



Legal Implications for Aying Ages Based on the Decree of the Governor Regarding Labor Intensive Minimum Wages that Have Been Canceled by the Sureme Court and/or Already Change Years

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Abstract

The discussion in this legal study relates to the decision of the governor of West Java which stiuates the minimum wage for labor Intensive Industries (UMK) for certain tyes of garment industry in urwakarta regency, bogor regency, and bekasi city for 2017, effective in July 2017, whose value is lower than the regency/city minimum wage for the same year set on November 21, 2016, effective as of January 2017. The three gubernatorial decrees above were met with oosition from the labor unions in the Kab. urwakarta, Kab. Bogor, and Kota Bekasi, West Java, also from the central level trade unions. Federation of Indonesian metal workers union T. Dada Indonesia, metal workers union federation of Indonesian metal Workers Union T. The decision of the Administrative Court which declared invalid and ordered the Governor of West Java to revoke it: Decree of the Governor of West Java Number: 561/Ke.644-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in the urwakarta Regency of 2017 dated July 24, 2017

Keywords: Legal Implications, Governor, Labor

A. Introduction

The discussion in this legal study relates to the decision of the governor of West Java which stiuates the minimum wage for labor Intensive Industries (UMK) for certain tyes of garment industry in urwakarta regency, bogor regency, and bekasi city for 2017, effective in July 2017, whose value is lower than the regency/city minimum wage for the same year set on November 21, 2016, effective as of January 2017. On 24 and 28 July 2017, the governor of west java rovince set the minimum wage labor-intensive industry for certain tyes of garment industry in Kab. urwakarta, Kab. Bogor, and Bekasi City for 2017, through 3 (three) governor decrees (Kegub):

1. For urwakarta Regency:

Kverdict governor Java West N o m o r : 5 6 1 / Ke . 6 4 4 - Yanbangsos / 2017 Regarding the Minimum Wage for Certain Labor-Intensive Industries for Tyes of Garment Industry in urwakarta Regency, 2017 dated July 24, 2017, which sets a minimum wage of R. 2,546,744.00;

2. For Bogor Regency:

Decision governor of west java number: 561/Ke.679-yanbangsos/2017 concerning minimum wage for certain labor-intensive industries for garment/aarel industries in Bogor Regency in 2017 dated July 28, 2017 of R. 2,810,150.00; and

3. For Bekasi City:

Kverdict governor West Java Number : 561/Ke.680-Yanbangsos/2017 Regarding the Minimum Wage for Certain Labor-Intensive Industries Tyes of Garment Industry in Bekasi City Region in 2017 dated July 28, 2017 amounting to R. 3.100.000,-. In essence, the Minimum Wage for Labor-Intensive Industries for Certain Tyes of Garment

Industry (hereinafter referred to as "UMK") is set by the Governor to prevent termination of employment (HK) for workers in garment companies in Kab. urwakarta, Kab. Bogor, and the City of Bekasi which are unable to pay the minimum wage in the amount according to the 2017 Regency/City Minimum Wage (UMK). And because of that, the UMK was issued to set a lower UMK than the minimum wage in the UMK based on the Governor's decision issued on November 21, 2016, namely:

For urwakarta Regency:

Decree of the Governor of West Java Number: 561/Ke.1191-Bangsos/2016 dated November 21, 2016 with the minimum wage for urwakarta Regency (urwakarta Regency UMK) of R. 3,169,549.17 effective as of January 1, 2017;

1. For Bogor Regency

Decree of the Governor of West Java Number 561/Ke.1191-Bangsos/2016 dated November 21, 2016 with the minimum wage for Bogor Regency (Bogor Regency UMK) of R. 3,204,551.00 effective as of January 1, 2017.

2. For Bekasi City

Decree of the Governor of West Java Number: 561/Ke.1191-Bangsos/2016 dated November 21, 2016 with the minimum wage for the City of Bekasi (UMK Bekasi City) of R. 3,601,650.00 effective as of January 1, 2017. With the stipulation of the UMK above, the minimum wage in labor-intensive industries is for certain type industry Clothes Finished/Garment in Kab. urwakarta, Kab. Bogor, and Kota Bekasi are lower than the UMK in each of these areas, with the following details:

No.	Region Name	UMK 2017	UMK 2017
1	Regency. urwakarta	R. 3,169,549,17	R. 2,546,744.00
2	Regency. Bogor	R. 3,204,551.00	R. 2,810,150.00
3	Bekasi city	R. 3,601,650.00	3,1000,000.00

