

# Urgency of Legal Protection for Labor Rights within Waging Sector

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## Abstract

National development is initiated in goal to achieve fully-fledged developments for Indonesians and the society as a whole through achieving prosperity, wealthy, equality either materially or spiritually in accordance to *Pancasila* and *Undang-Undang Dasar 1945* 'The 1945 Constitution of Republic of Indonesia'. For labors or workers, doing what they are assigned with are clearly intended to help sustaining their daily needs, as they will later receive remunerations based on their working contributions. Wage as mean of incomes is one of the rights embedded to the workers that need to be protected in line with the relevant regulations in force.

**Keywords:** Legal Protection, Workers Right, Wages.

## 1. Introduction

National development is initiated in goal to achieve fully-fledged developments for Indonesians and the society as a whole through achieving prosperity, wealthy, equality either materially or spiritually in accordance to *Pancasila* and the 1945 Constitution. In implementing national development, the role of labors as supporting factor hold its own importance for the work enforcement; be it as the actor or the sole purpose of such development itself. This is needed for improving quality and prosperity, as well as to enhance protection on work enforcements and their families by considering their dignities and prides.<sup>1</sup>

Protection of worker as one of goals in national development within the employment sector is intended to guarantee the fundamental rights of the workers such as the equality to pursue job opportunities as well as non-discrimination treatment in any ground. These are particularly important in achieving prosperity of workers or labors along with their families without neglecting future prospect of business world. One of those rights is the right to earn wage as remuneration for fulfilling their personal and family needs. For this, any individuals would need a job which is part of their right as men as well as to ensure the degree of humanity in satisfying their daily needs.

Indeed in this case both state and society are under right and obligation to ensure that all individuals would have opportunity to seek employment without any discrimination.<sup>2</sup> By doing so, workers and labors should be able to satisfy their various needs as they all shall be entitled for remuneration based on their respective jobs. Thus, salary as a right vested on workers and labors should receive adequate protection as the consequence of our country's legal order that affirmed such right within its enforced legislations.

Remuneration system applied on a country may highly depend on certain philosophy rooted within the country concerned. Indonesia, being the nation that looked up to *Pancasila* as its philosophy, would undoubtedly implement its wages in accordance to this philosophy; whereas its system requires industrial relations to guarantee the adequate living of any worker and his/her families.

Indonesia's remuneration system is regulated under *Undang-Undang* 'Law' No. 13 of 2003 concerning Employment and through *Peraturan Pemerintah* 'Government Regulation' No. 8 of 1981 concerning the Protection of Wages. These provisions are basically prohibits undertaking to discriminate their remunerations on grounds of gender, race, religion and so on for its working status (e.g. permanent or temporary status, regular or freelance, contract or non-contractual obligated, etc). Pursuant to this principle, wages should be considered as having its own social function. Additionally, it also needs to reflect the wage earners that such wages are well-suited for the skills and services they have offered. Remuneration system may in addition act as an incentive-giver towards the productivities achieved for the work fields and for the national incomes.

For enterprises, wage is essentially one of the main elements in its production expenses; therefore wage could determine the pricing of products created in any company. Reversely, workers' considers that wage could be utilized to sustain their personal and family lives. Organization such as labor union would always put its strong concerns in wages; it was none but to ensure the well-being of the workers in their working relations. Meanwhile, government perceives wages as the narrow indicator of prosperity among workers and for the broader one that is on society level of prosperity. Conclusively, this paper shall discuss the urgency of legal protection of the workers' rights.

<sup>1</sup> Djumadi, *Working Agreement of Labour Law*, PT. Grafindo Persada, Jakarta, 1993, p. 3.

<sup>2</sup> Khildah R.Fatma, *Challenging of Working in Indonesia*, Bentang Media, Jakarta, 2004, p.4.

## 2. Urgency of Legal Protection of Labor Rights Within Waging Sector

The importance of the right to obtain job is that such right is among the rights for every citizen (including worker and labor), which was nationally regulated throughout series of regulations in the employment field. As a country with legal order, Indonesia therefore obligated to assure its citizens well-being by facilitating all the citizens to landed jobs and received the wages as suggested in its 1945 Constitution.

The country and its government are required to ensure protection of its citizen to obtain job as held in Article 27(2) and 28(2) of the Constitution.<sup>1</sup> These provisions subsequently succeeded by Article 4 of the Act No. 13 of 2003 which held that the goals of development in employment are:

- a. Memberdayakan dan mendayagunakan tenaga kerja secara optimal dan manusiawi;
- b. Empowering and leveraging work enforcement optimally and humanely;
- c. Achieving equality of working opportunity and availability of workers in line with the local and national needs;
- d. Providing protection for workers in achieving their welfare; and
- e. Improving well-being of workers and their families.

