

**MINIMUM WAGE FOR WORKERS IN MICRO AND SMALL
ENTERPRISES: ANALYSIS OF GOVERNMENT REGULATION
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Abstract

This study aims to explore legal views on the implementation of wages below the minimum wage for Micro, Small Enterprises (MSEs) in Indonesia. The research method applied is a literature study that includes an analysis of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, Government Regulation Number 36 of 2021 on Wages, as well as related case studies in the field. The results show that wage arrangements for MSEs aim to protect workers' welfare and improve decent living standards. Nevertheless, its implementation faces various challenges, especially in terms of law enforcement against employers who do not comply with the stipulated minimum wage provisions. This shows that there is an expansion of the reach of legal protection for workers/laborers in the MSEs sector.

Keywords: Minimum Wage Policy, Micro and Small Enterprises (MSEs), Indonesian Labor Law, Worker Protection, Job Creation Law

1. INTRODUCTION

The Indonesian government holds a significant responsibility in supporting the community both materially and spiritually, in accordance with the values of Pancasila. This includes a commitment to improving quality of life through infrastructure development, education, healthcare, and economic empowerment across Indonesia, as well as ensuring that the results of development are distributed fairly and equitably.

The government aims to ensure that its citizens can enjoy their basic rights without discrimination while still considering the needs and aspirations of individuals and groups. With this approach, Indonesia is committed to achieving sustainable development goals based on principles of social justice and collective welfare (Ramadhani & Ndonga, 2024).

An important aspect of national development is the employment sector. The government strives to enhance worker welfare through various policies, such as employment development, which includes expanding job opportunities, equalizing employment opportunities, and improving the quality of the workforce based on the principle of integration. This principle requires strong cross-sectoral coordination between central and regional governments, as outlined in Article 3 of Law Number 6 of 2023 on the Establishment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as a Law (Suparman, 2022).

Principles such as democracy, justice, and equity serve as the main foundation for efforts to improve worker and community welfare overall (Harahap, 2019). This development involves various stakeholders, including employers, workers/laborers, and the government, who need to collaborate in implementing policies that support labor rights, improve working conditions, and ensure equal opportunities for everyone in the workforce.

Employers play a crucial role in empowering human resources by creating jobs that can sustainably support the community. Meanwhile, workers/laborers are essential for economic progress by directly contributing their labor. The government acts as a regulator, overseeing and protecting workers' rights and promoting policies that ensure social protection and equal opportunities in the workplace. With solid collaboration among these three parties, it is hoped that employment development can create a more inclusive and sustainable working environment.

Labor regulations are designed to ensure rights and protection for workers while creating conditions that support business growth. Important aspects of labor regulations include wage setting, social security, establishing minimum wages, and providing protection for workers. Wages, in particular, are a vital element as wages are a worker's basic right (Nadhiroh, 2020). Article 88 paragraph (1) of Law Number 6 of 2023 explicitly states that every worker is entitled to receive decent and humane wages.

In the context of employment development in Indonesia, the role of Micro and Small Enterprises (MSEs) is very significant. They not only contribute significantly to Gross Domestic Product (GDP) but also serve as a major driver in absorbing labor. Data shows that MSEs contribute approximately 60.51% to national GDP and absorb 96.9% of Indonesia's total workforce. However, a major challenge faced is the issue of wage compliance (Hikmah, 2024).

Wages below the minimum standard highlight the need for improvements in labor protection and regulation in the MSEs sector. Close collaboration between the government, employers, and worker organizations is necessary to ensure that all workers receive fair wages. Strengthening regulations and oversight on wages, as well as increasing awareness and involvement of all relevant parties, are essential to creating a more equitable working environment for all workers.

To address wage challenges in the MSEs sector, the Indonesian government has issued Government Regulation Number 36 of 2021 on Wages. This regulation is a strategic step to ensure adequate wages for workers and regulate minimum wage policies that must be adhered to by all employers. Article 6 paragraph 1 of this regulation emphasizes the importance of minimum wage policies as an integral part of the wage system to achieve a decent standard of living for all workers (Gultom, 2023). The aim is not only to regulate wage amounts but also to ensure that every worker receives adequate wages as per the regulations.

However, in practice, there are still many cases where employers, especially in the MSEs sector, do not comply with these provisions. They tend to set wages based on their financial capability without considering the obligation to pay minimum wages. The impact of this behavior is an imbalance in the relationship between employers and workers, often disadvantaging workers by worsening their economic and social conditions.

This phenomenon creates serious issues in employment that need to be addressed by the government immediately. Actions that can be taken include imposing stricter enforcement of minimum wage violations and providing better understanding to employers about the importance of complying with regulations. Additionally, education and advocacy on workers' rights need to be enhanced to ensure that every worker, especially those in the MSEs sector, receives adequate protection for their wage rights.

