

Implementation of The Provision of Wages Below the Minimum Wage Provisions in Micro Enterprises and Small Businesses

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ABSTRACT

This research is based on the application of wages below the minimum wage for businesses that meet the criteria for micro and small businesses. As it is known that the provisions of the district and city minimum wages are a form of safety net for the economic life of Indonesian workers. However, often a common problem for micro and small businesses is that they cannot meet the minimum wage requirements because the economic capacity of their own businesses is different from that of large businesses. Through the Employment Creation Act, the government finally made changes to the labor cluster by providing special rules for micro and small businesses in terms of providing wages below the minimum wage. The problems that will be studied in this research are regarding the requirements to be able to provide wages below the minimum wage provisions and how to provide wages under the minimum wage provisions. The method used by the author in this study is a normative juridical research. The results of the research are an explanation of the conditions for businesses that can pay their workers' wages below the minimum wage, how to make a Collective Agreement so that they can pay wages below the minimum wage.

Keywords: Minimum wage requirements, UMKM, Criteria for giving wages below the minimum wage.

ABSTRAK

Penelitian ini didasarkan pada pemberlakuan pemberian upah dibawah ketentuan upah minimum bagi usaha yang memenuhi kriteria usaha mikro dan usaha kecil. Sebagaimana yang telah diketahui bahwa ketentuan upah minimum kabupaten dan kota adalah sebagai bentuk jaring pengaman bagi kehidupan ekonomis pekerja Indonesia. Namun seringkali menjadi permasalahan umum bagi usaha mikro dan usaha kecil adalah bahwa mereka tidak bisa memenuhi ketentuan upah minimum tersebut dikarenakan memang dari kemampuan finansial usaha mereka sendiri yang memang berbeda dengan usaha-usaha besar. Melalui Undang Undang Cipta Kerja pemerintah akhirnya membuat aturan perubahan dalam klaster ketenagakerjaan dengan memberikan aturan pengkhususan bagi usaha mikro dan usaha kecil dalam hal pemberian upah dibawah ketentuan upah minimum. Permasalahan yang akan dikaji dalam penelitian ini adalah mengenai persyaratan untuk dapat memberikan upah dibawah ketentuan upah minimum dan bagaimana pemberian upah dibawah ketentuan upah minimum. Metode yang digunakan oleh penulis pada penelitian ini adalah penelitian yuridis normatif. Adapun hasil penelitian adalah mengenai penjelasan syarat usaha yang dapat membayar upah pekerjanya dibawah ketentuan upah minimum, bagaimana tata cara pembuatan Kesepakatan Bersama agar dapat membayar upah dibawah ketentuan upah minimum.

Kata Kunci: Ketentuan Upah Minimum, UMKM, Kriteria Pemberian Upah dibawah Upah Minimum.

INTRODUCTION

Employers always have the principle that by reducing the cost of wages to a minimum, they can get maximum results, in this case services from workers, but for workers, wages are a source of income that

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is expected to be maximum so that they can improve welfare (Baily, 1974). This of course occurs both on the scale of large, medium and micro and small businesses.

The role of Micro and Small Enterprises affects the pace of the economy in developing countries, including Indonesia. In this case, Micro and Small Enterprises contribute to job creation, especially for low-income groups. Micro and Small Enterprises are considered as sectors that have an important role, because most of the population lives from the traditional and modern micro and small business sectors. Supported by human resources who focus on skills and talents with educational backgrounds from elementary to high school which are generally Micro and Small Businesses established from their own capital or borrowing capital from banks or other people.

Although micro and small businesses make a major contribution to the creation of job opportunities and gross domestic product, they are constrained by financial, management, place of business and marketing limitations. Meanwhile, on the other hand, there is a minimum wage regulation policy that must be implemented. However, in its implementation, it is very difficult for micro and small business actors to fulfill these provisions. In this regard, the minimum wage policy/stipulation cannot be applied to all business scales. In micro-scale and small-scale businesses, they cannot be forced to pay the wages of their workers/labourers in accordance with the provisions of the minimum wage that has been set.

In the national economy, wages have a very strategic position both for workers, employers and for the government, each of which has different interests. For entrepreneurs, wages are a financial burden that must be borne, the greater the burden of wages, the more it can hinder the development of the company so that it is suppressed to a minimum, but for workers wages are a source of income that is expected to be maximum so that it can improve welfare. This is certainly a polemic for entrepreneurs and workers in micro and small businesses because their interests are different from the two.

