

**THE SOCIALIZATION OPTIMIZATION OF MINIMUM WAGE REGULATION IN
LAW NUMBER 11 OF 2020 CONCERNING
JOB CREATION RELATED TO THE LEGAL FICTION PRINCIPLE**

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ABSTRACT

The arrangement of the minimum wage after the enactment of the Job Creation Law has become a polemic and raises concerns about income decrease for workers due to a lot of unclear information. To overcome this problem, it requires quick and precise action by the government by providing socialization to the public. Referring to these conditions, the writer is interested in examining how the minimum wage arrangement in the Job Creation Law, and what efforts should be made in disseminating wage arrangements. Furthermore, the research method that is used in this research is normative juridical with descriptive-analytical research specifications. The results of this study indicate that companies are not allowed to pay wages to their workers below the minimum wage. Therefore, the government must provide socialization to academics, practitioners in the field of manpower, regional heads, manpower service officials both in the province and city/regency, and more importantly, socialization to employers and workers, both formal and informal.

Keywords: *legal fiction principles, socialization, minimum wages, job creation law*

INTRODUCTION

One of the urgencies of the creation of the Job Creation Law is to create jobs through the increase of investment as well as increasing protection for workers/laborers. The targets of worker protection are workers who have not worked, workers who are working, and workers who have experienced layoffs. The scope of the Job Creation Law in improving the protection and welfare of workers includes the protection of wages through minimum wages.

The relationship between entrepreneurs and workers/laborers is a cooperative relationship to produce the required products and services. Workers/laborers have a role in processing capital owned by entrepreneurs, either in the form of money or raw materials, which are then converted into goods and services that are needed. One of the topics that is interesting to discuss in the pattern of relations between workers and entrepreneurs is the system of employers' wages to workers. (Budijanto, 2017).

The process of forming laws and regulations in Indonesia goes through various stages. The formation of laws is part of the formation or creation of laws. In general, the formation or creation of the law deals with three things, namely: 1. "the formulation of general rules, which can be in the form of additions or changes to existing rules; 2. arises from concrete decisions (law of precedent or jurisprudence); and 3. Concerning real action, which is an action that only occurs once (einmalig), which is carried out by state organs based on the constitution without being accompanied by amendments to the laws or the constitution (Atok, 2015). After a law is enacted and promulgated in the State Gazette, a situation called legal fiction arises, it must be socialized to the public.

Based on the foregoing statement, the authors are interested in examining the wage arrangements in Job Creation Law or UUCK and the efforts that must be made in socializing it.

METHOD

The research method used by the writer in examining the socialization of the minimum wage setting is a normative juridical approach with analytical descriptive research specifications.

The types and sources of data used are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

FINDING AND DISCUSSION

Wage Arrangements in Law Number 11 of 2020 concerning Job Creation.

The minimum wage of 17 districts/cities in West Java will increase by 2021. The increase was from 2.3 percent to 6.5 percent. While the wages in ten other districts/cities are the same as in 2020. (Sinaga, 2020) Referring to these things, it shows that wages are one of the most sensitive aspects of the employment relationship. Various parties involved have different views of wages from their respective sides. Workers/Laborers view wages as a source of income to meet the needs of Workers/Laborers and their families. Psychologically, wages can also create satisfaction for Workers/Laborers. On the other hand, entrepreneurs see Wages as one of the costs of production. The government sees that wages can still guarantee the fulfillment of a decent life for workers/laborers and their families, increase worker/labor productivity, and increase people's purchasing power. By looking at these different interests, an understanding of the wage system and its arrangements is needed to get the same understanding and interpretation, especially between workers/laborers and entrepreneurs. To fulfill a decent life, the worker's / laborer's income must be able to meet physical, non-physical, and social needs, which include food, beverage, clothing, housing, education, health, pension plan, and recreation. For this reason, wage policies must also be able to encourage economic growth and expand employment opportunities and improve the welfare of workers/laborers and their families. Wages or salaries that are given to a worker is an appreciation for carrying out work done for the benefit of an organization or company. This appreciation is not always in the form of money, but also in the form of other rewards. (Budijanto O. W., 2017).

