia, which has an abundant number of Human Resources (HR), poses its own challenges because of this abundance of human resources, it is certain that there is a tendency for the workforce to need jobs that cannot be followed by the world of work as fast as the growth of the workforce.

The problems above are related to a very substantial matter in the field of employment, namely Wage (Salary).[1] The abundance of existing human resources makes employers tend to be able to freely choose workers according to their field of work while still using the principle of pursuing maximum profit at cost which is as minimal as possible. Coupled with the global economic conditions which are currently completely uncertain, exacerbated by the outbreak of the Covid-19 pandemic in Indonesia and even the world, employers and workers alike have to rack their brains so that each of their interests is facilitated.

The imbalance between the number of labour force and employment has resulted in the emergence of high unemployment. It's the same as doing business using the notions of demand and availability. The availability of a high labour force which is not followed by the demand for labour, of course there are some labour forces who are not absorbed as workers. This doesn't only have an impact there, for workers who already have jobs it can also have an impact with the large number of prospective workers needed by employers if the employer wants them. Automatically Entrepreneurs will, wherever possible, reduce the rate of growth of costs issued to these Workers because the availability of the workforce is still very large.

This is what causes workers to sometimes work without getting a decent wage, even though the minimum wage has been determined by the government. Not only that, workers' rights have also been regulated by the government in various statutory instruments related to manpower, which have been neglected. Of course this needs to be taken seriously because this concerns rights and justice that will be received by citizens who are guaranteed in the constitution. Not only prioritising workers, but labour law must
also prioritise 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 triggers the Classical Economic Theory (relative wages to the cost of capital) through economic liberalization, which will direct the allocation of factors of production using input excess, in this case labour. This economic theory also shows that for countries with abundant labour such as Indonesia, economic liberalization tends to increase the share of the value of the marginal production of labour relative to the total output, while the share of capital factor remuneration (profit) tends to decrease. This increase in the value share of the marginal production of labour will increase the real wage rate. In an increasingly free market, an increase in labour productivity will always be followed by an increase in real wages. Thus the determination of the minimum wage does not mean much, it only creates new distortions in the economy.[2]

Sinalíñ (2021) has highlighted an additional dimension to labor issues in the country, emphasizing the plight of foreign workers who often find themselves deprived of fair wages for their labor. This injustice further exacerbates the problem, leading to widespread violations of the rights of foreign workers, largely stemming from a lack of awareness and understanding of the law.[18]

Based on Marginal Productivity Theory states that in the framework of maximizing profits, Entrepreneurs use factors of production in such a way that each production factor used receives or is rewarded in the amount of the added value of the marginal yield of said production factor. Entrepreneurs employ a number of workers to run the business they own so that the added value of the marginal return of a worker is equal to the wages received by the worker. This theory states that workers get wages according to their marginal productivity of employers.[3]

Based on the above, in relation to the concept of wages (salary), it becomes an essential factor in the world of work. Often, by really needing it for a job, employers often abuse this "urgent" situation by setting the standard wage (salary) for their workers to be very minimal. There are still many workers who receive wages below the minimum standard set by the Government, these workers also "willingly" to continue doing a job ordered to them by the employer even though they receive wages that are far from proper so they can continue their lives. It is the abuse of "urgent" circumstances that will be discussed further and in detail in this legal research. This is due to Abuse of circumstances...
that is carried out by Employers in providing wages below the minimum wage set by the Government is a hidden crime.

The term condition abuse (Abuse of circumstances) or Undue Influence (in Common Law System), the misuse of this situation is based on an imbalance in bargaining power (bargaining position) in an engagement (contract). Misuse of circumstances can be interpreted as a flawed will because it is more in line with the content and nature of the abuse of circumstances itself. Van Dunne's opinion on this matter distinguishes between abuse due to economic advantage and psychological advantage as follows:

1. Conditions for abuse of economic advantage;
2. One party must have an economic advantage over the other;
3. The other party had to enter into an agreement;
4. Requirements for abuse of psychological superiority;
5. One party abuses relative dependency, such as the special trust relationship between parents and children, husband, wife, doctor, patient, pastor, congregation, including the relationship between workers and employers.

