

Legal Politics of Minimum Wage in Indonesia

Zainul Akhyar^{1*} Sudarsono² Abdul Rachmad Budiono³ Rachmad Safa'at³

1. Doctoral Candidate majoring Law, Faculty of Law, Brawijaya University, Malang

2. Professor of Administrative Law, Faculty of Law, Brawijaya University, Malang

3. Associate Professor of Labor Law, Faculty of Law, Brawijaya University, Malang

Abstract

The Standard of Minimum Waging Policy according to constitution is less concerned to equitability and humanity. It is caused by the policy of constitution has not been oriented to the employees' needs. The standard of minimum waging is described as the fulfillment of employees' physical needs, although there has been a conceptual paradigm changing from Minimum Physical Requirements to Minimum Living Needs and Prosper Living Needs as the final stages. The minimum waging policy concerns much to the economic stability rather than to equitability and humanity. Economic stability will be stable if the employersexist and they will exist if the wages are low even it is formally legalized, although equitability and humanity are put aside. The purpose of the policy is not to prosper the employees, yet to prosper the employers. By stabilizing the existence of the employers, national economic and politic stability will be safe. The policy's characteristics are placed in an unclear position which affect it to be far from the ideals of good constitution. The policy's forms are to oppose between one policy to others which cause to the unclear meaning of minimum waging.

Keywords: Policy, Minimum Wage

INTRODUCTION

The labor problems in Indonesia are too complex and classified to many problems which are related between one problem to others, such as job discharged, job safety and hygiene, job productivity, retirement payment, standard of prosperity and wage. The standard of minimum waging has become one of the most crucial problem among other labor problems, even the standard of minimum waging problem can emerge an implication to other labor problems.

According to Indonesian Basic Constitution 1945, section 27D clearly states that all citizens have their rights to get a proper job and living. The mandate of the section implies that any person who goes to work must have a proper payment to fulfill their daily needs. However, in contrary, it seems that the 27D section's mandate is not literally well defined to the National Constitution Number 13 Year 2003 regarding employment. Section 89 verse (2) and (4) clearly state that the standard of minimum waging of the employees is led to the achievement and fulfillment of prosper living needs and the components as well as its steps. In addition, Permenakertrans Number 7 Year 2013 regarding the standard of minimum waging section 3 verse (4) states that the Governor from each province decides the steps of prosper living needs fulfillment in form of road map. As a result, the regulations about the standard of minimum waging are not "based" on the prosper living needs, yet it is "lead"¹ to the needs. This kind of politic does not concern to the equitability and humanity since Padmo Wahyuno said that..."policy is the base regulation which is to lead the direction, form, either content from the law which are to be made"².

The problem of policy of the standard of minimum waging in Indonesia before the existing law, it shows an unclear condition which may affect to the unfair impacts in building a good waging policy system. In other words, it can be defined that the regulations which are correlated to waging policy does not concern substantially to the equitability and humanity principles which has become the dream of the constitution, which has been also mandated in Indonesian Constitution 1945 as "the highest dream of the constitution", ..."law to be justified is the law which consists of the principles of humanity"³ has not been implemented well and correctly to the lower level constitutions, yet it becomes operational regulations which seems to be far away from the dream of the constitution.

In case of understanding the problem, the policy approach is able to investigate the background of ideas in arranging the regulations; the main goal of the regulators"⁴ which makes the policy of standard minimum waging is not concerning the equitability and humanity principles. The problem is not only in normative aspect, but also politic one. As a result, to analyze those problems, this study intends to obtain and analyze why the policy of standard minimum waging in Indonesia less concerns to the equitability and humanity principles. In addition, the description and analysis conducted in the study is to elaborate the policy's condition which is connected to the laws regarding to the standard minimum waging in Indonesia. Therefore, the approach in this study is policy approach which is connected to the standard minimum waging regulations.

THE IDEAS OF THE MINIMUM WAGING IN THE POLICY OF THE STANDARD MINIMUM WAGING SYSTEM

The minimum waging, according to Zaeni Asyadie, is that... "the lowest waging which is decided to be the standard by the employer is the wage of the employees"⁵, while the constitution of employment states that the minimum wage is the wage which is given to a single employee who works under a year to fulfill a monthly physical daily needs.

