



Reform of Labor Wage Determination Provisions: Review of Welfare and Importance in the Job Creation Law

Chelsea Mutiara Putri^{1*}, Annisa Khairiyah Hutapea^{2*}, Zaky Ihsan Edy Ramadhani^{2*}

^{1,2} Faculty of Law, Universitas Sumatera Utara

³ Faculty of Law, Universitas Muria Kudus

Email: chelseaputri636@gmail.com, annisahutapea@gmail.com, ihsanzaky517@gmail.com

Correspondence email: ihsanzaky517@gmail.com



Abstract: The passing of the Job Creation Law by the government is considered to show more partiality to investors or entrepreneurs and marginalizes labor rights, especially in terms of wages, Indonesia's goal to create and guarantee community welfare in accordance with the concept of the Welfare State (Welfare State) adopted becomes blurred. This article focuses on the discussion related to the first the determination of the minimum wage submitted to the authority of the Governor and by referring to the economic growth of the Regions and inflation conditions of each Region. Second, the Decent Living Needs (KHL) is no longer an indicator of determining the minimum wage for workers. Third, the abolition of sectoral minimum wages previously in the Manpower Law. This article uses the Juridical-Normative research method. This article found that the Economic growth and inflation rate of each region / province vary. Thus the Minimum Wage cannot be equated between people in each region. In an effort to realize equality of position for employers, Law No. 6 of 2023 has denied the state's obligation to protect workers' rights, thus clashing with Article 27 paragraph (2) of the 1945 Constitution. The policy of abolishing the sectoral minimum wage in the Job Creation Law will cause inequality between sectors and cause a sense of injustice for workers.

Keywords: Job Creation, Labor, Wages.

INTRODUCTION

The idea of a *welfare state* is not new. The concept of the Welfare State has been established since the 18th century. The application of the concept of Welfare State is not limited to the ideology or constitutional system adopted by a particular country. This concept requires the state's administrator to be responsible for the welfare of citizens by intensive intervention, responsible for the economic sector and all development that leads to the achievement of maximum public welfare, by authorizing the state to interfere in all affairs and activities of society keeping in mind the principle of legality.¹

There are four general principles of the *Welfare State*, namely:

- 1) Principles of Social Rights in a Democratic State;
- 2) Principles of *Welfare Rights*;
- 3) The principle of equality of opportunity for citizens; and
- 4) Principles of Balance of Public and Economic Authority, and Economic Efficiency. The

¹ Nurtiyas, F. (2016). Analysis of Factors Influencing the Provincial Minimum Wage in Java Island 2010-2014. *Journal of Education and Economics*, Volume 5 Number 2, p. 76.

four general principles of the *Welfare State* have relevance and synergy with the objectives of the development of the Republic of Indonesia.

Indonesia adhered to the concept of the material law state and also adopted the concepts of the *Welfare State*. This can be implicitly found in the general explanation of the 1945 Constitution of the Republic of Indonesia. The extensive analysis of the 1945 Constitution of the Republic of Indonesia, strongly indicates that the Indonesian state is a material law state that has an absolute responsibility to advance the welfare of its citizens from all fields, including economic fields. According to the Central Bureau of Statistics, 2020 one of the indicators that affect people's welfare in Indonesia is household consumption or expenditure. Based on these indicators, the Government must ensure that every citizen, especially workers, can earn their income fairly so that they can live properly and meet their household consumption or expenditure. It is also to ensure that the rights of every marginalized person and social group are not deprived so that they lose access to resources that are fundamental to their lives. This is in line with one of the four principles of *Welfare State*, namely the principle of *Welfare Rights*.

The fulfillment of good household consumption and expenditure can be seen from people's purchasing power. The higher the purchasing power, the more it shows the balanced economic condition of the people. However, based on a statement from Bank Central Asia (BCA) Chief Economist David Sumual, Indonesia's economic growth in the first quarter of 2023 has the potential to not reach 5% even in the first three months of this year, only in the range of 4.9%. According to him, this is due to the performance of household consumption which is not as high as expectations and people's purchasing power is weakening. The root of the problem boils down to the renewal of regulations on setting the minimum wage, causing workers' incomes or wages to be relatively low which automatically also reduces household consumption performance and weakens purchasing power. Iman Soepomo contended that , labor is a status that although juridically a free individual, sociologically workers are not free individuals. It is primarily because workers have no other provisions of life besides their own energy, and are forced to sell their energy to others, where they cannot determine the conditions of work. This is because the workers are always close to unfair and discriminatory circumstances. Therefore, a protection from the state is needed in the forms of laws and regulations to become workers' welfare., However, based on the data provided this study is of the view that the state is still unable to provide an umbrella for optimal protection even though there are regulations that regulate it.²

