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# Analysis of the Application of Criminal Sanctions against Companies Paying Labor Wages Below the Regency / City Minimum Wage

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### **Abstract**

*Wages are the rights of workers or employees received and expressed in the form of money as compensation from employers or employees to workers who are determined and paid according to a work agreement, agreement or legislation, criminal sanctions against companies (entrepreneurs) who make wages workers below the minimum wage can be seen from the number of violations of workers' rights, especially the practice of paying workers' wages below the provincial minimum wage standard, the existence of criminal sanctions did not reduce the criminal acts not repeated, for example in Lampung province. The problem in this thesis is how to enforce criminal sanctions against companies that pay labor wages below the Regency / City minimum wage and what factors hinder enforcement of criminal sanctions against companies that pay labor wages below the Regency / City minimum wage. The approach of the problem in this paper is a normative juridical and empirical juridical approach. The sources and types of data used are primary data and secondary data. Determination of sources is done by interviewing respondents. The method of data collection is done by literature study and field studies. Based on the results of the research and discussion on the results of the study, it was concluded that the company violated the Regency / City Minimum Wage provisions, so the worker could take a criminal effort, namely reporting to the labor inspectors at the Manpower Office. The inhibiting factor is the existence of lameness from the substance of Law No. 13 of 2003 concerning Manpower. The number of labor inspectors in Lampung Province is not comparable to the number of companies supervised. The community, especially workers / laborers, do not know about the existence of criminal facilities. Lack of public awareness of the importance of law enforcement in the field of employment. The suggestion in this study is that labor inspectors should increase socialization to companies regarding minimum wage provisions. Workers / laborers are expected to be able to report to labor inspectors if the rights as workers get wages below the minimum.*

**Keywords:** Analysis; Enforcement; Criminal Sanctions; Company; Wages.

## **A. Introduction**

Wages are the rights of workers or employees that are received and expressed in the form of money as compensation from employers or employees to workers which are determined and paid according to a work agreement, agreement or statutory regulation, including allowances for workers and their families for a job and or services have or will be done.<sup>1</sup>Wages are the compensation for the company that has accepted the work of the workforce and in general is the goal of the employee or to do the job. If

<sup>1</sup>Wages and Severance Pay, (Jakarta: Indonesia Legal Center Publishing, 2006), p. 1.

there is no wage, in general there is also no work relationship, for example work carried out in a joint project relationship.<sup>2</sup>

In general, wages are income that plays a very important role in the life of the workforce to meet the needs of their family, so it is only right for a worker to receive a sufficient amount of income which is considered in order to guarantee his basic life needs and his family and to feel satisfaction with respect to the income of other people doing similar work in his company or at other places of business in the community.

A good working relationship is carried out between the labor party with regard to wage issues, the labor party and the company, if the company is unable to pay the same wages as in other companies, then as employees, they must not demand the same wages as in the company. others, but vice versa. However, the principle of the company to get the maximum profit with the minimum capital (funds), sometimes causes companies to sacrifice the wage element of labor, by providing unworthy wages. Currently, there are still many companies that still rely on labor with improper wages that are incompatible with the work of employees, while wages for employees are the only means of living for workers and their families.

The government then provides clear rules regarding wages through provisions in legislation as a guarantee that the wages will actually be paid by the company, constituting a decent wage and received by the employees themselves.<sup>3</sup>This is as regulated in the 1945 Constitution Article 27 paragraph (2): "every citizen has the right to work and a living that is decent for humanity". Thus, the wages that must be received by our employees or workers for the services they do must be given a fair wage. Wages in Indonesia are generally based on three wage functions, namely:

- a. Ensuring a decent life for workers and their families
- b. Reflects the reward for one's work
- c. Provide incentives to encourage increased work productivity.<sup>4</sup>

It is necessary to determine and increase the Minimum Wage and be carefully reviewed so that all parties can benefit. A minimum wage increase that is too drastic will hurt the company. Conversely, an increase that is too flat / sloping does not benefit workers / laborers, because the increase will be defeated by inflation so that the goal of increasing the welfare of workers / labor will not be achieved. Therefore, the increase in the minimum wage needs to be known and agreed upon by all parties.

