

# PalArch's Journal of Archaeology of Egypt / Egyptology

## LEGAL STATUS OF SUSPENSION OF MINIMUM WAGE IMPLEMENTATION

*Astrella Levina<sup>1</sup>, Lanny Ramli<sup>2\*</sup>*

<sup>1</sup>Department of Administrative Law, Faculty of Law, Universitas Airlangga, Surabaya,  
Indonesia

<sup>2</sup>Department of Constitutional Law, Faculty of Law, Universitas Airlangga, Surabaya,  
Indonesia

Corresponding Author: <sup>2</sup>[lannyramli@yahoo.com](mailto:lannyramli@yahoo.com)

**Astrella Levina, Lanny Ramli. Legal Status Of Suspension Of Minimum Wage Implementation--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(4), 2224-2230. ISSN 1567-214x**

**Keywords: Legal Status, Entrepreneurs, Suspension, Implementation, Minimum Wage**

### ABSTRACT

The purpose of this study are: First, to learn and comprehend the legal efforts for the entrepreneurs who cannot afford labor wage according to the established minimum. Second, to learn and understand the enactment of Decision Letter of minimum wage implementation suspension currently being contested in the Administrative Court (PTUN).

Methodology: Juridical normative method with collection of primary legal material was used in this study, while the statute and conceptual approaches were used.

Main Findings: Results show that entrepreneurs proposed a suspension on the implementation of minimum wage. Decision Letter of suspension on the implementation of minimum wage issued by the governor could be in a rejection and approval.

Applications of this study: Suspension of minimum wage implementation is a legal effort to reduce the burden of entrepreneurs who cannot afford labor wage according to the established minimum.

Novelty/Originality this study: To conclude, decision letter of minimum wage implementation suspension can still be enacted by entrepreneurs despite it still being in the legal process at PTUN.

### INTRODUCTION

Legal subjects in employment relationships are workers and employers.

According to Article 1 number 3 of Law No. 13 of 2003 concerning Manpower, workers or laborers is any person who works for a wage or other forms of remuneration (Indonesia, 2003). In this sense, it is clear that people who work must be given wages or rewards for doing work. Workers who have done the work will be given wages or rewards by the employer in accordance with the work agreement made between the worker and the employer (Rachmawati, 2015). The relation is governed by an agreement between workers and employers or in accordance with statutory regulations (Indonesia, 2003).

Employer is an individual, entrepreneur, legal entity, or other bodies that employ workers by paying wages or other forms of compensation, as referred to in Article 1 number 4 of Law No. 13 of 2003 concerning Manpower (Nurachmad, 2009). Entrepreneurs are employers in a company. Based on Article 1 number 5 of Law No. 13 of 2003 concerning Manpower, entrepreneurs are individuals, alliances, or legal entities that run a self-owned company, a company not theirs, and who are in Indonesia representing their own or non-owned companies domiciled outside the territory of Indonesia (Khoe, 2013).

Work relations are relations between workers and employers that occur after an employment agreement (Khoe, 2013). Work agreements are made in writing or unwritten agreed by workers and employers. Work agreement is an agreement between the worker/laborer and the entrepreneur or employer which contains the terms of work, rights, and obligations of the parties as stated in Law No. 13 of 2003 concerning Manpower (Harikedua, 2015). Elements in the work agreement are the existence of work, the presence of orders, and the existence of wages (Husni, 2010; Widiensyah, 2014).

Every employer is required to pay wages to their workers in accordance with wages set by the government. If the worker cannot pay the wages according to the regulation, the employer can propose a suspension of wages to the governor. This matter has been regulated in Article 90 of Law No. 13 of 2003 concerning Manpower. Employers can apply for the suspension of minimum wages in accordance with the procedure for filing a minimum wage suspension that has been regulated in Minister of Manpower and Transmigration Decree No. 231 of 2003 concerning Procedures for Suspending the Implementation of Minimum Wages (Nasrudin, 2014).

In the case of employers who have proposed a suspension on the implementation of the minimum wage, more than a few workers disagree with this. Viable legal effort for the workers when they do not agree with the suspension of minimum wage implementation by the company is to sue the decree of suspension of minimum wage implementation issued by the governor.

The purposes of this study are: first, to learn and comprehend the legal efforts for the entrepreneurs who cannot afford labor wage according to the established minimum, and second, to learn and understand the enactment of Decision Letter of minimum wage implementation suspension currently being contested in the Administrative Court (PTUN).