Wages are workers/laborers' rights that are received and expressed in the form of money as remuneration from the entrepreneur or employer to workers/laborers who are determined and paid according to a work agreement, agreement, or statutory regulation, including allowances for workers/labor and their families for a job and/or service that has been or will be conducted. (Pasal 1 PP No. 78 Tahun 2015)

In determining the level of wages in the contemporary conventional economy, there is a combination of minimum basic needs standards with market mechanisms. When the market mechanism results in a wage level below the minimum basic needs of workers, the government must set a minimum wage level that meets the basic needs of the workers. (Ghazali, Wahyuddin, & Trisnawati, 2012)

The definition of a minimum wage is basically a person's main source of income. Therefore, wages must be sufficient to meet the needs of workers and their families properly. This fairness can be assessed and measured by minimum living needs which are often called minimum physical needs or what is so called *Kebutuhan Fisik Minimum* (KFM). All of this is the responsibility of all society, government, employers, and workers themselves to ensure that the minimum living needs of each worker can be met through the work performed.

Some of the provisions in the Manpower Law amended by the Job Creation Law are as follows. Firstly, types of wages are reduced according to the provisions of Article 88 paragraph (3) in the Manpower Law amended by the Job Creation Law so that it reads as follows. The wage policy as referred to in paragraph (2) includes: minimum wage; wage structure and scale; overtime pay; wages for not coming to work and/or not doing work for certain reasons; form and method of payment of wages; things that can be calculated with wages; and wages as the basis for calculating or paying other rights and obligations. Previously, in the Manpower Law, Article 88 paragraph (3) reads as follows. The wage policy that protects workers/laborers as meant in paragraph (2) includes: minimum wages; overtime pay; wages for absence from work due to absence; wages for absence from work because of other activities outside of work; wages for exercising the right to take time off from work; form and method of payment of wages; fines and deductions from wages; things that can be calculated with wages; wage structure and scale that is proportional; wages for severance pay; and wages for calculating income tax. In the Job Creation Law, several points are missing from the Manpower Law, namely points regarding wages for not coming to work due to

absence, wages for exercising the right to take time off from work, wages for severance pay, and wages for calculating income tax.

Secondly, the decent living component is not included in the Manpower Law Article 88 paragraph (4) of the provisions concerning the determination of the minimum wage for workers which reads as follows. The government determines the minimum wage as referred to in paragraph (3) letter a based on the need for a decent life and by taking into account productivity and economic growth. Meanwhile, in the Job Creation Law, the provisions concerning the determination of the minimum wage are regulated in Article 88D, which was not previously included in the Manpower Law, and reads as follows. The minimum wage as referred to in Article 88C paragraph (1) and paragraph (2) is calculated using the minimum wage calculation formula. (1) The formula for calculating the minimum wage as referred to in paragraph (1) contains economic growth or inflation variables. (2) Further provisions regarding the minimum wage calculation formula are regulated in a Government Regulation. (3) The difference in the standard for setting the minimum wage between the Manpower Law and the Job Creation Law is on the point of the need for a decent life. The Manpower Law states that one of the standards for determining the minimum wage is based on the needs of a decent life, but the Job Creation Law eliminates this point in the provisions for determining the minimum wage.

Thirdly, the period of work is not considered In the Manpower Law Article 92, the provisions concerning the preparation of a structure and scale of wages for workers read as follows. Employers arrange the structure and scale of wages by looking at a class, position, the years of service, education, and competence. Employers carry out regular wage reviews by looking at the company's ability and productivity. (2) Provisions regarding the structure and scale of wages as referred to in paragraph (1) shall be regulated by a Ministerial Decree. Meanwhile, in the Job Creation Law, the provisions in Article 92 are amended to read as follows. Employers are required to formulate the structure and scale of wages in the company with the capability of the company and productivity. The structure and scale of wages are used as guidelines for employers in determining wages. Further provisions regarding the structure and scale of wages are regulated in a Government Regulation. The differences in the structure and scale of wages between the Manpower Law and the Job Creation Law are based on the consideration of class, employment, years of service, education, and competence of workers. The Manpower Law states that the preparation of the structure and scale of wages must pay attention to the class, position, years of service, education, and competence of workers. However, the Job Creation Law eliminates this consideration and leaves the arrangement of the structure and scale of wages based solely on the ability and productivity of the company.

