

CORPORATE RESPONSIBILITY IN PROVIDING WAGES BELOW THE MINIMUM WAGE

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Abstract: *Wages are one of the important stimuli for employees in a company. This does not mean that it is the wage rate that is the main driver, the wage rate is only the main driver so that the wage rate is not sufficient to adequately meet the needs of the workers. employer's orders. Individuals, entrepreneurs, legal entities or other entities and for their services in the work concerned receive wages or other forms of compensation. In other words, workers are called workers if they carry out work in an employment relationship and on orders from other people by receiving wages or other forms of compensation. The criminal sanctions imposed in this law are in the form of imprisonment and fines. The minimum wage policy also aims as a tool to fight poverty and encourage Indonesia's economic development with fair and competitive wages. Salaries are adjusted annually to the upper and lower limits of the minimum wage for the relevant area. If the employer unreasonably violates the wages paid for the work, in this case paying less than the minimum wage, the employer can be classified as a criminal offense according to the Labor Code. Roeslan Saleh writes in his book Hanafi Amrani: According to the provisions of criminal law, actions that are prohibited are referred to as criminal acts (which can be punished) or minor violations.*

Keywords: *Corporate Responsibility, Minimum Wage*

1. Introduction

The Labor Law is contained in Article 1 paragraph 1 of Law no. 13 of 2003, employment includes all matters related to work before, during and after working hours. Employment law is the law that regulates work. The employment law was originally known as the Employment Code. Regulations are made because they have goals, one of which is the purpose of labor legislation, namely as a tool for human renewal. Instruments for renewal in the context of development can be interpreted as channeling human activities that lead to development. Therefore, the community has directives to channel the development of the world of work to achieve national development which aims to master, promote and regulate all activities that take place in the world of work to achieve equity. Article 4 of Law Number 13 of 2003 concerning Manpower emphasizes that manpower development is carried out on the principle of integration through cross-sectoral functional coordination between the center and the regions. Employment development aims to:

The basic right that workers have and which must be fulfilled is legal protection. This provision is regulated in Law Number 13 of 2003 concerning Manpower. This legal protection is designed to protect the welfare of workers and their families, taking into account the interests of employers. Observing the current global condition of employment, Indonesia as one of the countries that has a sizable population with a condition of human resources (Abduh, 2020) and working age which is quite a lot and must be protected. The form of protection offered is equal treatment for employers and the realization of basic rights such

as the right to holidays and wages. Fulfillment of basic rights makes sense to protect workers from abusive behavior by employers (Ariana Fajriati et al., 2021).

Embodiment this right is further stated in the laws and regulations which form the legal basis of Indonesian labor law, namely the Manpower Law No. 13 of 2003, in particular Article 88 paragraph 1, which states: "Every worker/employee has the right to income that fulfills a dignified life". The definition of wages can be defined as the price that must be paid to workers for services that generate wealth.

Everyone has the right to get a job to fulfill their needs, therefore the constitution shows the importance of human rights as something that must be upheld and protected by all parties in the nation, starting from the state. (Harisman, 2021). The setting of minimum wages is intended to protect workers/workers from low wages resulting from weak bargaining positions in the labor market.

The minimum wage policy also aims as a tool to fight poverty and encourage Indonesia's economic development with fair and competitive wages. The factors affecting the adjustment of the minimum wage are related not only to the consideration of the value of economic growth or inflation at regulatory levels, but also to the average per capita consumption of working households. Salaries are adjusted annually to the upper and lower limits of the minimum wage for the relevant area. (Syahharis, 2022). Legal certainty and state protection can be understood based on these provisions, in which employers in this case are required to pay their workers wages of at least the minimum wage. However, there are still employers who do not comply with these regulations, so it can be said that until now in the 1945 Constitution one of the constitutional rights is the right of workers or workers to a decent wage. unable to function effectively. If the employer unreasonably violates the wages paid for the work, in this case paying less than the minimum wage, the employer may be classified as a criminal offence. According to the provisions of criminal law, actions that are prohibited are referred to as criminal acts. (Amran, 2019)

2. Literature Review

Based on Article 3 of Law Number 13 of 2003 concerning Manpower (hereinafter abbreviated as UUKK) confirms that manpower development is carried out on the principle of integration through functional coordination across central and regional sectors. The principles of manpower development are basically in accordance with the principles of national development, in particular the principles of Pancasila democracy and the principles of fairness and equality. Manpower development has many dimensions and linkages with various parties, namely between the government, employers, and workers/labourers. Therefore, manpower development is carried out in an integrated manner in the form of mutually supportive cooperation. Thus, the principle of employment law is the principle of integration through functional coordination across central and regional sectors. (Hanifah, 2020)

