

CHAPTER IV

FINDING AND ANALYSIS

A. The Legal Problem (Pros and Cons) in Minimum Wage Determination in DIY

1. Minimum Wage Determination in DIY

In general, wage is defined as the minimum amount to be paid to the laborer, where the amount has been set in order to fulfill the decent living needs of the laborers and their family based on the calculation of economic, social and national condition at the time.³⁸

The first minimum wage in Indonesia was already introduced in 1956, followed by a national wage council established in 1969 and minimum wage legislation implemented in the early 1970s.³⁹ However, until the late 1980s, minimum wage had more a symbolic character since it was neither binding nor enforced.⁴⁰ Under increasing pressure from domestic and international groups against low wages and labor standards in the growing economy, the Indonesian government implemented new minimum wage legislation in 1989 that states that minimum wage have to be based on minimum physical needs, local costs of living, and labor market conditions.⁴¹

³⁸ Catherine Saget, *Op.Cit*, p. 5.

³⁹ *Ibid*, p. 25-42.

⁴⁰ Pratomo DS, "Minimum Wage Effects Throughout the Wage Distribution: Evidence from Indonesia", *European Journal of Economics, Finance and Administrative Sciences* (2012): p. 27–35.

⁴¹ Rama M, "The Consequences of Doubling the Minimum Wage: The Case of Indonesia", *International Labour Review* Vol. 54 No. 4 (2001): p. 864–881.

The minimum wage in Indonesia began with the establishment of the Minimum Physical Needs (KFM/*Kebutuhan Fisik Minimum*) of 1956 through the Tripartite consensus and nutritionists as a reference for minimum wage calculation.⁴² The minimum wage policy was first introduced in the early 1970s after the establishment of the National Wage Research Council (DPPN/*Dewan Penelitian Pengupahan Nasional*) based on Presidential Decree No. 85 of 1969 and the establishment of Regional Wage Research Council (DPPD/*Dewan Penelitian Pengupahan Daerah*) by local governments.

The first minimum wage determination was based on the Minimum Physical Needs consists of 38 (thirty-eight) components of needs, then the review of the amount of minimum wage was held no later than two years. Then, from 1996 to 2005 the improvement was made to Minimum Living Needs (KHM/*Kebutuhan Hidup Minimum*) consists of 43 (fourty-three) components, the minimum wage was set by the Minister based on region, and it is reviewed every two years.⁴³

Furthermore, the minimum wage determination in 2006 was based on Decent Living Needs (KHL/*Kebutuhan Hidup Layak*) for single/unmarried laborer where the calculation is based on 46 (fourty-six) components, and from 2012 until now it has been refined to 60 components, but since 2015, minimum wage determination was based on

⁴² Tianggur Sinaga, "Kebijakan Pengupahan di Indonesia", *Jurnal Ketenagakerjaan* Vol. 3 No. 2 (2008): p. 29-46

⁴³ Devanto Shasta Pratomo & Putu Mahardika Adi Saputra, "Kebijakan Upah Minimum Untuk Perekonomian Yang Berkeadilan: Tinjauan UUD 1945", *Journal of Indonesian Applied Economics* Vol. 5 No. 2 (2011): p. 269-285.

the latest wage formula in accordance with the Government Regulation No. 78 of 2015 on Wages. The review of KHL components is done every 5 years, because the KHL is included into the minimum wage formula for the current year.

The improvement of KHL components into 60 (sixty) components is considered insufficient to fulfill the living standards for laborers, because the laborers demand the addition of 24 (twenty-four) KHL components, so the total is 84 (eighty-four) components. Among the additional components demanded by the laborers are jackets, t-shirt, watch, wall clock, briefcase, semi-formal slipper, perfume (super quality), powder, raincoat, computer, mobile phone, pulse, umbrella, wallet, carpet, fan, washing machine, dispenser, first aid kit, doormat, hangers, curtains, bowls, dining table and chairs.⁴⁴

Table 1. The Comparison of Old and New Wage Rules

	Old Wage Rules	New Wage Rules
Official	Governor	Governor
Period	Mentioned periodically, but no detailed	Every five years
Indicator	<ul style="list-style-type: none"> • Productivity • Economic growth 	<ul style="list-style-type: none"> • National inflation • National economic growth

⁴⁴ Dian Dharu Rohmadhoni, “Formulasi Regulasi Upah Minimum yang Responsif terhadap Kebutuhan Pekerja/Buruh”, *Jurnal Hukum Universitas Brawijaya*, Malang (2016): p. 4.