This regulation regarding the minimum wage for workers does not only involve elements of companies (employers) represented by employers' organizations (such as the Indonesian Employers' Association), workers represented by trade unions / labor unions, and the central government but also involves elements of the local regional government. . Regional Government of Provincial Wage and / or Regent / Mayor.

When the company violates to provide unworthy labor wages, in this case giving wages below the stipulated minimum wage, the company can be given a fairly severe penalty. In the case of Tjioe Christina Chandra,<sup>5</sup>The Supreme Court (MA) sentenced Tjioe Christina Chandra, a businessman from Surabaya to 1 year and Rp. 100 million,

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<sup>2</sup>ImanSoepomo, Introduction to Labor Law, (Jakarta: Djambat, 2008), p. 5

<sup>3</sup>Faith Soepomo. Labor Law, Employment Relations, (Jakarta: Djambat, 2009). p. 108

<sup>4</sup>*Ibid.*, p.109

<sup>5</sup>[www.kompas.com](http://www.kompas.com), 25/04/2013, Pay for Employees Below the UMR, Entrepreneurs Get a Penalty, accessed on 12 June 2018, 06.17 WIB.

who pays his employees below the regional minimum wage. The cassation verdict was chaired by the chairman of the panel of judges, Zaharuddin Utama, with panel members Surya Jaya and Gayus Lumbuun in case Number 687 K / Pid.Sus / 2012. The panel of judges gave criminal penalties on the basis of violations of Law Number 13 Year 2003 concerning Manpower, namely Article 90 Paragraph (1) and Article 185 Paragraph (1).

Article 90 Paragraph (1) states, entrepreneurs are prohibited from paying wages lower than the minimum wage. Meanwhile, Article 185 Paragraph (1) states, violations of these provisions are subject to imprisonment for a minimum of 1 year and a maximum of 4 years, and / or a fine of at least Rp. 100 million and a maximum of Rp. 400 million.<sup>6</sup>in this case is the Provincial Government and the Regional Government of the Regent / Mayor, and this minimum wage is determined by the Governor by taking into account the recommendations of the Supreme Court Council considering that neglect of the minimum wage provisions is a crime. The verdict was given to be the initial stage for community learning so that in the future, companies (entrepreneurs) who commit similar crimes and are reported will be subject to sanctions. The Supreme Court also hopes that this decision will have a deterrent effect so that employers will not abuse the situation and obey the minimum wage regulations. The cassation verdict was set on December 5, 2012. Previously, the Surabaya District Court acquitted Chandra, but the public prosecutor filed an appeal.<sup>7</sup>

Several parties took this case seriously. The government, through the Secretary General of the Ministry of Industry, Ansari Bukhari, said that the government will study the Supreme Court decision because the issue of minimum wages is related to industrial interests, especially labor-intensive industries. "For the labor-intensive industries, yesterday efforts were made to facilitate suspension," said Ansari. Meanwhile, the entrepreneurs, through the Chairman of the Indonesian Employers' Association (Apindo) Franky Sibarani, said that all parties must see the Supreme Court's decision imposing criminal sanctions on entrepreneurs who pay their employees below the UMR from various sides. As a legal decision, this decision must be respected, however, don't just look at the final decision, but also the background in the case. Franky said, The background must be seen, namely whether all the necessary mechanisms, starting from bipartite approval, submitting a suspension, and approval from the local Manpower Office (Disnaker) are carried out by employers. If all of these mechanisms were implemented, there should be no sanctions imposed. This mechanism was adopted because there were companies that were in fact unable to pay in full according to the stipulated minimum wage. According to Franky, the Supreme Court's decision will also open the eyes of the public, including small, medium-scale businesses and companies above it who will also be burdened, because this decision could make them choose to reduce their workforce (layoffs) when they are unable to pay their employees according to the minimum wage. applications for deferrals and approval from the local Manpower Office (Disnaker) are made by employers. If all of these mechanisms were implemented, there should be no sanctions imposed. This mechanism was adopted because there were companies that were in fact unable to pay

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<sup>6</sup>This case is very interesting, because for the first time in Indonesia the company (entrepreneur) is penalized and provides a wage for labor under the minimum wage.