Quoting from Law 13 of 2003 concerning Manpower, it is stated that Employment Relations is a relationship between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders. In addition, one of the parties, the worker/labourer, is under the orders of the other party, the employer, which indicates the existence of a subordinate position. (Sudjono, 2012). Given the position of workers who are lower than employers, it is necessary for government intervention to provide legal protection (Kahfi, 2016). This is done as government intervention to protect the parties, especially workers/ laborers who are in an unbalanced position. This government intervention is called the socialization process (Saprudin, 2012).

Therefore, the government plays a very important role in maintaining a balance between the interests of entrepreneurs and the interests of workers/laborers, including the role of the government in responding to problems that arise between workers and entrepreneurs in Micro and Small Enterprises. For example, government intervention that occurs in the field of wages. Saprudin in his research revealed that government intervention in the field of wages had begun in the Old Order Period, namely when Law Number 33 of 1947 concerning Work Accidents was enacted. (Saprudin, 2012). The state regulates the provisions of wages associated with compensation due to work accidents in the employment relationship. The government's role in wages is getting bigger with the stipulation of Government Regulation Number 8 of 1981 concerning Wage Protection. This arrangement continues until now with the enactment of Government Regulation Number 78 of 2015 concerning Wages. Which has now been updated again with Government Regulation Number 36 of 2021 concerning Wages.

Now in the Development Period for Advanced Indonesia, Indonesia is again experiencing obstacles, namely the lack of employment opportunities and the increasing number of new graduates and the ready-

to-work force every year which causes the unemployment rate to increase. This of course also affects the country's economic growth and also the standard of living of Indonesian citizens in general.

Currently, business development in Indonesia is dominated by micro and small businesses which have a larger percentage. MSMEs have a fairly strong role in economic development in Indonesia, because most of the population has low education and lives in small business activities both in the traditional and modern sectors (Muliadi et al., 2020). However, they are faced with setting a minimum wage with criminal sanctions for entrepreneurs who do not implement it. With limited economic capacity, this actually slows down and even stops MSMEs from growing.

In order to protect and develop the MSME sector, the government has issued Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (MSMEs) which is the legal umbrella for all activities in this sector (Sitorus, 2018). Currently, the regulation has been updated with Government Regulation Number 7 of 2021 concerning the Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises. As a form of more support for MSMEs, the government has also issued Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses.

The government's alignment with the MSME sector is very clear through the recent law devoted to MSMEs because the government is very interested in protecting and developing the MSME sector. In the process of national economic development, until now Indonesia's economic structure is supported by entrepreneurs who are also members of the micro, small and medium-sized businesses (Maharatih, 2019).

Since the New Order to the Reformation Era, the government has made many efforts to help the development of MSMEs in the form of various programs, ranging from providing cheap credit to technical assistance (Susanty, 2017). Currently, to deal with problems that arise that the unemployment rate is increasing and it is also based on the reality that it turns out that Micro and Small Businesses absorb a lot of labor but are constrained by financial capabilities than businesses that cannot pay according to the Provincial/City Minimum Wage Provisions. Not to mention the shadow of criminal sanctions for Micro and Small Business actors who do not pay their labor according to the UMP so that it actually results in many Micro and Small Businesses that do not develop and close in the middle of the road because they are financially unable to develop and even unable to do so. finance their own business, including in financing their workers.

So for the issue of wages for Micro and Small Businesses, which often becomes problematic because there are no further provisions regarding remuneration for Micro and Small Businesses, this then encourages the Government to make policies on wages for workers in Micro and Small Businesses through the Law. Law No. 11 of 2020 concerning Job Creation in the Employment Cluster Article 90B and in Government Regulation no. 36 of 2021 concerning Wages in Article 36. In this paper, it will be further investigated how this regulation can be applied and what elements and conditions are implemented in this latest regulation.

RESEARCH METHOD

This research is qualitative (Sugiyono, 2013). The data from the research results are analyzed qualitatively, meaning that the existing data is analyzed in depth, literature and comprehensively. All data obtained from library materials in the form of books, laws and regulations, agreements, and decisions were analyzed qualitatively. The analysis activity begins with an examination of the data collected through

research on regulatory inventory literature, and data related to research so that the analysis carried out can provide an overview of Wages below the Minimum Wage for Micro and Small Businesses.

