

CHAPTER I

INTRODUCTION

A. Background of Research

From the very beginning of the establishment of Indonesia, employment is the basic right of every citizen as set forth in Article 27 paragraph (2) of the 1945 Constitution which states that every citizen shall have the right to work and a decent living of humanity. In Article 88 paragraph (1) of Law No. 13 of 2003 on Manpower also reaffirmed that every laborer entitled to earn wage that fulfill a decent living of humanity so they can fulfill the life necessities of themselves and their family, which include food and beverage, clothing, housing, education, health, recreation, and pension plan.¹ This is closely related to the wage of laborer and a determinant factor for the implementation of national development in Indonesia.²

Wage is a very sensitive issue in the field of employment and become one of the important elements in the implementation of working relationship. Working relationship is the relationship between the laborer and the employer that occurs after the agreement is made by the laborer with the employer, where the laborer declares his/her ability to work for the employer by receiving wage and the employer declares his/her ability to hire laborer by paying wage.³

¹ Koesparmono Irsan, dkk, *Hukum Tenaga Kerja*, (Jakarta: Erlangga, 2016), p. 191.

² Gunawi Kartasapoetra, *Hukum Perburuhan Pancasila dalam Pelaksanaan Hubungan Kerja*, (Bandung: PT. Amiko, 1982), p. 9.

³ Imam Soepomo, *Pengantar Hukum Perburuhan*, (Jakarta: Penerbit Djambatan, 1999), p. 70.

Wage is the most demanded thing for laborer in various strikes and/or laborer protests.⁴ Until now, Indonesia's wage system always got critics from various parties because there are many problems that have not been resolved. The problems are about⁵: (1) the minimum wage which already set is still inadequate from the real value of decent living needs; (2) the laborers who work under the foreman or supervisor, their minimum wage often becomes the maximum wage; (3) some countries in Asia relate the minimum wage with social allowance and the price control system⁶, while in Indonesia, the minimum wage becomes the sole foundation of income; (4) the wage policy generalize all types of formal business with domestic capital and foreign capital.

Seeing the number of wage problems that happen, on October 23, 2015, the central government enacted a new regulation called the Government Regulation No. 78 of 2015 on Wages to replace the Government Regulation No. 8 of 1981 on Protection of Wages. The previous government regulation stated that the right to negotiate the minimum wage for laborers is made through the mechanism of tripartite negotiation in the Wage Council and the establishment of structure and scale of wage is not an obligation of employers. In addition, the establishment of Provincial Minimum Wage (*UMP/Upah Minimum Provinsi*) is dominated by various forms of politicization that cause

⁴ Abdul Khakim, *Pengupahan dalam Perspektif Hukum Ketenagakerjaan Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2016), p. 1.

⁵ Syarif Arifin, "Kebijakan Pengupahan: Masalah dan Beberapa Pilihan", accessed from <http://majalahsedane.org/kebijakan-pengupahan-masalah-dan-beberapa-pilihan/>, on Tuesday, October 10, 2017, at 11.00 A.M.

⁶ Catherine Saget, "Fixing Minimum Wage Levels in Developing Countries; Common Failures and Remedies", *International Labour Review*, Vol. 147 No. 1 (2008): p. 14.

wage increase is irrational and uncertain. This makes the government feel that the Government Regulation No. 8 of 1981 on Protection of Wages is not efficient to solve the problem of wage in Indonesia, and the government needs the latest wage formulation.

Indonesia has changed the standard of living for three times as the basis for minimum wage determination, which includes the Minimum Physical Needs (KFM/*Kebutuhan Fisik Minimum*) prevailing from 1969-1995, the Minimum Living Needs (KHM/*Kebutuhan Hidup Minimum*) prevailing from 1996-2005, and the Decent Living Needs (KHL/*Kebutuhan Hidup Layak*) prevailing from 2006 until now.⁷ Then, in 2015, the government released several Economic Policy Packages, one of which is the Economic Policy Package Volume IV⁸ that focuses on the new wage calculation scheme in order to push back economic growth in Indonesia. They issued Government Regulation No. 78 of 2015 on Wages because this regulation provides certainty of minimum wage determination in every year which directed to achieve a decent living income for laborers. So they can fulfill the necessities of their life and their family, and give big benefit to the business world.⁹

However, after the issuance of Government Regulation No. 78 of 2015 on Wages, wage still becomes the issue that always be questioned by the laborers.