Fundamental rights such as those for obtaining job and receiving income are also been recognized internationally. This could be seen through the provisions of the 1948 Universal Declaration of Human Rights on Article 23(1), (2), (3) and (4) respectively. It held that:

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.<sup>2</sup>

Instructions as dictated inside the instrument showed that one of human rights is the right to seek, obtain, choose job that is relevant to someone will and skill. Exercising this mandate would require a nation to improve its practices in terms of creating pro-society regulations, policies and other legal products; by guaranteeing protection on social, politic, legal and economic freedom for the people.

Works done by workers and labors, as the consequence of their working relations, are strongly relevant with the system of remuneration. Every workers and labors are entitled to be granted protection on every inch of their fundamental rights as work enforcement, such as protection for their salaries. On its economic benefit, having paid jobs would help the workers to receive payment for what they have done on their assigned tasks. Various types and forms of job would eventually be expected to boost the standard of living, from previously hard-struggling to rather self-sufficient and way above the poverty line.

Economic growths nowadays have brought changes in employment field, this could be seen from the progress of companies in various sectors, and one of this was the agricultural, where it has significantly impact the field as a whole. Take example of the companies producing palm oils. Its growth and development have provided expansion for the nation's work field, offering job opportunities to numerous workers and labors out there as well as the remunerations they needed.

Increasing quantity of agriculture-based companies (e.g. palm oil Company) have widened the working field and simultaneously offered bigger chances for everyone to have their own job. However, it should be borne in mind that this growth may lead to more competitive and problematic work fields for the workers. As reality unfolded, we may find that the expected expansion of work fields by agriculture enterprises was unable to race up with the massive numbers of worker and labor around. As consequence, many companies have unilaterally imposed its working terms without considering the wellbeing of workers and labors.<sup>3</sup>

Under Article 88(1) of Act No. 13 of 2013, it was stated that, "every worker and labor are entitled to receive wages that could satisfy proper living of the people." Implementation of remuneration system does not merely constitute a part of an efficient market mechanism, but also followed by its social policy function which is essential in protecting the 'vulnerable' by tying up remuneration as an element of working relations.<sup>4</sup> This is intended to grant the workers the sense of safety, serenity and fairness in addition to achieve welfare, spiritual, harmonious and balanced living between workers, entrepreneurs, business world and the other components that required regulations to assure their protections.

<sup>1</sup> Article 27(2) of the 1945 Constitution stated that: "Every citizen is entitled for job and adequate earning". Subsequently on Article 28(D)(2) it held that: "Every citizen is entitled to work and to receive reward and fair treatment on his/her work relation."

<sup>2</sup> Suratman, *Indonesian Labour Law*, Indeks, Jakarta, 2010, p. 3.

<sup>3</sup> Khaeron Sirin, *Path of Labour Politic*, Republika, 26 April 2006, p. 4.

<sup>4</sup> Yunus Shamad, *Waging Guidance to Management of Human Resources in Company*, Bina Sumber Daya Manusia, Jakarta, 1992, p. 5.

Wage protections as held by those provisions are mostly covered only for workers with ‘permanent’ or ‘tied without fixed duration’ status. For those with ‘temporary’ or ‘tied with fixed duration’, their system of remuneration is further regulated in details by *Keputusan Menteri* ‘Minister Decree’.

Classification of workers and labors in terms of their working contract status was originated by the rise of jobs that only require limited working duration, which distinctly differs from the work without fixed duration. This was further defined in Article 56 (1) of Law No. 13 of 2003, which affirmed the existence of working contract made with or without fixed duration. Article 56 (2) further stated that: “Working contract with fixed duration as referred in paragraph (1) is based on: (a) Length of time; or (b) Conclusion of the work concerned.