The three gubernatorial decrees above were met with opposition from the labor unions in the Kab. urwakarta, Kab. Bogor, and Kota Bekasi, West Java, also from the central level trade unions. Federation of Indonesian metal workers union T. Dada Indonesia, metal workers union federation of Indonesian metal Workers Union T. Anugerah Abadi Bersama, the Federation of Indonesian Metal Workers Unions, and the National Center for Trade Unions (hereinafter collectively referred to as the "Workers Union") are said to have filed a lawsuit for the cancellation of the three UMK Governors' Decrees to the Bandung State Administrative Court ("TUN Bandung") with Case Number 108/ G/2017/TUN-BDG on August 25, 2017 ("Case TUN 108/2017"). In the TUN Case 108/2017, the labor union filed a lawsuit against the governor as the defendant through the Administrative Court and asked the Administrative Court to declare the three UMK Kegub UMK invalid and ordered the Governor to revoke them. The reason for the lawsuit is that the governor's decision in setting the minimum wage is a decision that is not based on legal authority and violates the general principles of good governance (AUB), as stated in his lawsuit: "is a wrong action and is not based on the provisions of the labor legislation, the Defendant in the labor legislation is only given the authority to determine the UM, UMS, UMK, and UMSK as stipulated in the provisions of Article 89 aragrah (1) and aragrah (2) Law Number: 13 of 2003 concerning Manower in conjunction with Article 41, Article 45, Article 46, Article 47, Article 48, and Article 49 of Government Regulation Number 78 of 2015 concerning Wages in conjunction with Article 6, Article 7, Article 11, Article 12, Article 13, and Article 14 of the Regulation of the Minister of Manower and Transmigration Number: 7 of 2013 concerning Minimum Wages in conjunction with Article 81 of West Java provincial Regulation Number: 6 of 2014 Concerning the Implementation of Manower, it is thus clear that the ACCUSED is not authorized to determine the minimum wage for certain labor-intensive industries in the type of apparel/garment industry (the object of the lawsuit a quo) as regulated in the provisions of the said manower laws and regulations and the ACCUSED's actions also violate the AUB in this regard. case of the principle of legal certainty, so that the object of the lawsuit a quo can be declared "DISABLED OF

AUTHORITY" so that it is invalid and therefore has a very legal reason to be canceled, as referred to in the revisions of Article 56 and Article 66 of Law Number:30 of 2014 concerning Government Administration (Kuncoro, 2002; Umar, 2012; Sulistiawati, 2013; rawira et al., 2021)."

On the lawsuit of the Labor Union, the Bandung Administrative Court on February 6, 2018 decided to declare the three UMK Kegub illegitimate and ordered the Governor to revoke them. The decision is based on legal considerations that:

1. The issuance of the third Kegub UMK is seen as discretionary because the legal instrument provided for entrepreneurs who are unable to pay the minimum wage set by the government is a deferral institution.
2. However, the issuance of the three Kegub UMK is a discretion that is contrary to the laws and regulations and does not meet the requirements as a form of discretion stipulated by Law 30 of 2014 concerning Government Administration. The Bandung Administrative Court's decision on the TUN case 108/2017 was upheld at the cassation level with the Sureme Court's Decision Number 587 K/TUN/2018 dated November 21, 2018 and at the level of review through Decision Number 90 K/TUN/2019 dated July 25, 2019.

Term	ermenaker Number: ER- 15/2018	ermenaker Number:ER-01/MEN/1999	ermenaker Number:ER-01/MEN/1990	ermenaker Number:ER-05/MEN/1989
Minimum Wage	Wages monthly lowest in the form of wages without allowance or wages tree including allowances ermanent which set by governor as net safety.	the lowest monthly wage consisting of basic wages including fixed allowances.	Wages tree added with allowance ermanent", with the terms of Wages tree as low as possible 75 % from wages minimum.	Wages tree Lowest not yet including allowances which given to worker.

With a court decision that has ermanent legal force which declares the 2017 UMK Gubernatorial Decree invalid in Kab. urwakarta, Kab. Bogor, and Bekasi City, the Minimum Wage for Labor Intensive Industries for Certain Tyes of Garment Industry in the three regions returns to the 2017 UMK in each Regency. urwakarta, Kab. Bogor, and Bekasi City. As a result, entrepreneurs who have paid wages to their workers at the amount based on the 2017 UMK are facing a difficult situation because they have to pay wages with a larger 2017 UMK.

B. Method

This is a study of the literature on the principle and significance of social inclusion in the smallest level of government, the village. A descriptive analysis with a qualitative approach is what this method of analysis is. This type of research is named after the fact that it emphasizes (focuses) on attempts to explain the situation as it is, with the aim of reducing descriptive data in the form of written or spoken words from people or observable behavior that is intended for the exploration and classification of a phenomenon or social reality. A qualitative approach is a research method that generates descriptive data from individuals and observable actions in the form of written or spoken words (Moleong, 2014).