⁷ Pusat Litbang Ketenagakerjaan, "Jurnal Ketenagakerjaan", *Departemen Tenaga Kerja dan Transmigrasi Republik Indonesia*, Vol. 3 Edition No. 2 (2006): p. 88.

⁸ The Economic Policy Package Volume IV focuses on the welfare of laborers, including provincial minimum wage (UMP) formula, expanding the distribution of People's Business Credit (KUR/*Kredit Usaha Rakyat*), especially for laborers who got termination of employment (PHK/*Pemutusan Hubungan Kerja*) and providing working capital credit for Micro, Small and Medium Enterprises.

⁹ Abdul Khakim, *Op. Cit*, p. 14.

This regulation has invited various pros and cons responses from the laborers and employers. The laborers rejected it through conventional and non-conventional ways, while the employers gave responds in different way: some accepted this regulation while others rejected it.

The Government Regulation No. 78 of 2015 on Wage gives an impact in the determination of minimum wage in all over Indonesia, one of them is in DIY. The laborers in DIY rejected this regulation as the legal basis for minimum wage determination in DIY because they stated that this regulation eliminate their roles in negotiation of minimum wage determination. Besides, it is unfavorable and unjust to them. The employers who accepted this regulation support the existence of this regulation because they are given the certainty in setting the wage. Then, the employers who rejected it argue that this new formulation makes them more difficult in giving wage to laborers because the standard used in the wage formulation is based on national inflation and national economic growth, not on regional inflation and regional economic growth.

The never-ending debate between laborers and employers seems to have never found a common ground. The laborers consider that the wage they receive still can not fulfill their decent living needs (KHL) since the annual price keep increasing. The employers also assume that wage increase will increase production costs and will be one of the factors of uncompetitive

business climate in Indonesia.¹⁰ The laborers mostly refused with the reason that the Government Regulation No. 78 of 2015 is more profitable to the employers. They also believe it can not make the wage of Indonesian laborers equal to other countries, if the wage increase is based on inflation and economic growth only.¹¹

The government stated with the Government Regulation No. 78 of 2015, the laborers will get wage and non-wage income, as well as the wage of laborers will certainly increase significantly each year. Here, non-wage income may be in the form of a holiday intensive (*THR/Tunjangan Hari Raya*), a company bonus, a replacement money for work facilities and a service fee for a particular business. The other advantage is the labor purchasing power is accommodated in wage formulas with inflation variable and still added with economic growth, then the Regency/City Minimum Wage (*UMK/Upah Minimum Kabupaten/Kota*) and sectoral wage are still exists and will be determined by the governor and should not be lower than the Provincial Minimum Wage (*UMP*).

The government also considered that the Government Regulation No. 78 of 2015 on Wages until today is the best decision made by the government. It gives a number of good impacts which are enables the government to protect all parties, protect laborers from retirement (*PHK/Pemutusan Hubungan Kerja*), and provide fair salary. In addition, the effects of this regulation for

¹⁰ Indrasari Tjandraningsih & Rina Herawati, *Menuju Upah Layak (Survei Upah Buruh Tekstil dan Garmen di Indonesia)*, (Jakarta: Friedrich Ebert Stiftung, 2009), p. 7.