Method	Market survey by Provincial/Regency/City Wage Council by forming a team consists of elements of tripartite, experts and local Central Bureau of Statistics.	The review through two stages, namely assessment and determination based on the wage formula. The review was conducted by the Minister with considering the result of the National Wage Council and Central Bureau of Statistics.
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Before the issuance of the Government Regulation No. 78 of 2015 on Wages, the determination of minimum wage was determined by the result of minimum wage survey done by the survey team established by provincial or regency/city wage council which its membership consists of tripartite elements (government, laborers, employers), academics/experts, and the local Central Bureau of Statistics. After the issuance of the Government Regulation No. 78 of 2015 on Wages, the minimum wage is determined by implementing a new formula of minimum wage determination regardless the result of market survey by wage council.

Furthermore, before the issuance of Government Regulation No.78 of 2015 on Wages, the mechanism of minimum wage determination was always colored by politicization, pressure and other aspects that led to lack of legal certainty and business certainty. Each party that become the pillar of employment, both the employers and laborers have large and

crucial interests in the mechanism of wage determination, so there was always a horizontal conflict between them.

After the issuance of Government Regulation No. 78 of 2015 on Wages, in Article 44 paragraph 2 stated that the minimum wage is determined based on the formula. Through the Government Regulation No. 78 of 2015, the government intends to provide clearer and more capable rules to maintain business continuity and sustainability of labor, in order to accommodate the principle of predictability and sustainability, as well as legal and business certainty. This formula brings new changes to the minimum wage setting process.⁴⁵

$$MW_{(n)} = MW_{(t)} + \{MW_{(t)} \times (\text{Inflation}_{(t)} + \% \Delta GDP_{(t)})\}$$

Explanation:

MW_(n) = Minimum wage to be set

MW_(t) = Minimum wage of the current year

Inflation_(t) = Inflation calculated from the September of the previous year up to the September of the current year

ΔGDP_(t) = Growth of Gross Domestic Product calculated from the third and fourth quarter of the previous year and the first and second quarter of the current year.

It means that the annual wage increase of labor will be based on the current year multiply by inflation plus the percentage of gross

⁴⁵ Hadi Adha, "The Wages Policy after Enactment of Government Regulation No. 78 of 2015 on Wages in Indonesia", *Unram Law Review* Vol. 1 No. 2 (2017): p. 9.

domestic product. So, it can be said that the determination of wage is influenced by the rate of inflation and the percentage of economic growth. While in Article 5 paragraph (1) of Law No. 21 of 2016 on Decent Living Needs it is stated that for survey of decent living needs components is done once every five years. In other words, the government will conduct the survey of decent living needs components which were used as the basis for wage calculation only once in five years, while the annual survey of decent living needs now is not a determinant, but only as a comparison to convince the parties who may not feel not satisfied with the formulation in Government Regulation No. 78 of 2015 on Wages.

The minimum wage used in DIY consists of two types, namely Provincial Minimum Wage and Regency/City Minimum Wage. Meanwhile, for Provincial Sectoral Minimum Wage and Regency/City Sectoral Minimum Wage, the DIY government has not made any decisions yet because there is no agreement between sectoral employers and the DIY government.

a. Provincial Minimum Wage

- 1) The Governor shall determine the provincial minimum wage (Article 45 paragraph 1 of Government Regulation No. 78 of 2015 on Wages)

- 2) Determination of provincial minimum wage is calculated based on minimum wage formula (Article 45 paragraph 2 Government Regulation No. 78 of 2015 on Wages)
- 3) After the review of decent living needs, the Governor set the provincial minimum wage by observing the recommendation of the Provincial Wage Council (Article 45 paragraph 3 of Government Regulation No. 78 of 2015 on Wages)
- 4) The recommendation of the provincial wage council is based on the results of a decent living needs assessment where the components and types are determined by the Minister by paying attention to productivity and economic growth (Article 45 paragraph 4 of Government Regulation No. 78 of 2015 on Wages)
- 5) Provincial minimum wage is determined and announced by the Governor every November 1 (Article 6 paragraph 2 of Minister of Manpower and Transmigration Regulation No. 7 of 2013 on Minimum Wage and Article 3 paragraph 1 of Governor Regulation of Special Region of Yogyakarta No. 74 of 2016 on Minimum Wage)
- 6) The provincial minimum wage set by the Governor shall take effect from January 1 of the following year (Article 8 paragraph 1 of the Minister of Manpower and Transmigration Regulation No. 7 of 2013 on Minimum Wage).