The regulation of the standard of minimum waging in Indonesia was implemented for the first time by concerning the standard of Minimum Physical Needs. Minimum Physical Needs is decided by the consensus tripartite and the nutritionists in 1956 which was classified into 5 categories and 48 components. Minimum Physical Needs only measured the minimum consumption of food, house, dressing, and other stuffs of the single employee in a month. That idea was more likely to be described to fulfill only the physical needs, and the human had no relationship at all to the development subject. The policy based on Minimum Physical Needs went to the different direction from the Indonesian's constitution which concerns the human... "as a living creature, individual creature, social creature, and God's creature"⁶. Indonesian people ought be concerned as a creature to be humanized according to its nature. It means that all the basic needs can be fulfilled in terms of the proper wage which they accept. Violating human's nature means abandoning human rights. The Minimum Physical Needs's policy could not be accepted and able to give satisfactions to the employees since their salaries could not fulfill the needs properly as human. Instead of breaking the constitutions, it was also a mockery to the humanity itself which was not accepted by anyone. Thus, the policy of the standard of minimum waging based on Minimum Physical Needs was widely criticized by many people and the employees as well.

The policy of waging by using Minimum Physical Needs standards finally had been changed and replaced by Minimum Daily Needs/Minimum Living Needs. Minimum Living Needs was legalized by the Ministry of Employment constitution Number 81 Year 1995, which consisted of 4 categories; 43 components; to the single employee's needs. According to Pratomo, "Minimum Living Needs is actually the upgrading of Minimum Physical Needs in quality and quantity manners, if it is seen from the fulfillment"⁷ since there were education and recreation additions in Minimum Living Needs as the component which was measured as the standard of the policy. This system was implemented in 1990s. In fact, the revisions of the regulations gave no significant improvements to the employees' prosperity. Conceptually, Minimum Living Needs did not reflect completely the human needs, since it was not measured by characters of human needs' parameters. According to Pancasila's philosophy, the human's nature is a living, individual, social, and God's creature. It means that if the minimum wage is described as "the fulfillment of human daily needs", therefore it can be concluded that the human as a creature has been accommodated by Minimum Living Needs, while others are not. The waging concept through Minimum Living Needs standards was not accepted by the Indonesian's employees at that time. As the national development and political conditions in reformation era, there had been many alterations to the policy of the standard of minimum waging by concerning the Proper Daily Needs (Prosper Living Needs) as it is written in Constitution Number 13 Year 2003 about employment.

The definition of proper daily needs which is stated and elaborated in the constitution is also described in the constitution which is related to employment. The proper daily needs is described as a condition that a person and/or his/her family's basic daily needs can be fulfilled, such as food, clothing, housing, education, health, and safety needs for his/her life. That idea is described as the standard of minimum waging in the constitution. The minimum waging is a waging system with the minimum standard which must be fulfilled by the employers to the employees through the governor's regulations from each province. As a result, the number of minimum waging will be different from one to other provinces. It is so since the government from each province must highly consider the economic condition and the companies' capability as well.

Conceptually, the definition of Prosper Living Needs has become a good paradigm in the waging system, since it describes what the human actually needs for his/her life. Prosper Living Needs means that the wage which is accepted can fulfill all human's life needs as a personal, individual, social, and God's creature. The policy of Prosper Living Needs standard of minimum waging is still implemented until now, yet the employees still give their disputations and disagreements which are the interesting topic to be deeply analyzed. Why the standard of minimum waging policy is not accepted by the employees, why the standard of minimum waging policy is decided as the solution for the waging problems, what is the purpose of the policy, what are the main matters of the policy in deciding the Prosper Living Needs standard of minimum waging, why the proper daily needs are the base of the policy. Those questions are to be investigated to examine the basic mindsets and rules which become the foundation of the Prosper Living Needs standard of minimum waging for the employees.

Based on the procedure, the proper standard of minimum waging for employees in Indonesia must be based on the agreement between the employers and the employees as well as the government from each province as the Committee of Waging whose duty is to arrange the proper standard of minimum waging. The Committee of Waging consists of employees, employers, and government from each province and independent waging experts which has a strong correlation to the standard of minimum waging, since the government and experts

position are to stabilize the connection between the employees and the employers in arranging the standard of minimum waging. ...”Both sides, in fact, have two different perspectives in understanding”⁸, since they have their own concerns which lead to a conflict. Therefore the government and the experts have the crucial position to establish and preserve the stability of justice and prosperity in economic challenge with good industrial base relationship.