The main factor that gives an indication of the existence of an abuse of circumstances in a legal or contractual action is the fact that the conditions agreed were unreasonable or improper or contrary to humanity (unfair contracts terms).[4]

Legal protection for workers is very necessary considering the position of workers who are inferior to employers. Mentioned by Zainal Asikin who said that the legal protection of workers from the power of employers will be carried out if laws and regulations in the field of manpower that require or force employers to act as stated in the legislation have actually been implemented by all parties because the enactment of the law cannot be measured only juridical, but is also measured sociologically and philosophically.[5]

The Indonesian government in a modern and democratic country, especially one that declares itself as a constitutional state based on Article 1 jo. Article 2 of the 1945 Constitution of the Republic of Indonesia carries out duties and responsibilities for the welfare of its citizens. The Indonesian government in its broadest sense for the welfare of the citizens of this country is a continuous effort towards the realization of an advanced, creative, democratic and just society. In this regard, work has a very important meaning.

Citizens need work as a source of income to meet the necessities of life for themselves and their families, besides that work is also a means of self-actualization. The
right to work is a human right inherent in a person that must be upheld and respected. These efforts towards prosperity will be difficult to achieve without a just socio-economic structure which from the aspect of the relationship between workers and employers is reflected in industrial relations harmonious, dynamic and proportionally just. Therefore, it is necessary to intervene in the Government through comprehensive and comprehensive policies that include developing human resources, increasing productivity and competitiveness of the workforce, expanding employment opportunities, and fostering industrial relations as regulated in laws and regulations in the field of manpower.

Government intervention in labor law is intended to create fair industrial relations, because if the relations between workers and employers who are very different socio-economically are left entirely to the parties, then the goal of achieving justice in industrial relations will be very difficult to achieve. This is because the strong will always want to dominate the weak. It is on this basis that the Government intervenes through statutory regulations to provide guarantees for the certainty of the rights and obligations of the parties.[6]

Based on the background that has been presented above, legal issues that will be discussed in this study arise as follows:

1. How is the regulation regarding Wages in current laws and regulations related to Manpower in Indonesia?
2. What is the criminal mechanism for Employers who abuse the condition of Workers in providing wages below the minimum standard?

2 METHODS

One thing that distinguishes the science of law and the social sciences is that law is not included in the number of behavioural sciences. Legal science is not descriptive but prescriptive. The object of legal science is coherence between legal norms and legal principles, between legal rules and legal norms, as well as coherence between behaviour not behaviour individuals with legal norms.[7] So this type of legal research is a type of normative legal research, which aims to examine positive legal provisions, in this case criminal law as a source of law.

Furthermore, Moris L Cohen expressed the opinion of Peter Mahmud Marzuki who stated "Legal Research is the process of finding the law that governs activities in human society”[7]. Legal research essentially starts from human curiosity expressed in
the form of problems or questions, where each of these legal problems and questions requires an answer and will gain new knowledge that is considered true. Besides that, this legal research is Doctrinal Research which provide or produce systematic explanations regarding legal norms or rules governing a particular category. [8]

In legal research there are several approaches. With this approach, researchers will get information from several aspects regarding the issue being tried to find answers. The approaches used in legal research are statutory approaches, case approach, historical approach, comparative approach, and the conceptual approach [7]. This legal research uses a statute approach, then the legal norms/rules are explained through existing legal concepts so that this study also uses a conceptual approach, besides that this legal research also conducts a study of court decisions handed down in the process of seeking justice in a case so that this legal research also uses a case approach.

As Peter Mahmud Marzuki's opinion regarding the approaches used in this legal research are as follows:

1. Statute Approach; this is done by examining all laws and regulations related to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is consistency and suitability between laws and regulations. Researchers need to find a system of law and the ontological basis of a law.
2. Conceptual Approach; carried out by departing from the views, the doctrines that developed in the science of law. By studying the views and doctrines in the science of law, researchers will find ideas that give rise to legal notions, legal concepts, and legal principles that are relevant to the issue at hand.
3. Case Approach; This is done by examining cases related to the issues at hand which have become court decisions that have permanent legal force. The case can be a case that occurred in Indonesia or in other countries. The main study in the case approach is the reason for falling namely the consideration of the court to arrive at a decision.[7]

