Legal Protection For Workers Who Have A Minimum Wage Suspension By Employers

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Abstract

The aims of this current research are to find the congruence of the minimum suspension wage conducted by entrepreneurs with the Decree of the Minister of Manpower and Transmigration Number: KEP.231/MEN/2003 and to understand law protection for the worker who has many experiences suspension of the minimum wage by the entrepreneur. In this study using the normative juridical method which does not recognize research down the field, because the research conducted is sourced from legal materials such as legislation, government regulations, ministerial decrees, books, journals and legal dictionaries. The conclusion that can be drawn from the results of this study is that the minimum wage deferment rules by employers which are carried out many times are permissible, because in the rules there are no clauses regarding the suspension restrictions, but in reality the employer does not carry out this based on applicable regulations. Unspecified restrictions on the suspension of minimum wages result in losses to workers’ normative rights.

Keywords: Legal Protection, Workers, Suspension of Wages

I. Introduction

The description of employment in Indonesia is contained in the Constitution 1945 in article 27 paragraph (2), namely the people of Indonesia have a constitutional right to the job and a decent livelihood. This proves that the country has an obligation to provide facilities and opportunities to all its people in order to obtain the work as well as to fulfill the needs of a decent life by providing protection for the rights of workers that should be obtained in order that when someone violates the rights of workers will get the consequences or sanctions.

Regarding the legal protection given by the Government on the wages of employees who are suspended we can find in Law No. 13 of 2003 on employment in article 90 paragraph (1), i.e. the wages paid by employers to workers/laborers shall not be under the minimum wage and in paragraph (2) that the employers can suspend if they are unable to wage workers/labors based on the prevailing minimum wage.

With the suspension of wages not necessarily respond to the unrest of workers who still do not get their wages, but workers still have to wait for entrepreneurs to provide wages in accordance with the limit of predetermined suspension. When the businessman has filed a suspension and is still unable to pay the wages to the worker to the specified limit,
the entrepreneur will apply for a suspension back to the limit that the entrepreneur can be in the last 12 months and at most. This gives the workers no certainty about the right to get wages that workers should be able to enjoy for their work.

Regarding the suspension procedure, the minimum wage can be seen based on the decree of the Minister of Manpower and transmigration number: KEP. 231/MEN/2003. This article analyses employment laws relating to the suspension of the minimum wage made by employers to workers/workers, to know the suitability of the suspension of the minimum wage made by employers based on the ministerial decree, and to understand the legal protection of what the worker acquired while experiencing several suspension of the minimum wage by the employer.

II. Method

In this study using the normative juridical method that makes this research without descending the field, because the research is conducted based on the primary legal material such as legislation, government regulation, Ministerial decree, as well as secondary legal materials such as books, journals or legal dictionaries, or can also be referred to as library based, focusing on reading and analysis of the primary and secondary materials. Analysis of the study uses a descriptive analysis of secondary data.

III. Main Heading of the Analysis or Results

A. Suspension Of Minimum Wage According To Decree Of The Minister Of Manpower And Transmigration Number: KEP.231/MEN/2003

The suspension of the minimum wage is when employers are unable to pay wages against workers/laborers who have been adjusted in the conditions of the prevailing minimum wage. If the businessman is unable to pay the wages of his workers/employees without submitting a request for suspension, then the entrepreneur will be given sanctions.

Therefore, entrepreneurs can do by suspending the minimum wage in accordance with the rules contained in article 90 paragraph (2) of Law No. 13 of 2003 on employment, which mentions if the entrepreneur cannot/cannot afford to pay the wages of the worker/employee in accordance with the provisions of the minimum wage then can suspend. The ordinances are as follows:
The employer shall submit an application for suspension of the minimum wage of 10 (ten) days through the Governor Against Dinas in provincial employment before the minimum wage is enforced with respect to the following:

1. Original manuscript of agreement between the two parties;
2. The company's financial statements;
3. Deed copy of establishment/establishment of company;
4. List of wages according to the department/part of each worker;
5. Total overall of the worker who was asked for suspension;
6. Product growth and marketing within the company over the last 2 (two) years and future.