RESULTS AND DISCUSSION

What are the conditions to be able to pay Wages under Minimum Wage Conditions

In Government Regulation No. 36 of 2021 concerning Wages, it is explained that basically employers are prohibited from paying workers wages lower than the minimum wage. (Article 23) What is meant by entrepreneurs in Law No. 13 of 2003 concerning Manpower (Article 1) are:

1. An individual, a partnership, or a legal entity that operates a self-owned company;
2. An individual, partnership, or legal entity that independently operates a company that is not his own;
3. An individual, partnership, or legal entity residing in indonesia representing the company as referred to in letters a and b which is domiciled outside the territory of indonesia.
4. In law no. 13 of 2003 concerning manpower (article 1), what is meant by companies are:
5. Any form of business that is a legal entity or not, owned by an individual, owned by a partnership, or owned by a legal entity, both privately owned and state owned that employs workers/laborers by paying wages or other forms of remuneration;
6. Social enterprises and other businesses that have management and employ other people by paying wages or other forms of remuneration.

The minimum wage applies to workers/laborers with less than 1 year of service at the company concerned as stated in Government Regulation No. 36 of 2021 concerning Wages (article 24). Law No. 13 of 2003 concerning Manpower explains that entrepreneurs who pay wages lower than the minimum wage are subject to a minimum imprisonment of 1 year and a maximum of 4 years and/or a minimum fine of Rp. 100 million and a maximum of Rp. 400 million. (Article No. 13 of 2003 concerning Manpower). 185) However, now the Minimum Wage is excluded for Micro and Small Enterprises based on: Law No. 11 of 2020 concerning Job Creation Chapter IV concerning employment regarding remuneration for micro and small businesses in Article 90B which reads;

1. The provisions of the minimum wage as referred to in Article 88C paragraph (1) and paragraph (2) are excluded for Micro and Small Enterprises.
2. Wages for Micro and Small Enterprises are determined based on an agreement between the entrepreneur and the workers/ laborers in the company.
3. The wage agreement as referred to in paragraph (2) is at least a certain percentage of the average public consumption based on data sourced from the authorized institution in the field of statistics.
4. Further provisions regarding wages for Micro and Small Enterprises shall be regulated in a Government Regulation.

The exception to the stipulation of Minimum Wage provisions for Micro and Small Businesses is also contained in Government Regulation No. 36 of 2021 concerning Wages (article 36) which reads;

1. The provisions on the minimum Wage as referred to in Article 23 to Article 35 are excluded for micro and small businesses
2. Wages for micro and small businesses are determined based on an agreement between Employers and Workers/Labourers in the Company with the following provisions:Paling sedikit sebesar 50% (lima puluh persen

- a. At least 50% (fifty percent) of the average public consumption at the provincial level; and
 - b. The agreed wage value is at least 25% (twenty five percent) above the poverty line at the provincial level.
3. (1) The average public consumption and the poverty line as referred to in paragraph (2) shall be sourced from the authorized institution in the field of statistics.

Then the exception to the stipulation of the Minimum Wage for Micro and Small Businesses is also contained in Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (article 101) which reads;

(1) Provisions for provincial minimum wages and regency/municipal minimum wages are exempted for Micro and Small Enterprises. (2) Provisions for provincial minimum wages and regency/municipal minimum wages as referred to in paragraph (1) shall be guided by the provisions of Government Regulations that regulate wages..

From the explanation above, the requirement for entrepreneurs to be able to pay wages below the minimum wage is that the business being run is a Micro and Small Business that meets the criteria for Micro and Small Business.

Whereas then it was explained in Government Regulation Number 7 of 2021 concerning Ease, Protection, Empowerment of Cooperatives and MSMEs which became the criteria for Micro and Small Businesses based on Business Capital and Annual Sales Results (article 35) as follows;

Business capital criteria;

1. Micro Enterprises have a business capital of up to a maximum of Rp. 1,000,000,000,- (one billion rupiah) excluding land and buildings for business premises;
2. Small Business has a business capital of more than Rp. 100,000,000.00 (one billion rupiah) up to a maximum of Rp. 5,000,000,000.00 (five billion rupiah) excluding land and buildings for business premises;

Criteria for annual sales results;

1. Micro Enterprises have annual sales of up to a maximum of Rp.2,000,000,000.00 (two billion rupiahs);
2. Small Businesses have annual sales of more than Rp. 2,000,000,000.00 (two billion rupiahs) up to a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiahs)

So if indeed the business being carried out has complied with the criteria for Micro and Small Business based on Business Capital and also annual Sales Results, the Entrepreneur can pay Wages below the Minimum Wage provisions. Thus, entrepreneurs on the criteria for Micro and Small Businesses have legal certainty to be able to pay wages below the minimum wage provisions with limits as stated in Government Regulation No. 36 of 2021 concerning Wages in Article 36 paragraphs 2 and 3. Micro and Small Business Entrepreneurs can calmly run their business without having to worry about the shadow of criminal sanctions for paying wages below the minimum wage. So that entrepreneurs can focus on running their business in order to develop into a big business.