Article 88 of the Job Creation Law states that (1) Every worker/laborer has the right to a life that is decent for humanity. The Central Government establishes a wage policy as an effort to realize the rights of workers/laborers to a life that is decent for humanity. (3) The wage policy as referred to in paragraph (2) includes: a. minimum wage; b. wage structure and scale; c. overtime pay; d. wages for not coming to work and/or not doing work for certain reasons; e. form and method of wages payment; f things that can be calculated with wages; and g wages as a basis for calculation or payment of other rights and obligations.

Furthermore, Article 88C arranged that the governor is obliged to determine the provincial minimum wage. (3) The governor can determine the district/city minimum wage with certain conditions. (2) The minimum wage as referred to in paragraph (1) and paragraph (2) is determined based on economic and employment conditions. Certain requirements as referred to in paragraph (2) include regional economic growth or inflation in the regency/city concerned. The district/city minimum wage as referred to in paragraph (2) must be higher than the provincial minimum wage. Economic and employment conditions as referred to in paragraph (3) using data sourced from authorized institutions in the statistics field.

Article 90B (1) The provisions of the minimum wage as referred to in Article 88C paragraph (1) and paragraph (2) are exempted for Micro and Small Enterprises. (2) Wages for Micro and Small Enterprises are determined based on an agreement between the entrepreneur and the worker/laborer in the company. (3) The wage agreement as referred to in paragraph (2) shall be at least a certain percentage of the average public consumption based on data sourced from

institutions that are authorized in the field of statistics. (4) Further provisions regarding wages for Micro and Small Enterprises are regulated in a Government Regulation.

The provisions of Article 89 Paragraph (2) of the Manpower Law stipulate that minimum wages, both minimum wages based on provincial or regency/city areas as well as minimum wages based on sectors in the province or regency/city are directed at achieving the need for a decent life. In simple terms, all parties can analyze the size of the provincial minimum wages because it is based on a survey of the needs of a decent life. In fact, there are still different perspectives between trade unions and the government regarding what components are included in the necessities of a decent life and how the standards are applied for each component. The minimum wage that has been set by the government through the Ministry of Manpower and Transmigration (KEMENAKERTRANS) together with the National Tripartite Institution and the Regional Tripartite Institution is aimed at protecting workers. Wages are one of the main factors for increasing welfare and work productivity in helping to create peace in work, job ability, and economic growth. Through the stipulation of the minimum wage which will be increased annually, it is hoped that there will be an increase in the welfare and productivity of the workforce in Indonesia (Trimaya, 2014).

Socialization of the Law

In the formation of laws and regulations, several basic principles must be considered, namely: a. Regulations must not conflict with higher regulations (*lex specialis derogat legi generalis*). In higher levels of laws and regulations which contradict the lower level of laws regulations, the higher level of regulation applies. b. In the case of laws and regulations which are equal in conflict with other equivalent laws and regulations, then the latest laws and regulations are considered to have been disregarded (*lex posterior derogat priori*); c. In the case of equivalent laws and regulations governing special fields, then laws and regulations that regulate general fields related to those special fields are set aside (*lex specialis derogat lex generalis*) (Octora, 2018)

The principle is something on which to think or to argue. Principles can also mean basic laws. A principle is a general proposition that is stated in general terms without requiring special conditions regarding its implementation which are applied to a series of actions to become an appropriate guide for that action. General law principles are basic norms that are elaborated from positive law and which are not considered by jurisprudence come from more general rules. General law principles are basic norms that are elaborated from positive law and which are not considered by jurisprudence come from more general rules. The principle of law is the deposition of positive law in society. Legal principles should not be considered as concrete legal norms but need to be seen as general basics or guidelines for the applicable law. (Wijayanta, 2014)

In the system of forming laws and regulations in Indonesia, there is still the theory of legal fiction application where everyone is considered to know the law if it has been promulgated in an official document and one's ignorance of the applicable laws or regulations does not exempt that person from legal prosecution (*ignorantia iuris neminem excusat*) (HSB, 2016).

