

LEGAL PROTECTION OF THE NORMATIVE RIGHTS OF WORKERS RELATED TO GIVING BELOW MINIMUM WAGES IN VIEW OF GOVERNMENT REGULATION IN LIEU OF LAW (PERPPU) NUMBER 2 OF 2022 CONCERNING EMPLOYMENT CREATION

Djalu Pamungkas
Yudho Taruno Muryanto

ABSTRACT

This study aims to explain the minimum wage arrangements for workers/laborers in Perppu Number 2 of 2022 concerning Job Creation as well as efforts and legal protection of workers' normative rights regarding wages below the minimum wage. The research method used is normative research. Source of data used is secondary data. The approach used is a statutory approach and a conceptual approach. The results of this study are that the minimum wage setting in the Job Creation Perppu is regulated in Chapter IV Employment Part Two of Employment, in Article 88C it is stated that those who have the obligation to set the minimum wage. The determination of the minimum wage is based on economic conditions and employment. There are 2 (two) models of wage regulation. First, wages are determined through the Governor, and wages are determined based on an agreement between employers and workers. Article 88E paragraph (2) of the Job Creation Perppu stipulates that employers are prohibited from paying lower wages than the minimum wage. This minimum wage provision is an exception for micro and small businesses. The legal protection provided by the Job Creation Perppu for laborers regarding the minimum wage is by regulating the minimum wage setting and prohibiting employers from paying wages below the minimum wage. In addition, the existence of sanctions regulated in Article 185 of the Job Creation Perppu in the form of imprisonment and/or fines shows that laws and regulations have provided preventive legal protection for workers in Indonesia. Legal efforts that can be made to claim the rights of workers/laborers for wages that are not fulfilled by the company. that can be done in 2 ways, namely by resolving disputes amicably (Non-Litigation) and through the courts (Litigation).

Keywords: Workers/labourers, Legal Protection, Job Creation Perppu, Minimum Wage

INTRODUCTION

One of the most important elements in carrying out business activities is the existence of workers/labor who have a role in running the company's activities. As it is known that workers get wages for the workload they carry out, with these wages workers can make ends meet. The important role of wages for workers in meeting their needs is the reason that wages are a right of workers guaranteed by the constitution, as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states "Every Indonesian citizen has the right to work and a decent living for humanity" and Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Every person has the right to work and receive fair and proper compensation and treatment in a work relationship". This was also reaffirmed in Government Regulation in Lieu of Law is also called Perppu Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Perppu of Job Creation) in Chapter IV Employment Part Two Employment Article 81 which amended the provisions in Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act) Article 88 paragraph (1) which states that "Every worker/laborer has the right to earn income that fulfills a decent living for humanity". Then Article 88 paragraph (2) which states that "The Central Government establishes a wage policy as one of the efforts to realize Worker/Labourer's rights to a decent living for humanity". This means that the determination of wages by the Government is an effort to realize the normative right of workers/laborers to a decent living as guaranteed by the constitution in Article 27 paragraph (2) and Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Basically, workers are everyone who works by receiving wages or other forms of remuneration. Labor issues from year to year attract the attention of many parties. Labor problems that give rise to conflicts among workers, such as cases of labor conflicts, violence, fraud, arbitrary dismissals, non-standard wages, are getting more complex day by day. It is important for this case to obtain legal protection for labor rights in the law, which strictly provides protection for labor rights. On 30 December 2022, the Government issued Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation in lieu of Law Number 11 of 2020 concerning Job Creation which was declared conditionally unconstitutional by the Constitutional Court (MK). Apart from considering urgent needs, in anticipating global conditions, Perppu Number 2 of 2022 also provides legal certainty for the Job Creation Law itself (Prabowo 2020).

