





Review Article

A Critical Review of Waging in Indonesian Law

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ABSTRACT

This paper is comprehensive look of waging in Indonesian law. Waging in employment still pose a problem. No details of the principle of fair and decent with the policies or the application of the rules of waging, always give rise to new issues and discourse. For the Government, to apply fair and decent wage does not merely make the norm on paper but should be able to guarantee the implementation of the norms in society. This paper uses the literature method with the concept approach. This paper discovers that the wage disputes can be avoided whereas industrial society interpret the wages in return for the sacrifice that has been given and is able to meet the needs of food, clothing and housing. Then it is not worth it if one party for their maximum benefit utilizing weakness of workers by making the waging system that ignores the principle of fair and decent.

Keywords: decent wage; waging; justice for workers; labour law.

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ABSTRAK

Pengupahan dalam hubungan ketenagakerjaan masih menimbulkan problematika. Setiap saat bergulir isu dan wacana pengupahan disebabkan biasanya prinsip adil dan layak dengan kebijakan ataupun aplikasi pengupahan di lapangan. Bagi pemerintah membumikan upah adil dan layak tidak hanya sekedar membuat norma yang muluk dan indah di atas kertas namun harus bisa menjamin terlaksananya norma tersebut di masyarakat. Tulisan ini berdasarkan studi kepustakaan dengan pendekatan konsep pada dasarnya mencetuskan bahwa perselisihan upah dapat dihindari manakala masyarakat industri memaknai upah sebagai imbalan atas pengorbanan yang telah diberikan dan padanya diharapkan mampu memenuhi kebutuhan pangan, sandang dan papan dari pekerjaan yang ia lakukan. Maka tidak layak jika satu pihak demi keuntungan maksimal memanfaatkan lemahnya posisi tawar pekerja dengan membuat sistem pengupahan yang mengabaikan prinsip adil dan layak.

Kata kunci: upah yang layak; pengupahankeadilan untuk pekerja; hukum perburuhan.

1. Introduction

Government Regulation No. 78 Year 2015 on Waging (hereinafter stated as GR 78) repeal the existing waging regulation included in Government Regulation No. 81 Year 1981 on Wage Protection. Recent regulation which is implementing GR 78 is Regulation of Minister Of Manpower Of The Republic Of Indonesia No. 6 Year 2016 on a Religious Feast Day Allowance For Workers In The Company (hereinafter stated as RM 6).

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Employment regulations are always interesting to discuss among workers, including both of these regulations. Wage increasing and the calculation based on the inflation rates becomes one of the points that is always carried during the celebration of international labor day in Indonesia. The allowance related RM 6 also became a spotlight concerning changes to the allowance payment, and opportunities for ignoring the temporary workers rights to get the allowance towards religious feast day.

This research is questioning about anything noteworthy in making regulations related waging in order to qualify the fair and decent to humanity. This paper uses the primary and secondary law materials obtained from library research. The analysis is performed through the legislation approach and the concept approach.

2. Discussion

2.1 Waging Policy

Waging policy for realizing decent livelihood income for humanity expressed in Article 88 paragraph (2) to the Law Number 13 Year 2003 on Manpower (hereinafter stated as LM 13), the waging policy then is specified in Article 3 GR 78 subsection (2) which includes: a. minimum wage; b. wage overtime work; c. wage for women period time; d. wage for workers who do not go work for other activities outside his work; e. wage because of leave; f. the form and method of payment of wage; g. fines and wage cut; h. matters that can be accounted with wages; i. structure and proportional wage scale; j. wage for severance payments; and k. wage for income tax calculation.

A decent income is not defined either in the LM 2 or GR 78. A decent income is the labourers income with reasonable amount.¹ The decent income is given in the form of wage and income of the non-wage.

One of waging policy is by setting a minimum wage system. This minimum wage is set up further in Regulation of Minister Of Manpower Of The Republic Of Indonesia No. 7 Year 2013 about Minimum Wage (hereinafter stated as RM 7), this regulation mentioned that the minimum wage is the lowest monthly wage which contains the main components of wage including fixed allowances set by the Governor².

This regulation is not suitable against Article 5 paragraph (1) GR 78 which states that the wage components can be composed of wages without allowance, main wage, and non fixed allowance. This unsuitable situation is because GR 78 gives detailed components of

¹ Minister of Manpower of Indonesia, *Permenaker No. 7 Tahun 2013 Tentang Upah Minimum* (Regulation of Minister Of Manpower Of The Republic Of Indonesia No. 7, 2013). Article 4 Paragraph (1).