C. Result and Discussion

The latest minimum wage revisions are regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia Number 15 of 2018 concerning Minimum Wages ("ermenaker 15/2018"). This ermenaker is the fourth regulation on minimum wages issued by the Minister of Manpower, after previously regulated in ermenaker Number:ER-05/MEN/1989, then ermenaker Number: ER-01/MEN/1990, and then ermenaker Number: ER-01/MEN/1999. ermenaker 15/2018 in addition to containing new things from the previous ministerial regulations, but also contains a new definition. Minister of Manpower regulations contain different definitions of the minimum wage (see table below). Each definition set out in each ermenaker represents a component of

the minimum wage in the regulation. The occurrence of differences in the definition of the minimum wage in each ermenaker shows the dynamics that continue to be turbulent in the olitics of wage law in Indonesia.

From the several definitions of the minimum wage above, there is one comonent that has not changed, namely the "fixed wage" comonent as referred to in Article 94 in conjunction with Article 157 aragrah (2) of Law 13/2003. Because itu secara law termsan wages noodlesminimum could juga called asi ublic law rovisions regarding lowest wages. Because it has become a ublic law rovision, its imlementation is an obligation for every entrepreneur. This is exlicitly stated in Article 90 aragrah 1 of Law 13/2003 which states that entrepreneurs are rohibited from aying wages lower than the minimum wage. If the rovisions of Article 90 aragrah

1) If Law 13/2003 is violated, then the eretrator based on Article 185 of Law 13/2003 can be unished with imrisonment for a minimum of R. 100,000,000.00 (one hundred million rupiah) and a maximum of R. 400,000,000.00 (four hundred million rupiah). In addition, the tye of crime is classified as a criminal offense.

Rovisions for the imosition of criminal sanctions for employers or employers who ay the minimum wage also aly in other countries, for examble the UK19. The editorial of Article 185 of Law 13/2003 is as follows:

- a) Whoever violates the rovisions as referred to in Article 42 aragrah (1) and aragrah (2), Article 68, Article 69 aragrah (2), Article 80, Article 82, Article 90 aragrah (1), Article 143, and Article 160 aragrah (4) and aragrah (7), is subject to a minimum imrisonment of 1 (one) year and a maximum of 4 (four) years and/or a minimum fine of R. 100,000,000.00 (one hundred million rupiah) and a maximum of R. 400,000. 0000.00 (four hundred million rupiah)20.
- b) The crime as referred to in aragrah (1) is a criminal offense.

1. Minimum Wage Alicable Scoe

Dith existence termsan chater 90 aragrah (1) jo origin 185 law 13/2003, It is the right of every worker to ay a fixed wage that cannot be less than the minimum wage and the right to receive a fixed wage that is not less than the minimum wage is the right of every worker. The determination and alication of minimum wages is a comlicated rovision, because the laws and regulations do not regulate the grouing of tyes of entrepreneurs and different amounts for each grou of entrepreneurs. In Law 13/2003, in Article 1 oint 5, entrepreneurs are defined as follows:

- a) an individual, artnershi, or legal entity that oerates a self-owned comany;
- b) an individual, artnershi, or legal entity that indeedently oerates a comany that is not his own;
- c) individual, artnershi, or legal entity residing in Indonesia reresenting the comany as referred to in letters a and b domiciled outside the territory of Indonesia.

Meanwhile, the Comany, in Article 1 oint 6, is defined as follows:

- a) any form of business that is a legal entity or not, owned by an individual, owned by a artnershi, or owned by a legal entity, both rivately owned and state owned that emloys workers/laborers by aying wages or other forms of remuneration;
- b) social enterprises and other businesses that have management and employ other eole by aying wages or other forms of remuneration.

From the two definitions, it can be concluded that entrepreneur is the owner of a form of business or social enterprises or other businesses that have management and employ other eole by aying wages or other forms of remuneration (Herawati & Sasana, 2013; Sidiq et al., 2021). From this understanding, all comanies in the tye of micro, small and medium enterprises, legal entities or not, owned by individuals, owned by artnershis, or owned by legal entities, both rivately owned and state owned, including social and religious foundations and organizations are required to comly with the rovisions. minimum wage. The scoe of alication of the minimum wage in the exlanation above, based on the rovisions

of Article 42 paragraphs (1) and (2) of 78/2015 only applies to Workers/Labourers with a period of service of less than 1 (one) year at the company concerned. Meanwhile, for workers with a working period of 1 (one) year or more, it is negotiated in a bipartite manner between the Worker/Labourer and the Employer in the Company concerned.

2. Minimum Wage Type

The Minimum Wage according to Law No. 15/2018 consists of:

- a) Provincial Minimum Wage ("UM");
- b) Regency/City Minimum Wage ("UMK");
- c) Provincial Sectoral Minimum Wage ("UMS"); and
- d) District/City Sectoral Minimum Wage ("UMSK").