Regarding the payment of wages to workers, the Job Creation Perppu has regulated the prohibition of paying wages below the minimum wage stipulated in Chapter IV Manpower Article 88E which states that "Employers are prohibited from paying wages lower than the minimum wage". This means that the State has actually provided regulations and guaranteed that employers are required to provide wages to workers at least in accordance with the minimum wage and the prohibition of giving wages below the minimum wage to workers (Damaryanti, Alkadrie, and Annurdi 2020), but despite this, in reality there are still entrepreneurs who do not comply with these regulations. An example of a case related to the provision of wages below the minimum wage by employers to workers is the case in the Surabaya District Court Decision Number 714/Pid.Sus/2022/PN Sby, where PT. Rakuda Furniture Surabaya has paid workers lower wages than the minimum wage applicable in the city of Surabaya in 2016. Whereas in East Java Governor Regulation Number 68 of 2015 concerning District/City Minimum Wages for 2016 and Article 90 paragraph (1) of the Labor Law, the minimum wage for the City of Surabaya in 2016 is Rp. 3,045,000, - (three million forty-five thousand rupiah), but the wages given to workers by PT. Rakuda Furniture in 2016-2017 under the stipulation of the Governor of East Java Regulation Number 68 of 2015, which is only around Rp. 2.200.000, - up to Rp. 2,700,000, - which should have a minimum wage

of Rp. 3,045,000. - (three million forty-five thousand rupiah). Apart from that, there are also other cases, namely the Purwakarta District Court Decision Number 115/Pid.Sus/2019/PN Pwk, where PT. Warranty Industries, Purwakarta Regency, pays Rp. 2,768,564 in 2018 and overtime hours for 2018 are calculated flatly at Rp. 16,003, - even though based on the Decree of the Governor of West Java Number: 561/Kep.1065-Yanbangsos/2017 dated November 21 2017 concerning District/City Minimum Wage in West Java Province in 2018 for Purwakarta Regency the UMK is Rp. 3,445,616, - (three million four hundred forty-five thousand six hundred and sixteen rupiah), this means PT. Warranty Industries has provided wages to workers below the minimum wage for Purwakarta Regency, which should be Rp. 3,445,616, - but workers are only given a wage of Rp. 2,768,564 only and overtime hours of Rp. 16,003, - on the grounds that the company's condition is still unstable and the company's inability to pay workers according to the UMK of Purwakarta Regency.

Based on the examples of the cases mentioned above, it can be seen that the normative right of workers to a decent wage as stipulated in the 1945 Constitution of the Republic of Indonesia as one of the constitutional rights has not been able to operate effectively, so the authors are interested in conducting a scientific study in the form of research on Legal Protection Against Normative Rights of Workers Regarding Paying Below the Minimum Wage in the Perppu of Job Creation.

RESEARCH PROBLEMS

1. How is the minimum wage setting for workers/laborers in Perppu Number 2 of 2022 Concerning Job Creation?
2. What are the efforts and legal protection of workers' normative rights regarding wages below the minimum wage?

RESEARCH METHOD

This type of research is normative research that examines laws and regulations regarding land registration in Indonesia. The type of data used in this research is secondary data. The research approach used is a statutory approach and a conceptual approach. Data collection techniques were carried out by library research, namely library research using various laws and regulations, books, journals, and scientific research relevant to this research to be analyzed descriptively, which would then obtain answers to problems and draw conclusions on the answers to these problems.

DISCUSSION

Minimum Wage Arrangements for Workers/Laborers in Perppu Number 2 of 2022 Concerning Job Creation

Wages are an important factor for workers/laborers. According to Mulyadi, wages are payment for the delivery of services performed by workers, generally paid based on working days, working hours, or the number of product units produced by workers (Damaryanti et al. 2020). Wages in the Job Creation Perppu are set based on units of time and units of output, which means that workers' wages will be higher if these workers/laborers produce more and more of a product or provide services in the company where they work, which also correlates that they have to sacrificing time for the right to rest at work. The longer the intensity of time they work and the more products or services they produce, the higher the wages they get. Basically, the main objective of setting the Provincial Minimum Wage is to have the function of preventing wages from continuing to decline below the purchasing power of workers/laborers. Of course, this is different from the aim of the District/City Minimum Wage which is always increasing, namely to reduce the gap between the highest and lowest wages paid by companies. The increase in the Provincial Minimum Wage is expected to be able to increase the income of workers/laborers at the lowest positions in the company and from a broader aspect, it is hoped that it can help boost people's purchasing power and the people's economy (Bagijo 2021).