From its juridical aspect, legal nexus between workers/ labors and companies/ employers as jobs giver is equally similar for being the subject of law, however, this relation is arguably different when looked from sociological point of view; take into consideration the position of workers/ labors as job seekers who highly depended on the job givers. With such fragility, these workers may subject to exploitation by the employers. Therefore they need to receive legal protection that based and built on the principles of humanity of fair and dignified that did not perceived workers as tools of production but rather as men with integrated human rights.<sup>1</sup>

Imposing working length on the working contract of workers/ labors by the company tends to cause losses on workers/labors side. This is due to fact that this working clause have been on numerous occasions be a justifying ground in giving the workers/labors less than adequate salaries, not to mention that they also rarely providing legal certainty to protect these individuals.<sup>2</sup>

Deviation on worker’s working contract duration had weakened the legal protection for the workers. Such indication can be extrapolated from these examples: Firstly, workers/ labors with low wages, even worse, they are not entitled for some allowances (e.g. *Jaminan Sosial Tenaga Kerja* [Jamsostek] ‘Workers Social Protection’, Working Protection and Career Protection, no Financial Incentive as result of Termination of), even lately, there are some cases where status of permanent workers/ labors were displaced into freelance or collective one by the companies, making the previously non-fixed work length into fixed working duration.<sup>3</sup>

An ideal employer and worker relation is the one that mutually benefitted one another; the reality however has proven otherwise where workers are putted in disadvantageous position over the employer. Such disparity was caused by low level of education among workers and labors which limiting them to fathom their rights and responsibility, lack of skills and imbalance regulations on workers and labors were also amongst the factors that causing this condition.<sup>4</sup>

These working conditions had resulted in reduction or loss of income for the workers and labors, partially or as a whole. Such poor conditions have disfavor the workers and labors that eventually give rise to resistance among the workers and labors as the party with the weaker link. Thus the workers and labors are demanding their rights for wellbeing to be fulfilled, by throwing rallies, demonstrations and at some points, to commence job strikes. Company’s failures to satisfy their needs are often cited as the catalyst of conflict between them, causing interference no company’s production wheel.

With the rising probabilities of conflict between workers and companies, prevention should be inherently taken to stop its continuity, as it may cause imbalance to social order. According to Sudikno Mertokusumo, men will always attempt to secure social order because a balanced social order would instill tranquility, peace and safety; aspects needed in ensure our sustainability. Therefore, any disrupted social order should be restored into its origin form (*restitution in integrum*).

As for today, Agricultural business such as Palm Oils Company remains enforcing differentiation in distributing its workers’ salaries, where it mainly set based on worker quantity and quality on the job. This means that the nominees given for lowest level labors would indeed insufficient to afford proper way of living. There are vast amounts of labors and workers crowding this group, which mainly those individuals who rely on physical to finish the job. Despite attempt to improve their salaries by setting the minimum nominee for each region, or so commonly known as *Upah Minimum Regional* ‘Regional Standardization of Minimum Wages’, these wages remains less than adequate in satisfying our daily needs.

Brief consequence on this low remuneration system could be seen when *Gabungan Serikat Pekerja/ Buruh Indonesia* [GSBI] ‘Indonesia Labor Unions Coalition’ demanded government to denunciate the Work Force Minister Decree No. 17 of 2005 concerning Adequate Living Needs. The claim was based on the fact that all permanent workers/ labors in agricultural sector are receiving wages no less than the minimum wages set by *Badan Koordinasi Perusahaan Perkebunan Swasta* [BKPPS] ‘Private Agriculture Companies Coordinative Body’

<sup>1</sup> Marwati Riza, *the Role of Labourer Council to Decide Wage-Fixing in the Framework of National Security*, (Thesis), Post-Graduate Program, UGM Yogyakarta, 1998, p. 34.

<sup>2</sup> Tim Redaksi Kontan, *What happen with Labourer*, Kontan Magazine, Vol.II/ Ed. XXIII, 07-20 May 2006, Jakarta, 2006, p. 9.

<sup>3</sup> Lahmuddin, *Waging System to Labourer in Special Working-Hours Agreement According to the Law Nomor13 Tahun 2003 (Study on Binanga Mandala Labuhan Batu Ltd.)*, Thesis, Post-Graduate Program USU, Medan, 2009, p. 20.

<sup>4</sup> Lalu Husni, *Indonesia Labour Law*, Rajawali Press, Jakarta, 2003, p. 12.

Brief consequence on this low remuneration system could be seen when Gabungan Serikat Pekerja/Buruh Indonesia [GSBI] 'Indonesia Labor Unions Coalition' demanded government to denunciate the Work Force Minister Decree No. 17 of 2005 concerning Adequate Living Needs.<sup>1</sup> The claim was based on the fact that all permanent workers/ labors in agricultural sector are receiving wages no less than the minimum wages set by Badan Koordinasi Perusahaan Perkebunan Swasta [BKPPS] 'Private Agriculture Companies Coordinative Body'. Meanwhile, those freelance and collective workers are exempted from BKPPS minimum standard and forced to align their salaries based 'employee - employer' agreement; which commonly lesser than the minimum wages standard and without the benefit of allowances.<sup>2</sup>