Initially, wage arrangements were regulated in Law Number 13 of 2003 concerning Manpower. However, since the Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which has been passed into Law Number 6 of 2023 concerning Job Creation has come into effect, the articles and their substance related to the regulation of labor wages have been replaced. This is in accordance with the principle of *Lex Posterior Derogat Legi Priori*, which means that the new rules override the old rules. There are changes related to matters that are indicators in the determination of the minimum wage in Law Number 6 of 2023 concerning Job Creation which are in the spotlight and have quite an impact on the welfare of workers in Indonesia.³

Contrary to the government's point of view that believes the enactment of the Job Creation Law can be Indonesia's savior to escape the trap of middle income countries or middle income trap. This is due to the regulation dubbed the sweeping universe law that is able to cut red tape

² Siebert, H., 1997. Labor market rigidities: at the root of unemployment in Europe. *Journal of Economic perspectives*, 11(3), p.37-54.

³ Wiswamitra, I. B. G., Budiarta, I. N. P., & Utama, I. W. K. J. (2022). "Juridical Study Regarding Determining the Amount of Workers' Wages Based on Article 88 C of Law Number 11 of 2020 Concerning Job Creation". *Journal of Legal Analogy*, Volume 4 Number 3, p. 86

and provide ease of business permits as well as simple and efficient regulations to attract investors. In fact, the passing of this Job Creation Law by the government is considered to show more partiality to investors or entrepreneurs and actually marginalizes labor rights, especially in terms of wages so that the goal of creating and guaranteeing community welfare in accordance with the concept of *Welfare State* adopted becomes blurred. Therefore, departing from these problems, this article will further discuss several issues related to the Renewal of Labor Wage Determination Provisions: Review of Welfare and Interest in the Job Creation Law. The issue is divided into three discussions, including the first related to the determination of the minimum wage submitted to the authority of the Governor, as well as by referring to regional economic growth and inflation conditions of each region. Second, Decent Living Needs (KHL) is no longer an indicator of the determination of the minimum wage for workers. Third, regarding the abolition of the Sectoral Minimum Wage previously in the Manpower Law.

METHOD

The research method used in this study is to use the Juridical-Normative method, namely by conducting legal research that refers to library materials. The library material referred to in this study basically functions as a medium for searching secondary data, which includes primary, secondary and tertiary legal materials. The data collection technique used is by literature study, namely after data and legal materials are collected, data processing is carried out. This data processing is done by processing data until the data is arranged in a coherent and systematic manner, making it easier to perform analysis. Data analysis techniques in this study use descriptive analysis methods, namely by describing the subject of research as the results of research obtained by the statutory approach method (*Statute Approach*). In this study, the Juridical-Normative method used focuses on Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation.

ANALYSIS AND DISCUSSION

THE DETERMINATION OF THE MINIMUM WAGE IS LEFT TO THE AUTHORITY OF THE GOVERNOR AND WITH REFERENCE TO REGIONAL ECONOMIC GROWTH AND INFLATION CONDITIONS OF EACH REGION

Wages are a very important aspect to ensure that companies can continue to carry out their production activities. As for workers, wages are the driver for them to continue working, by carrying out production activities in the company. If there is no wage, workers are likely to be reluctant to work. Article 1 Number 30 of Law Number 13 of 2003 states that wages are the rights of workers or laborers who are received and given in the form of money in return from employers to workers or laborers where the amount has been stipulated in work agreements, agreements, or laws and regulations including benefits for workers or laborers.

The provision of wages to workers or laborers that are fair and decent is expressly stated in the 1945 Constitution Article 28 D Paragraph 2, "Everyone has the right to work and to get fair and decent remuneration and treatment in employment relations". And It is also restated in Law Number 13 of 2003 Article 88 Paragraph (1), "Every worker or laborer earns an income that meets a decent living for humanity." To realize the ideals and goals of the nation, the government issued regulations regulating the Minimum Wage. Minimum wage is a standardization of the amount of wages that must be obeyed by employers or wage givers in providing wages to workers or laborers. The government can intervene if employers do not comply with the policy of standardizing wages by enforcing the law. The Minimum Wage is divided into 2, namely the Provincial Minimum Wage and also the District/City Minimum Wage. This division is contained in Article 25 of Government Regulation Number 36 of 2021 concerning Pay.

