

# Crimination Against the Official of Paying Wages Below the Minimum Limit in Order to Achieve the Objectives of Crimination in Indonesia

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## ABSTRACT

This research is a normative legal research by collecting data on criminal decisions on the issue of paying wages below the minimum limit for workers in Indonesia. This study uses a legal approach and a case approach that is related to the problems in this study, which are criminal cases regarding the offense of paying wages below the minimum wage which are less effective in comparison with civil cases or Industrial Relation Disputes which are aimed at achieving the objectives of punishment in Indonesia. The purpose of punishment is as a deterrent effect, coaching and educating the perpetrators so that they do not repeat their actions again and become better individuals in carrying out their lives so as to create security and protection for the people in Indonesia. This offense has been regulated that the act is a criminal offense whose criminal sanctions have been regulated in the Manpower Act which was updated in the Job Creation Law by applying special minimum criminal sanctions, but due to the lack of understanding of the legal apparatus in the field of labor crime and even the labor criminal desk which had been formed at Polda Metro Jaya did not work as expected because its function was only to consult law and direct the case to the Industrial Relation Disputes.

*Keywords: paying wages below the minimum limit, workers, criminal cases, the purpose of punishment, punishment.*

## 1. INTRODUCTION

Indonesia is a state of law. As a state of law, it must guarantee legal protection for everyone, including for workers in Indonesia. The state's efforts to provide legal protection by establishing laws and regulations that provide guarantees for the rights of workers in Indonesia. The guarantee of protection for workers in Indonesia is contained in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which reads "Every citizen has the right to work and a decent living for humanity". The guarantee arrangement is further regulated in Article 38 paragraph (4) of Law No. 39 of 1999 concerning Human Rights (UU HAM) which reads, "Everyone, both men and women, in carrying out work commensurate with their human dignity has the right to fair wages in accordance with his achievements and can ensure the survival of his family." A state is obliged to be responsible for the enforcement of human rights in its own country. The state's obligation is not to commit human rights violations either through actions, including guaranteeing the active fulfillment of everyone's rights. This is a form of state responsibility to protect (to protect), to respect (to respect), and to fulfill (to fulfill) in upholding human rights in Indonesia which is implemented in Law

No. 13 of 2003 concerning Manpower regarding the rights of every employee. people in getting a job and a decent wage to fulfill their life.

In determining a decent wage, the minimum wage is created as a policy instrument used by the government to carry out the income distribution function. Wages can be based on a work agreement, as long as the wage provisions in the work agreement do not conflict with the legislation. If it turns out that the wage provisions in the work agreement are contrary to the legislation, then what applies is the wage provisions in the legislation[1]. Minimum Wage is also a minimum standard used by entrepreneurs or industry players to provide wages to workers in their business or work environment[2].

Based on Article 88 Paragraph (4) of Law Number 13 of 2003 concerning Manpower (Labor Law), the government sets the minimum wage based on the need for a decent living and with due regard to productivity and economic growth. Income that fulfills a decent living is the amount of income or income of workers/laborers from the results of their work so that they are able to meet the living needs of workers/laborers and their families fairly which include food and drink, clothing, housing, education, health, recreation, and old-age insurance.

The determination of the minimum wage for workers/laborers has been carefully calculated and has been discussed jointly between representatives of workers/laborers with representatives of employers and the local government. Because it was mutually agreed upon, the government issued a stipulation called a decision on the minimum wage. In the Job Creation Law, the division of the minimum wage has been updated, that the wage required is the provincial minimum wage set by the local governor every year.

In labor law, there are not only elements of industrial relations disputes or civil relations, but there are criminal elements in them. In the Manpower Act, there are criminal provisions regulated from articles 183-189, some of which have been updated in the Employment Creation Act, but in practice, it is rare for the criminal mechanism in this law to be applied by law enforcement officers to implement the existing rules. For example, in this case, the provision of wages below the minimum wage to workers. Based on the description above, the title of the research entitled: "Crimination Against The Official Of Paying Wages Below The Minimum Limit In Order to Achieve The Objectives Of Crimination In Indonesia".