<sup>7</sup>*Ibid.*

in full according to the stipulated minimum wage. According to Franky, the Supreme Court's decision will also open the eyes of the public, including small, medium-scale businesses and companies above it who will also be burdened, because this decision could make them choose to reduce their workforce (layoffs) when they are unable to pay their employees according to the minimum wage. applications for deferrals and approval from the local Manpower Office (Disnaker) are made by employers. If all of these mechanisms were implemented, there should be no sanctions imposed. This mechanism was adopted because there were companies that were in fact unable to pay in full according to the stipulated minimum wage. According to Franky, the Supreme Court's decision will also open the eyes of the public, including small, medium-scale business actors and companies above it who will also be burdened, because this decision could make them choose to reduce their workforce (layoffs) when they are unable to pay their employees according to the minimum wage. This mechanism was adopted because there were companies that were in fact unable to pay in full according to the stipulated minimum wage. According to Franky, the Supreme Court's decision will also open the eyes of the public, including small, medium-scale businesses and companies above it who will also be burdened, because this decision could make them choose to reduce their workforce (layoffs) when they are unable to pay their employees according to the minimum wage. This mechanism was adopted because there were companies that were in fact unable to pay in full according to the stipulated minimum wage. According to Franky, the Supreme Court's decision will also open the eyes of the public, including small, medium-scale business actors and companies above it who will also be burdened, because this decision could make them choose to reduce their workforce (layoffs) when they are unable to pay their employees according to the minimum wage.<sup>8</sup>

Through the view of the President of the Confederation of Indonesian Workers Unions (KSPI), the manpower office, Said Iqbal, saw the Supreme Court's decision as correct because it was in accordance with Law No.13 of 2003 concerning Manpower. According to Iqbal, the decision is a legal protection for labor rights because the minimum wage is a safety net so that workers are not absolutely poor due to not being paid a decent wage. Iqbal added that this decision is proof that the law is in favor of the little people and so that employers do not arbitrarily pay workers' wages. In this case, it should be noted that the Government includes criminal sanctions that can be given to parties. Companies (entrepreneurs) that violate the provisions of providing workers wages below the stipulated minimum wage. The provisions contained in the Manpower Law too explain that the said act is a criminal act. The government also provides a fairly severe criminal sanction in this case.<sup>9</sup>

Enforcement of criminal sanctions against companies (employers) that provide workers wages below the minimum wage, apparently did not prevent these criminal acts from being repeated, for example what happened in Lampung Province.<sup>10</sup> Although there have been threats of criminal sanctions for entrepreneurs who pay wages below the UMK, there are still many entrepreneurs who pay wages for

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<sup>8</sup>*Ibid.*

<sup>9</sup>See Article 185 Paragraph (1 & 2) of Law No.13 of 2013 concerning Manpower

<sup>10</sup>It's been 5 years of work, the salaries of insurance employees in Central Lampung are still below the UMK Tribun Lampung, Thursday, March 1 2018.

workers below the UMK, including in Lampung Province. PT. Pratama Prima Sentosa (SPBU) in the Way Kandis Bandar Lampung area in August 2018, when the employee of the Lampung Province labor service supervisory employees carried out supervision found the wages of the Way Kandis gas station employees were under the UMK of Bandar Lampung city, preventive and justitia guidance had been carried out 2 times as many as guidance notes but the owner of the SPBU is still ignoring on the basis of the reports of the incident the Lampung province manpower inspector is followed up with an investigation of the owner of the SPBU.<sup>11</sup>

Based on the background description, the issues that will be discussed and raised in the writing of this thesis are: How to enforce criminal sanctions against companies that pay labor wages below the Regency / City minimum wage? And what are the factors that hinder the application of criminal penalties for companies paying labor wages below the Regency / City minimum wage?