Provision on minimum wage in its actuality was only to regulate the minimum wage in general, leaving the sectorial wages to be regulated in Upah Minimum Sektor Provinsi [UMSP] 'Provincial Sector Minimum Wages'. Unfortunately, in practice it is BKPPS who plays the bigger role over the government in deciding the wages on agriculture sector. By putting the threshold given by BKPPS, those salaries would be slightly lower than the minimum wages set by UMSP.<sup>3</sup>

Generally speaking, remuneration system on agricultural sector is consisted of several components such as wage, which could be further stretched into: main salary, housing allowance, premium, over-time wage and education allowance. But it should be noted that in the current waging system, not all of those components are collectively given by companies in particular for the freelance labors and workers.<sup>4</sup> From its legal aspect, all workers/labors regardless their terms of working contracts should receive equal protection on remuneration and allowances as well as to receive technical protection such as safety and health insurances.<sup>5</sup>

This can be aligned to Article 3 of *Peraturan Menteri Tenaga Kerja* 'Work Force Minister Decree' No. 6 of 1985 concerning Protection of Freelance Worker which held that, "principally, all rules related to work force are enforceable to any worker regardless of his/her status". Subsequently on Article 7, the regulation dictates that, "Waging for freelance workers on its quantity should be no less than the minimum wages set by the Government".

There is urgency for government to interfere on this situation by actively producing the pro-labor legislations that also recognized the importance of restoring the mutually beneficial relations between companies and its employee. Government's intervention on waging system could be by disclosing waging policy that capable in protecting workers and labors. Forms of policy which protect the needs of workers may be seen in Article 88(3) Act No. 13 of 2003 of concerning Employment. One of protection form referred is by imposing the minimum standard of wages by closely looking at people adequate living, productivity and the economic growths.

Remuneration system applied on a country may highly depend on certain philosophy rooted within the country concerned. Indonesia, being the nation that looked up to Pancasila as its philosophy, would undoubtedly implement its wages in accordance to this philosophy; whereas its system requires industrial relations to guarantee the adequate living of any worker and his/her families.

The minimum threshold is to be approved by the Governor by looking through recommendation made by *Dewan Pengupahan Provinsi* 'Provincial Wages Council' and/ or *Dewan Pengupahan Kabupaten / Kota* 'City Wages Council' or 'Regency Wages Council'. Component and timeline to achieve the better standard of living is regulated by Minister Decision. Furqon Karim views<sup>6</sup> that the settlement of minimum wages by the government was initially designed to web-guarding the worker to receive remuneration by the company that is relatively close to afford all his/her basic needs. But in reality, this minimum salary is nowhere near in fulfilling worker's essential needs, therefore failed to meet the expectation in creating improved industrial relations.

Other form of wage protection is concerning the worker's work hours, Article 78 of Act No. 13 of 2003 concerning Employment held that any employer that hires worker/labor beyond his/ her mandatory working hours is obliged to pay additional wage, or commonly known as over-time wage. Protection on other waging system is further ruled by Article 90 of Act No. 13 of 2003 concerning Employment which stated that employer is prohibited to pay remuneration lower than the minimum wages as referred under Article 89.

Additionally, Article 95 of Act No. 13 of 2003 concerning Employment affirmed that any employer that intentionally or by omission causing delay in remunerating shall be subject to fine in accordance to certain percentage coming from workers or labors salaries. The importance in protecting workers' wages is constantly

<sup>1</sup> <http://surat kabar wartapos.com/index.php/ekonomi-dan-pembangunan/556-ekonomi-ii-edisi-384.html>, accessed 20 March 2014.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid

<sup>4</sup> Delivered on Press Briefing: *Turbidity Reveals Behind Palm Oil Sheen*, at Ibis Hotel, Jakarta, Tuesday, 6 April 2010, Hosted by Greenpeace, Sawit Watch, WALHI, Institut Hijau Jakarta, KPS – Medan, Aliansi Masyarakat Adat Nusantara, Jakarta, 2010.

<sup>5</sup> Lalu Husni, Loc Cit., pg. 13.

<sup>6</sup> Asri Wijayanti, *Labour Law Post Reform Era*, Sinar Grafika, Jakarta, 2010, p. 110.

overlapping the needs of companies to maintain its wheel of productions. Thus it is often the case for companies and workers for having different point of view.