### **1.1. Related Work**

All minimum wage determinations have been made in such a way and carefully calculated and have been discussed jointly between representatives of workers or laborers, representatives of employers and the local government. Therefore, giving wages below the minimum wage will clearly harm workers. As a further consequence of providing guarantees for the right to work and a decent living for humanity for every worker in Indonesia, a minimum wage is regulated in the Manpower Act. There are even criminal sanctions that are used to strengthen the guarantee of protection for workers from getting wages below the minimum.

In labor law, there are not only elements of industrial relations disputes or civil relations, but there are criminal elements in them. In the Manpower Act, there are criminal provisions regulated from articles 183-189, some of which have been updated in the Employment Creation Act, but in practice, it is rare for the criminal mechanism mechanism in this law to be applied by law enforcement officers to implement the existing rules. For example, in this case, the provision of wages below the minimum wage to workers.

This criminal imposition is intended to provide lessons to entrepreneurs who are in fact able to pay workers wages based on the minimum wage, but are not implemented. The Manpower Act has set rules for companies that are unable to pay workers' wages in accordance with the applicable minimum wage, to be able to defer wages according to the available procedures. So, if a company does not apply for a wage deferral, it is considered that the company is able to pay workers' wages in accordance with the minimum wage limit. At the level of practice, criminal sanctions that have a function to provide legal certainty for workers to get a decent wage are not used properly, with evidence that

punishment in the offense of giving wages below the minimum wage is not optimal. The exact number of labor criminal cases that reach the court is unknown, but based on data that can be obtained online at the Supreme Court Directory, from 2015 to 2021 the number of cases of paying wages below the minimum wage that entered the PHI domain was more than two hundred fifty (250) decisions, while those that enter the criminal realm are not more than ten (10) decisions.

Public lawyer, Eny Rofiatul, stated that the enforcement of the labor law is still minimal. Eny said that the labor penalty is aimed at protecting the rights of workers. Therefore, rogue entrepreneurs who do not fulfill the rights of workers should be given sanctions. The mechanism is clear, manpower conducts investigations into reported labor crime cases. If it meets the criminal element, the case proceeds to court. However, labor cases are always drawn to the private sphere, and brought to the Industrial Relations Court, even though the criminal element is strong[3]. This shows that the application of criminal law in the criminal case of paying wages below the minimum wage is not effective when compared to the number of civil cases.

### **1.2. Our Contribution**

Based on the background and problem formulation described above, the purpose of this research is to find out how the punishment for the offense of paying wages below the minimum limit is in order to achieve the goal of punishment in Indonesia.

### **1.3. Paper Structure**

In conducting this research, the writer uses normative legal research. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced[4]. Legal research is a process to find the rule of law, legal principles, as well as legal doctrines in order to answer the legal issues faced. This research will examine the criminal rules that have been regulated in the Manpower Act and the Job Creation Act for the offense of paying wages below the minimum but not optimal yet. The research specification used is descriptive qualitative research, namely research that describes a situation, subject, behavior, or phenomenon that is currently happening[5]. With this descriptive study, it aims to clarify a situation in a certain problem completely against primary data and also secondary data related to data on criminal decisions in the offense of paying wages below the minimum wage. The type of data used in this paper is secondary data, namely data obtained from the literature, such as books, legislation, articles, magazines or other materials that can be used for research as the basis of research, which in this study derived from the Manpower Act, the Job Creation Act, the 1945 Constitution, as well as data from the Supreme Court's decision. In this study, a legal approach is used, namely an approach that is carried out by examining laws and regulations related to related legal issues, namely Law

Number 13 of 2003 and the Job Creation Act. This study also uses a case approach, which is an approach that is carried out by collecting data on cases of decisions related to this study, which are sourced from the directory of decisions of the Supreme Court. In this paper, deductive data analysis techniques are used, namely by means of document studies or library research with primary legal materials, secondary legal materials, and tertiary legal materials containing data on criminal decisions for paying wages below the minimum wage. The search for legal materials is carried out using library media, books, and internet-based electronic media.

## 2. BACKGROUND

Criminal law is a provision that regulates what actions should not be carried out, where when the action is carried out there are sanctions for those who do it. Criminal law is also intended for the public interest (public law), namely the law that regulates the relationship between individuals and the state which is different from private law which only regulates the relationship between individuals. A person who can be sentenced to criminal sanctions is a person who violates a statutory regulation (*nullum delictum noela poena sine praevia lege poenali*), as stated in article 1 paragraph (1) of the Criminal Code which stipulates "An act cannot be punished, except based on the strength of the provisions of the existing criminal law", which in this case is the criminal provisions of article 90 jo. Article 185 of the Manpower Law and Article 88 jo. Article 185 of the Job Creation Law. In this provision it is stated that an entrepreneur is prohibited from paying workers wages below the minimum wage that has been determined by the local governor every year.