In carrying out a written agreement, the petition/request for suspension is done by the businessman with the workers/workers or trade unions/unions recorded. If there is 1 (one) or more than 1 (one) union/trade union in the company with a membership of over 50% (fifty hundredth) of the total worker, it can be represented during the agreement. If the company does not have a trade union member of more than 50% of the total number of workers, it can be a coalition to achieve more than 50% (fifty hundredths) to be represented. If these two things are not achieved, workers/unions may be allowed to conduct talks according to the number of membership respectively. If the company does not have unions/trade unions, it is the same as the employees who are mandated to represent the negotiations.

In the application of suspension by employers, the governor has the authority to appoint a public accountant in verifying the company's finances to be examined in its
truthfulness. The agreement stipulated by the Governor in the application of the suspension of the last one is 12 (twelve) months.

B. Analysis Of Minimum Wage Suspension According To Decree Of Minister Of Manpower And Transmigration Number: KEP. 231/MEN/2003

Employers are not allowed to pay the wages of workers/workers under the minimum wage and if the entrepreneur cannot/does not attempt to pay the wages of the worker/person based on the minimum wage, then it is allowed to suspend. The rules regarding the suspension of wages made many times by entrepreneurs can actually be done, because in the rule there is no clause regarding the restriction of the number of times the suspension can be done. But in the fact that the businessman who commits the suspension does not implement in accordance with the existing rules.

Speaking of the time period in which the employer is committed by a limited entrepreneur only for 12 (twelve) months since the request is approved by the Governor, and the absence of provisions that mention how many times the entrepreneur can suspend, because in article 5 paragraph (1) Decree of the Minister of Manpower and transmigration number: KEP. 231/MEN/2003, only governs the period of time to be implemented by the entrepreneur when suspension.

The time period in the suspension of this minimum wage explains that the administration may suspend less than the exact time period which is set at 12 (twelve) months. In practice of the interview with Pak Suhardi, there is the administration who applied for the suspension of minimum wage many times during the period of 12 (twelve) months of the administration is still not able to fulfill or pay wages to its workers/labors.2 This means that there is no prohibition or reproof of entrepreneurs to make a suspension request within 12 months or more.

Therefore, there is no legal consequences to the company that holds the minimum wage even though it is done many times, but this gives the employer a gap to do so and detrimental to the normative rights of workers, because in practice the businessman who suspension repeatedly does not pay the difference in his wages to workers/workers, which is the obligation of the employer.

Nevertheless, the condition may not be ruled out by entrepreneurs, because in principle, employers are not allowed to pay the wages of their workers/employees lower than the
minimum wage. If the businessman does not implement the principle, then the entrepreneur should be penalized in the form of imprisonment of at least 1 (one) year and maximum 4 (four) years and/or can be subject to a minimum penalty of Rp 100,000,000.00 (hundred million rupiah) and a Max Rp 400,000,000.00 (four hundred million rupiah), based on the rules in article 185 paragraph (1) Jo. Article 90 paragraph (1) of Law No. 13 year 2003 on employment.

In fact the sanction is not applied to employers who do not pay the suspended wage difference in accordance with the provisions. It should be that the local employment Department should be able to firmly impose the sanctions on employers who do not pay the difference in wages against the suspension repeatedly, so that the entrepreneurs get the entanglement do not harm workers’ rights.

C. Legal Protection For Employees Experiencing Multiple Suspension Of Minimum Wage By Employers

Legal protection is the protection obtained by the legal subject when its rights are harmed by other parties to obtain a justice. Protection provided in this case is preventive protection or repressive, or oral or written. If there is a legal subject that feels the right to be harmed, it is automatically the subject of the law will sue the party who has authorized him to be able to respond to his legal actions. The protection of the normative rights obtained by the workers/workers is to obtain the wages provided by the entrepreneurs based on the prevailing provisions by observing some of the wage principles, the following:

1. The employees/workers are entitled to obtain wages arising at the time of the end of the employment relationship.
2. There is no distinction in the acceptance of wages against workers and labour of men and women by entrepreneurs.
3. Employers are not allowed to pay wages under the minimum wage.
4. Neither worker nor Labor will get wages if not running a job.