The UM is the Minimum Wage that applies to all regencies/cities within the territory of 1 (one) province. UMK is the Minimum Wage applicable in the territory of 1 (one) district/city. UMS is the Minimum Wage applicable to certain sectors in 1 (one) province. UMSK is the Minimum Wage that applies to certain sectors in 1 (one) district/city²¹. Of these types of minimum wages, the applicable minimum wage is the highest minimum wage. If there are only UM and UMS as in DKI Jakarta province, then for business sectors that are not included in the 2020 UMS regulations, the 2020 UMS will still apply²², but for business sectors that are included in the 2020 UMSK, the 2020 UMSK provisions will apply. What applies is UMK²⁴. If in addition to the UMK provisions there are also UMSK, the applicable minimum wage provisions are UMSK for the business sector included in the UMSK decision²⁵.

3. Minimum Wage Determination

Based on Chapter 89 paragraph (2) Law No. 13/2003, determination wages is directed to achieving the necessities of a decent life. In the explanation section, it is stated that what is meant by being directed to the achievement of a decent living need in this paragraph is that every determination of the minimum wage must be adjusted to the stages of achieving a comparison of the minimum wage with the need for a decent living, the amount of which is determined by the Minister of Manpower (Nulhaqim & Sulastri, 2019; Kunyanti & Mujiono, 2021; Dadi, 2021). The minimum wage that must be set by the Governor is the Provincial Minimum Wage, while UMS, UMK, UMSK are not mandatory or can be set. The determination of the UM is carried out and announced on November 1 with a Governor's Decree. If November 1 falls on a national holiday or a national holiday, the UM is determined and announced by the governor 1 (one) day before a Sunday or a national holiday or a day that is nationally closed. The UM that has been announced is effective as of January 1 of the following year²⁶. While the UMK is not mandatory or can be set by the governor²⁷. If the governor stipulates the UMK, the stipulation is made no later than November 21. The minimum wage is effective as of January 1 of the following year²⁸.

The determination of the UM by the governor is carried out by taking into account the recommendations of the Provincial Wage Council (D), where the recommendations of the Provincial Wage Council are based on the results of a review of the needs of a decent living whose components and types are determined by the Minister and by taking into account productivity and economic growth (Kumbadewi et al., 2016; Sidiq & Maulida, 2021). The UMK is determined by the governor by taking into account the recommendations of the regent/mayor as well as the suggestions and considerations of the provincial wage council. With regard to the recommendations given by the regents and mayors, these are submitted based on the suggestions and considerations of the district/city wage councils based on the results of a review of the needs of a decent living whose components and types are determined by the Minister and by taking into account productivity and economic growth. The minimum wage calculation formula is the current year's minimum wage plus the product of the current year's minimum wage multiplied by the sum of the current year's national

inflation rate and the current year's gross domestic product growth rate³¹.

As an additional note, for the 2020 minimum wage, inflation rate data is determined nationally by the Minister of Manpower based on the submitted national statistical data melalui Surat Circular number: B-M/308/HL.01.00/X/2019, date 15 October 2019, regarding the Submission of Data on the National Inflation Rate and Gross Domestic Product Growth in 2019. Based on the Circular, the increase in the UMK and/or UMK in 2020 is based on data on national inflation and national economic growth, which is 8.51% (eight point fifty one percent).

4. Attitudes of the Supreme Court and the Constitutional Court towards the Minimum Wage

Not all entrepreneurs/companies based on the definition of Article 1 section numbers 5 and 6 of Law 13/2003 are able to pay the minimum wage. For that there are several legal efforts made by the governor and businessmen. Things that have been done by governors, for example by the Governor of West Java is to issue.

- a) Decree of the Governor of West Java Number 561/Ke.644-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Types of Garment Industry in Urugadarta Regency in 2017 dated July 24, 2017;
- b) Decree of the Governor of West Java Number: 561/Ke.679-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in Bogor Regency, 2017 dated 28 July 2017;
- c) Decree of the Governor of West Java Number: 561/Ke.680-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in Bekasi City Region of 2017 dated 28 July 2017.

