

JURIDICAL REVIEW: LABOR WAGE REGULATIONS IN INDONESIAN LEGISLATION

(Case of Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja)

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Abstract

The right to get a job and a decent life is a basic right of every citizen that has been mandated by the constitution. However, in its application there are various problems in employment, one of which is related to the right to wages. Wage problems occur because existing regulations have not been able to provide protection for their rights. Therefore, the Government must act to make changes and harmony in realizing the rights of citizens to just and constitutionally decent wages. In this paper, the author uses juridical-normative research with a statue approach in finding and analyzing the Law on Employment and Job Creation. This article is the result of an analysis of wage protection arrangements in accordance with existing laws and legal principles

Keywords: *Wages, Labor, Legislation*

Abstrak

Hak mendapatkan pekerjaan serta kehidupan yang layak merupakan hak dasar setiap warga negara yang telah diamanatkan oleh konstitusi. Namun, dalam penerapannya terdapat berbagai permasalahan dalam ketenagakerjaan yang salah satunya terkait hak atas upah. Permasalahan pengupahan terjadi disebabkan peraturan yang ada belum dapat memberikan perlindungan atas haknya. Oleh karena Pemerintah harus bersikap melakukan perubahan dan keselarasan dalam mewujudkan hak warga negara atas upah yang adil dan layak secara konstitusional. Dalam tulisan ini penulis menggunakan penelitian yuridis-normatif dengan statue approach dalam menemukan dan menelaah terkait Undang-undang tentang Ketenagakerjaan dan Cipta Kerja. Artikel ini merupakan hasil analisis pengaturan perlindungan upah sesuai peraturan perundang-undangan dan prinsip hukum yang ada

Kata Kunci : *Upah, Tenaga Kerja, Peraturan Perundang-undangan*

Introduction

Citizens have the right to obtain decent work for humanity which is a basic need in fulfilling a decent life. This has been mandated by the constitution as stated in Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states 'Every citizen has the right to work and a decent living for humanity', then one of the fulfillment of rights in work is to get wages. Article 28D paragraph 1 of the 1945 Constitution of the Republic of

Indonesia states that 'Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law'. So it can be interpreted that everyone has the right to work and get rewards (in the form of wages) as well as fair and proper treatment. The right to wages must be in the employment agreement.

Wages are workers' rights which are obtained in the form of money as compensation from employers or employers to workers who are determined and paid in accordance with work agreements, agreements, laws and regulations. Wages are also a source of livelihood for workers. The right to wages is regulated in Article 1 (30) of Law no. 13 of 2003.

However, in the protection of workers' rights, especially the right to wages, is the most central issue fought by hard workers through trade unions by holding a demonstration every year on May 1 which is commemorated as 'May Day' where workers demand an increase in drinking wages. This is closely related to the problems that arise due to the lack of protection of workers' rights, the concept of regulation is not regulated by Law No. 13 of 2003 on Employment, such as; Problems of working hours and breaks that are not balanced with wages earned from entrepreneurs, the determination of minimum wages in areas that are still influenced by non-technical factors so as not to reflect the minimum wage in accordance with local conditions, problems of severance and severance pay not In accordance with the period or length of employment, and the uncertainty of payment of severance pay.

The existence of the Employment Creation Law as an answer to various issues related to wages, with the existence of the Employment Creation Act which contains an employment cluster can provide answers to problems arising from the lack of protection of workers' rights arrangements, especially wage rights in the Manpower Law. After the issuance of the Copyright Act, the government stipulates the formula for calculating the wages of new workers in Government regulation number 36 of 2021 on derivatives of the Copyright Act.

Research Methods

This study uses a juridical-normative research method. With regard to the normative juridical used, the research is carried out through library research which is based on the literature. In this study, using a statutory approach where in this writing the statute approach is carried out to examine the laws and regulations regarding Wage Arrangements for Workers in the existing statutory regulations. In this writing, the type of data used in legal research is secondary data here consisting of primary legal materials and secondary legal materials. Primary legal materials are legal materials obtained directly from various laws and

regulations. Then, secondary legal materials are legal materials that are supporting primary legal materials, such as books, journals, theses, and documents. Finally, this tertiary legal material provides instructions for primary and secondary legal materials such as news, websites, and so on. The data analysis method used in this research is qualitative analysis.