With the enactment of Law Number 6 of 2023 concerning Job Creation, the wage system

previously described in Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower has changed where the procedures for wage for workers are described in article 88 C paragraph (1) and paragraph (2). The enactment of the Law on Job Creation in Article 88 C Paragraph (1) states that the governor is required to determine the provincial minimum wage and Article 88 C Paragraph (2) states that the governor can determine the minimum wage for districts/cities equipped with a requirement. This means that the Job Creation Law only provides for the obligation to set a minimum wage at the provincial level, while at the district/city level it is optional. In fact, the provincial minimum wage is the lowest minimum wage among the entire district/city minimum wage in the province. This is due to the provision that the district/city minimum wage must be set higher than the provincial minimum wage. This means that the provincial minimum wage may not be representative of the needs of decent living in a district/city, due to possible disparities in socio-economic conditions between districts/cities in a province.

According to the Confederation of Indonesian Trade Unions (KSPI), the use of the phrase "may" in the provisions of the District/City Minimum Wage makes a big loss to workers. The provision of the Regency/City Minimum Wage is not mandatory. When the governor does not decide the Regency / City Minimum Wage, it has resulted in low wages. As in West Java, in 2020, the Minimum Wage for the West Java region is IDR 1.8 million. Meanwhile, the Bekasi Regency/City Minimum Wage is IDR 4.6 million. If you set the Provincial Minimum Wage, the minimum wage in Bekasi will decrease. Thus, the enactment of the Job Creation Law returns to the low wage arrangement.⁴

Economic growth and inflation can influence the Government to issue a Minimum Wage policy every year. On the contrary, the Minimum Wage can affect economic growth and inflation of a region. Minimum wage and economic growth are interconnected and could not be separated. If a region's Minimum Wage increases, it will also increase people's buying interest. The higher the public wage will increase people's purchasing power to carry out economic transactions. This is related to the theory of inflation, the higher the input of the community, the higher the output. In addition, increasing the minimum wage will increase people's enthusiasm to work harder and of course this will increase the production of a company as well. With the increase in the company's production power, it will also increase the economic growth of a region.⁵

If economic growth increases, it will affect the Government in issuing a Minimum Wage policy. For example, in 2018 Bali Province has a Minimum Wage of Rp. 2,893,139 rupiah. Nusa Tenggara Province has a wage value in 2018 of Rp. 2,195,209. East Nusa Tenggara Province has a minimum wage value in 2018 to Rp. 2,069,196. and in Maluku Province, the minimum wage value in 2018 was Rp. 2,518,027. According to the data, there are differences in the value of the minimum wage in each province. The province that has the lowest minimum wage value in 2018 is East Nusa Tenggara Province and the one with the regional minimum wage value in 2018 is Bali Province. Because economic growth and inflation rate of each region/province are different, it cannot equate the Minimum Wage of people in each region.

⁴ Rusniati, R., Sudarti, S., & Agustin, A. F. (2018). "Analysis of the Influence of Economic Growth and Minimum Wage on Labor Absorption in Malang Regency". *FALAH: Journal of Islamic Economics*, Volume 3 Number

⁵ Manika, A. S. (2022). "Juridical Study Regarding Determining the Amount of Workers' Wages Based on Article 88 C of Law Number 11 of 2020 Concerning Job Creation". *Journal of Legal Communication (JKH)*, Volume 8 Number 2 p. 54

DECENT LIVING NEEDS (KHL) IS NO LONGER AN INDICATOR OF SETTING THE MINIMUM AGE FOR WORKERS / LABORERS

Another update to Law Number 6 of 2023 concerning Job Creation that is in the spotlight is regarding Decent Living Needs (KHL) which is no longer an indicator of determining the minimum wage for workers/laborers. Decent Living Needs (KHL) is the standard need for a worker/laborer to be able to live a decent physical life in 1 month. The KHL is also the basic reference in setting the Minimum Wage. What is the purpose for which the KHL standard is established? KHL standards as a protection policy and to fulfill workers' rights. With the KHL standard, the minimum wage must meet the provisions and components of the KHL listed in the rules of the Law.