The minimum wage is the minimum standard used by employers or industry players to pay workers in their business or work environment. Because the fulfillment of decent needs differs in each province, it is called the provincial minimum wage. Minimum wages are set at the provincial, district/city levels. According to Article 89 of the Labor Law No. 13 of 2003, each region has the right to set its own minimum wage policy both at the provincial and

district/city levels. Regulated in a Minister of Manpower Regulation Number 18 of 2022. This regulation explains that the minimum wage is the lowest monthly wage determined by the Governor as a safety net (Article 1 point 1). The minimum wage consists of the provincial minimum wage and the district/city minimum wage (Article 5 paragraph 1).

Determination of wages must reflect justice and consider various aspects of life to better realize the Islamic view of workers' rights in receiving wages. Wages paid to a person must be proportional to the activities carried out, sufficient and also useful to meet the rational needs of life. In this case or differences in the level of human needs and abilities or environmental factors.

Regulations on minimum wages apply to all companies, but exemptions can be given to companies that are unable to pay according to the stipulated minimum wage. Companies that are unable to provide labor wages in accordance with the minimum wage that has been set can submit a request for suspension to the Governor through the competent agency no later than 10 days before the date of the minimum wage. Regarding the suspension itself, it has been regulated in Article 90 UUKK.

The government itself thinks that Article 90 of the Manpower Law, which in its explanation provides for a suspension of employers who are unable to pay wages according to the minimum wage, is to protect workers in companies so that workers continue to work in companies that are experiencing difficult conditions.(Aulia & Mahartayasa, 2018).If the company does not provide the wages that have been set then the company or corporation can be given a sanction. According to Article 185 of the Job Creation Perppu, employers who pay workers 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.(Saptohutomo, 2023).

Wages or rewards given by employers to workers after workers have carried out work that has been agreed upon prior to a mandatory employment relationship. If the worker is required to perform the performance given by the employer or the entrepreneur, it is the employer's obligation to pay the worker's wages in money according to what was agreed. Law No. 13 of 2003 confirms what is meant by the term wages. Wages are rights of workers/workers that are received and expressed in the form of money as compensation from the employer or employer to workers/workers who are determined and paid as stipulated in the work agreement, or laws and regulations, including allowances for workers and their families for work or services. which has been done.(Abduh, 2022)

3. Method

The research method is one of the factors of a problem that will be discussed, where the research method is the main way it aims to achieve scientific research level(Hanifah, 2020). This paper is a type of normative legal research. By taking a statutory and conceptual approach originating from library research (secondary data)(Achmad, 2010). The research method used is a literature study(Astuti, 2022).

4. Result and Discussion

a. Provision Corporate Responsibility in Providing Wages Below the Minimum Wage

Today's global developments encourage increased mobility of the world's population which creates various positive and negative impacts for the interests and lives of the people and the nation of the Republic of Indonesia.(Abduh, 2020). The parties in labor law are very broad, not only between employers and workers but also other related parties such as companies and the government.Labor is part of workers/labourers, namely workers who work in an employment relationship, at the behest of the employer (can be an individual, employer, legal entity or other entity) and for their services while working receive wages or other forms of compensation. compensation. In other words, work is referred to as work if it works in an employment relationship and on orders from other people receives wages or other forms of compensation. Laborers are non-workers who work on orders from other people and receive wages or other forms of compensation but are not in an employment relationship, such as shoe suppliers or hairdressers.(Aulia & Mahartayasa, 2018).

Entrepreneurs, in general, are people who run companies, whether they are owned or not. In general, the term entrepreneur refers to people who do business (entrepreneurs). The term used in previous laws and regulations is employer, person or entity that employs workers. Some employers are employers in relation to their workers. Entrepreneurs who run companies that they do not own, on the other hand, are workers in relation to the owners or shareholders of the company because they work for wages and other forms of remuneration. We also need to distinguish between entrepreneurs and corporations, because entrepreneurs may not own the company either.