Article 88C paragraph (1) of the Job Creation Perppu stipulates that the Governor is obliged to set the provincial minimum wage. In addition, the Governor can determine the district/city minimum wage, as stated in Article 88C paragraph (2), which is carried out in the event that the district/city minimum wage calculation result is higher than the provincial minimum wage. Based on Article 88C paragraph (4) of the Job Creation Perppu, provincial and district/city minimum wages are determined based on economic and employment conditions. Economic conditions and employment use data sourced from the competent authority in the field of statistics. Article 88C paragraph (6) stipulates that if a district/city does not yet have a minimum wage and will set a minimum wage, the determination of the minimum wage must meet certain requirements. Further provisions regarding the procedure for setting the minimum Wage are regulated in a Government Regulation.

Determination of the minimum wage is a statutory order, which is intended to prevent workers from being arbitrary by employers in terms of paying wages. Philosophically, the minimum wage must be able to meet the value of the basic needs of workers/laborers. Article 88D of the Job Creation Perppu stipulates that the minimum wage is calculated using the formula for calculating the minimum wage, namely by considering the variables of economic growth, inflation and certain indices. Basically there are 2 (two) models of wage regulation. First, wages, which are determined through the Governor, are intended as a safety net and a minimum wage standard to keep wages from falling to the lowest level, as a result of an imbalance between demand and supply of labour. Second, wages are determined based on an agreement between employers and workers through deliberative negotiations, but these wages must be above the minimum wage. The minimum wage policy, including setting the minimum wage, is a heteronomous rule where there is state intervention to provide protection for workers' rights. The minimum wage setting mechanism by the Governor always involves other subjects or institutions, namely workers and employers, which is framed in a tripartite institution (wages council) (Pamungkas 2016).

Fundamentally, wages are an important factor for workers to make ends meet, so the minimum wage setting policy is part of macro-economic and social policies, which must be implemented with full consideration of fulfilling workers' basic needs and increasing their welfare. The minimum wage must also be a safety net, because it must be able to cover living expenses, alimony, economic conditions and economic growth rates, as well as the wage ratio. The minimum wage determines whether the Government, in forming the wage policy, has moral considerations to provide equal portions for protection for business interests on the one hand, and protection for the welfare of workers/laborers and their families on the other (Podungge 2020).

Article 88E paragraph (1) of the Job Creation Perppu stipulates that the minimum wage as explained above applies to workers/laborers with less than 1 (one) year of service at the company concerned, and in Article 88E paragraph (2) of the Job Creation Perppu It is regulated that Employers are prohibited from paying lower Wage than the minimum Wage. Based on Article 90B of the Work Creation Perppu, this minimum wage provision is excluded for micro and small businesses. Wages for micro and small businesses are determined based on an agreement between the Employer and Workers/Laborers in the Company, with the condition that it is at least a certain percentage of the average public consumption based on data sourced from an authorized institution in the field of statistics. The Job Creation Perppu contains regulations stating that the formula for calculating the minimum wage may change under certain circumstances. Article 88F of amendments to the Manpower Law states 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) amendments to the Labor Law. The explanation regarding "certain circumstances" in article 88F includes, among others; disasters designated by the President and extraordinary global economic conditions such as pandemic non-natural disasters. With the stipulation of "certain conditions" as a consideration in changing the formula for calculating wages, policies regarding wages tend to change at any time according to the subjectivity of the government. This policy creates legal uncertainty for workers whose wages depend solely on the government's assessment. According to Article 185 of the Job Creation Perppu, employers who pay wages below the Minimum Wage are subject to imprisonment for a minimum of 1 year and a maximum of 4 years and/or a fine of at least IDR 100,000,000 and a maximum of IDR 400,000,000.