The purpose of the issuance of this decision is to save the continuity of the labor-intensive business world, especially in the garment sector, which is the sector that absorbs the most labor in West Java. The Supreme Court's attitude towards the three decisions was very firm, namely declaring them invalid and requiring the Governor of West Java to revoke them, through Supreme Court Decision Number: 587 K/TUN/2018 which was strengthened by Decision Number: 90 K/TUN/2019. There are also other legal remedies that are most often taken by employers, namely delaying the payment of the minimum wage. In Article 90 paragraph (2) of Law 13/2003 it is stipulated that entrepreneurs who are unable to pay the minimum wage can be suspended. In the explanation section of the article, it is stated that the suspension of the implementation of the minimum wage for companies that cannot afford is intended to free the company concerned from implementing the minimum wage in force within a certain period of time. If the suspension ends, the company concerned is obliged to implement the minimum wage in force at that time but is not obliged to pay the fulfillment of the minimum wage revisions in force at the time the suspension is given. The attitude of the Constitutional Court towards the suspension of wages and its part of the explanation, basically states that the suspension of payment of the minimum wage is only a temporary suspension of which the lack of payment must be aided by employers to workers. This is based on the Decision of the Constitutional Court of the Republic of Indonesia Number: 72/UU-VIII/2015, which basically states the Elucidation of Article 90 paragraph (2) along with the phrase "not obliged to pay the fulfillment of the minimum wage revisions that apply at the time the suspension is granted", contrary to the 1945 Constitution and has no binding legal force.

5. Labor-Intensive Industry Minimum Wage

The Bandung Administrative Court in the decision of the TUN Case 108/2017 at the beginning stated that the UMK Gubernatorial Decree was invalid and must be revoked by the Governor based on the following legal considerations:

Considering, that from the description of the legal facts above, because there is no regulation regarding the mechanism for determining the Labor Intensive Minimum Wage (UMK), the panel of Judges is of the opinion that in issuing the three disputed object decisions, the Defendant has taken legal action by using discretionary authority based on the policy of the central government in this case by the Vice President of the Republic of Indonesia as stated in evidence

T-55 in the form of Notes of the Coordination Meeting Discussion on the Determination of Wages for Social Garment Labor-Intensive Industries for Certain Regions in West Java in 2017 in number 5 which mentions the determination of social wages for the aarel/garment industry for the area of Bekasi City, urwakarta Regency, Bogor Regency and Deok City is a social olicy of the Vice resident, and need to be followed u immediately within a week, Considering, whereas since there are no rovisions governing the determination of the Labor-Intensive Minimum Wage, the anel of Judges will examine whether the use of discretionary authority in the rocess of issuing the three Decision Letters on the object of disute is aroriate and correct.

Considering, that after examining evidence -19 in the form of the Governor of West Java Decree Number: 561/Ke.1191-Bangsos/2016, concerning Regency/City Minimum Wages in the rovince of West Java in 2017, dated November 21, 2016 and observing the three Decrees a quo Regarding the Minimum Wage for Certain Labor-Intensive Industry Tyes of Garment Industry in the urwakarta Regency, Bogor Regency and Bekasi City Regions, it is a legal fact that the minimum wage set in the three disuted objects is lower than the minimum wage for the Regency/City in the Region. West Java rovince in 2017 which has been determined so that according to the anel of Judges the use of discretionary authority by the Defendant in issuing the three disuted objects is contrary to the rovisions of laws and regulations and in their imlementation have created a conflict of interest between employers and workers/laborers of the Garment Industry in urwakarta Regency, Bogor Regency and Bekasi City Region, considering, that if further reviewed, the background for the ublication of the three a quo disute objects is the objection from the Garment Industry entrereneur in the urwakarta Regency, Bogor Regency and Bekasi City Region to ay workers' wages according to the minimum wage Regency/City. Regarding the objections of emloyers to ay workers/laborers wages, there are laws and regulations that regulate the mechanism, namely the West Java rovincial Regulation Number: 6 of 2014 concerning the Imlementation of Manower, considering, that the rovision is a legal instrument that has been rovided to overcome the roblem of objections from entrereneurs to ay the Regency/City Minimum Wage that has been determined but in the a quo disute to overcome the roblem of objections from the Garment Industry entrereneurs in aying the wages of workers/labor The defendant actually used his discretionary authority by issuing the three disuted objects, this is clearly a olicy that is contrary to the rovisions of the legislation, considering, whereas based on the above legal considerations, the anel of Judges is of the oinion that the Defendant's action in issuing the three a quo Decrees does not meet the requirements as a form of exercising discretionary authority as regulated in Article 24 of Law Number: 30 of 2014 concerning Government Administration because it is contrary to the laws and regulations. - alicable law.

Considering, whereas in the oinion of hilius M. Hadjon in the book Introduction to Indonesian Administrative Law age 152, the discretionary authority granted to government organs is used to carry out government duties and functions which are not expressly stiuated in the law and when set forth in written form, it generally becomes a olicy regulation (beleidsregel) in the sense of revealing a written olicy, considering, that from the description of the Exert oinion above, the anel of Judges is of the oinion that before the Defendant issues the a quo Decision Letter, a olicy regulation must first be made as the basis for the use of discretionary authority in issuing the three objects of disute by the Defendant with the rocedure as regulated in the rovisions of Article 26 to Article 28 Law Number: 30 of 2014 concerning Government Administration, because in fact there is an oen sace of discretion for the Defendant as mandated by Law Number: 13 of 2003 concerning Manower in Article 88 aragrah (2) which contains the rovisions "to realize an income that meets a decent living for humanity as referred to in aragrah (1), the government establishes a wage olicy that rotects workers/laborers" instead of

setting wages below the Minimum Wage revisions. Regency/City as a safety net.