## RESEARCH METHOD

Juridical normative method with collection of primary legal material was used in this study. As for the approach, statute approach and conceptual approach were used. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1986 concerning State Administrative Court, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law No. 13 of 2003 concerning Manpower, Law No. 30 of 2014 concerning Government Administration, Minister of Manpower and Transmigration Decree No. 231 of 2003 concerning Procedures for Suspending the Implementation of Minimum Wages.

Secondary legal materials include reading books, doctrines from experts, legal journals, articles and news related to the title. Based on the formulation of the problem and the purposes of the study, the analysis of legal material was carried out by means of interpretation, which served as the application and supervision over whether the applicable law or regulation has been fully implemented.

## RESULTS AND DISCUSSION

### *Legal Efforts Taken by Entrepreneurs Who Cannot Afford Labor Wage According to the Established Minimum Wages*

Employers who apply for a suspension on the implementation of the minimum wage must really be unable to pay the labor wage in accordance with the minimum wage. Evidence from employers is needed, which states that they are truly unable to pay workers' wages in accordance with the minimum wage. Article 4 of the Decree of the Minister of Manpower and Transmigration No. 231 of 2003 concerning Procedures for Suspending the Implementation of the Minimum Wage has set the requirements that must be met for submitting a request to suspend the implementation of the minimum wage (Lazuardi et al., 2019).

One proof that the employer is unable to pay laborers in accordance with the minimum wage is to include the company's financial statements consisting of the balance sheet, loss/profit calculation along with explanations for the last 2 years, all of which have been audited by public accountants (Utami, 2017). After the evidence has been collected, the governor determines the rejection or approval of the suspension of minimum wage implementation after receiving advice and consideration from the Provincial Wage Council.

Efforts to suspend the implementation of the minimum wage by employers as referred to in Article 90 paragraph (2) of Law no. 13 of 2003 concerning Manpower are considered contrary to Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to fulfill his living needs and get compensation, fair and proper treatment in work relationships (Levina, 2018). Due to that, Constitutional Court Decision Number 72/PUU-XII/2015 was issued. In the Constitutional

Court's ruling, it is stated that the minimum wage is, in addition to being a basic protection for workers/laborers, a safety net, intended to prevent a decline to the lowest level (Ardatha, 2017).

The principle of employers is that they are prohibited from paying wages lower than the minimum wage set by the governor or authorized official (Hadiyan, 2015). Therefore, the suspension of payment of the company's minimum wage to workers is intended to provide protection for both employers and workers. The suspension of minimum wage payments as stipulated in Article 90 paragraph (2) of Law no. 13 of 2003 concerning Manpower basically does not necessarily eliminate the obligation of employers to pay the difference between the minimum wage with payments made by employers during the suspension period (Kalsum, 2016).

The difference between the minimum wage and the payment made by the employer during the suspension period is the employer's debt that must be paid to the worker or laborers (Levina, 2018). This is in order to provide legal protection and legal certainty for workers or laborers to be able to receive a decent income for humanity while at the same time giving responsibility to employers, preventing them to use the inability to pay wages as an excuse. Hence, the difference between the minimum wage and the payment made by the entrepreneur remains an obligation of the entrepreneur to pay.

Non-litigation legal efforts are a form of repressive legal protection. Repressive legal protection is legal protection that aims to resolve disputes that have occurred (Albar et al., 2018). Non-litigation legal efforts are legal remedies that can be carried out outside the court. They are usually referred to as Alternative Dispute Resolution (ADR) (Kurniawaty, 2017).

Based on Article 1 number 10 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Kurniawan, 2019), Alternative Dispute Resolution is an agency that resolute dispute or dissent through a procedure agreed by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment (Diah, 2016). The abovementioned law does not explain what is meant by consultation, negotiation, mediation, conciliation, or expert judgment.

Repressive forms of legal protection in addition to non-litigation legal efforts are litigation legal efforts. They are defined as legal remedies carried out through the courts (Mahyuni, 2019). In the litigation process, the parties are opposed to one another. In addition, litigation dispute resolution is the final means (*ultimum remidium*) when other alternative dispute resolution methods do not produce results (Zaman, 2017). The final result of a dispute resolution through litigation is a decision stating a win-lose solution (Syufaat, 2018). The procedures in this litigation are more formal and very technical in nature.