Results and Discussion

1. The Concept of Wage Protection Arrangements in Indonesian Positive Law

The regulation of wages in positive law means the legal norms contained in Law No. 13 of 2003, and Government Regulation No. 78 of 2015, which can be described as follows:

a. Unclear wage concept

The concept of wages contained in Article 1 point 30 of Law Number 13 of 2003 comes from the concept proposed in the Draft Law on Manpower Development and Protection, only the word 'worker' is added to become worker/labourer. The concept of wages provides a very limited understanding. According to Article 1 point (30) of Law Number 13 of 2003 in conjunction with Article 1 point (1) and Government Regulation Number 78 of 2015, wages are in the form of money in the sense of nominal wages, while in society there are workers who receive compensation in addition to money in the form of wages. A material right to movable objects such as basic materials, clothing, medicines and so on. The facilities provided are free of charge from employers to workers due to certain positions, and there are also facilities that are calculated as additional wages. Facilities include expenses or capital or company costs whose expenses are still calculated. This means that the wages can be in the form of money only and/or added in kind. The concept of wages contained in the provisions of Article 1 point 30 of Law Number 13 of 2003, will make it difficult for those forming laws and regulations for domestic helpers who are now known as 'household assistants'.

b. The concept of minimum wage is not regulated

Law Number 13 of 2003 Provisions on the minimum wage are found in Article 88 paragraph (2) which states: "*The Government shall set the minimum wage as referred to in paragraph (3) letter a based on decent living needs and with regard to productivity and economic growth*". This means that the minimum wage is a government policy in order to protect workers and also pay attention to the interests of

employers. The meaning of 'importance' can be defined as the needs or requirements that must be met. The interest of the worker is the fulfillment of the necessities of a decent living. The interest of the entrepreneur is the continuity of the business to keep it running smoothly. The concept of minimum wage is found in the Regulation of the Minister of Manpower Number 7 of 2013 on the Minimum Wage is only intended for beginner workers who are still single. How is the wage safety net for workers who already have families and their working life is long, no arrangements have been found.

- c. The concept of preventive wage protection is still unclear in Law Number 13 of 2003. In Law Number 13 of 2003, Wage protection is an effort to protect the wage system based on humanity, so that workers' rights related to wages are not eliminated or reduced. Wage protection can be done preventively and curatively. Preventive wage protection in legislation must be able to obtain the accuracy or certainty of the law that governs it. The concept of wage protection should already be clearly in the Law governing employment. In accordance with the purpose of employment development in Article 4, namely: "*c. Provide protection to the workforce in creating well-being; And d. Improving the well-being of the workforce and their families*". Ideally, in the explanation of Article 4, the definition of protection is established. Then in Article 88 paragraph (3) states: *The wage policy that protects workers/laborers includes*", but the explanation of the two regulations does not exist.
- d. The concept of a wage component that is not clear. In Article 94 of Law Number 13 of 2003 which states that: "*In terms of wages consisting of basic wages and fixed allowances, the amount of basic wages is at least the principal and fixed allowances*". The provisions are very vague or ambiguous, this can result in entrepreneurs misinterpreting. If the view "*combines all the components of the wage in one minimum wage*", this will result in the absence of legal certainty to protect workers/laborers.
- e. The provisions of Article 41 of Government Regulation Number 78 of 2015 do not provide legal certainty. The provisions of Article 41 paragraph (2) of Government Regulation Number 78 of 2015 states: "*The minimum wage as referred to in paragraph (1) is the lowest monthly wage consisting of: a. Wages without benefits; or b. Basic wages include fixed allowances*". It is natural for workers to want benefits as additional income. The benefits are fixed and some are not. According to Adrian

Sutedi, there are many types of fixed allowances, namely; Supporting position allowances: such as transportation allowances; b. Allowances that have a social function: health care allowance, old age allowance, expensive allowance, wife/husband allowance, child allowance, religious day allowance, leave allowance, housing allowance. This benefit is called social security. Fixed allowances which are not paid separately from basic wages in terms of minimum wages, this shows that the role of allowances as a wage supplement does not function..

