

Wages Problems of Local Wisdom-based Tourism Development During Covid-19 Pandemic

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ABSTRACT

This paper aims at obtaining legal solutions to build the concept of wage policies during the COVID-19 pandemic to maintain the continuity and development of local wisdom-based tourism businesses. The covid-19 pandemic has a significant impact on local wisdom-based tourism industries' development. Decreased income caused the disability to pay workers' standard wages. Numbers of companies were forced to close and stop operating, which affected tourism development as a source of income and a component to communicate Indonesian wealth. The Law on Manpower has regulated the minimum wages, stating that it must comply with the Minimum Wage Provisions. The denial of this provision leads to criminal sanctions for entrepreneurs. Wages are paid based on the agreement of entrepreneurs and workers. However, this agreement should not regulate the nominal value under the minimum wage provisions because it makes the agreement null and void. Laws and regulations normatively hinder the company's efforts to develop tourism based on local wisdom. Through the normative juridical method, this research found a legal solution concept to answer the problem. The wage system must be based on individual workers' statements to obtain the nominal amount of wages based on the tourism company's ability. This concept should be an accommodation for legislators to carry out legal making or legal repairing of laws and regulations in the field of labor relations to save the sustainability of local wisdom-based tourism business development.

Keywords: Local wisdom, Pandemic, Solutions, Wages.

1. INTRODUCTION

The tourism sector is not limited only to the tourist destination context. However, it is also synergically correlated with other cases, namely traveling from one place to another, taking accommodation concerning socio-cultural conditions, and providing souvenirs at the tourism spot [1]. The systematical correlation of these components is known as the tourism industry. The tourism industry is a collection of interrelated tourism businesses to produce goods and/or services for the needs of tourists [2]. In this business, a business actor is well-known as a tourism entrepreneur.

The Covid-19 pandemic has brought a severe effect on almost all industries sectors in Indonesia, such as transportation, travel, warehouses, the accommodation and food provision sector, and the tourism sector. There are about 11.83% of Indonesian workers in the sector of tourism industry [3]. In Indonesia, based on *Badan Pusat Statistik* (Central Statistics Agency) data, or is referred to as BPS, the number of foreign tourist arrivals in 2020 was only 4.022 million visits, or it decreases 75.03 percent compared to 2019, which could reach the target of 16.1 million visits. The impact of the Covid-19 pandemic on the tourism industry sector is the absence of hotel rooms

and inns booking. The number of passengers on planes and other transportation has drastically reduced, especially for foreign tourists. The absence of tourists also causes food and beverage providers, especially in tourist destinations, to lack the income to go out of business. Many arts, entertainment, and recreational services that rely on tourism activities are stopped operating too. The interest of domestic tourists is also reduced. People are reluctant to travel because they are worried about being infected by Covid-19 [4]. This condition is indeed worrying both for tourism development, especially those based on local wisdom, and the world of work to build the welfare of workers and their families through the tourism companies.

The Covid-19 pandemic does not change the rights and obligations of the parties in the working relationship, i.e., workers and employers. The new regulation on human resources, namely Act No. 11 of 2020 *Undang-Undang Cipta Kerja* (Laws on Job Creations), hereinafter referred to as UUCK, does not make significant changes to Act No.13 of 2003 *Undang-Undang Ketenagakerjaan* (Law on Manpower), hereinafter referred to as UUK, regarding workers' wages. The two-wage system regulated in the regulation is the nominal amount of wages known as the Minimum

Wage. The minimum wage consists of the Provincial Minimum Wage as the nominal standard of each district or city. The district minimum wage cannot be lower than the provincial minimum wage. However, the problem occurs since the minimum wage in 2021 does not necessarily accommodate the actual conditions of companies affected by Covid-19, including tourism companies.

Although tourist visits are reduced during the Covid-19 pandemic, as long as the tourism company operates, the nominal wage for workers must be paid according to the Regency Minimum Wage standard. This fact may lead to termination of employment, and the tourism companies go out of business. The number of tourism companies no longer operating due to potential income has undoubtedly resulted in the dismal development of tourism businesses, especially those based on local wisdom. Local wisdom-based tourism destinations are located outside the city area, in which the availability of facilities to reach the place involves various tourism companies.