In addition, the Job Creation Perppu has also changed the severance pay arrangements for workers/laborers affected by Termination of Work Rights (PHK). The provisions in the Job Creation Perppu are different from the amount of severance pay provided according to the Manpower Act. Article 156 paragraph (2) amendments to the Manpower Law, the amount of severance pay given must be in accordance with and remains in the calculation of years of service, whereas in the Labor Law the list of years of service is only the minimum limit for giving severance pay so that a company can provide severance pay in excess from those listed on the list. This concludes that the severance pay that will be received by a worker affected by layoffs will be less if it refers to the PERPPU Ciptaker compared to the Manpower Law.

Efforts and Legal Protection of Workers' Normative Rights Related to Paying Below the Minimum Wage

Legal protection can be interpreted as an action or effort to protect society from the arbitrary actions of authorities that aren't in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings. Philipus M. Hadjon is said that Legal Protection is protection of human dignity and recognition of human rights owned by legal subjects based on legal provisions of arbitrariness, which originate from Pancasila and the concept of a rule of law (Lumanaw and Dkk 2021). Basically, in the Job Creation Perppu Chapter IV Employment Part Two, Article 88E paragraph (2) has actually mandated that employers are prohibited from paying wages lower than the minimum wage, but in fact, based on the examples of cases mentioned above in the introductory chapter, even though there are regulations that strictly prohibit employers from paying workers below the minimum wage, but there are still many employers who violate these provisions by paying below the minimum wage as in the case examples in the introductory chapter above. The existence of legal norms governing the prohibition of paying wages below the minimum wage is a legal protection provided by the State.

Legal protection for workers is needed considering the position of workers is on the weak side. Protection of workers is intended to guarantee the basic rights of workers and ensure equality and treatment without discrimination on any basis to realize the welfare of workers and their families, while taking into account developments in the progress of the business world and the interests of the company. The existence of provisions regarding minimum wages is basically a form of protection provided by the state for workers. The wage system in Indonesia is generally based on three functions, viz (Hukum 2010):

- 1) Ensure a decent life for workers and their families.
- 2) Reflects the reward for one's work.
- 3) Providing incentives to encourage and increase work productivity.

In theory, in Pancasila Industrial Labor relations, there is indeed a legal principle which says that workers and employers have an equal position. According to labor terms, it is called a work partner. However, in practice, the positions of the two were not equal. Entrepreneurs as owners of capital have a higher position than workers. This is evident in the creation of various company policies and regulations. Given the lower position of workers than employers, it is necessary for the government to intervene to provide legal protection, so that justice in employment can be achieved more quickly (Heru Suyanto and Nugroho 2016). Kranenburg is an adherent of the theory of the welfare state, according to him, the purpose of the state is not only to maintain law and order, but also to be active in seeking the welfare of its citizens. Welfare in this case covers various fields, so that the goals of the country should be called plural, that is, efforts to achieve the goals of the country are based on equitable and balanced justice (Suseno 1999).

Indeed, currently the regional minimum wage (UMR), which later changed to UMP (Provincial Minimum Wage) and UMK (District Minimum Wage), continues to increase in accordance with developments in people's purchasing power. However, the percentage increase in the UMR does not have a strong correlation with the increase in the economic needs of workers and the community. That means the level of welfare of workers is still below standard. This has escalated demands and demonstrations, especially those made by workers. In fact, all potential wages for workers/laborer's are used up for opportunity costs, without ever being able to enjoy economic rent (Lamijan 2020). Even so, there are still many employers who pay wages to workers below the minimum wage as in the cases, Surabaya District Court Decision Number 714/Pid.Sus/2022/PN Sby, and Purwakarta District Court Decision Number 115/Pid.Sus/2019/PN Pwk is in the Introduction chapter. Legal protection related to the wage setting mechanism is regulated in the Job Creation Perppu Chapter IV Manpower Part Two Article 88 and Article 88E which stipulates that employers are prohibited from paying lower wages than the minimum wage. Apart from that, Article 91 of the Manpower Act has also provided legal protection, namely mandating that the wage arrangements determined by agreement between employers and workers or workers' unions may not be lower than the wage provisions stipulated by applicable

laws and regulations. If the agreement is lower wages or contrary to laws and regulations, then the agreement is null and void, and the employer is obliged to pay workers' wages according to applicable laws and regulations.