b. Regency/City Minimum Wage

- 1) The Governor may determine regency/city minimum wage (Article 46 paragraph 1 of Government Regulation No. 78 of 2015 on Wages)
- 2) Regency/city minimum wage must be greater than provincial minimum wage (Article 46 paragraph 2 Government Regulation No. 78 of 2015 on Wages)
- 3) Determination of regency/city minimum wage is calculated based on minimum wage formula (Article 47 paragraph 1 of Government Regulation No. 78 of 2015 on Wages)
- 4) After the review of decent living needs, the Governor set the regency/city minimum wage by observing the recommendation of the Regent/Mayor and the consideration of the Provincial Wage Council (Article 47 paragraph 2 of Government Regulation No. 78 of 2015 on Wages)
- 5) The recommendation of Regent/Mayor based on the suggestion and consideration of Regency/City Wage Council (Article 47 paragraph 3 Government Regulation No. 78 of 2015 on Wages)
- 6) The recommendation of Regent/Mayor, the suggestion and consideration of Provincial Wage Council, and the suggestion and consideration of Regency/City Wage Council are based on the results of a decent living needs assessment where the components and types are determined by the Minister by paying attention to

productivity and economic growth (Article 47 paragraph 4 Government Regulation No. 78 of 2015 on Wages)

- 7) Regency/city minimum wage is determined and announced by the Governor no later than November 21 after the determination of provincial minimum wage (Article 7 paragraph 2 Minister of Manpower and Transmigration Regulation No. 7 of 2013 on Minimum Wage and Article 3 paragraph 2 Governor Regulation of Special Region of Yogyakarta No. 74 of 2016 on Minimum Wage)
- 8) The regency/city minimum wage set by the Governor shall take effect from January 1 of the following year (Article 8 paragraph 1 of the Minister of Manpower and Transmigration Regulation No. 7 of 2013 on Minimum Wage).

After the regency/city minimum wage already determined and announced, based on Article 7 paragraph 2 of Governor Regulation of Special Region of Yogyakarta No. 74 of 2016 on Minimum Wage, provincial minimum wage is no longer used. While, for regencies/cities that have not yet proposed the determination of regency/city minimum wage, based on Article 7 paragraph 1 of Governor Regulation of Special Region of Yogyakarta No. 74 of 2016 on Minimum Wage, provincial minimum wage is still valid.

Here is the calculation of the minimum wage of DIY in 2018 based on the minimum wage of DIY in 2017:

Table 2. Provincial Minimum Wage of DIY in 2017

No.	Province	Provincial Minimum Wage
1.	Special Region of Yogyakarta	Rp1.337.645

Table 3. Regency/City Minimum Wage of DIY in 2017

No.	Regency/City	Regency/City Minimum Wage
1	Yogyakarta City	Rp1.572.200
2	Sleman Regency	Rp1.448.385
3	Bantul Regency	Rp1.404.760
4	Kulon Progo Regency	Rp1.373.600
5	Gunung Kidul Regency	Rp1.337.650

The data of national inflation and national economic growth were used to calculate the minimum wage of DIY in 2018, i.e:

- a. National inflation = 3.72%
- b. National economic growth = 4.99%

Total for provincial minimum wage and regency/city minimum wage increase is 8.71%. The minimum wage of DIY in 2018 will be calculated with the wage formula, as follows:

$$MW(n) = MW(t) + \{(MW(t) \times (\text{Inflation}(t) + \% \Delta GDP(t))\}$$

$$\begin{aligned} MW(t) &= \text{Rp}1.337.645 \\ \text{Inflation}(t) &= 3,72\% \\ \Delta GDP(t) &= 4,99\% \\ MW(n) &= \text{Rp}1.337.645 + \{(\text{Rp}1.337.645 \times (3,72\% + 4,99\%))\} \\ &= \text{Rp}1.337.645 + \{\text{Rp}1.337.645 \times 8,71\% \} \\ &= \text{Rp}1.337.645 + \text{Rp}116.508,90 \\ &= \text{Rp}1.454.153,9 \text{ or } \text{Rp}1.454.154 \end{aligned}$$