The government as the national authority has an interest in ensuring that the wheels of the national economy and distribution of income run in an orderly and smooth manner so as not to endanger national security. Therefore, the government has an obligation to ensure that laws and regulations in the field of human resources work fairly for the benefit of the parties. Reliable enforcement of laws and regulations. The field of just employment requires government intervention through agencies and departments that specifically deal with employment issues, currently the central level agency is called the Ministry of Manpower and the Regional Manpower Office,

In accordance with what is regulated in the Perppu of 2022, in principle, employers are prohibited from paying workers wages lower than the minimum wage. On the other hand, employers are obliged to pay wages to workers in accordance with the agreement which cannot be lower than the amount determined by statutory regulations. The governor is obliged to set the UMP and can set the UMK under certain conditions, the value of which must be higher than the UMP. The UMP and UMK are determined based on economic and employment conditions. It should be noted, the minimum wage applies to workers with less than 1 year of service at the company concerned. Meanwhile, wages above the minimum wage are set based on an agreement between employers and workers.(Pramesty, 2020)

UUKK Article 88 regulates the right of workers to earn a decent income for humanity. To fulfill this, the government's wage policy is intended to protect workers. Wage policies to protect workers include:

1. minimum wage;
2. overtime pay;
3. wages absent from work due to absence;
4. wages absent from work due to other activities outside of work;
5. wages for exercising their rights during work breaks;
6. forms and procedures for payment of wages;
7. fines and deductions from wages;
8. things that can be calculated with wages;
9. proportional wage structure and scale;

10. wages for severance pay; And
11. wages for the calculation of income tax

The government in setting a minimum wage based on decent living needs by taking into account productivity and economic growth. Entrepreneurs are prohibited from paying wages below the stipulated minimum wage. If the determination of the minimum wage is based on an agreement between workers or trade unions, it may not be below the minimum wage or the agreement is contrary to laws and regulations. If that happens then it is null and void.

The wages received by workers/laborers are the income they receive as compensation for the work they have done. Protect workers, provide wage policies. The government has to accept the minimum, due to domestic and international pressure. These pressures arise due to concerns about working conditions in Indonesia. The minimum wage policy is designed to protect unmarried or unmarried new workers/workers with low education, no experience, less than one year of service. This aims to prevent the arbitrariness of employers as payers in paying workers/new workers to work. The government-set minimum wage was originally designed as a safety net for companies to pay the minimum wage. We have not been able to build good labor-management relations.(Piliang, n.d.)

b. Criminal Liability Against Corporations Proven To Make Payments Under The Minimum Wage

The imposition of liability on the corporation is based on the respondeat superior doctrine, a doctrine which states that corporations themselves cannot commit crimes and have faults. Only agents acting for and on behalf of corporations can commit crimes and have fault. Therefore, corporate responsibility is a form of accountability for the actions of other people/agents (vicarious liability), in which he is responsible for the criminal acts and mistakes of the agents. This doctrine is taken from civil law which is applied to criminal law. Vicarious liability usually applies in civil law regarding torts of law based on the respondeat superior doctrine.(Malau, 2019)

The main difference in classifying corporations and individuals as subjects of criminal justice lies in the party responsible for the crimes they commit. Consequently, the types of sanctions that can be imposed on the two are not equal. *Celia Wells* divide the forms of criminal sanctions that may be imposed on corporations, namely:(Mompang, 2017)

1. *Financial Sanctions:*

Is a criminal sanction in the form of a fine, the amount of which is considered appropriate and can be imposed on the corporation. If the corporation does not want to carry it out or is unable to carry it out, then the substitute for the fine is not a form of imprisonment or confinement as stipulated in the Criminal Code, but the confiscation of assets or property from the corporation itself.

2. *Non-Financial Sanctions:*

- a. *Probation*
- b. *Adverse publicity*
- c. *Community service*
- d. *Direct compensation orders*
- e. *Punitive injunctions.*

As for the non-financial sanction model, Indonesia has the same steps in both criminal and non-criminal law. The probationary period, for example, is similar to the probationary period under articles 14a to 14f of the Criminal Code. Adverse publicity is also similar to the model for announcing a judge's decision as formulated in Article 10 of the Criminal Code.

On the other hand, the concept of community service, direct reparation orders, and punitive interim measures take the form of obligations to do things that are neglected without rights, exploitation of profits from criminal acts, and recovery as a result of criminal acts. Basically, the model of non-monetary sanctions was developed to overcome the limitations of criminal sanctions that can be imposed on business actors.

The model of criminal sanctions for other corporations also emerged from the results of the "International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment" on 19-23 March 1994 in the United States. From the results of the meeting it was stated that the model of sanctions for corporations that can be imposed are:

1. Penalties worth the money:
 - a. Replacing the economic benefits derived from crime
 - b. Replace all or part of the costs of investigation and repair of losses incurred
 - c. Fine
2. Additional punishments such as prohibition of committing acts/activities that may lead to the continuation of crimes, orders to end or not continue activities, revocation of activity permits and dissolution of business ventures, confiscation of assets and proceeds of crime, expulsion and disqualification of convicts, and so on.