Considering, that because it has been proven that the use of the Defendant's discretionary authority in issuing disputed objects is contrary to the laws and regulations, the Defendant's actions are also contrary to the principle of legal certainty which prioritizes the basis of the revisions of laws and regulations, certainty, constancy and justice in every policy of implementation. government and this has created a conflict of interest between the entrepreneur and the worker/laborer so that the Defendant's action in issuing the three disputed objects does not meet the requirements as a discretion. Therefore, it is legally reasonable if the three disputed objects are declared legally flawed, and because of the Defendant's authority in determining the Labor-Intensive Minimum Wage. not regulated by applicable laws and regulations, without having to consider the procedural and substance aspects, the panel of Judges is of the opinion that the Defendant does not legally have the authority to issue the three Dispute Objects a quo, therefore the plaintiffs' claims must be declared granted.

Based on the legal considerations of the Bandung Administrative Court, it can be concluded that the UMK stipulated by the 2017 UMK Decree above is a minimum wage that is not recognized by law as a minimum wage that functions as a safety net or stated in the Bandung Administrative Court Decision above with: "no there are regulations regarding the mechanism for determining the Labor-Intensive Minimum Wage (UMK)" and "there are no revisions governing the determination of the Labor-Intensive Minimum Wage". And therefore the three 2017 UMK Governor Decrees are legally categorized as discretionary to overcome social circumstances, namely to avoid termination of employment in apparel/garment industrial companies. However, The three 2017 UMK Gubernatorial Decrees, which are seen as discretionary, are also considered as illegitimate discretion because they are contrary to the laws and regulations that have provided suspension institutions for entrepreneurs who cannot afford it, as regulated in the Prov. West Java No. 6 of 2014 concerning the Implementation of Manover, which stipulates that entrepreneurs who are unable to pay the minimum wage can apply for a suspension to the Governor through the Office no later than 10 (ten) days prior to the enactment of the Governor's decision.

The Labor-Intensive Minimum Wage for certain industries is indeed not known in the laws and regulations that were in effect when the case was decided by the Bandung Administrative Court and currently, namely Law Number 13 of 2003 concerning Manover ("Law 13/2003"), Government Regulation Number 78 2015 concerning Wages ("78/2015"), and Regulation of the Minister of Manover and Transmigration Number 7 of 2013 concerning Minimum Wages. Currently the minimum wage technical revisions are regulated by the Minimum Wage according to the Minister of Manover Regulation Number 15 of 2018 (which replaces the Regulation of the Minister of Manover and Transmigration Number 7 of 2013) consisting of the provincial Minimum Wage (UM), Regency/City Minimum Wage (UMK), provincial Sectoral Minimum Wage (UMS), and District/City Sectoral Minimum Wage (UMSK)

6. Consequences of Court's Decision Declaring Kegub UMK 2017 Kab. urwakarta, Kab. Bogor and Bekasi City are not valid

The third Kegub UMK 2017 which applies to Kab. urwakarta, Kab. Bogor, and Bekasi City in 2017 are declared effective on the issuance date of the Governor's Decree, namely the UMK for urwakarta Regency on July 24, 2017, and for Kab. Bogor, and Bekasi City took effect on July 28, 2017. However, as stated in the Decree, the payment of the UMK was carried out from January 2017 for one year of minimum wages until December 2017. The revisions of Article 43 78/2015 stipulate that the determination of wages minimum is carried out every year based on the need for a decent living and taking into account productivity and economic growth. Thus, entrepreneurs or companies that fall into

the garment industry/labor-intensive category in the three regions can ay wages to their workers with wages equal to the UMK determination (to workers whose working eriod is less than 1 year) lower than the minimum UMK wage since January 2017 until December 2017, as the table below:

No.	Region Name	UMK 2017	UMK 2017
1	Regency. urwakarta	R. 3,169,549,17	R. 2,546,744.00
2	Regency. Bogor	R. 3,204,551.00	R. 2,810,150.00
3	Regency. Bogor	R. 3,601,650.00	3,1000,000.00

After each of the three Kegub UMK 2017 was declared invalid by the Bandung Administrative Court which was strengthened at the cassation level by Sureme Court Decision Number 587 K/TUN/2018 dated November 21, 2018 and at the level of review through Decision Number 90 K/TUN/2019 dated 25 July 2019 then the minimum wage that must be aid by entrereneurs in Kab. urwakarta, Kab. Bogor, and Deok City must not be lower than the minimum minimum wage for each region. The Court's decision has legal consequences for the ayment of the minimum wage for aarel/garment comanies in Kab. urwakarta, Kab. Bogor and Deok City which have imlemented the 2017 UMK from January to December 2017. The implications of the Court's Decision arise in two things, namely (i) the birth of a state of underayment equal to the total difference between the 2017 UMK and the 2017 UMK (the amount of the 2017 UMK). the amount of UMK 2017); and (ii) when will the Court's Decision take effect.