3 RESULTS AND DISCUSSION

3.1 WORKERS’ WAGES SYSTEM IN THE NATIONAL LEGAL SYSTEM

Employment Law was formerly referred to as “Labor Law”. Is a translation of the term "Labour law”. Labor law serves as a critical cornerstone in the foundation of society,
diligently safeguarding the rights and well-being of workers while concurrently fostering an environment of security, tranquility, and affluence [17]. There are several opinions or limitations regarding the understanding of Labor Law. Molenaar's opinion provides a definition of the definition of Labour law as part of the applicable law which basically regulates the relationship between workers and employers, between workers and workers, and between workers and the authorities (the State).[9] According to M.G. lavender bach, Labor law as something that covers the law related to the work relationship, where the work is done under the leadership and with living conditions that are directly related to the work relationship. Further, Iman Soepomo gives the definition of labour law as a set of rules, both written and unwritten, that relate to the incident where a person works for another person by receiving wages.[9][10]

Regulations regarding remuneration for workers began to be regulated seriously in Indonesia through the Minister of Manpower Regulation Number 05/Men/1989 concerning Minimum Wages issued on May 29, 1989. Wages for Workers at that time were carried out every year through a long series of processes. At first the Regional Wage Council, which consisted of academics, held meetings, formed committees and went directly to the field to find out a number of needs needed by employees, employees, labourers (workers). After carrying out a survey in a number of cities within the Province which were considered representative, a figure known as the Decent Living Needs was obtained, which was formerly known as the Minimum Living Needs.

Based on the Decent Living Needs, the Regional Wage Council proposed the Regional Minimum Wage to the Governor for approval. The component of decent living needs is used as the basis for determining the minimum wage based on the Workers' living needs. At present the Minimum Wage is also known as the Provincial Minimum Wage because its scope usually only covers a province. Besides that, after being implemented for all regions of Indonesia, it is known as the City / Regency Minimum Wage.[11]

Tug-of-war regarding employment eventually issued a law that regulates the relationship between workers/labourers and employers. Law Number 13 of 2003 Concerning Manpower (LN.2003/No.39, TLN No.4279 hereinafter referred to as Law Number 13/2003) comes into effect. The current Law 13/2003, although not completely abolished, has changed several of its provisions with the issuance of Law Number 11 of 2020 concerning Job Creation (LN.2020/No.245, TLN No.6573 hereinafter referred to as Law Number 11/2020).
The legal basis for the technical implementation regarding 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 Government Regulation Number 36/2021), the definition of Wages according to PP 36/2021 is the Rights of Workers/Labourers received and stated in the form of money as compensation from Employers or employers to Workers/Labourers which are determined and paid according to an Employment Agreement, agreement , or laws and regulations, including allowances for Workers/Labourers and their families for a job and/or service that has been or will be performed.

Based on Article 4 jo. Article 5 paragraph (1) Government Regulation Number 36/2021 states that the wage policy as one of the efforts to realise Workers'/Labourers' rights to a decent living for humanity is regulated by the Central Government. The central government makes the wage policy which is included in the national strategic program. The regional government (governor, district head, mayor) in implementing the wage policy must be guided by the policy of the central government. The wage policy as stated above includes:

1. Minimum wage;
2. Wage Structure and Scale;
3. Overtime Wages;
4. Wages for not coming to work and/or not doing work for certain reasons;
5. The form and method of wage payment;
6. Things that can be calculated with wages; And
7. Wages are the basis for calculating or paying for other rights and obligations.