On the other hand, the labor regulations do not provide a solution to deal with the impasse on workers' wages. Therefore the tourism development efforts are dilemmatic. The development of tourism businesses is significant as a vehicle for building and communicating cultural diversity, while the welfare of workers through tourism companies is also the main thing. A legal breakthrough is needed as a policy basis to get the solutions when dealing with the wages problem. The decision of tourism entrepreneurs to take alternative policies by making wage agreements below the minimum wage standard is undoubtedly reasonable. However, such a policy deviates from the rules.

Based on the above description, the strategic issues of this study are as follows:

- Does the arrangement of wages in an employment relationship hinder the development of local wisdom-based tourism businesses?
- What is the legal solution for local wisdom-based tourism entrepreneurs who cannot pay workers' wages based on the provisions of the Minimum Wage can carry on their business?

2. METHODS

The normative juridical research is applied to deal with the above legal problems [5]. It is applied by examining the existing laws and regulations. The objects of this study are the laws and regulations concerning human resources, including Act No.13 of 2003 on Manpower, Act No.11 of 2020 on Job Creation, Act no.10 of 2009 on Tourism, Act No.12 of 2011 on the Establishment of Legislation and Government Regulation no.36 of 2021 concerning Wages. This type of normative juridical research is supported by a statutory approach and a conceptual approach. The statutory approach is carried out by reviewing various laws and regulations, especially various matters concerning wages

in employment relationships. The conceptual approach is carried out by reading, understanding, and accommodating various concepts about wages in employment relationships and strategies to maintain tourism companies. The comparative approach is carried out by comparing the regulation of wages in terms of working relationships in tourism companies, especially those based on local wisdom.

3. RESULT AND DISCUSSION

3.1 *The Wages Regulation of an Employment Relationship in the Development of Local Wisdom-Based Tourism Business*

There are two laws and regulations governing employment relations, i.e., the Act No.13 of 2003 on Manpower (UUK) and Act No.11 of 2020 on Job Creation (UUCK) as a refinement of the UUK. Both regulations are still valid by considering the principle of *Lex Posteriori Derogad Lex Priori* [6]. The principle of *Lex Posteriori Derogad Lex Priori* means that the new regulation in a law overrides the old regulation. Thus the wages arrangement in UUCK as a new law overrides the old regulation in the UUK. However, the existence of the UUCK does not revoke the UUCK because not all provisions in the UUCK are regulated in the UUCK.

According to Article 1 number 5 of the UUK, Entrepreneurs are:

- an individual, partnership, or legal entity that operates a self-owned company;
- an individual, partnership, or legal entity that independently operates a company that is not his own;
- an individual, partnership, or legal entity was residing in Indonesia representing the company as referred to in letters a and b domiciled outside the territory of Indonesia.

An employment relationship is an engagement between an entrepreneur and a worker/laborer based on a work agreement, which has elements of work, wages, and order [7]. As long as the relationship between the tourism entrepreneur and the workers is based on an agreement that regulates job descriptions, wages payment, and orders from the entrepreneur, the employment relationship exists, and the parties are subject to labor law.

Based on these provisions, the matter of remuneration for workers at tourism companies submitted to the laws and regulations in the field of labor law, namely UUCK and Government Regulation No. 36 of 2021 on Wages. Article 88E (2) of Article 88E (2) states that: Employers are prohibited from paying wages lower than the minimum wage. Such provisions are emphasized in Government Regulation No. 36 of 2021 Article 23 paragraph (3). By this regulation, the tourism company workers are entitled to receive wages according to the minimum wage provisions. Although the UUCK stipulates that workers' wages can be paid through an

agreement, the nominal wages should not be lower than the minimum wage. Minimum wage is a policy of the central government to realize the rights of workers to a decent living for humanity.