7. Occurrence of Underayment

Law 13/20003 in Article 90 stiuulates a rohibition for employers to ay wages lower than the minimum wage. Furthermore, 78/2015 stiuulates that the Governor sets the minimum wage as a safety net. The determination of the minimum Wage serves as a safety net so that Wages are not aid lower than the minimum Wages set by the government and also so that Wages do not decline to a level that endangers the nutrition of the Worker/Labourer so that it does not interfere with their work ability. In Law 13/2003 in Article 185, criminal sanctions are also regulated for entrereneurs who ay the minimum wage in the form of imrisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least R. 100,000,000.00 (one hundred million ruiah) and a maximum of R. 400,000,000.00 (four hundred million ruiah). It should be emhasized that the minimum wage based on Law 13/2003 and 78/205 alies to workers whose tenure has not yet reached 1 (one) year of work. Meanwhile, workers with a working eriod of 1 (one) year or more are negotiated in a biartite manner between workers and employers in the comany concerned.

Is the aarel/garment industry entrereneur in Kab. urwakarta, Kab. Bogor, and Deok City which met the 2017 UMK and then the 2017 UMK was declared invalid by the Court, can they be considered to have violated the criminal rovisions of Article 185 of Law 13/2003? Because the ayment of wages by the entrereneur is made based on the 2017 UMK stiuulated by the 2017 UMK Kegub, the ayment is valid as long as the 2017 UM Kegub has not been declared invalid by the Court, which has has ermanent legal force starting from the time the arties receive a coy of the decision on the case at the Cassation level (the Decision on Cassation in the 2017 UMK Case was issued on November 21, 2018). This means that the entrereneur can be assessed as aying wages to his workers below the 2017 UMK minimum wage as of the Court's Decision on the above UMK lawsuit as of November 21, 2018, more recisely from the date the West Java rovincial Government received an official coy of the related cassation decision. Therefore, the ayment of wages by aarel/garment industry entrereneurs in Kab. urwakarta, Kab. Bogor, and Deok City were legal before the Court's Decision which annulled the 2017 UMK had ermanent legal force.

If the ayment by the entrereneur which is lower than the 2017 UMK is deemed to have fulfilled the elements of an action rohibited by Article 90 aragrah (1) of Law 13/2003, then, if referring to Article 191 aragrah (2) of the Criminal rocedure Code, the entrereneur's action does not constitute a

criminal act. so that it will be judged by the court with a decision free from all lawsuits. Even with the principle of criminal law stated in Article 1 aragrah (2) of the Criminal Code, namely "if there is a change in the legislation after the act is committed, then the most favorable provisions are applied to the defendant", the act of paying the entrepreneur cannot be criminally prosecuted from the start. However, in employment law, due to the Court's Decision on the payment by the apparel/garment industry entrepreneur in Kab. urwakarta, Kab. Bogor, and Depok City which refer to the 2017 UMK are invalid and are deemed to have underpaid the difference with the 2017 UMK in their respective regions, as shown in the table below:

No	Region Name	MSE	UMK	Difference
1	Regency. urwakarta	R.3.169,549,17	R.2,546.744,00	R. 622.805.17
2	Regency. Bogor	R.3.204.551.00	R.2.810.150.00	R. 394401.00
3	Bekasi city	R.3.601.650.00	R.3.100.000.000,00	R. 501.650.00

Underpayment Table

From the table, the underpayment for apparel/garment industry entrepreneurs (assuming payment of wages is equal to the 2017 minimum wage) in Kab. urwakarta is R. 622.805.17, Kab. Bogor for R. 394401.00, and Bekasi City R. 501.650.00. Because the problem of underpayment is a normative right of workers to employers, in principle the settlement is carried out based on Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes at the Industrial Relations Court by referring to the provisions of 78/2015 concerning the obligation of employers to pay the lack of the proper amount of wages.