On the other hand, several laws in Indonesia have changed the criminal penalties imposed on companies. However, from the various punishment options available above, Indonesia only chooses fines as the only main punishment that can be imposed on companies that commit crimes. In general, the penalty for a legal entity that commits a crime is set at one third compared to the penalty for an individual who commits a crime. In contrast to the principal punishments as mentioned above, the formulation of additional sentences for companies that commit criminal acts tends to be more diverse. Indonesia regulates other additional criminal acts besides those regulated in Article 10 paragraph (2) of the Criminal Code, such as closing all or part of a company for a maximum of 1 year due to criminal acts of corruption, revocation of business licenses, revocation . legal entity status, determination of actions to be taken by the company and others

By imposing punishment, the state must guarantee individual autonomy and maintain respect for the individual. Based on this, punishment must have goals and activities that can maintain a balance between humans and the interests of society to achieve common prosperity.

The purpose of sentencing policy is to determine punishment which cannot be separated from the objectives of criminal policy. In accordance with its definition, namely the protection of society to achieve prosperity. To answer and understand the purpose and function of punishment, we cannot be separated from the existing concept of punishment.

Mardjono Reksodiputro argues, as Hasbullah F. Sjawie has included in his book, there are three systems in Indonesia regarding the position as maker and the nature of corporate responsibility, namely: (Trihardianto, 2018)

1. Corporate management as maker and the manager is responsible.
2. Corporations as makers and the manager is responsible.
3. Corporations as makers and also as responsible

It's not usual for corporations to be asked accountability in the form of imprisonment has also been emphasized in the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (hereinafter referred to as PERMA 13 of 2016) Article 25 paragraph (3) which states that the Principal Crimes that can be imposed on Corporations is a fine. The Supreme Court regulations themselves were made to serve as a reference for law enforcers in resolving cases with corporations as the subject. However, even though PERMA 13 of 2016 has stated that

the main punishment that can be imposed by judges on corporations is in the form of fines and/or additional punishment,

This article provides the understanding that PERMA13 of 2016, although it specifically regulates the procedures for handling criminal acts by corporations and states that the main punishment that can be imposed on corporations is only in the form of fines, they will still follow the criminal provisions in the law relating to corporations as the subject.

Impossible to drop criminal sanctions against a corporation in the form of imprisonment, so as a consequence it is not possible to prosecute a corporation as the perpetrator of a crime based on a criminal law if the law determines that the criminal sanction that can be imposed on a criminal is a cumulative prison sentence and a criminal sanction fines (both of these criminal sanctions are cumulative, that is, both sanctions must be imposed on the perpetrators of criminal acts concerned). In other words, corporations may only be prosecuted and sentenced to a criminal sentence if the criminal sanction of imprisonment and fine is determined in the law as an alternative criminal sanction (meaning that it can be chosen by a judge). If the two criminal sanctions are alternative in nature, then the person concerned may be subject to only imprisonment, or a fine, or the two sanctions will be imposed cumulatively. Meanwhile, the corporation is only subject to the main criminal sanction in the form of a fine because it is impossible for the corporation to serve a prison sentence. If criminal sanctions are determined cumulatively between imprisonment and fines, not alternatively,

From the explanation, it can be concluded that companies that do not pay the stipulated wages can be subject to sanctions as stipulated in laws and regulations in the form of criminal sanctions for a minimum of 1 year and a maximum of 4 years for company management and a fine of at least IDR 100,000,000 .- and a maximum of IDR 400,000,000, - as explained in Article 185 of Perppu Number 2 of 2022 Concerning Job Creation.

5. References

The criminal sanctions imposed in this law are in the form of imprisonment and fines. The minimum wage policy also aims as a tool to fight poverty and encourage Indonesia's economic development with fair and competitive wages. Regulations are made because they have goals, one of which is the purpose of labor legislation, namely as a tool for human renewal. The basic right that workers have and which must be fulfilled is legal protection. This legal protection is designed to protect the welfare of workers and their families. The determination of wages must reflect justice and consider various aspects of life to better realize the Islamic view of workers' rights in receiving wages. In this case or differences in the level of human needs and abilities or environmental factors. Regulations on minimum wages apply to all companies, but exemptions can be given to companies that are unable to pay according to the stipulated minimum wage. The imposition of responsibility on corporations is based on the respondeat superior doctrine, a doctrine which states that corporations themselves cannot commit crimes and have faults. Only administrators acting for and on behalf of the corporation can commit criminal acts and have faults. The main difference in classifying corporations and individuals as subjects of criminal justice lies in the party responsible for the crimes they commit. If the two criminal sanctions are alternative in nature, then the person concerned can only be subject to imprisonment or fines. or both sanctions are imposed cumulatively. Meanwhile, the corporation is only subject to the main criminal sanction in the form of a fine because it is impossible for the corporation to serve a prison sentence.