¹¹ Syamsul Anwar Khoemaeni, "Ini Tujuh Alasan Buruh Tolak PP Pengupahan", accessed from <https://news.okezone.com/read/2015/11/20/338/1252831/ini-tujuh-alasan-buruh-tolak-pp-pengupahan>, on Tuesday, October 10, 2017, at 11.38 A.M

employers are to protect the business world to grow and continue to increase job vacancies, because the business world has the certainty of raising wage to be more predictable and will not interfere the company's financial planning.¹²

The government feels that the current wages regulation is the best way for both laborers and employers since the government should guarantee a decent standard of living for laborers and their family, increase productivity, and increase the purchasing power. On the other hand, the government should also be able to stimulate investment to encourage economic growth and expansion of job opportunities, and be able to hold the rate of inflation.¹³

Furthermore, in DIY, the authority in the minimum wage determination shall be submitted to the Governor (Sri Sultan Hamengkubuwono X). In this regard, the Governor of DIY also stipulated the Governor Regulation of DIY No. 74 of 2016 on Minimum Wage to be used as a wage reference and has issued the Governor Decree of DIY No. 220/KEP/2017 on the Determination of UMP DIY 2018 and Governor Decree of DIY No. 223/KEP/2017 on the Determination of UMK DIY 2018.

Perhaps from the minimum wage that has been set, it is expected to avoid laborers strike and demonstration. In respond to this condition, the laborers in DIY held a thank giving activity called "*selametan/tumpengan*" which aims to glorify Allah and asks His blessing on the Governor of DIY, Sri Sultan Hamengkubuwono X, to be always healthy and safe as the Sultan has fulfilled

¹² Budi Santoso, "Benarkah PP Pengupahan Perbaiki Nasib Buruh?", accessed from <http://www.antaraneews.com/berita/526104/benarkah-pp-pengupahan-perbaiki-nasib-buruh>, on Tuesday, October 10, 2017, at 11.40 A.M.

¹³ Adrian Sutedi, *Hukum Perburuhan*, (Jakarta: Sinar Grafika, 2011), p. 146.

the demand of the laborers not to use the Government Regulation No. 78 of 2015 on Wages as the legal basis for minimum wage setting in DIY. Then, the laborers in DIY also had filed a lawsuit in the Administrative Court of Yogyakarta on the Governor Decree of DIY No. 235/KEP/2016 on Determination of UMK DIY 2017 that used Government Regulation No. 78 of 2015 as a reference. They filed it because the Government Regulation No. 78 of 2015 was in disharmony with Law No. 13 of 2003 on Manpower.¹⁴

Based on the background above, it can be highlighted that the existing legal problem on minimum wage determination should not be allowed to continue; it is necessary to find a solution so each interest between the laborer and employer can be minimized. If it is allowed to continue, it will result a non-conducive situation of industrial relations in DIY, and the goals of employment development and national/regional development will not be achieved.

With pros and cons condition againsts Government Regulation No. 78 of 2015 on Wages in DIY, the researcher is interested to find out why there is legal problem (pros and cons) arising between the laborers and employers in DIY after the implementation of this Government Regulation, and how is the role of local government in settling the legal problem of minimum wage determination in DIY. So, the researcher is decided to make a legal research entitled **“Legal Problem on Minimum Wage Determination in the Special Region of Yogyakarta”**.

¹⁴ Ujang Hasanudin, “Upah DIY Terendah Dibanding Daerah Lain”, accessed from <http://www.solopos.com/2016/05/02/hari-buruh-2016-upah-diy-terendah-dibanding-daerah-lain-715627>, on Wednesday, October 11, 2017, at 08.25 A.M.

B. Problems of Research

Based on the background above, in this research, the researcher formulates the problems of research as follows:

1. What is the legal problem (pros and cons) in minimum wage determination in the Special Region of Yogyakarta?
2. How is the role of local government in settling the legal problem of minimum wage determination in the Special Region of Yogyakarta?

C. Objectives of Research

The objectives of research are as follows:

1. To understand the legal problem (pros and cons) in minimum wage determination in the Special Region of Yogyakarta.
2. To analyze and get a valid data of the role of local government in settling the legal problem of minimum wage determination in the Special Region of Yogyakarta.

D. Benefits of Research

Based on the problems and objectives of research, the benefits of research are as follows:

1. Theoretically

This research is expected to give usefulness or serve as a guide to develop the science of law, especially in the field of labor law and in minimum wage determination in the Special Region of Yogyakarta.

2. Practically

This research is expected to give information and become reference for the public or legal practitioners and related institution to determine the minimum wage in the Special Region of Yogyakarta.