The sanctions given can be in the form of imprisonment and/or fines. With this provision, the punishment of the perpetrators of the crime of paying wages below the minimum wage can be carried out properly in accordance with the objectives of the punishment. This is reinforced by criminal sanctions in the offense of paying wages below the minimum wage as regulated in Article 185 of the Manpower Law and the Employment Creation Law which apply special minimum criminal sanctions in their provisions.

Because basically, workers have been protected by the state in terms of payment of wages, namely through criminal provisions regulated in the Manpower Law and the Job Creation Law. The provision of wages by employers below the minimum wage for workers violates Article 90 paragraph (1) of the Manpower Law which reads: "Entrepreneurs are prohibited from paying wages lower than the minimum wage as referred to in Article 89". In Article 185 paragraph (1) of the Manpower Law, it reads[6]:

1. Whoever violates the provisions as referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), is subject to a minimum imprisonment of 1 (one) year and a maximum of 4 (four)

years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah).

2. The crime as referred to in paragraph (1) is a criminal offense.

Now, with Law Number 11 of 2020 concerning Job Creation, Article 90 of the Manpower Law is abolished, and replaced with Chapter IV concerning Manpower in Article 88 E paragraph (2) of the Job Creation Law which reads "Entrepreneurs are prohibited from paying lower wages. of the minimum wage" in conjunction with Article 185 which is updated in the Job Creation Law, which contains:

1. Whoever violates the provisions as referred to in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), and Article 160 paragraph (4), shall be subject to a minimum imprisonment of 1 (one) year and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah). and a maximum of Rp. 400,000,000.00 (four hundred million rupiah).
2. The crime as referred to in paragraph (1) is a criminal offense.

In this provision, it is stated that whoever violates the provision will be subject to a minimum imprisonment of 1 (one) year and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah). The special minimum penalty is an exception, namely for certain offenses that are very detrimental, dangerous, or disturbing to the community and offenses that are qualified or aggravated by their consequences, such as the application of special minimum penalties for corruption[7]. With this application in the provisions for the offense of paying wages below the minimum wage, it can be interpreted that this offense is an offense with a heavy weight which is very detrimental to workers and the community, for which the punishment in this offense should be more effective.

Sentencing is a stage to give and determine criminal sanctions to a criminal or perpetrator of a crime in criminal law. The policy of criminal law aims to enable positive legal regulations (criminal law) to be better formulated so that they can serve as guidelines not only for legislators, but also for courts that apply laws and also implementer or implementer court decisions. Criminals need to be imposed on someone who commits a criminal offense, because crime also functions as a social institution that regulates the system of social relations in society. In this case, crime as part of social reaction sometimes occurs in violation of applicable norms, namely norms that reflect the values and structure of society which is an affirmation of violations of "common conscience" as a form of disagreement with certain behaviors. It takes the form of painful, or at least unpleasant, consequences"[8].

Sentencing has a purpose which is one of the important roles in imposing criminal sanctions. The purpose of punishment according to Wirjono Prodjodikoro is to frighten people not to commit crimes, either by scaring the crowd or by scaring certain people who have committed crimes so that they will not commit crimes again or to educate or improve those who commit crimes. to become people of good character so that they are beneficial to society. In addition, the purpose of the crime is complex, which means that it must not only be seen to educate the convict in the right direction like other members of the community (guiding) but also to protect and provide peace for the community (protect)[9]. The purpose of sentencing is also one of the elements considered in imposing a sentence, just as the elements of a crime or error and criminal liability are considered in imposing a sentence. Although workers have been protected by criminal provisions in the Manpower Law and the Job Creation Law, it often happens that the problem of paying wages below the minimum wage is directed to the civil realm, namely the settlement of industrial relations disputes. According to Khamid Istakhori (Secretary General of the Serbuk Federation), the employment criminal desk at the Polda Metro Jaya is not working as expected because its function is only legal consultation. In fact, this manpower desk actually makes the process even longer because the apparatus usually asks the complainant to show new evidence if he wants the case to continue. Even though the evidence must be sought and investigated by the Police, not burdened by the workers who report. Often police officers argue that this case is in the realm of industrial relations disputes, so that the settlement is directed through the industrial relations court[10].