But in fact, as in the cases of the Surabaya District Court Decision Number 714/Pid.Sus /2022/PN Sby, and the Purwakarta District Court Decision Number 115/Pid.Sus/2019/PN Pwk mentioned above, employers have given wages to the workers are lower than the minimum wage without making suspensions, even though they are not included in micro and small businesses, this means that the entrepreneur has violated the provisions stipulated by the Labor Law and the Job Creation Perppu. In this regard, the Perppu on Job Creation provides legal protection if there are employers who pay wages below the minimum wage stipulated in Article 185, which states that anyone who violates the provisions referred to in Article 90 paragraph (1) is subject to imprisonment. a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of a minimum of IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR 400,000,000.00 (four hundred million rupiah). Based on the provisions of Article 185, employers who pay wages below the minimum wage can be categorized as criminal acts. The existence of the regulation is a preventive legal protection (prevention) for workers in Indonesia. In preventive legal protection , legal subjects have the opportunity to submit objections and opinions before the government makes a final decision. Preventive legal protection is contained in statutory regulations which contain signs and restrictions on doing something. This protection is provided by the Government to prevent a violation or dispute before it occurs. With the existence of legal provisions regarding the prohibition of paying wages below the minimum wage and the existence of fines or sanctions if employers violate this, it means that the law has protected what is their right as a preventive measure sought by the Government .

Basically, companies that pay wages below the minimum wage are then subject to fines or sanctions, based on Article 185 of the Job Creation Perppu, criminal sanctions in prison, confinement , and/or fines do not eliminate the obligation of employers to pay rights and/or compensation to workers. or workers/laborers. Therefore, workers still have legal remedies to claim their rights which are not fulfilled by the company. There are two ways workers can do to claim their rights. The first way is by resolving disputes amicably (non-Litigation) without any court proceedings. And the second way, is through court (Litigation). Settlement efforts outside the Industrial Relations Court, namely bipartite, conciliation, mediation, negotiation and arbitration, the arrangements for which are regulated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (Dalimunthe and Mendrofa 2022). Workers who are paid wages below the minimum wage provisions can complain about problems experienced by workers to the local Manpower Office to get protection and input as well as settlement efforts which are expected to be beneficial for the problems faced by workers, but if the Manpower Office is also unable To resolve this problem, it is better to take legal action through the Industrial Relations dispute settlement mechanism (Kirti and Priyono 2018).

In order to provide legal protection for workers in obtaining the minimum wage, the Government also authorizes agencies in the manpower sector within the Central Government , Provincial Governments, and Regency/City Governments to carry out supervision (Fitriani 2022). Supervision by the Technical Implementation Unit for Labor Inspection on the provision of the minimum wage for workers is still not effective. Efforts that can be made by the Technical Implementation Unit (UPT) of Labor Inspection in streamlining supervision of the provision of minimum wages to workers are by means of carrying out unannounced inspections (Sidak) to workers' locations to supervise the provision of minimum wages to workers and to impose strict sanctions on workers. employers who pay their workers wages that are not in accordance with the minimum wage as stipulated in the laws and regulations in the field of wages.

CONCLUSION

Wages in the Job Creation Perppu are determined based on the unit of time and unit of output. Article 88C of the Job Creation Perppu stipulates that the Governor is obliged to set a provincial minimum wage, and may set a district/city minimum wage, which is determined based on economic conditions and employment. The determination of the minimum wage is intended to prevent workers from being arbitrary by employers in terms of paying wages. There are 2 (two) models of wage regulation. First, wages are determined through the Governor, and wages are determined based on an agreement between employers and workers through deliberative negotiations. Article 88E paragraph (2) of the Job Creation Perppu stipulates that employers are prohibited from paying lower wages than the minimum wage. This minimum wage provision is an exception for micro and small businesses. Wages for micro and small businesses are determined based on an agreement between Employers and Workers/Labourers in the Company.