6. References

- Abduh, R. (2020). Dampak Sosial Tenaga Kerja Asing (TKA) di Indonesia. *Sosek: Jurnal Sosial Dan Ekonom*, 1(1), 26–27.
- Abduh, R. (2022). Perspektif Kesejahteraan Tenagakerja Dengan Model Penetapan Upah Minimum Kabupaten Kota. *Iuris Studia: Jurnal Kajian Hukum*, 3(2008), 38–44. <https://doi.org/10.55357/is.v3i1.211>
- Achmad, M. F. dan Y. (2010). *Dualisme Penelitian Hukum Normatif & Empiris*,.
- Amran, H. (2019). *Politik Pembaharuan Hukum Pidana*. UII Press.
- Ariana Fajriati, R., Ratna, E., & Doramia Lumbanraja Program Studi Magister Kenotariatan, A. (2021). Tinjauan Hukum Pembayaran Upah Di Bawah Ketentuan Upah Minimum Provinsi (UMP). *Notarius*, 14, 452–465.
- Astuti, M. (2022). *Perdagangan Bebas Dalam Pandangan Islam*. 3, 228–233.
- Aulia, R., & Mahartayasa, I. M. (2018). Pertanggungjawaban Pengusaha Atas Tidak Terpenuhinya Pemberian Upah Minimum Bagi Tenaga Kerja. *Kertha ...*, 1–14. <http://download.garuda.kemdikbud.go.id/article.php?article=1334233&val=907&title=PERTANGGUNGJAWABAN PENGUSAHA ATAS TIDAK TERPENUHINYA PEMBERIAN UPAH MINIMUM BAGI TENAGA KERJA>
- Hanifah, I. (2020). HUKUM KETENAGAKERJAAN di INDONESIA. In *วารสารวิชาการมหาวิทยาลัยอีสเทิร์นเอเชีย* (Vol. 4, Issue 1).
- Harisman, H. (2021). Protection of Human Rights in the Amendment of the 1945 Constitution of The Republic of Indonesia. *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 549(Iclhr), 384–389. <https://doi.org/10.2991/assehr.k.210506.050>
- Malau, P. (2019). *Pertanggungjawaban Pidana Korporasi Dalam Hal Tidak Dilaksanakannya Perlindungan Keselamatan dan Kesehatan Kerja Pekerja/Buruh Di Tempat Kerja*. USU.
- Mompang, P. L. (2017). Pemidanaan Korporasi. *Dictum Jurnal Kajian Putusan Pengadilan*, 12, 79.
- Piliang, J. N. (n.d.). PERTANGGUNGJAWABAN PIDANA TERHADAP PENGUSAHA YANG MEMBAYAR UPAH LEBIH RENDAH DARI UPAH MINIMUM. *Jurnal Hukum Kaidah*, 17(2), 151. <https://docplayer.info/223341553-Jurnal-hukum-kaidah-media-komunikasi-dan-informasi-hukum-dan-masyarakat.html>
- Pramesty, T. jata A. (2020). *Langkah Hukum Jika Upah di Bawah Standar Minimum*. Hukum Online. <https://www.hukumonline.com/klinik/a/langkah-hukum-jika-upah-di-bawah-standar-minimum-lt4c85f88b626af>
- Saptohutomo, A. P. (2023). *Menurut Pasal 185 Perppu Cipta Kerja, pengusaha yang membayarkan upah pekerja di bawah upah minimum dikenai sanksi pidana penjara paling singkat 1 tahun dan paling lama 4 tahun dan/atau pidana denda paling sedikit Rp100.000.000 dan paling banyak Rp400.000*. Kompas.Com. <https://nasional.kompas.com/read/2023/01/02/18590881/perppu-cipta-kerja-pengusaha-bayar-upah-pekerja-di-bawah-minimum-terancam-4>
- Syahharis, H. F. (2022). *BAWAH UPAH MINIMUM*.
- Trihardianto, R. (2018). Pertanggungjawaban Pidana Korporasi Terhadap Hak Penyandang Disabilitas Di Bidang Ketenagakejaan Dalam Undang-Undang Nomor 8 Tahun 2016 Tentang Penyandang Disabilitas”. *Jurnal Hukum*, VI(1), 57.