² *Ibid.* Article 1 point (1).

wages within 3 (three) types, whereas in the LM 13 clearly states that the wage comprises the main wage and fixed allowance³, otherwise, RM 7 states that the minimum wage is the lowest wage consisting of main wage including fixed allowances (Article 1 point (1)).

Article 2 RM 7 confirms that Minimum wage consists of Province Minimum Wage (hereinafter stated as UMP) or City Minimum Wage (hereinafter stated as UMK). Article 3 paragraph (1), (2), (3) and (4) that the determination of the Minimum wage is based on the necessities of worthy life (hereinafter stated as KHL) with attention to productivity and economic growth. The Minimum wage is directed on achievement of the KHL. Achievement of the KHL is a comparison of the magnitude of the minimum wage against the value of the KHL in the same period. For achievement of the KHL as referred to in paragraph (2), the Governor set a milestone KHL in the form of a road map for the achievement of the KHL Labor-intensive Industry Specific Companies and for other companies considering the condition of the ability of the corporate world.

In one hand, the minimum wage is useful as a benchmark for the entrepreneurs in deciding the wage work their workers. On the other hand, there are also weaknesses for the workers, i.e. large corporations that are able to give wages above the minimum wage hide behind that policy and state that they have been running the wages in accordance with the provisions of the government. It will be good if the entrepreneurs apply the principle of transparency, creating a harmonious working climate and regulating waging based on expertise and working period. This is to perpetuate company achieving productivity, and create shared well-being. It will be better if wage can be agreed with deliberation and realized in joint work agreement (hereinafter stated as PKB).

Article 7 paragraph (2) and (3) confirms that UMK is defined and announced by the Governor not later than November 21st, after the determination of the UMP. UMK magnitudes larger than the UMP. Then Article 15 paragraph (1) and (2) confirmed that employers are prohibited to pay wages lower than the Minimum wage. The minimum wage only applies to workers/labourers who had a working period of less than one (1) year.⁴

It is clear that the minimum wage applies to the period of employment under a year old and not married (single), this confirms that the entrepreneurs should be willing to negotiate and set the percentage wage increases regularly for workers who already passed one

³ Indonesia, *UU No. 13 Tahun 2003 Tentang Ketenagakerjaan* (Law Number 13 Year 2003 on Manpower: SG No. 39, 2003). Article 1 Point (30)

⁴ Indonesia, *Permenaker No. 7 Tahun 2013 Tentang Upah Minimum*.

year in the company. Once again the climate of democracy by deliberation truly wants to be created by the government through a policy of minimum wage.

GR 78 has confirmed the need for the preparation of the structure and wage scale by each company, regarding to the time, title, work period, education and competence of workers/labourers. Employers who do not have the structure and wage scale given during 2 (two) years counted since the GR 78 is legalized. This obviously needs to be applied for the sake of the existence of a decent and fair wage.

The government threatened with administrative sanctions for employers who do not draw up and apply the scale and structure of wages, in addition to the wage structure and scale into documents that must be attached when the companies apply for endorsement and renewal of the PKB, thus the existence of states becomes very important to encourage the achievement of treatment set by the government. Until this paper is written, the government still has not issued the implementing rules for the application or the law instrument for those administrative sanctions.

Article 90 paragraph (1) and (2) LM 13 confirms the prohibition of paying the wages lower than the applicable provisions. Specifically for employers who cannot afford to pay the minimum wage can be made to the suspension. According to Article 91 paragraph (1) and (2) that the settings of waging based on an agreement between workers and employers or labor/unions/trade unions should not be lower than the provisions of waging defined by the regulations. In terms of the deal are lower or contrary to regulations, the deal annulled by law, and the entrepreneur is obliged to pay the wages of workers/laborers according to the legislation in force.

Non-compliance of the company to pay wages in accordance with the minimum wage and do not process the suspension of payment of wages as proof of his inability to be financially, threatened by criminal sanctions (Article 90 *juncto* Article 185 LM 13). This provision as a form of protection for workers to earn a decent wage over its rights, and seek a fair waging system works for workers and employers.