## **B. Research methods**

The research method used in this study uses a normative juridical and empirical juridical approach. Sources and types of data used are primary data and secondary data. Determining the sources is done by interviewing the respondents. The data collection method was carried out by literature study and field study. The data analysis used is qualitative analysis.

## **C. Results and Discussion**

### **1. Enforcement of Criminal Sanctions against Companies Paying Labor Wages Below the Regency / City Minimum Wage**

Every worker / laborer has the right to earn income that fulfills a life worthy of humanity, namely being able to meet the needs of the worker / laborer and their family fairly.<sup>12</sup>Wages are included as an important aspect of worker / labor protection. The main motivation for a worker / laborer to work in a company is to earn a living (wages). Wages are a sensitive right for workers / laborers. Hence, no rarely wages create disputes.<sup>13</sup>The wages received by workers / laborers are very meaningful for their survival in fulfilling their daily needs, because by receiving wages a person can realize his dreams and at the same time also in order to increase a standard of living that is worthy of humanity. Ability and expertise that a person has very affect wage receipts.<sup>14</sup>

In enforcing laws and regulations in employment, there is always a gap between the basic science (theory) anddas sollen(practice) so that there always appears discord between law in the books and law in action. This disparity is caused by differences in views and principles between legal interests (protection of workers / laborers) and economic interests (corporate profits). Employment Law will the fulfillment of workers / laborers' rights to the maximum, but for the company this is considered to be an obstacle in gaining profit / profit.

<sup>11</sup>It's been 5 years of work, the salary of insurance employees in Central Lampung is still below the minimum wage  
Tribun Lampung, Thursday, March 1 2018.

<sup>12</sup>Hardijan Rusli, Law on Manpower 2003, (Jakarta: Indonesian Publisher, 2004), p. 115.

<sup>13</sup>Abdul Khakim, Basics of Indonesian Manpower Law, (Bandung: PT. Citra Aditya Bakti, 2009), p. 129.

<sup>14</sup>Soedarjadi, Manpower Law in Indonesia, (Yogyakarta: PublisherPustakaYustisia, 2008), p. 73

The gap between *das sollen* (necessity) and *das sein* (reality) in the practice of paying wages to workers / laborers is not only detrimental to workers / laborers but also affects their work productivity. Robert Owen (1771-1858) 1 a series of attitudes of workers / laborers in work relations are very influential on productivity because they are related to motivation to increase work performance. Workers / laborers will work harder if they believe that the company pays attention to their well-being, this phenomenon is known as the Hawthorne effect, that organizations can motivate employees to be as effective or better to show concern for problems than by actually improving their working conditions.<sup>15</sup> Enforcement of criminal sanctions against companies that pay workers wages below the UMK is of course very important to protect labor rights and prevent workers from exploiting their workers.

Eddy Rifa'i explained that the use of criminal law in regulating society is essentially part of a policy step, the operational policies of criminal law by means of penal means can be carried out through a process consisting of three stages, namely:<sup>16</sup>

1) Formulation Stage

In this case what is meant is the regulation of regency / city minimum wage (UMK) for workers and law enforcement if the company pays the labor wage below the UMK as regulated in Article 90 paragraph (1) of the Manpower Law. If the company violates these provisions, workers can take criminal measures, namely reporting to the labor inspector. The criminal threat for entrepreneurs who pay their workers' wages below the minimum wage is imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least Rp. 100 million and a maximum of Rp. 400 million. As stipulated in Article 185 paragraph (1) of Law no. 13 of 2003 concerning Manpower.

2) Application stage

At this application stage, labor inspectors take action against violations of the provisions of Article 90 paragraph (1) of the Manpower Law with the threat of punishment as stated in the provisions of Article 185 paragraph (1) of Law No. 13 of 2003 concerning Manpower that "Whoever violates the provisions referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), subject to sanctions and imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah)."

3) Execution Stage

After the defendant was convicted by a judge for his actions which violated the provisions of Article 90 paragraph (1) of the Manpower Law, the defendant was executed in this case by the Public Prosecutor in accordance with the provisions of the prevailing laws and regulations.