Table 4. Provincial Minimum Wage of DIY in 2018

No.	Province	Provincial Minimum Wage
1.	Special Region of Yogyakarta	Rp1.454.154

Table 5. Regency/City Minimum Wage of DIY in 2018

No.	Regency/City	Regency/City Minimum Wage
1	Yogyakarta City	Rp1.709.150
2	Sleman Regency	Rp1.574.550
3	Bantul Regency	Rp1.527.150
4	Kulon Progo Regency	Rp1.493.250
5	Gunung Kidul Regency	Rp1.454.200

2. Parties Involved in Minimum Wage Determination in DIY

There are three elements that affect each other in industrial relations, especially wages, which if one of the functions and roles of these three elements are not working, then the employment conditions will not run well. The three elements consist of employer, laborer (labor union), and government, which in labor/manpower terms is known as 'tripartite'.

a. Employer

Law No. 13 of 2003 on Manpower stated that the employer is an individual, a partnership or a legal entity that runs a company of his/her own, or independently runs a company not of his/her own, or represents a company domiciled outside Indonesia.

The Employers Association of Indonesia (APINDO) is the employers association which being the government's partner. It was

established on January 31, 1952 in Jakarta, formerly called as the Consultative Social and Economic Affairs of Indonesian Employers (PUSPI/*Permusyawaratan Urusan Sosial Ekonomi Pengusaha Indonesia*), then changed to APINDO in 1985 at the 2nd National Conference in Surabaya.

APINDO's visions are protecting, defending and empowering the employers. Protecting means protecting the employer/company from parties who want to disturb the tranquility in the workplace. Defending is meant as an advocacy service if it is expected and will accompany the employer in the Industrial Relation Court, if there is an employer/company that incapable of proceedings in the Industrial Relation Court. Then, empowering can be implied as the helping hand to the government to give socializations through APINDO gatherings related to manpower regulations, because there are many companies are not understand with the new regulations.⁴⁶

b. Labor Union

Labor union is an organization that protect the interests of the laborers. A labor union is an organization founded by and for laborers voluntarily.⁴⁷ The organization is also established to promote, protect, and improve the social, economic, and political interests of the laborers

⁴⁶ Interview's result with representative from APINDO, Mrs. Hermelien Yusuf (Vice Chairman of Industrial Relations and Advocacy of APINDO DIY), on February 19, 2018.

⁴⁷ Sugiyono, *Manajemen Tenaga Kerja*, (Yogyakarta: Bina Aksara, 2010), p. 191.

through collective action.⁴⁸ The dominant interests that the laborers struggle for are economic interests, such as demand for wage increase.⁴⁹ Labor union has a function as a means of channeling aspirations and demands in the struggle for laborer's rights and interests, as a means of creating fair, harmonious, and dynamic industrial relations in accordance with applicable laws and regulations to minimize disputes in industrial relations.⁵⁰ In the minimum wage determination in DIY, the labor union that plays a major role is KSPSI (Confederation of Labor Unions in Indonesia) Chapter DIY.

c. Government

In relation to the minimum wage, the government is normatively and publicly being a mediator and decision maker of the minimum wage through calculation based on the minimum wage formulation stipulated in the Government Regulation No. 78 of 2015 on Wages. The government's role in minimum wage determination at provincial level is administered by the Department of Manpower and Transmigration and Provincial Wage Council at its final stage will be fixed with the Governor's decree.

Currently, the government set the minimum wage based on the latest wage formulation and it is considered as an ideal scheme because

⁴⁸ Edwin B Flippo, *Manajemen Personalia*, (Jakarta: Erlangga, 1990): p. 58.

⁴⁹ T. Hani Handoko, *Manajemen Personalia dan Sumber Daya Manusia*, (Yogyakarta: BPFE, 2000), p. 43.

⁵⁰ Ulung Yhohasta, "Pelaksanaan Perjanjian Kerja Bersama (PKB) antara Karyawan dengan Manajemen Perusahaan PT. Telkom. Tbk Divisi Regional IV Semarang", *Thesis*, Magister Kenotariatan, Universitas Diponegoro, Semarang (2009): p. 61.

it has considered all parties' interests, namely laborers and employers. In addition, with the Government Regulation No. 78 on Wages, the laborers become increasingly benefited because wage is guaranteed to increase from year to year. Moreover, with reference to the formula for fixation of minimum wage in that government regulation, the employers can also predict annual wage increase which will avoid company's shocks and help company in making financial design.