As a result of the suspension of the minimum wage made many times by employers, the worker/Bururh did not receive wages that were supposed to be carried on the basis of the prevailing minimum wage procedures, and detrimental to the normative rights of
workers. Therefore, the verdict of the Constitutional Court Decree No. 72/PUU-XIII/2015 in which it contains legal protection of workers/laborers. The emergence of the award is because the company is given the freedom to not fulfill the minimum wage that has been running at any given time or within the period of the suspension. Then if the suspension period is completed then the company is obliged to run a minimum wage, but is not obliged to settle the difference of wages when the suspension is made.

According to the explanation, from the wages gained by the workers/workers has the difference to the minimum wage, which is the difference of the minimum wage during the suspension was not paid. Therefore, the difference/deficiency is a debt/arrears worthy of the entrepreneur received by workers/workers, it is fitting to be given for protection and legal certainty to the workers/workers and make the responsibility of the entrepreneurs not to arbitrarily.

But in reality, the difference from the wages of workers in suspension is not paid by employers because the difference in wages has been deemed paid off and workers/laborers only receive a wage of wages received during the suspension and this is sacrificing the rights of workers. Obviously it is not in line with existing rules and employers do not implement the Constitutional Court ruling which Mendalmnya contains about protecting the normative rights of workers. It is unfortunate that when employers do not carry out the ruling, employers are not subject to any sanctions due to the absence of reports received by the local department of Manpower then it will not be in the process.

Workers/laborers can sue a decree that causes no wages earned by the Governor’s decree to the competent institution, because on that basis it is not the wages that should be obtained by workers/laborers. There are several kinds of industrial relations disputes that can be found among others:

1. Rights disputes are disputes made by employers with workers/laborers for not achieving any of the rights;

2. Disputes of interest are disputes because there is no alignment in making or changing the rules of employment in the work Agreement (PK), the company’s regulation (PP), or in the joint work Agreement (PKB);
3. Termination of employment relationship is a dispute due to the absence of an exit/solution to the problem of termination of relationship/bonding;

4. Union/trade union disputes are due to perceptual inequality in the membership.

According to regulations that have been applied in resolving industrial relations disputes, the parties can choose what kind of effort to be taken. Most of the parties choose to use the mediation efforts and the Industrial Relations Court (IRC), but between the two efforts, the most widely used is mediation, because it is most effective and easy, if choosing to settle through the Industrial relations court the cost factor becomes a matter of consideration for workers/workers to do so.

IV. Conclusion

From the discussion of the issues raised in this study, the author can draw several conclusions including: In reality, the suspension of minimum wages done many times by entrepreneurs can actually be done, because in the rule there is no clause on the restriction of the number of times the suspension could be done, but during the implementation of the suspension made by the businessman is not aligned with the rules. In conducting an application/request for the suspension of minimum wages by employers, there must first be a written agreement between the two parties. If the suspension application is received then the deadline is given a maximum of 12 (twelve) months, but in the decree of the Minister of Manpower and transmigration number: KEP. 231/MEN/2003, not mentioned about the number of times the entrepreneur's limitation can apply for a suspension of minimum wage, and it can be utilized for employers as a gap to be able to suspend repeatedly.

Protection of legal acquired by workers/workers to protect the normative rights against deferred wages, in accordance with the ruling of the Constitutional Court number: 72/PUU-XIII/2015, that the difference/deficiency is a debt/arrears that should be obtained by workers/workers when suspension. But in practice, the ruling was not implemented by the businessman and the worker did not receive the rights that should be obtained from the difference of the suspended wage and the businessman who did not carry out the ruling did not get any sanction because as long as what the businessman did no one reported to the local Labor Department then it will not be in the process.
The suggestion based on the discussion and conclusions made in this study, the authors have the following suggestions: It should be in the decree of the Minister of Manpower and transmigration number: KEP. 231/MEN/2003, there needs to be a clear restriction on how many times the suspension can be made in order for entrepreneurs not to take shelter behind its inability, then The need for technical rules or regulations to carry out the decree of the Minister of Manpower and transmigration number: KEP. 231/MEN/2003 So it is clearer terms, time period and other criteria that are more detailed that can protect the normative rights of workers/workers.

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