f. Legal language that does not provide legal certainty

The title of the legislation that stipulates the minimum wage in each province, some use the nomenclature 'Governor's Decree' and some use the nomenclature 'Governor Regulation'. The title of the Legislation with the nomenclature "Governor's Decree" is not appropriate for the title of the regulation that stipulates the provincial minimum wage. Because the nomenclature 'Decision' is usually used for official statements that are aimed at certain legal subjects, are individual in nature, while 'Regulations' are aimed at the general public related to regulated norms. The nomenclature of 'Governor's Regulation' indicates a regulation that comes from the Governor that is enforced on his people. Of the 28 provinces that set minimum wage regulations in Indonesia in 2015, it was found that only 4 provinces (14%) used the 'Governor Regulation' nomenclature. The Minister of Manpower and Transmigration should issue a regulation requiring the use of the nomenclature "Governor Regulation" to determine the lowest wage in each province.

g. The wage policy does not provide special wage protection to outsourced workers and workers who make *certain time work agreements* (PKWT).

Workers who make a certain time work agreement (PKWT). Or also known as contract system work. The contract work system does not mean the payment of wages in a piece rate system, but the worker makes a work agreement with the entrepreneur in which the length of work for a certain period of time is a maximum of 1 (one) year and can be extended again. The term outsourcing or outsourcing is not found in Law No. 13 of 2003. According to R.Greaver H, said: 'Outsourcing is seen as an act of transferring some of the company's activities and decision-making rights to other parties, where this action is bound in a cooperation contract. The outsourcing work relationship has its own characteristics in the implementation of work, so that the receipt of wages is irregular. The absence of wage protection for these two types

of work systems will result in discomfort for these workers who are vulnerable to unemployment, in which case both systems provide more benefits for companies such as: it is easier to recruit workers without the hassle of doing job training because outsourcing companies have done so. Entrepreneurs focus more on the main business. Termination of employment without paying severance pay. The contract work system benefits employers, because in the case of termination of employment, they are not required to pay severance pay.

- h. Government Regulation Number 78 of 2015, Does not pay attention to the needs of a decent living for workers in determining the Provincial Minimum Wage every year. The provisions of Article 44 of Government Regulation Number 78 of 2015 are more favorable to investors, and ignore the need for a decent living which is predicted to change every year. A new formula in determining the minimum wage, which employers can predict and plan for the company in the future. Employers will be able to predict how wages will develop for the next five years. The increase in wages in the next five years is not too large, because it does not pay attention to the needs of a decent living per year for workers. Although Article 45 of Government Regulation Number 78 of 2015 regulates the government's authority to conduct a review of the needs of a decent living once in five years, the results of the review are not in sync with the provisions of the wage calculation formula as regulated in Article 44 paragraph (2) of Government Regulation Number 78 of 2015. 2015. The aim of the Minimum Wage according to Article 1 of ILO Recommendation No.135 of 1970 is to eradicate poverty and to ensure satisfaction of the needs of all workers and their families.

2. Changes in the arrangement of wages in the regime of the Job Creation Act (*Undang-Undang Cipta Kerja*)

In order to improve the investment climate, the productivity variable must be included in the regulation for determining the wages of workers/laborers. One of the proxy variables used to assess the level of worker/labor productivity is effective working hours. By including this productivity variable, the wage system will be felt to be much fairer besides of course increasing the competitiveness of the national economy, improving the investment ecosystem and Indonesia's competitiveness.

The wage law of the Employment Creation Act must be able to increase worker/labor productivity through effective working hours so that company profits increase while at the same time supporting the improvement of the investment ecosystem and Indonesia's competitiveness in the economy. One of the important problems faced by the law, is how the law can maintain survival in the midst of the pull of changing challenges, whether the law can provide answers, or the law in question is destroyed, or the law in question is able to adapt to these changes so that it can maintain its survival. Referring to Satjipto Rahardjo's opinion above, the government must give confidence to all parties in industrial relations (especially workers/laborers) that the wage law of the Job Creation Law can increase worker/labor productivity through effective working hours so that company profits can increase which is capital. In order to realize decent income for workers/laborers while at the same time improving the investment ecosystem and Indonesia's competitiveness with this guarantee, the existence of the wage law of the Job Creation Law will be able to maintain its existence and/or investment and Indonesian competitiveness.