Then, the government has regulated the regulation of Article 102 of Law No. 13 of 2003 on Manpower governing the functions and roles of employer, labor union, and government. The contents of that article are as follows:

- b. In implementing industrial relations, the employer have the functions of creating partnerships, developing businesses, expanding employment, and providing laborers' welfare openly, democratically and equitably.
- c. In implementing industrial relations, laborer/labor union have the functions of carrying out their work in accordance with their obligations, maintaining order for the sake of production continuity, conduct their aspirations democratically, developing their skills and expertise and promoting the company and striving for the welfare of members and their families.
- d. In implementing industrial relations, the government have the functions of establishing policies, providing services, conducting

supervision, and taking action against violations of labor laws and regulations.

3. Pros and Cons in Minimum Wage Determination in DIY

The difference of interests between laborers and employers in the minimum wage determination often lead to conflict in the implementation of work relationship, even though since 2000, the government has raised the minimum wage of laborers each year.⁵¹ These differences lead to the need for intervention from the government as the competent authority in making decisions to provide guarantee in order to avoid imbalance position in the implementation of work relationship, because basically laborers and employers need each other.

The difference in interest on wage is because the laborers and employers have different perceptions of wage. The laborers consider wage as a means to support the needs of their lives and their families when employers consider wage as part of production cost. The employers will try to get the maximum profits with minimal cost. The minimum wage is made as a safety net so that employers do not pay the laborer's wage arbitrarily.

The process of minimum wage determination is used by some groups in fighting for their interests. For example, the laborers who are always trying to fight for their interests to demand the improvement of

⁵¹ Hermien Triyowati and Yolanda Masnita, "Positive and Negative Influences on the Implementation of Minimum Wage Policy in Indonesia", *International Conference on Business, Economic, and Social Sciences*, Faculty of Economics, Universitas Trisakti, Jakarta, Indonesia (2016): p. 1-10.

welfare living through the minimum wage. There is a presumption that with high wages, then their welfare will also increase. Besides, the employers expect an increase in production, because they will receive higher profits.

Before the issuance of Government Regulation No. 78 of 2015 on Wages, minimum wage determination was based on the market survey and often raises the debate between laborers and employers. The debate occurs because the values of basic living needs found by both parties are different. For example, when discussing the calculation of decent living needs to determine the minimum wage, the laborers determines the price of rental boarding house (with the bathroom inside) is Rp.600.000, while the employers determines the price of rental boarding house (with the bathroom outside) is Rp.400.000. The different calculation of laborers and employers led to the different result of minimum wage proposal. In addition, minimum wage calculation based on decent living needs/market survey do not have clear limits on the minimum wage determination, so the rate of minimum wage increase that occurs from year to year is very high.

The high increase of wage is considered inconsistent with the productivity of laborers where the market competition is increasingly getting tighter. However, since the enactment of Government Regulation No. 78 of 2015 on Wages, some employers feel that they got certainty in raising the wage. Meanwhile, for laborers, the Government Regulation and

the new minimum wage formula are not fair for them. They feel that they have limited efforts to improve their welfare through minimum wage.

However, after the issuance of the Government Regulation No. 78 of 2015 on Wages, the pros and cons on minimum wage determination in DIY still continue which generally on the matters of:

- a. Article 44 paragraph (2) concerning the formula of minimum wage
- b. The increase in minimum wage based on inflation and economic growth
- c. The change and review of components of KHL once in 5 years

The laborers reject this regulation because it eliminates the role of labor union in the process of minimum wage determination. This regulation also makes the wages of laborers in DIY continues to be the lowest because it is limited only by national inflation and national economic growth that make the result is far from the decent living needs that should be received for laborers. Then, the laborers also regret why the local government has not issued the Sectoral Minimum Wage in DIY, whereas in DIY there are so many leading sectoral companies which capable in financially and capacity, such as textile, housing, tourism, hotels and restaurants.

Laborers also argued that the Government Regulation No. 78 of 2015 on Wages which eliminates the role of labor union in the process of determining the minimum wages is considered as legal defect. Meanwhile, in the Law No. 13 of 2003 on Manpower stated that the laborers have the

right to negotiate and have the right to propose the minimum wage of regency/city.