Furthermore, there are two legal aspects regarding the agreement between employers and workers on the payment of the minimum wage, namely:

- The aspect of criminal law. An agreement (between workers and employers) to pay wages below the minimum wage is a criminal offense punishable by imprisonment between 1 year to 4 years and/or a fine of Rp. 100 million to Rp. Four hundred million[8].
- The aspect of civil law. A deal in an agreement, including a work agreement, must not conflict with the laws and regulations. Thus, agreement on wages below the minimum wage is null and void[9].

Based on the above legal provisions, the decrease of tourist visits and the reduction of working hours, which causes a decrease in income of tourism companies, basically cannot be used as an excuse to deviate from paying the minimum wage. This material on wage arrangements is burdensome for tourism companies because they do not accommodate developments and business situations due to the COVID-19 pandemic, which the end cannot be predicted. The government, in principle, is responsive to this issue, but they seem to be half-hearted in taking legal policies in the field of employment relations.

The government's response is proven by issuing a Circular Letter of the Republic of Indonesia Number M/3/HK.04/III/2020 concerning Protection of Workers/Laborers and Business Continuity in the Context of Prevention and Control Covid-19, which is addressed to the Governors (hereinafter referred to as SE). In the Circular Letter, in number II point 5, it is stated that for companies that limit their business activities due to government policies in their respective regions for the prevention and control of COVID-19, causing some or all of their workers/laborers to be absent from work, considering the continuity of the work, the change in the amount and method of payment of workers' wages is carried out by the agreement between the entrepreneur and the worker.

Reviewing the theoretical concept of enactment of laws and regulations, the SE material deviates from the UUCK because the amount of worker's wage is regulated under an agreement. Meanwhile, the status of norms containing deviant rules is found in SE. Based on Act No. 12 of 2011 on the Establishment of Legislations, the existence of SE is not included in the category of statutory regulations, for the existence of SE is meaningless. Thus, the wage arrangements, especially for tourism company workers during the COVID-19 pandemic, cannot answer the problems that arise to maintain the business continuity of tourism companies. In other words, the laws and regulations governing the employment relationship, in this case, the UUK and

UUCK and the regulations below are an obstacle to the continuity of tourism companies in developing tourism potential, including local wisdom-tourism. Legislation is functionally expected to be a solution in national disaster situations and conditions. However, it has become counterproductive, which creates new problems in tourism development based on local wisdom.

3.2 Legal Solutions for Remuneration of Local Wisdom-Based Tourism Workers

The function of law is to protect human rights, including workers' rights. In addition, the law is also an element and aims to achieve justice oriented towards usability and benefits. The functions and objectives of the law are closely related to the constitutional commitment of the 1945 Constitution of the Republic of Indonesia, which stipulates that Indonesia is a welfare state. The concept of a welfare state, according to Bagir Manan, is:

“The state or government is not merely a guardian of security or public order, but the main bearer of the responsibility to realize social justice, general welfare, and the greatest prosperity of the people [10].”

Bagir Manan further states that the conception of modern legal state or welfare state law contains three political, legal, and socioeconomic aspects. The political aspect requires the limitation of state power in political life. The legal aspect requires the state to prioritize the rule of law in the law enforcement process, the principle of legality, and the rule of law. In contrast, the social aspect requires the creation of social justice and general welfare. In this case, it is also the welfare of workers.

According to Muchsan, a welfare state aims to promote the welfare of its citizens equally, and four, the state is required to provide the best and most comprehensive possible service to the community. Without these qualified services, it is impossible to realize prosperity in people's lives. In connection with these characteristics, a definite symptom that appears in the welfare state is government intervention in aspects of the life of the wider community. Government intervention in this aspect of community life is required to create equitable social welfare [11].

By the above concept, morally and functionally, the government should be proactive in taking concrete steps as a form of service to deal with the problem of developing local wisdom-based tourism during the COVID- 19 pandemic. In the legal field, government organs must issue authoritative public decisions based on Act No. 12 of 2011 concerning Legislation.