Perppu Cipta Kerja has provided legal protection if there are entrepreneurs who pay wages below the minimum wage stipulated in Article 185, which states that anyone who violates the provisions referred to in Article 90 paragraph (1) is subject to imprisonment for a minimum of 1 (one) years and a maximum of 4 (four) years and/or a fine of at least IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR 400,000,000.00 (four hundred million rupiah). The existence of the regulation is a preventive legal protection (prevention) for workers in Indonesia. In addition, workers still have legal remedies to claim their rights which are not fulfilled by the company. Things that can be done by workers to claim their rights can be done in 2 ways, namely by resolving disputes amicably (non-Litigation) and through the courts (Litigation).

REFERENCES

- Bagijo, Himawan Estu. 2021. "Kewenangan Gubernur Menetapkan Upah Pasca Pemberlakuan UndangUndang Nomor 11 Tahun 2020 Tentang Cipta Kerja (Studi Kasus Penetapan UMP Dan UMK Tahun 2021 Di Jawa Timur)." *Jurnal Sosio Yustisia* 1(1):220.
- Dalimunthe, Nikmah, and Rizka Hanum Mendrofa. 2022. "Upaya Arbitrase Dalam Penyelesaian Sengketa Pemberian Upah Buruh Yang Tidak Sesuai Dengan Penetapan Upah Minimum." *Jurnal Pendidikan Dan Konseling* 4(6).
- Damaryanti, Henny, Sy. Abdullah Alkadrie, and Annurdi Annurdi. 2020. "Pemenuhan Upah Minimum Sebagai Upaya Perlindungan Hak Konstitusional." *Jurnal Hukum Media Bhakti* 1(2):110. doi: 10.32501/jhmb.v1i2.8.

- Fitriani, Rizki Amalia. 2022. "Efektivitas Pengawasan Ketenagakerjaan Terhadap Upah Minimum." *Jurnal USM Law Review* 5(2).
- Heru Suyanto, and Andriyanto Adhi Nugroho. 2016. "Perlindungan Hukum Terhadap Hak-Hak Pekerja Outsourcing Berdasarkan Asas Keadilan." *Jurnal Yuridis* 3(2).
- Hukum, Tim Pengkajian. 2010. *Laporan Pengkajian Hukum Tentang Menghimpun Dan Mengetahui Pendapat Ahli Mengenai Pengertian Sumber-Sumber Hukum Mengenai Ketenagakerjaan*. Badan Pembinaan Hukum Nasional Departemen Hukum Dan HAM.
- Kirti, Harin Nadindra, and Joko Priyono. 2018. "Mendapat Bayaran Di Bawah Ketentuan Upah Minimum Regional (UMR)." *Jurnal Notarius* 11(1).
- Lamijan. 2020. "Perlindungan Hukum Dan Pemberdayaan Buruh Dalam Memperoleh Hak Kehidupan Yang Layak." *Jurnal Penelitian Hukum Indonesia* 1(2).
- Lumanaw, Tania Patricia Wiesye, and Dkk. 2021. "Tinjauan Yuridis Terhadap Hak Dari Tenaga Kerja Untuk Memperoleh Upah Minimum Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan." *Jurnal Lex Privatum* 9(6):212.
- Pamungkas, Setyo. 2016. "Diskresi Dalam Penetapan Upah Minimum Oleh Gubernur." *Jurnal Refleksi Hukum* 1(1):73.
- Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja
- Podunge, Ismi Pratiwi. 2020. "Eksistensi Peran Serikat Buruh Dalam Upaya Memperjuangkan Hak Upah Pekerja (Dalam Penetapan Upah Minimum)." *Jurnal Hukum Lex Generalis* 1(2):38–50.
- Prabowo, A. S. 2020. "Politik Hukum Omnibus Law." *Jurnal Pamator* 1(1):20.
- Suseno, Franz Magnis. 1999. *Kuasa Dan Moral*. Jakarta: PT Gramedia.

Djalu Pamungkas
Notary Study Program
Faculty of Law, Sebelas Maret University, Indonesia
Email: djalu1923@gmail.com

Yudho Taruno Muryanto
Faculty of Law, Sebelas Maret University, Indonesia
Email: yudho_fhuns@yahoo.com