Law Number 11/2020 through government Regulation Number 36/2021 has differences from Law 13/2003 regarding wage policy. Previously, based on Article 88 of Law 13/2003, the wage policy that protected workers/labourers included the following:

1. Minimum wage;
2. Overtime Wages;
3. Wages absent from work due to absence;
4. Wages absent from work due to other activities outside of work;
5. Wages for exercising the right to rest time;
6. Forms and procedures for payment of wages;
7. Fines and deductions from wages;
8. Things that are calculated with wages;
9. Proportional wage structure and scale;
10. Wages for severance pay; And
11. Wages for income tax calculation

The enactment of Law 11/2020 has changed the wage standards for Workers/Labourers in Indonesia. The wage component policy as stipulated in PP 36/2021 was then revised through Minister of Manpower Regulation Number 18 of 2022 Concerning Minimum Wage Setting (BN.2022/No.1165 hereinafter referred to as Permenaker 18/2022), based on Article 4 paragraph (1) jo. Article 5 of the Minister of Manpower 18/2022 states that the Minimum Wage applies to Workers/Labourers with a working period of less than 1 (one) year at the company concerned, the determination of the Minimum Wage referred to is determined based on economic and employment conditions.

The formula for calculating the Minimum Wage according to Permenaker 18/2022 is calculated by taking into account the variables of economic growth, inflation and certain indices. Permenaker 18/2022 was issued at a time when Indonesia and the world were in a condition of the Covid-19 pandemic. The formulation for calculating the Minimum Wage according to Permenaker 18/2022 is as follows:

\[ UM(t+1) = UM(t) + (\text{Adjustment UM} \times UM(t)) \]

Information:

- \( UM(t+1) \): The minimum wage to be set;
- \( UM(t) \): Minimum Wage for the current year;
- \( UM \text{ Value Adjustment} \): Adjustment of the value of the Minimum Wage which is the sum of inflation by multiplication economic growth and a He adjustment to the Minimum Wage value 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:

\[ M \text{ Value Adjustment} = \text{Inflation} + (PE \times a). \]
Information:

Adjustment: Adjustment of the value of the Minimum Wage which is the sum of inflation by multiplication economic growth and a; Inflation: Provincial inflation calculated from the period September of the previous year to September period of the current year (in percent); PE: Economic growth is calculated as following:

a. For the Province, it is calculated from changes in the economic growth of the Province in the first quarter, second quarter, third quarter of the current year, and fourth quarter of the previous year to 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 regencies/cities, economic growth is calculated from changes in regencies/cities' economic growth in the first quarter, second quarter, third quarter and fourth quarter of the previous year to the economic growth of the regency/city in the first quarter, second quarter, third quarter and fourth quarter in the previous 2 (two) years.

Alpha (a): There is a certain index that describes labour contribution to a growth economy with a certain value within a certain range namely 0.10 (zero point one zero) up to 0.30 (zero point three zero).

Based on Article 13 jo. Article 15 Permenaker 18/2022 states that the Governor is required to set the Provincial Minimum Wage for 2023 no later than November 28, 2022. Furthermore, the Governor can determine the District/City Minimum Wage in 2023 and announce it no later than December 7, 2022. The Minimum Wage as stipulated under Article 13 paragraph (2) jo. Article 15 paragraph (2) of the Minister of Manpower Regulation 18/2022 will become effective on January 1, 2023.

The tug-of-war regarding wages in the Labor Law is increasingly complicated between Workers-Employers-Government. Most recently, Permenaker 18/2022 as a derivative of Law 11/2020 is considered problematic and contradicts PP 36/2021, currently Permenaker 18/2022 is being sued by the Indonesian Employers' Association (Apindo) and is in the process of judicial review at the Supreme Court through Case Number 72P/HUM/2022. Previously, the Constitutional Court Decision Number 91/PUU-XVIII/2020 dated November 3, 2021 issued the following decision:

1. Stating that Law Number 11 of 2020 Concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the
State Gazette of the Republic of Indonesia Number 6573) is still valid until repairs are made in accordance with the 2 (two) year grace period as stipulated in the decision;

2. Declare to suspend all actions/policies that are strategic in nature and have broad implications, and it is also not justified to issue new implementing regulations relating to Law Number 11 of 2020 Concerning Job Creation;

The fierce bargaining process between Workers-Employers-Government regarding Manpower Law has made the polemic on wage regulation and other employment matters even more complicated. On the other hand, to carry out the Constitutional Court Decision Number 91/PUU-XVIII/2020 where it was stated that it was necessary to make improvements through replacing Law 11/2020. Therefore, the Government recently issued Government Regulation in Lieu of 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 issued by President Joko Widodo. PERPU 2/2022 is the embodiment of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia jo. Article 1 point 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 the Formation of Legislation (LN.2022/No.143, TLN No.6801 hereinafter referred to as Law 13/2022) which states that in the case of compelling matters of interest, the President has the right to enact Government Regulations in Lieu of Laws.