Waging is dilemmatic because its interpretation on the method of calculation was often pointed out for being unfair and failed to meet the expectation of the workers, labors and even for the government who is acted as the referee in deciding and supervising the concerned waging system.<sup>1</sup>

In practice, allegation was made on some companies with system of remuneration that is incompatible with current law despite the emerging numbers of legislation produced to protect the workers and labors. Some deviations are easily spotted in field, where several companies paid the workers with less than minimum standard wage, be it in accordance to *Upah Minimum Provinsi* 'Provincial Minimum Wages' or *Upah Minimum Sektoral Provinsi* 'Provincial Sectorial Minimum Wages' as regulated by the Governor Decree.

The fact unfolds showed that there are companies which provide low wages below the minimum standard of wage for workers/ laborers. There is also clear discrimination in the payment of wages to workers/ laborers which based on the status of workers/ laborers, where the freelance workers do not enjoy social security, severance pay for the termination of employment, and many other problems which arise within the agricultural companies.

The phenomenon of lower wages for workers / laborers that was initiated by several companies who deviate from the provisions of the applicable law has indicated the weak protection of workers/ laborers in the agricultural wage system. If not addressed properly, these problems will ultimately be the source of the problems that led to the emergence of a dispute between workers / labors and employers, which would certainly lead to disruption on labor relations. This creates measures that do not respect the rights and obligations between workers / labors with employers such as discrimination in wages which are occurs frequently lately.<sup>2</sup>

Under Article 90(1) of Law No.13 of 2003 concerning Organized Labors, it was regulated that employers are prohibited from paying wages lower than the minimum wage, but in practice the workers/ laborers would occasionally receive discriminatory treatment from the company in terms of lower wages for freelance workers that is incompatible with the required minimum standard of wages. There is allegation that non-permanent employees on the agricultural companies do not get paid for their overtime wages even when they have been forced to do overtime work beyond the mandatory working hours. There were numbers of occasion where companies discriminate the workers' wages based on their genders and their status as freelance workers.

Some of the issues occurred on the field regarding the employment relationship for the agricultural companies, among others, were the allegation that workers and laborers are subject to low wages below the applicable minimum standard of wage. Furthermore, it also alleged that the working agreement between contracted workers and freelance workers were carried out without concluding any the written agreement, which supposedly to be written. Other legal issues are the rising dispute among workers and employers in terms of workers' wages.

For example, a worker or labor working at Tandan Sawit Papua Ltd - a Papua based company - would receive a wage of approximately IDR 68.000,- per day on average basis.<sup>3</sup> When accumulated on monthly basis (24 working days), these wages could only mount up to IDR 1.632.000,-. This clearly insufficient when compared with the minimum standard set by Governor of Papua Decision No. 263 of 2013 concerning Fixed Minimum Wage that should no less than IDR 2.040.000,- per month.

The phenomenon of the low wages for workers / laborers can be briefly seen from the recent demonstration thrown by numbers of worker representatives who are enlisted in the Coalition of Arek Lancor Bangkit (Kalab) on Pamekasan. They rallied to Transmigration and Social Work Force Service for the Pamekasan Regency, demanding explanation from the government on behalf the enforcement of *Peraturan Gubernur* 'Government Regulation' No 72 of 2012 concerning Regency Minimum Wages in Pamekasan which is roughly IDR 1.059.000,-. Because in reality, many companies have violated such standard, some of these workers even have to suffers to be paid only in around IDR 600.000,- to IDR 700.000,-.<sup>4</sup> Remuneration given at lower rate would clearly infringed Article 90(1) of Law No. 13 of 2003 which prohibits the payment of wage below the fixed minimum wage.

### 3. Conclusion

Legal protection for workers' rights in particular on their wages had been stipulated by the national legislations,

<sup>1</sup> Eggi Sujana, *Fate and Workers Struggle in Indonesia*, Renaissance, Jakarta, 2005, p. 12.

<sup>2</sup> Aloysius Uwiyono, Implication of Labour Law No. 13 of 2003 to Investment Climate, Vol.22 No.5, Jurnal Hukum Bisnis, Jakarta, 2006, p. 10.

<sup>3</sup> <http://www.mongabay.co.id/2013/09/25/derita-buruh-sawit-rajawali-group-di-papua-protes-beban-kerja-berbuah-pemecatan/> accessed 26 April 2014.

<sup>4</sup> <http://www.karimatafm.com/upah-di-bawah-umk-buruh-pamekasan-demo-dinsosnakertrans>. Accessed 14 May 2014

whether in the 1945 Constitution or in the Law No. 13 of 2003 concerning Employment. Legal protection on the matter of remuneration partly constitutes the protection of human rights. Therefore, workers' wages should be given in compliance with the minimum wage set by each region. Any payment below the agreed minimum wage would in contravention to Article 90(1) of Law No. 13 of 2003.

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