THE ASPECTS OF THE STANDARD OF MINIMUM WAGING POLICY

Analyzing the standard of minimum waging policy which abandons the equitability and humanity principles, it seems that it needs very deep comprehension and concerns wide and clear elaboration by having not only normative perspectives, but also the background of the norms which is written inside. In other words, the analysis has become the strategy to understand those problems. In short, the explanations below are to elaborate which are based on some existing references:

1. There is an inconsistency to the policies which are decided by the government regarding the standard of minimum waging in the constitution

The decision of the policy which is still argued by the employees seems to have many meanings that “proper daily needs” as it is stated in the constitution has not been implemented yet. It shows the real inconsistent condition of the policy. As it stated in section 88 verse 1 Constitution Number 13 Year 2003 that every employee/labor has their rights to get a proper income which is able to fulfill their daily needs. The section 88 verse 4 in the same constitution clearly states that the standard of minimum waging is seen from the proper living needs which concern to the economy productivity and the development. By concerning the aspect, it can be concluded that the standard of minimum waging to fulfill the employees’ proper daily needs can be conceptualized as the minimum wage.

Another consideration which is written in the constitution section 89 verse 2 clearly states that the standard of minimum waging is seen from the Prosper Living Needs fulfillment. This section explicitly states that the standard of minimum waging is not based on the Prosper Living Needs as the section 88 verse 1 statement. Yet it is “seen” to the Prosper Living Needs fulfillment. The word “seen” has a clear meaning that the standard of minimum waging cannot fulfill the employees’ Prosper Living Needs. This kind of policy certainly creates an unclear situation which may damage the national constitution dream.

That kind of policy is also possible to law phenomenon which widely implies to emerge serious problem about waging. The standard of minimum waging which is based on unclear constitution can produce massive continual fidgetiness, and it seems that it is impossible to be solved between the employees, the employers, and the government. The employees’ fidgetiness can be determined by the protests and demonstrations from the employees everywhere. Usually, in labor’s day which is on May, they always protest about the low wage which they get. Surely, it will give impacts to the Indonesian employees’ prosperity.

If we concern carefully the constitution regarding employment and the standard of minimum waging, it shows the inconsistency of normative system. Thus, it can be inferred that the standard of minimum waging policy is still unclear which is meant not to be clear that leads to a result in different interpretations among all sides. It states that this problem is the root which causes huge waging problems which are supposed to be based on to the employees’ proper daily needs and also affects to the unclear definition to other constitution.

The government and the employers have the same policy perspective that the standard of minimum waging must be concerned to other serious matters, such as the economy development, the unemployed citizens’ problem, the quality and productivity of the employees. As a result, the concept of proper daily needs in the standard of minimum waging is out from the employees/labors’ expectation. In the perspectives of government and employers policy about the standard of minimum waging have produced to a policy in the form of regulation...”Permenakertrans No7/2003 and Inpres No 9/2013 which have the same ideas as the section 88 verse 1”⁹. Those regulations are widely criticized by the employees/community of employees which is likely to be unfair to the employees’ side, ...”regulation must be on the weak side”. However...”Machfud MD stated that there are many incidents regarding the regulations which do not respect the equitability principles”¹⁰, that is what it is to be a good country which protects the citizens’ rights. The regulations which put aside the equitability and humanity principles due to the inconsistency and disoriented standard of minimum waging policy regarding PROSPER LIVING NEEDS for the employees and other regulations, can be judged that they have rejected the Indonesian’s highest constitution which is National Constitution 1945.

2. The regulators concern much to economic stability instead of equitability and humanity problems regarding the standard of minimum waging

The government must have exactly the same perspective that...”the employees’ waging problem must concern other problems, such as the economy development, the unemployment, the employees quality and productivity”¹¹. As a result, the standard of minimum waging expected by the employees is far from the expectation.

The standard of minimum waging policy based on Prosper Living Needs decided by the government

and the employers' policy perspective emphasize the macro employment problems, including job seekers and unemployed people. This perspective is not based on a linear logical thinking, which causes to the many variables considerations added to the standard of minimum waging policy. The variables of new employees and the unemployed people become a consideration before deciding the waging. If the standard of minimum waging policy is measured from those variables, they can decrease the number of wage, since there is another consideration to be considered. On the contrary, if the standard of minimum waging is based on the proper daily needs by considering the employees variable only, the number of wage the employees will get will be bigger, since there is only one variable in the equation.