The application of legal fiction theory in Indonesia can be seen in all levels of regulation. This is regulated in Article 81 of Law Number 12 the Year 2011 concerning the Formation of Laws and Regulations which states: "To make everyone aware of it, laws and regulations must be promulgated by placing them in: 1. State Gazette of the Republic of Indonesia; 2. Supplement to the State Gazette of the Republic of Indonesia; 3. Official Gazette of the Republic of Indonesia; 4. Supplement to the Official Gazette of the Republic of Indonesia; 5. Regional Gazette; 6. Supplement to the Regional Gazette; or 7. Regional News. It can be interpreted that by the promulgation of statutory regulations in official sheets as referred to in this provision, everyone is deemed to have known these matters.

The theory/principle of legal fiction is needed to anticipate when the laws and regulations are enforced against someone who is not aware of statutory regulation. Without the theory/principle of legal fiction, it is possible that many people will not be caught up in statutory regulations.

In Article 5 of Law no. 12 of 2011 states that in the formation of statutory regulations, several principles must be fulfilled in the formation of statutory regulations so that the resulting statutory regulations are the good one. These principles are: (a) clarity of purpose, (b) appropriate

institutional or official formation; (c) suitability between types, hierarchy and content; (d) can be implemented; (e) efficiency, (f) the clarity of formulation; and (g) the openness.

The principle of the formulation clarity means that every formation of laws and regulations must have clear objectives to be achieved. This principle aims to ensure that the established legislation does not become a dead-end because there is no goal to be achieved. The principle of an appropriate institutional or forming official means that every type of statutory regulation must be made by the competent state institution or officially authorized regulations former. These statutory regulations can be canceled or null and void if they are made by unauthorized state institutions or officials. The principle of conformity between types, hierarchy, and content of content means that in the formation of laws and regulations, the appropriate content material is following the type and hierarchy of statutory regulations. The principle of being enforceable means that every formation of laws and regulations must consider the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically.

The principle of efficiency and efficiency means that every statutory regulation is made because it is needed and useful in regulating society's life, nation, and state. The principle of clarity of formulation means that each statutory regulation must meet the technical requirements in drafting statutory regulations, systematics, diction, or terms, as well as clear and understandable legal language so that it does not lead to various kinds of different interpretations in its implementation. The principle of openness means that the formation of laws and regulations starting from planning, preparation, discussion, ratification or stipulation, and promulgation is transparent and open. Thus, all levels of society have the widest opportunity to give ideas in the formation of laws and regulations.

Aside from these four conditions, I.C. van der Vlies divides the formal principles and material principles, as follows: 1. Formal principles include: a. Clear purpose principle (*beginsel van duidelijke doelstelling*); b. Principles of appropriate organs / institutions (*beginsel van het juiste orgaan*); c. The principle of the need for regulation (*het noodzakelijkheids beginsel*); d. The principle of enforceability (*het beginsel van uitvoerbaarheid*); e. Consensus principle (*het beginsel van consensus*). 2. Material principles include: a. Principles concerning correct terminology and systematics (*het beginsel van duidelijke terminology en duidelijke systematiek*); b. The principle of being recognizable (*het beginsel van de kenbaarheid*); c. The principle of equal treatment in law (*het rechtsgelijkheids beginsel*); d. The principle of legal certainty (*het rechtszekerheidsbeginsel*); e. The principle of implementing the law according to individual circumstances (*het beginsel van de individuele rechtsbedeling*) (Indrati, 2007).

In order to create responsive legislative regulations, especially those concerning the realization of the statutory regulation formation towards the welfare state of Indonesia, the formation of statutory regulations in Indonesia must comply with Article 5 and Article 6 of Law No. 12 of 2011 concerning the formation of legislation and adhering to the principles of good statutory regulations formation. (Arliman, 2017)

In the elucidation of Article 88 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, it is stated that what is meant by dissemination is the activity of conveying information to the public regarding Prolegnas, the draft law that is being drafted, discussed and has been promulgated so that the public can provide input or response to these laws and regulations or understand the laws and regulations that have been promulgated. Dissemination of these laws and regulations, for example through electronic media and/or printed media (HSB, 2016).