In fact, the rules and mechanisms of criminal law to deal with the payment of wages below the minimum wage are clear, if many cases are brought to the Court of Justice, the perpetrators will carry out their obligations to pay the lack of wages to the victim, while this punishment is very necessary in tackling the case of payment of wages in below the minimum wage made by the defendant. This is intended to achieve the purpose of sentencing to provide lessons and guidance to entrepreneurs who are in fact able to pay workers wages based on the minimum wage, but it is not implemented.

Based on data that can be found online through the Directory of Decisions of the Supreme Court, there were only no more than ten criminal decisions in the last 6 years that were found in which the defendants paid wages below the minimum wage and were given imprisonment or fines. The data on criminal decisions is very small when compared to the data on civil decisions which reach more than two hundred decisions.

In these decisions, it is stated that the judge considers the purpose of the sentencing. As in Decision Number 417/Pid. Sus/2016/PN Mpw (Mempawah District Court), Defendant Jayanto was proven to have paid wages below the minimum wage. Mempawah Regency UMK in 2015 was Rp. 63,000 (sixty three thousand rupiah) while the company paid employee salaries of Rp. 46,720, - (forty six thousand seven hundred and twenty rupiah) and there was still a shortage of salary payments of Rp. 16,280. - (sixteen thousand two

hundred and eighty rupiahs), the Panel of Judges concluded that the Defendants had been legally and convincingly proven to have committed the criminal acts that they were charged with, namely violating Article 185 of the Manpower Law no. 13 of 2003 jo. Article 90 paragraph (1) of the Manpower Act jo. Article 55 paragraph (1) of the Criminal Code. In the decision it is written that the judge considers, based on aggravating and mitigating factors and keeping in mind that the purpose of sentencing is not as a means of revenge, but aims to teach lessons and educate the defendants, so that after serving the sentence they will become a better person. Therefore, the Panel of Judges is of the opinion that the punishment to be imposed on the defendant as stated in the verdict has been deemed appropriate and fair, both for the interests of the defendants, the interests of the community and the application of the law in general.

Then, in Decision Number 115/Pid.Sus/2019/PN.Pwk (Purwakarta District Court), the defendant Tan Chee Mun (PT. Warrenty Industries), paid wages below the minimum wage, in accordance with the Decree of the Governor of West Java Number: 561/ Kep.1065-Yanbangsos/2017 dated November 21, 2017 concerning the Regency/City Minimum Wage in the Province of West Java in 2018 for Purwakarta Regency The UMK is Rp. 3,445,616,- (three million four hundred forty five thousand six hundred and sixteen rupiah) but PT. Warrenty Industries does not carry out the West Java Governor's Decree and only provides wages/salaries to its employees in accordance with the Agreement Letter that has been made between the company and its employees, on the grounds that the company's condition is still unstable and work is carried out only if there is an order from garments. and the company's inability to pay employees according to the UMK of Purwakarta Regency. That for that reason, PT. Warrenty Industries should have filed a Suspension for the wages/salaries of employees requested by PT. Warrenty Industries to the Office of Manpower and Transmigration Prov. West Java due to the company's inability to pay wages/salaries according to the UMK in accordance with the labor law, but PT. So far, Warrenty Industries has not submitted a deferral to the employee's wages/salaries to the Prov. Manpower and Transmigration Office. West Java, so that PT. Warrenty Industries is not justified in providing wages/salaries to its employees below the Regency/City Minimum Wage in accordance with the Decree of the Governor of West Java and contrary to the applicable law. The defendant's actions were threatened and regulated by criminal law in Article 185 paragraph (1) of the Republic of Indonesia Law no. 13 of 2003 Jo. Article 90 paragraph (1) and paragraph (2) concerning Manpower. The judge considers that the purpose of sentencing here is not merely as revenge for the defendant's mistakes, but it is hoped that the sentencing can be a lesson for the Defendant and others not to commit similar acts in the future.