The wage policy is intrinsically inseparable from the state's obligation to make a decent living for its people. As also stated in Article 88 of the Manpower Law that "Every worker/laborer has the right to a decent living for humanity". Furthermore, "The Central Government establishes wage policy as one of the efforts to realize the right of workers to a decent living for humanity". This promise of decent living in the Manpower Law is embodied in Article 89 on the minimum wage which in paragraph (2) states that: "The minimum wage is directed to the achievement of decent living needs." Unfortunately, Article 89 was abolished in the provisions of the Job Creation Law. Through Law No. 6 of 2023 concerning Job Creation, precisely in Article 88 C Paragraph (4), it is stated that: "The minimum wage as referred to in paragraph (1) and paragraph (2) is determined based on economic and employment conditions." or in this case it is no longer based on decent living needs (KHL) which means there is no longer a KHL survey consisting of several types of necessities of life and used to be carried out every year, however, through the Regulation of the Minister of Manpower No. 21 of 2016 concerning Decent Living Needs is changed to be reviewed every 5 years.⁶

Instead, Article 88 D stipulates that: "(1) The minimum wage shall be calculated using the minimum wage calculation formula. (2) The minimum wage calculation formula contains variables of economic growth or inflation." Calculations are solely based on variables of economic growth or inflation. The question is, can these variables represent the necessities of decent living for workers? It is ironic that this provision will actually keep the policy of economic growth or inflation variables cannot be used as a benchmark in the decent living needs of workers, so the replacement of the phrase is considered very contrary to the constitution, because it cannot be used as a reference in providing a decent life for workers. Therefore, the content of the Job Creation Law related to wages has violated the constitutional rights of workers/laborers. This is emphasized in Constitutional Court Decision Number 91/PUU-XVIII/2020 which contains that there are several content materials in the Job Creation Law that need to be granted, especially regarding labor law, including related to wages. Because, this is closely related to respect (to respect), *protection* (to protect), and *fulfillment* (to fulfil) *the constitutional rights of workers*.

Minimum wage calculations that do not include the KHL component will certainly have fatal consequences on the feasibility of living standards of workers or laborers. The change will have a significant impact on the increase in the minimum wage which tends to be lower when compared to the determination of the minimum wage based on the calculation of the KHL. In addition to the poor guarantee of eligibility for determining the minimum wage, it also creates flexibility in exploitative work rules. The determination of the minimum wage based on economic conditions is considered inappropriate because the minimum wage is more appropriate if it is based on the KHL considering that the elements of the KHL are obtained from real prices in the market. The price is the result of a survey by Disnaker officers to be used

⁶ Hakim, Y. R. (2021). "Omnibus Law Policy in the Perspective of Labor Policy in Indonesia". PolGov Journal, Volume 3 Number 1, p. 76

as a reference in compiling the minimum wage. When compared to economic growth conditions, the price of the KHL survey results is indeed closer to reality, and each region certainly has a different price range. With the change in the minimum wage, which initially made KHL as its parameter, it is now changed based on economic and employment conditions. From this, it can be seen that in an effort to realize equality of position for employers, Law No. 6 of 2023 has denied the state's obligation to protect workers' rights. This provision is very contrary to Article 27 paragraph 2 of the 1945 Constitution which guarantees the right to work and decent livelihood for all Indonesian citizens.

ABOLITION OF SECTORAL MINIMUM WAGES PREVIOUSLY IN LABOR LAW

The minimum wage applies to workers who have only worked less than 1 (one) year, while for workers who work more than 1 (one) year, the income/salary is based on the wage scale structure adjusted to the company's ability. The sectoral minimum wage is at least 5% above the minimum wage which is determined by sectoral type based on company associations. Furthermore, the abolition of the sectoral minimum wage means the later loss of income from the 5% difference usually received by workers, impacting also the calculation of overtime pay. The abolition of the sectoral minimum wage is not based on clear reasons. In fact, so far the sectoral minimum wage is considered more representative because it represents conditions in certain sectors. The sectoral minimum wage was also previously required to be set higher than the provincial minimum wage. So again, the abolition of the sectoral minimum wage tends to harm workers.

This study found that there are impacts of eliminating the sectoral minimum wage for workers. Workers who usually receive the sectoral minimum wage will lose money due to declining income, so workers still insist on bipartite negotiations in their respective companies to accommodate workers' aspirations.

CONCLUSION

From the description of the discussion above, it can be concluded that controversial articles among workers regarding wages as mentioned cause inequality/injustice. This injustice is clearly contrary to the principle of justice adopted by the Indonesian nation as stipulated in the Pancasila and the 1945 Constitution. It is clearly written in Article 27 paragraph 2 of the 1945 Constitution that the state is obliged to guarantee the right to work and decent livelihood for all Indonesian citizens. It clearly indicates that these articles contradict the constitutional law and welfare state principles adopted by Indonesia because the substance of these articles tends to show its favor to investors or entrepreneurs rather than workers. The proposed Job Creation Law can provide welfare to workers/laborers but in fact it is just the opposite. In this case, it is hoped that the article can be subject to *judicial review* by the Constitutional Court to check the feasibility of the article. This is because workers have constitutional rights that must be used as well as possible if they feel that our interests are violated by the enactment of a law.

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