How should a Collective Agreement between Workers and Employers be made to pay wages below the minimum wage?

The employment relationship is the relationship between the Employer and the Worker that occurs after the employment agreement is established (Shore & Tetrick, 1994). In addition, an employment relationship can be defined as a relationship between a worker and an employer, where the worker

declares his/her ability to work for the employer by receiving wages and where the employer declares his/her ability to employ workers by paying wages (Rohendra Fathammubina, 2018).

According to Law 13 of 2003 concerning Manpower (article 1), a work agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains the terms of employment, rights, and obligations of the parties.

Then regarding the agreement made by the Employer and the Worker, it can refer to the concept of the agreement contained in the KUHper. An agreement according to Article 1313 of the Criminal Code is an act by which one or more people bind themselves to one or more other people. What is meant by an agreement is that the position between the parties to the agreement is equal and balanced (Hapsari & Kurniawan, 2020). The conditions for a valid agreement as stated in 1320 of the Criminal Code are:

1. Agree on those who bind themselves
2. Able to make an agreement
3. Regarding a certain thing
4. A lawful cause

The first two conditions are known as subjective conditions, because these conditions relate to the people or subjects who make an agreement in this case are the Workers Party and the Employer Party. While the last two conditions are called objective conditions because they relate to the object of an agreement or things made in the agreement in this case the terms of work, rights, and obligations of the parties (Subekti, 1985).

This objective requirement in the employment relationship must be achieved by both parties, namely workers and employers. What are the working conditions, rights and obligations of the parties as stated in the work agreement and the normative rules of labor legislation.

With the existence of a work agreement between the worker and the entrepreneur/employer, a working relationship will be established between the employer and the recipient of the work concerned, and subsequently provisions on amending laws will apply, among others regarding working conditions, social security, health, and work safety guarantees, dispute resolution and termination of employment (Suwarti & Malik, 2020).

Then regarding Wages and how to arrange wages given by entrepreneurs/employers to workers/laborers in Micro and Small Businesses. Wage is an acceptance received in return for work that has been done on a job where the reward is in the form of money (Mulyapradana et al., 2016). Wages are rights that must be obtained for work that has been done and the rewards come from the existence of a work agreement, agreement or regulation (Thamrin, 2017). Listed in Government Regulation Number 36 of 2021 concerning Wages (article 36), namely;

1. Wages for Micro and Small Enterprises are determined based on an agreement between the entrepreneur and the workers/ laborers in the business concerned.
2. The wage agreement is at least a certain percentage of the average public consumption at the provincial level, which is 50%
3. Determination of the percentage must result in a wage value of at least 25% above the poverty line.

From the explanation above, it can be seen that the application of the provision of wages under the provisions of the minimum wage is that in the work agreement between entrepreneurs and workers in micro and small businesses there must be a collective agreement that contains wages that are not less than those stated in Article 36 of Government Regulation No. 36 of 2021 concerning Wages.

CONCLUSION

Remuneration which is a heteronomous rule. In order to accommodate micro-enterprises and small-scale businesses that have different financial capabilities from medium-sized and large-scale businesses, the government has issued a new regulation specifically for wage provisions on the criteria for micro-enterprises and small-scale businesses by not requiring them to pay wages in accordance with the minimum wage as stipulated in Law No. 11 of 2020 Clusters of Employment Article 90B, Government Regulation No. 36 of 2021 concerning Wages in Article 36, Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises Article 101. With the application of the provision of wages based on in the agreement between Workers and Employers but still within the limits as stated in Government Regulation Number 36 of 2021 concerning Wages Article 36 paragraph 2. With these regulations, micro and small business entrepreneurs can avoid the shadow of criminal sanctions from giving wages dib under the minimum wage. These latest provisions are also expected to be able to create harmonious industrial relations between workers and entrepreneurs in micro and small businesses. Thus, it is hoped that workers will always try their best to advance their business and entrepreneurs will get maximum service results from their workers so that their business will be more developed and bigger. And then these micro and small businesses grow into medium and large businesses that are competitive and able to improve the Indonesian economy.

The application of the provision of wages below the minimum wage provisions in micro and small businesses is carried out by making joint agreements between workers and entrepreneurs. The form of this collective agreement can later be stated in a work agreement that contains the amount of wages received by workers. This Collective Agreement is declared valid if the amount of wages is in accordance with what is stated in Government Regulation Number 36 of 2021 concerning Wages (article 36). Thus, it is hoped that Indonesian workers in micro and small businesses will get prosperity. And then micro and small businesses get legal certainty so that they can grow into medium and large businesses that are competitive and able to improve the Indonesian economy.

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