In addition, in Decision Number 725/Pid.Sus/2019/PN.Tjk (Tanjung Karang District Court), the defendant Sukardi paid wages below the minimum wage. That the defendant as the owner of the company PT. PRATAMA PRIMA SENTOSA or SPBU 24,351,112 provide wages or salaries

for employees for the month of January to December 2017 is for gas station supervisors of Rp. 2,000,000,- (two million rupiah) for admin around Rp. 1,750,000,- for pom operators around Rp. 1,350,000,- and for Office Boy (OB) it is around Rp. 1,200,000,- up to 1,300,000,- further for January to July 2018, are: for gas station supervisors it is around Rp. 2,250,000,-, for Admin, it is around Rp. 2,000,000,-, for operators 1,485,000,- for OB it is around Rp. 1,375,000,- where the wage or salary is not in accordance with the Bandar Lampung City Minimum Wage as stipulated in the Governor's Decree Number: G/586/V.07/HK/2017 for 2018 amounting to Rp. 2,263,390.87. The defendant's actions are subject to criminal sanctions as regulated in Article 90 Paragraph (1) in conjunction with Article 185 paragraph (1) Law Number 13 of 2003 concerning Manpower in conjunction with the Decree of the Governor of Lampung Number G/586/V.07/HK/2018 dated November 22, 2017 concerning Bandar Lampung City minimum wage 2018. The judge considered that the imposition of a criminal sentence on the defendant was not intended as revenge for the defendant's actions but should be considered as an effort to foster and regain awareness as well as a lesson so that the defendant can reflect on his wrongful attitude and violate the law. and harm other parties, so that later when the defendant returns to the community, he becomes a person who is aware and obedient to the rule of law as a good citizen, and therefore the imposition of a crime according to the Assembly's opinion is more focused on the preventive nature of the defendant.

### 3. CONCLUSION

Based on the discussion above, it can be concluded that the punishment for the offense of paying wages below the minimum wage in Indonesia is not good because it is seen from the number of data on criminal decisions which are less than civil decisions. Basically, the criminal provisions for this offense have been regulated and stipulated in the Manpower Act and the Job Creation Act and with the implementation of a special minimum penalty in it, but there are errors in its implementation so that this problem is often brought to the private or civil domain and eliminates criminal element. Punishment has a goal that must be achieved, namely to educate and guide the actors who in this case are entrepreneurs who pay workers wages below the minimum wage, besides that punishment aims to provide comfort and protect the community, because everyone has the potential to become a paid worker which has been determined and agreed on the amount based on a standard of living that is adequate for humanity.

Punishment in the offense of paying wages below the minimum wage against workers must be optimized by introducing existing minimum wage criminal provisions and minimum wage provisions in each province which have been regulated in the governor's decision of each province so that it is better known by employers and workers in order

to understand what is the minimum wage that must be paid or received and so that employers and workers understand that workers are protected by law, especially criminal law. In addition, by establishing a special sub-directorate that handles labor crimes within the organizational structure of the police and other law enforcement agencies and maximizing the process of increasing the professional knowledge capacity of labor criminal law for enforcement officers.

### REFERENCES

- [1] Budiono, Abdul R. *Hukum Perburuhan*, (Jakarta: PT. Indeks, 2009).
- [2] Krishhermono, Rio. *Pengertian Upah Minimum*, from Kompasiana site. 24 Juni 2015.
- [3] Thea, Ady. *Penegakan Pidana Perburuhan Lemah*, from hukumonline.com site. 20 May 2015.
- [4] ND, Mukti Fajar & Yulianto Achmad. *Dualisme Penelitian Hukum Normatif dan Empiris*. (Yogyakarta: Pustaka Belajar, 2010).
- [5] Sudjana, Nana dan Ibrahim, *Penelitian dan Penilaian Pendidikan*, (Bandung: Sinar Baru. 1989).
- [6] Indonesia, Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan.
- [7] Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2008).
- [8] Waluyo, Bambang. *Pidana dan Pemidanaan*, (Depok: Sinar Grafika, 2004).
- [9] Moeljatno, *Fungsi dan Tujuan Hukum Pidana Indonesia*, (Jakarta: PT Bina Aksara, 1985).
- [10] Thea, Ady. *Penegakan Pidana Perburuhan Lemah*, from hukumonline.com site. 20 May 2015.