Litigation efforts in manpower law can be resolved in the Industrial Relations Court. The Industrial Relations Court is a special court established within the

district court that has the authority to examine, hear and give decisions on industrial relations disputes (Sinaga, 2018). As stated in Article 1 number 17 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes (Amin, 2015), if no agreement is reached through the settlement of industrial mediation and industrial conciliation, one of the parties or two parties to the dispute can file a lawsuit to the Industrial Relations Court.

### **Validity of the Decree on the Suspension of the Minimum Wage Implementation while Still Being in Contest at the State Administrative Court**

Decree on the suspension of minimum wage implementation is concrete, in which the suspension is not abstract, but is tangible because it is proposed by a company due to their inability to pay labor wages in accordance with the specified minimum wage. This is in accordance with the Decree of the Governor of West Java Number 561/Kep.110-Yanbangsos/2017 concerning the Suspension of the Implementation of the Subang Regency Minimum Wage in 2017, where the Governor of West Java issued the Decree in writing to two companies unable to pay wages to workers based on the results of verification and clarification of West Java Province Wage Council.

Decree on the suspension of minimum wage implementation is individual. It is not intended for public, not intended for all companies but intended for companies proposing the suspension in question, and those that have met the suspension requirements for implementing the minimum wage as stipulated in legislation. This was stated in the Decree of the Governor of West Java Number 561/Kep.110-Yanbangsos/2017 concerning Suspension for the Implementation of the Subang Regency Minimum Wage in 2017, which contains the Governor's decision regarding the rejection and approval of the application for the suspension aimed at 2 (two) companies, namely PT. Gerin Trend of toys and garment manufacturing business and PT. Lintassurya Alam Industries of yarn reel business.

A State Administration Decree shall be deemed valid if it does not conflict with applicable laws and regulations and does not conflict with the general principles of good governance. It is as explained in Article 53 paragraph (2) of Law No. 5 of 1986 concerning State Administrative Court (Triwulan et al., 2016). The State Administration Decree is said to be in conflict with the prevailing laws and regulations if the decision is contrary to statutory regulations that are by nature substantial/material, and issued by unauthorized state administrative bodies/officials (Levina, 2018).

Based on the description above, it can be concluded that the validity of the decision on the suspension of minimum wage implementation can be reviewed from the Minister of Manpower and Transmigration Decree No. 231 of 2003 concerning Procedures for Suspending the Implementation of Minimum Wages. The Decree on the suspension of minimum wage implementation was carried out by an authorized official such as the governor. Finally, the validity of a Decree on the suspension of minimum wage implementation is reviewed in

terms of its compliance with the General Principles of Good Governance (AUPB) or does not conflict with the AUPB.

### CONCLUSION

Legal efforts taken by employers who are unable to pay workers' wages in accordance with the minimum wage include submitting a request to suspend minimum wage implementation to the governor. In the event the application is rejected and the employer is objected to the decision, the employer can take litigation legal action by suing the Decision Letter issued by the Governor to PTUN.

Decree on the suspension of minimum wage implementation can still be in effect despite it being in legal process at PTUN. It is in line with the principle of *rechtmatic* presumption in the State Administrative Court Procedural Law, which states that the lawsuit does not delay the implementation of the State Administrative Decree.