The case of the payment of wages under the terms of the minimum wage has been rolled out by Indonesian Metal Workers Union (FSPMI) in Deli Serdang district, the verdict has also been dropped on two entrepreneurs from two companies that proved to deliberately pay wages not in accordance with the regulation. The case was decided in March 2016, more or less almost three (3) years to process which was worked by the unions until then judge believed that not paying the wages in accordance with the provisions by not asking

postponement of payment of wages is an action that can be threatened with criminal sanctions in accordance with Article 185 LM 13.

The minimum wage is still considered being an instrument that can be a means for the protection of the rights of workers over a decent and fair wages, even though there is an opinion that minimum wages have weakness as well. Such weaknesses include, first, the similar wage rate in conditions of diversity workers turned out to be no effect on total employment, but limited to only certain groups.⁵ Second, the job opportunities for workers who have skills will be more limited because employers will choose the use of capital-intensive.⁶ Third, closing opportunities for the workers of the non experts to be trained and provided with skills in particular by entrepreneurs.⁷

2.2 Fair and decent wages for humanity

Article 88 paragraph (1) LM 13 *juncto* Article 3 GR 78 basically requires that every labor has the right to earn a decent livelihood that satisfies for humanity. In order to achieve what was mandated as an income that meets a decent livelihood for humanity, the waging policy became the basis for the Government work has also outlined the following points (Article 88 paragraph (2) and (3)):

minimum wage, overtime, wage labor wage does not enter employment due to misadventure, wages do not go work for other activities outside of his work, the wages because of the running rights to time off work, form and manner of payment of wages, fines and piece wages, things that can be accounted for by wages, the structure and scale of waging a proportionate, wages for severance payment, and wages for income tax calculation.

Further elaboration on a decent income found in Article 4 paragraph (1) and (2) GR 78 mention that: "*A decent income is the amount of Workers/labourers income from the results of his work so that it is able to meet the needs of living Labor/Worker and his family.*"

Furthermore, the decision of a decent income is administered in the form of wages and non-wage income. Wages can consist of several components namely wages without allowance, main wages and fixed allowance added by fixed and non-fixed allowance. When wages consist of main wages and fixed allowances, the main wage must reach 75% (seventy five percent) of the amount of the main wages and fixed allowances. This also applies when the wage components consist of main wage, fixed allowance, and non fixed allowance.

⁵ Richard Anker et al., "Measuring Decent Work with Statistical Indicators," *International Labour Review* 142, no. 2 (2003): 147–78.

⁶ Frances Stewart and Paul Streeten, "Conflicts between Output and Employment Objectives in Developing Countries," *Oxford Economic Papers* 2, no. 23 (1971): 145–68. [View Item](#)

⁷ Anker et al., "Measuring Decent Work with Statistical Indicators."

Fair use in waging should be associated and linked between the contributions or the sacrifice given by income or salary/wages. An Office can only be filled when met a number of requirements (specifications) whose goal is to put a person on the field of his expertise. Then it can be permissible if the requirements of the position or work a lot higher and then of course the expected earnings or compensation are also getting higher. In addition to note time of work as the form of loyalty and devotion to the workers as a form of sacrifice as well, so that the working period will affect the magnitude of the wage or income are expected.

Fair use in waging not an absurd thing, abstract, but rather can be measured. The wage level in each company would be a quantitative measure for workers to gauge what he received with what other colleagues received in another company so that it will form a quantity of wages which is considered fair.

Other things that have to be met are the eligibility. This feasibility can also be measured by market conditions, such as the rate of inflation, the value of money, as well as purchasing power. This is because the wages should be utilized to finance the needs of workers which includes food, clothing, Board, the cost of children's education, even ideally earnings can be spent for savings.

The word fair become some of the basic principal in waging or payroll system. Fair in granting a taxable return fro the work that has been done should be correlated to the seriousness of the great contribution of the workers in the production system. The contribution of workers not only with regard to the large number of hours of work, but rather the quality of performance based on education and work experience that she pointed out in that working relationship.⁸

Justice is often called fairness. Justice has two basic principles. The first principle is the balance which means that the regulations must apply equally to certain deeds in the same situation. The second is that correctness means that the decisions taken must be true. In this case, it requires a high quality from the policy makers in terms of consistency, accuracy, clarity, thoroughness compatibility in accordance with the values and moral force. In the Organization of the work of justice must be upheld because it has a purpose. First, in the work demanded of the effectiveness of the performance. That is, in the work of the organization or individual and group achievements company sued by the companies or by workers. So both not collide then there should be a fair rule. Second, the targets of the justice