Dissemination of statutory regulations can be done in the following ways: 1. dissemination of laws and regulations can be done through printed media, electronic media, and other means; 2. dissemination of laws and regulations through printed media in the form of loose-leaf or compilation of state gazette; 3. state gazette dissemination of the Republic of Indonesia in the form of a loose-leaf by the Minister of Law and Human Rights which is carried out by the Directorate General of Legislation to be submitted to the ministry/institution that initiated or stipulated the statutory regulations, and the people in need; 4. state gazette Dissemination of the Republic of Indonesia in the form of a compilation carried out by the Minister of Law and Human Rights carried out by the Directorate General of Legislation which is submitted to State Institutions, Ministries / Non-Departmental Government Agencies, Regional Governments,

Regional House of Representatives, and other related parties; 5. dissemination through electronic media by using the Department of Law and Human Rights website and can be accessed through: www.djpp.depkumham.go.id, or others; 6. Dissemination using socialization can be done by face to face or direct dialogue, in the form of lectures, workshops/seminars, scientific meetings, press conferences, and other means. To reduce the applicability of legal fiction theory, the dissemination of laws and regulations must be optimized, especially dissemination through printed media and socialization or face-to-face contact with the public. Dissemination through electronic media, especially the internet, is still inadequate since not all regions in Indonesia are covered by the internet network. In addition, for the dissemination of laws and regulations to be more effective, every activity related to legal counseling activities is accompanied by notification of the promulgation of new laws and regulations, both central and regional regulations.

The Ministry of Manpower continues to socialize Law Number 11 of 2020 concerning Job Creation, Employment Clusters, such as the socialization at Hotel Ciputra, West Jakarta, Tuesday (17/11/2020), to supervisors and partner stakeholders of labor inspectors to have the same understanding, that the Job Creation Law is also to create new jobs through increased investment, while still increasing protection for workers/laborers. This socialization was attended by Primary High Officials within the Ministry of Manpower; Head of Provincial Manpower Office from all over Indonesia; Structural Officers and Functional Officers of Labor Inspectors throughout Indonesia; and Occupational Safety and Health Examining Functional Officers throughout Indonesia (Kemnaker.go.id, 2020).

Besides, The House of Representatives of The Republic of Indonesia (DPR RI) also made book one Straightening the Hoax of the Job Creation Bill, related to the minimum wage, information was circulated that the UMP, UMK, and UMSP were removed, the fact is that UMR still exists as regulated in CHAPTER IV UUCK Article 89 concerning amendments to Article 88C of Law No. 13 of 2003 concerning Manpower.

In addition, the Indonesian House of Representatives also produced a book to straighten the Hoax on the Job Creation Law, related to minimum wages, information was spread that the Provincial Minimum Wages (UPM), Regency Minimum Wages (UMK), and Provincial Sectoral Minimum Wages were deleted, in fact, the Regional Minimum Wages (UMR) still exist as regulated in CHAPTER IV UUCK Article 89 concerning amendments to Article 88C of Law no. 13 of 2003 concerning Manpower. The minimum wage has not decreased, the minimum wage is divided into Provincial Minimum Wages (UMP) and District Minimum Wages (UMK). Due to workers' wages per hour of work calculations, the fact is that there are no changes in the current system, wages can be calculated based on time or based on results and will further be regulated by Government Regulation

CONCLUSION

The minimum wage setting in Law Number 11 of 2020 concerning Job Creation, the Employment Cluster is intended to protect workers, employers are not allowed to pay wages below the UMP / UMK. Dissemination of Law Number 11 of 2020 concerning Job Creation, Employment Clusters, especially regarding minimum wage arrangements using socialization which can be carried out face-to-face or direct dialogue, in the form of workshop lectures/seminars, scientific meetings, press conferences, and other means. In addition, the dissemination of laws and regulations must be optimized, especially dissemination through print media and through socialization methods such as meeting face to face with the public.

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