Currently, the laborers in the wage council are only entitled to conduct wage studies but they can not propose, because the government already has a fixed formulation of wage. The laborers are demanding the minimum wage determination return back to the result of decent living needs survey which conducted in the 4 districts and 1 city traditional market in DIY since the result of this survey is believed more reliable even though there are always different of opinions. The laborers feel more satisfied because they are involved in decision making process. In addition, labor union can also reject the minimum wage which set by the government that is considered far from the needs of the laborers.⁵²

The employers reject laborer's opinion of lower wages as in the last 3 years (2016-2018), the minimum wage has increased and it is higher than decent living needs according to the survey conducted before the issuance of the Government Regulation No. 78 of 2015. They claim the standard used in the minimum wage formula is national standard, not regional. Then, the employers themselves were divided into two groups, there are some who have accepted this regulation and there are some who have not yet accepted this regulation.

The employers who have accepted this regulation said that this regulation saves their time and energy, because it does not need to conduct

⁵² A. Nurul Fajri Osman, "Penetapan Upah Minimum dalam Rangka Memberikan Perlindungan terhadap Buruh", Fakultas Hukum, Universitas Lampung: *Jurnal Ilmu Hukum* Vol. 2 No. 1 (2013): p. 32-46.

decent living needs survey in traditional market and argue with the laborers. In addition, the employers also have more certainty to raise the wage of laborers because it can be predicted and will not interfere the company's financial planning.

Then, for the employers who have not yet accepted, they feel objected because the standard used in the formulation is a national standard, then surely the wage increase will be higher, while the economic situation in DIY is different from other regions. If it is a labor-intensive company which has thousands of laborers, the wage increase will be very significant. For example, in the Yogyakarta City, there are many small companies and small shops have not be able to pay the Yogyakarta minimum wage (Rp1.709.150). So, in every coordination meeting by the National Wage Council, the Wage Council of DIY always propose the safety net should be distinguished between labor-intensive and non labor-intensive companies, and also between small and large companies.

Wages given to the laborers are in accordance with the laborer's needs. The employers, therefore, should increase productivity of laborers to achieve the goals of the company and their welfare. This is very necessary, because the costs incurred by employers are returned to the laborers by giving significant contribution to the company. If the employers have a good intention to provide wages to laborers in accordance with the provisions of the law or even exceed the provisions,

the laborers must have a commitment to provide the best performance and productivity for the company.

Although the determination of the minimum wage has negative consequences, because the interest of protecting laborer and the importance of income distribution, the policy of wage determination is still acceptable. What is needed to be considered right now is how the formulation of minimum wage policy to be able to accommodate the interests of laborers and employers fairly.⁵³

B. The Role of Local Government in Settling the Legal Problem of Minimum Wage Determination in DIY

In the field of labor law concerning the work relationship between laborers and employers, the government has interfered with the contents of agreement made by employers with laborers on the minimum wage determination. It means that all employers are prohibited from paying wage to laborers under the provisions of minimum wage. The implementation of government interference here is that the central government gives authority to local/regional government with the existence of regional autonomy.

Regional autonomy is the right, authority, and obligation of autonomous region to regulate and manage their own governmental affairs and the interests of local communities in accordance with the laws and

⁵³ Suparjan & Hempri Suyatno, "Kebijakan Upah Minimum yang Akomodatif", *Jurnal Ilmu Sosial dan Ilmu Politik* Vol. 5 No. 3 (2002): p. 301.

regulations.⁵⁴ With regional autonomy, the local government has the authority to determine the minimum wage in the province, districts and city to protect the laborer's rights and also to realize the welfare of laborers who have low bargaining position.⁵⁵

Based on Article 9 paragraph 3 of Law No. 23 of 2014 on Regional Government, concurrent affair is a government affair that is shared between central government and provincial government as well as regency/city area. Furthermore, in Article 12 paragraph 2 of Law No. 23 of 2014 on Regional Government stated that one of the concurrent affairs of local government is related to manpower.

The government has the main function to make the relationship between laborers and employers harmonious and balance. In addition, the government also play a role as mediator in resolving conflicts or disputes fairly. Basically, the government also play a role in maintaining the continuity of the production process for the wider interests.⁵⁶ To provide wage protection for laborers, the government intervenes on wage issue through minimum wage determination. The objective of minimum wage determination by the government is to prevent arbitrary action from employers in providing wage to laborers who have just worked.