8. When does the UMK come into effect relating the UMK?

The reason put forward in the lawsuit in the state administrative dispute is that the state administrative decision (KTUN) being sued is considered contrary to the applicable laws and regulations. The element of 'contrary' to the KTUN and the statutory regulations is substantively seen from the contents of the KTUN and the timing (time) of the issuance of the KTUN with the laws and regulations that are used as a reference for issuing the KTUN. In some cases, the KTUN becomes invalid due to changes in the laws and regulations that form the basis for the issuance of the KTUN. This negates the validity and enforceability of the said KTUN (Indradewa et al., 2015; Wihastuti & Rahmatullah, 2018). To see the validity of the application of KTUN in state administrative law, it is known as the principle of *ex tunc* and *ex nunc* testing in state administrative disputes. The principle of *ex tunc* testing is one of the distinguishing characteristics of tests conducted by the State Administrative Court. *Ex tunc* testing is a test carried out by the Administrative Court which is limited to the facts or legal conditions at the time the disputed KTUN was issued.

Meanwhile, changes in facts and changes in legal conditions are not taken into account, meaning that the judge's examination is only limited to facts or legal conditions at the time the decision of the State Administration is issued (Utari & Soelistyo, 2018; Sulistiani et al., 2021). Because the TUN judge conducts an *ex-tunc* examination, the KTUN in dispute will be declared null and void, so as a consequence, the decision which is declared null and void applies retroactively from the time the decision is issued. The legal consequences the situation is returned to its original state before the issuance of the disputed decision. Likewise, the legal consequences that arise are considered invalid and are considered to have never existed. The judge's decision is declarative and not constitutive, or is called a retroactive decision. So the judge's decision does not contain a constitutive annul. On the other hand, *ex nunc* testing, which is a test that is carried out is not bound by the facts and legal conditions at the time the decision was issued. Changes in facts and changes in legal circumstances are not considered. *Ex Nunc* means that it takes effect at the time of its stipulation (now) as well, so not later or first or it means starting.

now, valid for the future, valid from the day of stipulation (not retroactive). KTUN testing is carried out against the latest laws and regulations. If the KTUN is canceled/declared invalid, then the legal consequences caused by the KTUN are valid/existing since the enactment of the applicable laws and

regulations. In the ex nunc assessment the KTUN is declared canceled and the legal consequences that have been caused by the KTUN are considered to have existed, starting from the time the KTUN is cancelled. So that the resulting legal consequences do not aly retroactively (ex tunc). The decision of the ex nunc judge is called a rosective decision and is constitutive, not a declaration.

Based on the concet of the TUN decision, the Administrative Court Decision on the three Kebug UMK 2017 Kab. urwakarta, Kab. Bogor, and Deok City above are ex tunc because the Administrative Court considers that the 2017 UMK Kegub was issued based on discretion that is contrary to the alicable laws and regulations, and is therefore invalid and legally considered to have never existed from the start. Therefore, due to the TUN's decision on the ayment by the aarel/garment industry entrereneur in Kab. urwakarta, Kab. Bogor, and Deok City which referred to the 2017 UMK were invalid from the start and were deemed to have underaid the difference with the 2017 UMK in their reseective regions from January 2017 to December 2017 according to the Short ayment Table above.

D. Conclusion

From all the descriptions above, regarding the legal consequences of the Administrative Court Decision on the 2017 UMK Kegub lawsuit in Kab. urwakarta, Kab. Bogor, and Deok City can be concluded as follows: The decision of the Administrative Court which declared invalid and ordered the Governor of West Java to revoke it: Decree of the Governor of West Java Number: 561/Ke.644-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in the urwakarta Regency of 2017 dated July 24, 2017. Decree of the Governor of West Java Number: 561/Ke.679-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in Bogor Regency, 2017 dated 28 July 2017. Decree of the Governor of West Java Number: 561/Ke.680-Yanbangsos/2017 concerning Minimum Wages for Certain Labor-Intensive Industries for Garment/Aarel Industries in Bekasi City Region of 2017 dated 28 July 2017. Has ermanent legal force and is binding on the arties as of the Court's Decision on the UMK lawsuit above as of November 21, 2018 (the date of the Sureme Court's Cassation Decision on this case), more recisely from the date the Governor/West Java rovincial Government received an official coy of the decision related aeal. As a result of the Administrative Court Decision stating that the three UMK Kegub 2017 above were invalid since the beginning of their issuance (a discretion that is contrary to the laws and regulations), ayments by aarel/garment industry entrereneurs in Kab. urwakarta, Kab. Bogor, and Deok City which referred to the 2017 UMK were invalid from the start and were deemed to have underaid the difference with the 2017 UMK in each of these areas from January 2017 to December 2017 according to the eriod of validity of the garment/work-intensive industrial UMK. in the district. urwakarta, Kab. Bogor, and Deok City. The roblem of underayment is a normative right of workers to employers. Therefore, in rincile, the settlement is carried out based on Law no. 2 of 2004 concerning Settlement of Industrial Relations Disutes at the Industrial Relations Court by referring to the rovisions of 78/2015 concerning the obligation of entrereneurs to ay the lack of the roer amount of wages.

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