⁸ Ibid.

community. By enforcement of the justice then prosperity can be achieved. Third, fairness is a means to reward for individuals as well.⁹

Eligibility is also seen by way of comparing waging in other companies. When eligibility has been reached, then the company has achieved what is called external consistency (external consistency). When the efforts within the company concerned is lower than other companies, then this can lead to difficulties for the company to acquire labor. Therefore, to meet both the consistency (internal and external) will need to use an evaluation of the work.¹⁰

Eligibility, as a purpose, is related to the implementation of all laws and regulations regarding wages. If the statutory laws and regulations change, then its own compensation system need to be adjusted as well, so that the purpose of the eligibility may continue to run. Not that same sense of justice equally indiscriminate, but it must be a connection between the associated tradeoffs (input) with output. The higher the income, the higher the sacrifice is expected, therefore the sacrifice (inputs) in a position should be judged very carefully. Input in one position devoted of requirements (specifications) that must be filled by a person. It is, therefore, increasingly higher income (output) is expected. The output is shown from the accepted wage employees is concerned, where it listed the very sense of justice observed by each employee beneficiary waging it. When the demands of justice like this have been met. this means the company has had an internal consistency within the waging system.

In addition to the issue of fairness, it is also necessary to pay attention on the eligibility in waging system. This understanding with regard to the standard of living as the minimum basic necessities or minimum wage in accordance with the provisions of the government. Eligibility is also seen by way of comparing waging in other companies. When eligibility has been reached, then the company has achieved what is called external consistency.

Waging impropriety can be done by measuring the wage scale of a company compared to other companies. There are two kinds of such impropriety, namely: (a) scales of lower wages compared to the scale of wages paid to scale the same job in another company, and (b). Scales of wages which a particular work receive a payment which is less than a decent scale compared with scales for other types of work in the same company.

⁹ Anthony T. Kronman, "Contract Law and Distributive Justice," *The Yale Law Journal* 89, no. 3 (1980): 472–511.

¹⁰ Mark A. Huselid, "The Impact of Human Resource Management Practices on Turnover, Productivity, and Corporate Financial Performance," *Academy of Management Journal* 38, no. 3 (1995): 635–72.

The wage or salary is the economic right fulfillment for workers who become a liability and should not be ignored by employers. Considering the importance of these workers wage issues, Islam gives guidance to the parties who employ other people that the principle of granting wage should cover two things, namely a fair and adequate.

A worker has the right to receive wage when he or she has already worked on his duties, then if the postponement salary of workers, it is in addition to violating the employment contract, it is also contrary to the principle of Justice in Islam. Then the settings in labor law about the mechanisms and the terms of the suspension of the minimum wage is just right.

The grant of a wage to be precise, it must also contain the justice. Justice seen from employment rates by the amount of the wages received. Well during this time, proportionality is translated with the Minimum wage system. Moreover, Islam also teaches in order that parties who employ others to heed the contract or agreement on waging system and work system, among employers with workers.

If fair is meant as clarity and proportionality, then the feasibility of talking quantity should be accepted wage simply in terms of human needs¹¹. If it refers to the command of God delivered through the Messenger of Allah to ask employers and entrepreneurs do not apply the wage system that poses a very big gap between workers with manager level for example, or between the level of workers with other workers at one company or with another company.

3. Conclusion

Waging systems that is capable of providing legal protection to workers/Labour is attempted by government through specifying the basis of the determination of the minimum wage based on KHL. During labor/worker is doing his job, he has right for life wage to guarantee his life with his family.

Determination of real wage and waging leads to a climate of healthy cooperation between employers and workers through bipartite. The form could be a PKB. It is not the time to play with the principle of cost production-suppressing wages by ignoring the principle of humanity, fairness, and professionalism.

The problems that occur in waging is a very crucial issue in the field of employment, and even if you are not a professional in handling waging, it can become a potential disputes as well as encourage the onset of labor strike or a rally. Handling waging not only includes

¹¹ Rafik I. Beekun and Jamal A. Badawi, "Balancing Ethical Responsibility among Multiple Organizational Stakeholders: The Islamic Perspective," *Journal of Business Ethics* 60, no. 2 (2005): 131–45.

the technical aspects and its economic aspect, but also the legal aspects that underlie how things have to do implement with waging safely and correctly based on the applicable regulation.

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