Enforcement of criminal sanctions against companies that pay labor wages below the Regency / City Minimum Wage (UMK), it is necessary to protect workers from

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<sup>15</sup>UmiKalsum. Law Enforcement Against Palm Oil Plantation Companies in Kab. Ketapang which violates Article 90 paragraph 1 of Law no. 13 of 2003 concerning Manpower.

<sup>16</sup>Based on the results of interviews with the lecturer of the Criminal Department, Faculty of Law, Lampung University

abuse by employers. According to Fathoni's opinion, labor protection can be divided into 3 (three) types, namely:<sup>17</sup>

- a) Economic protection, namely protection of workers in the form of sufficient income, including if the worker does not work against his will.
- b) Social protection, namely protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- c) Technical protection, namely protection of workers in the form of security and safety strength.

Furthermore, Fathoni explained that labor legal protection is divided into three types, namely economic protection, social protection and technical protection. The three types of protection above absolutely must be understood and implemented as well as possible by employers as employers. If a businessman commits a violation, the role of the government, provincial government and district / city government is to provide guidance and supervision in accordance with their authority, including law enforcement through applicable procedures and mechanisms. Legal protection for workers is intended to guarantee the basic rights of workers and ensure equal opportunity and treatment without discrimination on any basis in order to realize the welfare of workers and their families while still paying attention to the development of the business world.<sup>18</sup>

In addition, the position of a weak workforce is often used by companies to exploit their energy for profit in an easy and cheap way. In addition to being able to take the pathway described above, workers who are disadvantaged by the wages paid by companies below the UMK can also take other legal steps to fight for their rights. Considering that criminal law is the last resort (*ultimum remedium*), to enrich the discussion in this thesis, the author adds several other legal steps that can be taken if companies pay wages below the UMK.

#### **D. Conclusion**

Based on the discussion of the research results regarding the problems raised in this thesis, in closing this thesis the authors make the following conclusions: Enforcement of criminal sanctions against companies that pay labor wages below the Regency / City minimum wage If the company violates the Regency / City Minimum Wage provisions, the workers can take criminal measures, namely to report the police. The criminal threat for entrepreneurs who pay their workers' wages below the minimum wage is imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least Rp. 100 million and a maximum of Rp. 400 million. As stipulated in article 185 paragraph (1) of Law no.

Apart from making a report to the police, there are other legal instruments that can be used if the company pays the employees wages under the terms of the Wages minimum District / City (UKM). Based on the provisions of Article 176 paragraph (1) of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, it is mandated that labor

<sup>17</sup>Based on the results of interviews with the lecturer of the State Administration of Law, Faculty of Law, University of Lampung.

<sup>18</sup>Based on the results of interviews with the lecturer of the State Administration of Law, Faculty of Law, University of Lampung.

inspection be carried out by competent and independent employees of labor inspectors to ensure the implementation of labor laws and regulations.

Factors that hinder the enforcement of criminal penalties for companies paying labor wages below the Regency / City Minimum Wage (UMK) In enforcing criminal penalties for companies paying labor wages below the Regency / City Minimum Wage (UMK), several obstacles were found, namely : 1) Legal factors: In terms of the law, there is an imbalance in the substance of Law no. 13 of 2003 concerning Manpower. where several implementing regulations such as Government Regulations, Presidential Decrees, Permenaker, Permenakertrans, Kepmenaker and Kepmenakertrans already existed before the law was issued. 2) Law Enforcement Factors: The number of labor inspectors in Bandar Lampung City is not proportional to the number of companies being supervised, 3) The lack of facilities and facilities in the Bandar Lampung City Manpower Office, it can be seen from the fact that the Labor Inspector / PPNS in Bandar Lampung City does not have transportation equipment and facilities and does not have a local office. 4) The community does not yet understand labor rights. 5) Cultural factors: Lack of public awareness of the importance of law enforcement in the field of manpower, business actors (companies) and workers do not have legal understanding and awareness in realizing the implementation of the provision of minimum wages.

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