PERPU 2/2022 also fulfills the formulation of the Constitutional Court Decision Number 003/PUU-III/2005 and the Constitutional Court Decision Number 138/PUU-VIII/2009 which provides an understanding of "force majeure" which does not have to be equated with a state of danger with the level of a civil emergency, military or a state of war, but the urgency of forcing becomes the Subjective Right of the President to determine which will then become the Objective Right of the People's Representative Council of the Republic of Indonesia to stipulate as a Law Invite. Besides that, PERPU can be stipulated due to an urgent situation to resolve legal issues quickly based on the Law. This is due to the existence of a legal vacuum that these problems cannot be resolved by means of making a new law procedurally. The presence of PERPU 2/2022 which was just set on December 30 2022 immediately resulted in several rejections of PERPU 2/2022. This is evidenced by the submission of a Formal and Material Test Lawsuit to the

Regarding wages, based on Article 88D PERPU 2/2022 it is stipulated that the Minimum Wage as referred to in Article 88C paragraph (1) and paragraph (2) is calculated using the formula for calculating the Minimum Wage which takes into account the variables of economic growth, inflation and certain indices. Based on Article 88F it is stated that in certain circumstances the Government may stipulate a formula for calculating the Minimum Wage that is different from the formula for calculating the Minimum Wage as referred to in Article 88D paragraph (2) PERPU 2/2022.

The differential wage system causes the quantity of wage rates, especially in setting the Minimum Wage, to occur several differences. Sectoral and regional policies are based on the selection of regions/regions along with their potential economic sectors by considering several influencing aspects, including the following:[12]

1. Aspects of the condition of the company; regarding the type of company where the worker works. Consists of small companies (startups/MSMEs), medium and large companies and regions and regions. This is because it concerns the capital and business activity units of each of these companies as well as the production and productivity of workers.

2. Aspects of labour skills; increase in production and productivity is determined by skill Good workers at lower levels, namely skilled Workers/Labourers up to the Managerial level who can become the driving force for Workers to be able to work with high productivity.

3. Aspects of standard of living; this is determined by the minimum Decent Living Needs which includes the basic (primary) needs of the Worker concerned in accordance with the pace of the economy in the place or area where the Worker works. KHL as intended does not only cover clothing, food, shelter, but also includes education, health and other social security.

4. Aspects of the type of work, the difference in the type of work is of course followed by the difference in the type of remuneration. Workload and job responsibilities are essential factors in wages. Wages in industrial companies are different from the hotel sector, and also different from the agricultural sector, and so on.
In essence, the remuneration given to workers must meet the standards of Decent Living Needs considering that a person is working to maintain and improve the quality of his life and that of his family.

3.2 CRIMINAL SANCTIONS FOR MISUSE OF REMUNERATION CONDITIONS BELOW THE MINIMUM WAGE STANDARD

Based on Article 90 of Law 13/2003 it is stated that Employers are prohibited from paying wages lower than the Minimum Wage as referred to in Article 89 of Law 13/2003. For Employers who are unable to pay the Minimum Wage as referred to in Article 89 of Law 13/2003, a suspension can be made according to the procedure regulated by a Ministerial Decree. Criminal sanctions that can be imposed if the Entrepreneur violates the provisions of Article 90 of Law 13/2003 regarding payment of wages refer to Article 185 of Law 13/2003 which regulates whoever violates the provisions referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7) are subject to imprisonment a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000.- (one hundred million rupiah) and a maximum of Rp. 400,000,000.- (four hundred million rupiah), the crime referred to is a crime.