### REFERENCES

- Albar, A. F., Rohaini, R., & Rusmawati, D. E. (2018). Perlindungan Hukum Penggunaan Musik Sebagai Latar Dalam Youtube Menurut Undang-Undang Hak Cipta. *Pactum Law Journal*, 1(04), 321–335.
- Amin, S. R. (2015). Penyelesaian Perselisihan Hubungan Industrial Di Luar Pengadilan Ditinjau Dari Undang-Undang No. 2 Tahun 2004. *Lex Et Societatis*, 3(9).
- Ardatha, T. (2017). Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 72/Puu–Xiii/2015 Terhadap Pembayaran Iuran Jaminan Sosial Ketenagakerjaan Pada Masa Penangguhan. *Kumpulan Jurnal Mahasiswa Fakultas Hukum*.
- Diah, M. M. (2016). Prinsip Dan Bentuk-Bentuk Alternatif Penyelesaian Sengketa Di Luar Pengadilan. *Hukum Dan Dinamika Masyarakat*, 5(2).
- Hadiyan, E. (2015). Sistem Pengupahan Tenaga Kerja Ditinjau Dari Prinsip Muamalah Dan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Jbima (Jurnal Bisnis Dan Manajemen)*, 3(1), 24–33.
- Harikedua, M. T. (2015). Perjanjian Kerja Antara Pengusaha Dan Pekerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Lex Administratum*, 3(6).
- Husni, L. (2010). *Pengantar Hukum Ketenagakerjaan Indonesia*. Rajawali Pers.
- Indonesia, P. R. (2003). Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Ln Nomor*, 39.
- Kalsum, U. M. I. (2016). Penegakan Hukum Terhadap Perusahaan Perkebunan Kelapa Sawit Di Kabupaten Ketapang Yang Melanggar Pasal 90 Ayat (1) Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Jurnal Nestor Magister Hukum*, 1(1).
- Khoe, F. N. (2013). Hak Pekerja Yang Sudah Bekerja Namun Belum Menandatangani Perjanjian Kerja Atas Upah Ditinjau Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *Calyptra*, 2(1), 1–12.

- Kurniawan, S. (2019). Perbandingan Penyelesaian Sengketa Merek Berdasarkan Undang-Undang Merek Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Jo. Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa Dengan World Intellectual Proper. *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi*, 11(1), 97–113.
- Kurniawaty, Y. (2017). Efektivitas Alternatif Penyelesaian Sengketa Dalam Sengketa Kekayaan Intelektual (Alternative Dispute Resolution On Intellectual Property Dispute). *Jurnal Legislasi Indonesia*, 14(2), 163–169.
- Lazuardi, M. F., & Rahayu, D. (2019). Pelaksanaan Penangguhan Pembayaran Upah Minimum Di Pt. X Surabaya. *Simposium Hukum Indonesia*, 1(1), 325–341.
- Levina, A. (2018). Status Hukum Penangguhan Pelaksanaan Upah Minimum Pada Saat Masih Digugat Di Pengadilan Tata Usaha Negara. *Jurist-Diction*, 1(2), 416–432.
- Mahyuni, M. (2019). Penyelesaian Kredit Macet Perbankan Melalui Jalur Non Litigasi Dan Litigasi. *Jentera Hukum Borneo*, 3(01), 37–44.
- Nasrudin, M. A. (2014). *Penangguhan Upah Minimum Pekerja/Buruh*. Universitas Airlangga.
- Nurachmad, M. (2009). *Cara Menghitung Upah Pokok, Uang Lembur, Pesangon, & Dana Pensiun Untuk Pegawai Dan Perusahaan*. Visimedia.
- Rachmawati, D. (2015). *Pemberian Upah Lembur Terhadap Pekerja Yang Bekerja Di Hari Libur Di Pt. Matahari Putra Prima Tbk (Hypermart) Bandung Dihubungkan Dengan Undang–Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Jo Keputusan Menteri No. 102/Men/Vi/2004 Tentang Waktu Kerja*.
- Sinaga, R. (2018). Peran Pengadilan Hubungan Industrial Pada Pengadilan Negeri Padang Kelas Ia Dalam Memberikan Kepastian Hukum Terhadap Perkara Pemutusan Hubungan Kerja. *Soumatara Law Review*, 1(2), 360–379.
- Syufaat, S. (2018). Penerapan Prosedur Mediasi Dalam Penyelesaian Sengketa Wakaf Di Pengadilan Agama. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 1(1), 21–36.
- Triwulan, T., & Sh, M. H. (2016). *Hukum Tata Usaha Negara Dan Hukum Acara Peradilan Tata Usaha Negara Indonesia*. Prenada Media.
- Utami, D. K. P. (2017). *Peran Pemerintah Dalam Penentuan Besaran Upah Minimum Kota Surabaya Tahun 2012-2017*. Universitas Airlangga.
- Widiansyah, M. (2014). Faktor–Faktor Penyebab Perilaku Remaja Perokok Di Desa Sidorejo Kabupaten Penajam Paser Utara. *Journal Sosiologi*, 2(4), 1–12.
- Zaman, M. R. (2017). Penyelesaian Sengketa Alternatif (Alternative Dispute Resolution) Pada Layanan Jasa Perbankan. *Miyah: Jurnal Studi Islam*, 11(1), 71–78.