⁵⁴ Titik Triwulan Tutik, *Kontruksi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, (Jakarta: Kencana Prenada Media Group, 2010), p. 254.

⁵⁵ Maria Farida Indrati, *Ilmu Perundang-Undangan*, (Yogyakarta: Kanisius, 2007), p. 180.

⁵⁶ Budiyo, "Penetapan Upah Minimum dalam Kaitannya dengan Upaya Perlindungan Bagi Pekerja/Buruh dan Perkembangan Perusahaan", *Thesis*, Fakultas Hukum, Universitas Diponegoro, Semarang (2007): p. 2.

The local government have a role in wages, especially in protecting laborers from receiving low-wages. That role can be undertaken by the local government in regulating the wage scheme with the purpose to ensure a decent living for laborers and their families. Accordingly, the Governor of the Special Region of Yogyakarta issued the Governor Regulation of DIY No. 74 of 2016 on Minimum Wage.

The government of DIY stated that from the legal side there is no problem because the wage mechanism in DIY is in accordance with the Government Regulation No. 78 of 2015. Through this regulation, government intends to provide clearer and more capable rules to maintain business continuity and sustainability of labor, in order to accommodate the principle of predictability and sustainability, as well as legal and business certainty.⁵⁷ The problem is there are huge numbers of laborers who misunderstand the meaning of the minimum wage.⁵⁸ The minimum wage is a lower nominal wage which has been adjusted to the minimum limit of basic decent living needs in the region and determined by the government only to be used as a safety net. Minimum wage is also applied to single laborers with a working period of less than 1 (one) year. If it has been more than 1 (one) year, the government advises the laborers to negotiate with employers about their wage increase.

⁵⁷ Setyo Pamungkas, “Diskresi dalam Penentuan Upah Minimum oleh Gubernur”, *Refleksi Hukum* Vol. 1 No. 1 (2016): p. 15.

⁵⁸ Interview’s result with representative from Government of DIY, Mr. R. Darmawan (Head of Wage Section in the Department of Manpower and Transmigration of DIY), on February 12, 2018.

The government in making policy is not solely to incriminate the people, but to prosper the people. The implementation of minimum wage is not solely applied directly by the Department of Manpower and Transmigration of DIY, but there are components that also tolerate those employers who are completely unable to implement minimum wage policy. The Department of Manpower and Transmigration of DIY gives tolerance to companies that objected to the implementation of minimum wage policy by filing a wage suspension no later than three months after being approved by the Governor.

The role of local government is not easy in implementing the minimum wage policy, because there are some interests between the tripartite, namely the government who has the interest to regulate the region, the laborer who has the interest of working to fulfill the needs of life, and the employers who has the interest to maintain their business and profits as much as possible.⁵⁹

The role of government of DIY in settling the dilemma in determining minimum wage is to conduct deliberation/coordination with three elements of tripartite (government, employers, laborers) to discuss matters relating to minimum wage, including the procedure, legal basis, etc. So, it will reach the mutual agreement on determination of minimum wage in accordance with applicable laws and regulations, because however and whenever, the government will always stand in the legal

⁵⁹ Firman Widia Nanda, "Peran Pemerintah Daerah dalam Pelaksanaan Upah Minimum Regional bagi Usaha Kecil dan Menengah", *Jurnal Ilmiah*, Fakultas Hukum, Universitas Brawijaya, Malang (2015): p. 9.

position. Then, the government also stated not to see on wage only, because the welfare components of the laborer is not only wage, but there are education, occupational injury insurance, health insurance, life insurance, pension/retirement insurance and 15 (fifteen) rental flats for laborers provided by the government of DIY.

In addition, to fulfill the demand of laborers and employers from the Government of DIY not fully use national inflation and national economic growth standard in fixing the minimum wages in Yogyakarta, in the 2019 evaluation, the government of DIY will propose a suggestion to the central government to consider the local condition in deciding the formulation in determining minimum wages. However, for today's needs the government of DIY concludes that this wage formulation has been running well, because besides already involving the decent living needs in the current year of minimum wage, it has also considered the inflation and economic growth that always rise consistently, even though it does not above 10%.