Based on Article 88E paragraph (2) jo. Article 185 paragraph (1) and paragraph (2) of Law 11/2020 in conjunction with Article 88E paragraph (1) PERPU 2/2022 stipulates that the Minimum Wage applies to Workers/Labourers 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 a lower Wage than the Minimum Wage. Criminal provisions for those who violate the regulation regarding remuneration according to PERPU 2/2022 are regulated in Article 185 PERPU 2/2022 namely: Whoever violates the provisions referred to in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), or Article 160 paragraph (4) is subject to criminal sanctions imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000.- (one hundred million rupiah) and a maximum of Rp. 400,000,000.- (four hundred million rupiah). The crime referred to is a criminal act.
Criminal sanctions are regulated in the Labor Law because Criminal Law according to Barda Nawawi Arif regulates criminal acts which are a form of deviant behaviour committed by the community which constitutes a real threat or threat to social norms that underlie life or social order, causing individual tensions and social tensions.[13] Then by Marc Ancel referred to as "a human and social problem"[14] and by Seichiro Ono referred to as "a universal phenomenon" because deviant behavior (criminal acts) is also a problem in the global (international) community.[14]

The regulation of criminal sanctions for criminal acts in Labor Law (Special Law) by Beire and James Messerschmidt said that criminal acts or criminal acts are referred to as "legal definition of crime which can be distinguished small and evil in the forbidden. Small and se It is called a crime because it is an act that has been felt as an injustice from the start because it contradicts the norms of society before it is determined by law as a criminal act. Meanwhile Evil in the Forbidden identified as violations which are acts determined by law as an injustice.[15]

The application of criminal sanctions for violations of the Minimum Wage provisions as stipulated in the laws and regulations above really makes Entrepreneurs have to recalculate the business they are running. On the one hand, fulfilling the Minimum Wage requirement is felt to be burdensome in the midst of intense business competition and declining work productivity due to the outbreak of the Covid-19 Pandemic. For the Government, the Minimum Wage is one of the ways to realize social welfare in the Covid-19 pandemic situation as well as the New Normal. Employers' compliance with paying wages on time and in accordance with the Minimum Wage provisions for their workers is the Government's main priority in order to maintain the level of people's purchasing power.[16]

4 CONCLUSION

Regarding non-payment of the Wage in accordance with the Minimum Wage because the Employer is unable or the Employer takes advantage of the condition of the Worker who needs a job. Law 13/2003 has been amended with Law 11/2020 with PP 36/2021 as the implementing regulation. Regarding wages, there are differences between Law 13/2003 and Law 11/2020. There are different variables and components to calculate the Minimum Wage. PERMENAKER 18/2022 which regulates this matter is deemed to be contrary to PP 36/2021 in terms of the hierarchy of the system of laws and regulations,
therefore it is being sued for a judicial review at the Supreme Court. Because Law 11/2020 was annulled by the Constitutional Court and there was a legal vacuum, the Government, in this case the President, issued PERPU 2/2022 as an answer to the void that occurred, but PERPU 2/2022 is not free from problems, as evidenced by being directly sued for a judicial review to the Constitutional Court within 1 (one) month of its launch. Remuneration of Workers by Employers may not be below the stipulated Minimum Wage.

Several provisions in Law 13/2003, Law 11/2020, PP 36/2021 and PERMENAKKER 18/2022 both stipulate criminal sanctions against Employers who do not pay the Minimum Wage to Workers. The criminal sanction is in the form of imprisonment and imprisonment. Failure to pay wages in accordance with the stipulated Minimum Wage standards qualifies as a crime, because indeed wages are one of the reasons a person works to fulfil his needs.

SUGGESTION

PERPU 2/2022 which has been stipulated by the President must be promulgated by the DPR immediately so that there is no legal vacuum which took too long in manpower law after Law 11/2020 was decided to be immediately corrected or replaced by the Constitutional Court, then the President had to order the Minister of Manpower to revoke PERMENAKKER 18/2022 because it contradicts the hierarchy of statutory regulations and caused polemics besides that immediately after PERPU 2/2022 was promulgated by the DPR to make regulations regarding its technical implementation. It is necessary to make this criminal sanction even more effective by giving authority to Labor Inspectors to be able to investigate and investigate criminal acts of wages below the Minimum Wage through their Civil Servant Investigators (PPNS). In addition, the Manpower Service is obliged to coordinate with the Indonesian National Police (POLRI) to enforce criminal sanctions against this crime.
REFERENCES


[10] Ibid.