Thus, a collaborative effort among the government, employers, and the community is key to ensuring that the implementation of Government Regulation Number 36 of 2021

on Wages is effective and fair for all parties. Only with strong synergy and high awareness of the importance of compliance with this regulation can Indonesia overcome sustainable wage challenges and positively impact economic development and social welfare overall.

From the above background, the interest arises to further examine the implementation of minimum wage policies in the MSEs sector. A legal review is needed to understand the extent to which these regulations are applied and their impact on worker welfare. This paper bears two objectives. To begin with, it will analyze the legal viewpoint on remitting salaries that are lower than the prescribed lowest for Micro and Small Enterprises. Additionally, it aims at examining of how legal consequences arise from payment behaviors that do not conform to MSEs standards.

2. RESEARCH METHODS

This study was a normative legal study. The normative legal research approach views law as a system of norms consisting of principles, norms, legislative rules, court decisions, agreements, and doctrinal concepts. The study utilizes primary sources such as laws, and secondary sources including books, articles, journals, and expert opinions. The data collection approach used in this study was literature review, with data analysis techniques involving description and argumentation.

3. RESULTS AND DISCUSSION

3.1. Legal Perspective on the Implementation of Wages Below the Minimum Standard for Micro and Small Enterprises (MSEs)

In the context of the workforce, a crucial legal aspect is the regulation of the salary payment system. Salary is not merely income for workers but also affects their quality of life and economic stability. Adequate earnings enable workers to meet essential needs such as food, housing, education, and healthcare, and provide stable financial protection. Therefore, salary functions not only as compensation for work but also as a support for a decent living for workers (Mariani Alimuddin et al., 2023).

The fundamental principle regarding wages is regulated by the 1945 Constitution of the Republic of Indonesia. According to the 1945 Constitution, wages are not just a sum of money paid to workers as compensation for their work. More than that, the concept of wages must encompass a broader and more humane dimension. This principle aims to ensure that the income received by workers is sufficient for a decent life (Suci Flambonita, 2023).

According to Article 1 paragraph (30) of the Employment Law, "wages" are the right of workers to receive monetary compensation for the work or services they provide to the employer. The amount is generally determined and paid according to the employment contract between the worker and the employer, or in accordance with provisions established by applicable laws. Wages also include all forms of compensation given to workers or employees and their families as a reward for the work or services performed or to be performed. Thus, wages include not only basic salary or income received by employees but also various types of allowances, incentives, bonuses, or other benefits provided as compensation for their contributions to the work or services they perform (Budijanto, 2017).

The Employment Law explicitly regulates the minimum wage, which serves as a safety net for workers in Indonesia. This is reflected in Article 88(3)(a) of the Employment Law, which states that the government is responsible for formulating wage policies to protect workers. A key aspect of this policy is the establishment of a minimum wage. Decisions regarding minimum wages must consider a decent standard of living and accommodate productivity and economic growth across Indonesian society comprehensively (Prasetyo, 2022).

Article 89 of the Employment Law divides minimum wages into two categories: minimum wages based on provincial/regional levels and minimum wages based on sectors within those regions. The determination of minimum wages in each provincial or regional area is carried out by the Governor, considering recommendations from the Provincial Wage Council and/or local Regents/Mayors. Thus, the Employment Law clearly regulates and guarantees workers' rights related to minimum wages, providing protection for workers in Indonesia to receive decent wages according to the conditions in their respective regions.

However, with the enactment of the Job Creation Law, there have been significant changes to several provisions regarding minimum wages in the Employment Law. One notable change concerns the types of wages regulated in certain articles. For example, Article 88 paragraph (3) of the Employment Law has been modified based on the Job Creation Law. Previously, Article 88 paragraph (3) might have had simpler or more limited regulations related to wage policies.

Following the removal of Article 89 of the Employment Law by the Job Creation Law, regulations concerning the determination of minimum wages are now detailed in Article 25 of Government Regulation Number 36 of 2021, which addresses wages and related topics. Although this regulation is a derivative of Law Number 11 of 2020, which received a conditional unconstitutional decision from the Constitutional Court in Decision Number 91/PUU-XVIII/2020, Government Regulation Number 36 of 2021 remains in effect due to Article 184 paragraph (1) of the Job Creation Law, which affirms the continuation of all regulations derived from Law Number 11 of 2020.

Specifically, the Wage Regulation governs various aspects related to wages, including the determination of minimum wages, payment requirements, and mechanisms for resolving wage-related disputes. It is expected that this regulation will prompt employers to better fulfill their obligations to pay wages according to applicable regulations, not only as compensation for work performed but also as a guarantee of workers' economic well-being in general.

Article 23 paragraph 3 of the Wage Regulation prohibits employers from paying employees below the established minimum wage. The aim is to ensure employee protection and enforce fair wage standards (Aprilsesa et al., 2023). However, there is an exception for MSEs (Micro and Small Enterprises) where minimum wages can be flexibly set based on agreements between employers and workers. This is regulated in Article 36 paragraph 1 of the Wage Regulation, which allows MSEs to adjust minimum wages according to local economic conditions. According to this regulation, minimum wages for MSEs can be set at a minimum of 50% of the average consumption of the population at the provincial level and at least 25% above the poverty line (Podungge, 2020).