The impasse of solutions in the field of wage regulation that threatens the survival of tourism companies has made entrepreneurs take unconstitutional policies in the form of violating the rules by using the principle of agreement. With the consideration that they are not entangled in the crime of wages, the entrepreneur carries out a tactic of providing wages for tourism company workers through the basis of an agreement. The content of the agreement is the willingness of workers to receive wages below the nominal minimum wage

provisions. The legal concept of this condition is that an agreement is a law for the parties who make it. The parties, the entrepreneur and the workers, may not recognize that the agreement shall not contradict the laws and regulations, morality, and public order.

Meanwhile, the agreement on wages is contrary to the UUCK and Government Regulation No. 36 of 2021 concerning Wages. Thus it is normatively null and void. Therefore, the solution of the wage problems shall be regulated in the form of legislation.

A short-term legal solution that can be done as a loophole to overcome the problem of wages for tourism company workers is a statement of commitment from the workers. The statement of capability, in this case, is the willingness of workers to receive wages at a rate according to the ability of the tourism company. The legislation does not regulate this kind of worker statement. However, it does not mean that the statement of the worker has no legal consequences. At least it provides security for the employer because of the nature of the worker's statement as the will of the individual worker. As long as it does not conflict with laws and regulations, decency, and public order, the concept of workers' statements regarding wages can be categorized as the legal solution. Legislation indeed prohibits employers from providing wages below the minimum wage, including making a deal in the form of an agreement. However, if the workers are willing to accept the decision, no single regulation prohibits it.

In the rule of law, the written will of the worker is a form of the statement. Legally, a statement letter, also known as an acknowledgment letter, contains a written explanation and bind responsibility. A statement letter is made to provide information about an important matter. It is a form of the document made to be used as evidence to specific actions, facts, or circumstances of a civil matter. This letter is a private deed.

The statement letter is also intended for the Maker Party, the Receiving Party, and the Party stated in the Statement Letter. Thus, it means that the main difference between a letter of agreement and a statement letter lies in the function of the letter. There must be two or more parties who make it in the agreement letter, while the statement letter is unilateral.

To be legal, the letter must be signed on sufficient stamp duty so that the statements made are considered accountable. This statement can apply to individuals or groups, or organizations. A statement is used to bind someone to a specific capability, to explain or to admit something. This written statement can be signed and has more legal force than an oral statement. The affixing of stamp duty as a part of the statement will further strengthen the contents and information contained in the letter. For the recipient, the statement letter is evidence to hold the Party responsible for the material stated. For the maker, it is also a means of evidence that the maker has to carry out the facts of the will that has been stated.

The statement letter will have a legally binding force and the strength of evidence equal to an authentic deed if

the truth is recognized by the person who signed it as regulated in article 1875 of the Civil Code.

“In the event that a party denies his writing or signature or even if the heirs or the rightful parties do not recognize it, the judge order that the authenticity thereof shall be legally investigated.”

By the provisions of the Civil Code, formally, the author acknowledges that he is the person who wrote and signed the letter. Materially, the author must also admit that the letter's contents are valid based on the facts. It means that the letter's contents are made according to the maker's will or are not under threats, coercion, or pressure in any form from other parties [12]. Based on the idea of preventing a vacuum of rules, agreement principles, and legal rules regarding the enforceability of statements, the legal solution to answer the problem of wages for tourism company workers is the concept of workers' statements to accept any counter achievement from the company in the form of wages according to the company's ability.

4. CONCLUSION

Laws and regulations in the field of human resources, in this case, the UUK and UUCK, and the regulations under them, in principle, hinder the efforts to create tourism business continuity, especially local wisdom-based tourism. This obstacle is reflected in the wage arrangement that does not accommodate the actual conditions of the COVID-19 pandemic, which causes a decrease in income due to decreased number of tourist visits. The legislation does not provide a solution to create an alternative wage system by the capabilities of tourism entrepreneurs.

The legal solution recommended in dealing with the issue of wages for tourism company workers, especially for local wisdom-based tourism, is to provide space for individual workers' statements as evidence of their willingness to receive wages below the minimum wage. This solution is carried out to fill the legal vacuum to support local wisdom-based tourism business continuity.

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