There is a need for the presence of law as a means to integrate and coordinate in such a way that it can minimize these conflicts of interest, meaning that a wage law must be created. / or company profits and decent income for workers / laborers. Ade Kurniawan said one of the goals of the Employment Creation Act was to prosper employees and overcome economic problems, especially for those affected by COVID-19. The minimum wage setting by the Governor makes it easy to calculate. The Job Creation Act is a solution to reorganize the labor climate, employees get a decent wage, minimum (UMP) and are still entitled to overtime pay. According to Abdul Khakim, the definition of a decent income is: 'The total income of workers/laborers from the results of their work is able to meet the living needs of workers/laborers and their families fairly, including food, drink, clothing, housing, education, health, recreation and day security. Old. The main motivation of a worker/labourer to work is to improve welfare and career development, one of which is to increase income from wages/salaries that are in accordance with their duties, functions and responsibilities. Wages are one of the basic rights of workers/laborers that are sensitive, because they can often lead to disputes.'

Eligible income for workers/labor is Indonesian domestic savings or savings and/or private capital, one of its functions according to Ali Ibrahim Hasyim 'will be used in business in the form of investment' which is one of the government's capital to carry out economic development :

“A series of activity processes carried out by a country to develop economic activities or activities to improve living standards/prosperity (Income per capita) in the long term. Prosperity itself is shown by the increase in people's per capita income (Gross Domestic Income), there is a balance between supply and demand in the market.”

Capital is needed to carry out economic development, for Indonesia the accumulation of capital through domestic savings is very limited and to overcome this, funds from abroad are needed as a complementary component called investment, both investment in the form of private capital and/or investment in the form of state capital needed for growth. Indonesia's economy, according to Windu Putra the notion of economic growth, is :

“The process of changing the economic conditions of a country on an ongoing basis towards a better state over a certain period. Economic growth can also be interpreted as a process of increasing the production capacity of an economy which is manifested in the form of an increase in national income. Their economic growth is an indication of the success of economic development”.

Referring to the understanding of economic growth from Windu Putra as described above, Indonesia's economic growth is a process of continuous change in Indonesia's economic conditions towards a better condition during a certain period or the process of increasing the production capacity of the Indonesian economy which is manifested in the form of an increase in Indonesia's national income and the existence of an increase in Indonesia's national income. Economic growth is an indication of the success of Indonesia's economic development.

According to Windu Putra, one of the factors that influence economic growth is the Human Resources and Human Resources Factor which is one of the most important factors in the development process, sooner or later the development process depends on the extent to which Human Resources as the subject of development have adequate competence to Carry out the development process. Indonesia continuously leads to a

better condition during a certain period or the process of increasing the production capacity of the Indonesian economy which is manifested in the form of an increase in Indonesia's national income, to harmonize the government's political will regarding the wage law of the Job Creation Law with the will of the entrepreneur group in the form of productivity and/or Company profits, willingness of groups of workers/labor in the form of decent income, government's will in the form of improving the investment ecosystem and Indonesia's competitiveness, for that the government must make strategic decisions and at the same time must provide recommendations or public policies to realize the wage law of the Job Creation Act which is a representation of interests All parties in industrial relations (employers, workers/labor, government).

Conclusion

1. Wage regulation in Indonesian positive law does not regulate the concept of wage protection, the concept of wages is limited, the concept of a wage safety net does not exist, the concept of a living wage is not clear, the concept of an unconstitutional minimum wage is still found in ambiguous legal language. Wage arrangements that can realize legal certainty are guaranteed legal clarity, so the law must have the following characteristics: 1. Clarity of legal concepts; 2. The regulation is established by the authorized official; 3. Clarity of legal objectives; 4. Regulations are not retroactive; 5. Formulation of regulations that are generally understood; 6. The regulation is announced to the public; 7. There must be no conflicting regulations; 8. Should not demand an obligation that exceeds his ability.
2. One of the purposes of the creation of the Copyright Law is to prosper employees and overcome economic problems, especially for those affected covid19. The setting of the minimum wage by the Governor simplifies its calculation. The Copyright Law is a solution to reorganize the employment climate, employees receive a decent wage, a minimum Provincial Drinking Wage and remain entitled to overtime pay. Wages are included as one of the important aspects in the protection of workers/workers both from the aspect of economic protection and protection of welfare and social security of labor, this is explicitly regulated in Article 88 paragraph (1) of the Copyright Law, which regulates 'Every worker /laborers have the right to earn an income that meets a livelihood worthy of humanity.

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