The criteria for determining MSEs status are based on capital and annual turnover, as explained in Government Regulation Number 7 of 2021 on the Assistance, Protection, and Strengthening of Cooperatives and Micro, Small, and Medium Enterprises. This

provides flexibility for MSEs to set wages more in line with their financial performance while still considering worker welfare. However, it is important to ensure that agreements between employers and workers adhere to principles of fairness and protection of workers' rights.

Medium-sized companies with larger capital and turnover are required to comply with the minimum wage set by Government Decisions on Wages without exceptions. This underscores that medium-sized enterprises must pay their employees according to the prevailing minimum wage to ensure social justice and employee welfare. Implementing this policy is crucial for creating a stable working environment and positively contributing to the local economy as well as the overall sustainability of the company.

3.2. Legal Impacts of Implementing Wages Below the Minimum Standard for Micro and Small Enterprises (MSEs)

The legal consequences of paying wages below the minimum wage for MSEs arise from the employment contract between an employer and an employee. This contract clearly defines the rights and obligations of each party. Employers are required to pay wages according to the agreed terms, including the amount of the wage and the timing and method of payment. Conversely, employees have the right to receive wages that are at least at the agreed minimum wage or higher.

If an employer violates the employment contract by paying wages below the minimum wage, they may face legal sanctions as stipulated by applicable laws. For instance, the Job Creation Law specifies that paying wages below the minimum wage can be considered a legal violation. In this context, the government imposes strict penalties to protect employees' rights, including potential imprisonment and substantial fines for non-compliant employers. Therefore, it is crucial for employers to adhere to minimum wage regulations to ensure legal compliance and fairness in employment relations.

The minimum wage policy established in Government Regulation No. 36 of 2021 on wages aims to protect workers. Employers are prohibited from paying employees less than the established minimum wage, except for micro and small enterprises (MSEs). For MSEs, wages are determined based on mutual agreements, with a minimum of 50% of the provincial average consumption and at least 25% above the provincial poverty line. If an agreement between an employer and an employee stipulates wages below the applicable minimum wage, such an agreement is deemed invalid and must be adjusted according to legal requirements. In other words, employers are obligated to provide wages at least equal to the established minimum wage.

If an employer continues to pay wages below the minimum wage, employees' rights are not fulfilled. To resolve such disputes, employees can follow the procedures outlined in Law No. 2 of 2004 on Industrial Relations Dispute Settlement:

- a. First, engage in a two-way discussion between the worker or labor union/employee and the employer to reach an agreement.
- b. If the negotiation does not result in an agreement within 30 days, either party must report the dispute to the local employment authority. At this stage, it is important to provide evidence that negotiations between both parties have taken place but no agreement was reached.
- c. As this is a legal dispute, arbitration procedures will be conducted after registration with the labor agency.

- d. If no resolution is reached, either party may file a lawsuit with the Industrial Relations Court to resolve the dispute legally.

The minimum wage regulations under the Job Creation Law apply to workers employed for less than a year, as stated in Articles 88C (1) and (2). Article 88E (2) affirms that the minimum wage applies to workers who have been employed by the company for less than a year. Additionally, Article 81(71) of the Job Creation Law stipulates that employers who previously paid wages higher than the minimum wage regulations before this law came into effect cannot reduce or eliminate such wages (Purnama & Amelia, 2021).

When calculating minimum wages, various economic factors such as economic growth, inflation rates, and other relevant indicators are considered. The Job Creation Law introduces a more dynamic approach to minimum wages based on relevant economic variables. The goal of these changes is to provide greater flexibility for employers while still protecting workers' rights, especially those newly employed.

Employers who pay wages below the minimum set by the Job Creation Law face more severe penalties than before, including imprisonment from one to four years and fines ranging from IDR 100,000,000 to IDR 400,000,000. Employers are urged to comply with minimum wage regulations. Violations may lead to legal action by employees based on Article 88 of the Job Creation Law, which sets out criminal sanctions for employers who breach these provisions (Wibowo & Rasji, 2023).

The Job Creation Law aims to enhance worker protection while providing certainty for employers who wish to hire employees at wages below the minimum wage. The regulation reinforces the principle that wages must meet established minimum standards, considering the impact on company reputation and relationships with other stakeholders.

4. CONCLUSION

Government Regulation No. 36 of 2021, specifically Article 36 Paragraph 1, stipulates that micro and small enterprises (as defined by Government Regulation No. 7 of 2021) can adjust wages below the regional minimum wage based on local economic conditions. The legal consequence of this new regulation is that the government must oversee micro and small enterprises to ensure they comply with the wage requirements, which must be at least 50% of the average provincial consumption and at least 25% above the poverty line, while monitoring the employment agreements between employers and employees.

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