The next commonly asked is that why the government and the employers policy in deciding the standard of minimum waging rigidly is based on Prosper Living Needs. It is still a question whether that logical thinking only give favors to the employers interests, or the governments', or perhaps, other basic interests. To the government, as it was discussed to decide the employment drafts, there is a problem which is bigger that should be considered, and it becomes the government's responsibility, which is the increasing of employees and unemployed people every year. If the number of employees and unemployed people are uncontrolled, it will affect the national politics and security stability. It seems that those are the biggest consideration for the government. Therefore, it can be inferred that the economic stability is the key of the standard of minimum waging policy. The decision taken by the government is to push the employers to keep opening job vacancies to reduce the number of unemployed people. To keep opening job vacancies, the employers must get financial support, and one of the steps is to increase the companies' income in order to increase the income to keep opening the job vacancies. To accumulate the funds, the production accumulation funds must be managed, one of which is the standard of the minimum waging. Therefore, the government's policy to decide the standard of minimum waging is suitable to the employer's perspectives in giving the wage.

The diplomacy between the government and the employers which is so close to each other makes the employees' position getting worse. No matter how hard the employees' demanding equitability for their proper lives, as long as the practice of the constitution in deciding the standard of minimum waging is still the same, the employees face a dead end. It is the main problem of employment in Indonesia which is still unable to be solved until now.

To repair the standard of minimum waging system in Indonesia, the perspective that the problem only occurs between the employers and the employees must be changed. The job seekers and unemployed people problems are distinct and different cases which has no relation at all to waging. There is no right principle to correlate the waging problem to the job seekers and unemployed people problems. The increasing of those problems has become the government's responsibility not to the employers. The government should be more innovative to arrange good regulations in order that there are a lot of job creators who are highly creative and innovative that can reduce the number of unemployed people in the environment. On the other hand, the employers must be focus in developing the industry by internally consolidating to their company, and if this step is done, the employees' prosperity will come true.

3. The low appreciation and acknowledgement of employees' status in Indonesian's economic system

The employees' fate in Indonesia is not fortunate and prosperous as other employees from other countries such as Malaysians, Singaporeans, Koreans, and other Asian countries. The employees' fate in Indonesia must be considered to be a serious concern by the employers, the government, and other social elements. With no significant support come to the employees, there will be no significant improvement as well to the employees' prosperity in Indonesia. There are a lot of factors which come to the surface to be causes of the low prosperity level of Indonesian's employees. The number of the wage is not dependably and surely to be permanent, since the concept of daily needs is always dynamic to the life. The most important thing is that "how to understand in fulfilling the employees and their family daily needs with equitability and humanity principles" will come to realization to life.

The Indonesian's employees think that the wage which they accept every month seems not to be enough to fulfill their daily needs. It is always shouted out as a demand when they demonstrate and protest to the government. The employees with the employees union deliver their aspiration through demonstration to fight for their rights in order that they can get serious attention from those who care about them, especially the government who is supposed to take the responsibility to prosper the employees' life, since the government must protect the citizen, prosper the people, and give constitution assurance to the life of the citizen by giving regulations to run the government's democracy which the citizens have already put trust on it. Although the employees' efforts to fight their rights have no end, the luck is still yet on their side. It can be determined by the standard of minimum waging number which is still unable to fulfill the employees and their family daily life. A lot of questions are raised responding to the problem, one of which is that why the standard of minimum waging is considered to be low by the employees in Indonesia.

The crucial problems which have become dilemma to the standard of minimum waging policy which is expected to be able to fulfill the employees and their family daily needs is that the employers and the

government think that the employees have no high level of education, skills, productivity, and other stigmas which can be concluded that the status of the employees is overall less concerned in Indonesian's economy system. They are still in the sub ordinate which is not to be the most important asset to the Indonesian's economy system. As a result, the policy of the standard of minimum waging system to the employees is yet to be done and out from the employees' expectation.

Actually, the employees are the most important elements in a company which means to be important as well to the Indonesian's economy. The presence of the employees determines the economy development of Indonesia. Without the employees, the company will be unable to do production, which means that the employees are rationally and logically important to the system and they cannot be counted as an unimportant thing. In line with the statement, It is better to consider more to the employees' condition. If the employees are considered and prospered, the capacity, skills, and motivation to go to work will be better as well. As a result, the productivity will be increased. In the regulation of employment... "there should be a good relation to all sides so that harmonic situation will be preserved"¹². It will be an irony if the standard of minimum waging policy cannot increase the employees' efforts. That pattern is irrational and opposite to logical and rational thinking.

The phenomenon of the wage which is still low is not only caused by the fewer acknowledgements and status, but also the increasing of the new job seekers number. This condition is actually beneficial for the employers who give job vacancies to them. If an employee does not accept the wage, and s/he quits from the job, the employers do not have to worry since new job seekers will be coming all the time who can replace the previous position. This circle of life always makes the employees' position in the weak side and fragile. Employees are human, and every human must be humanly treated. It is a must that the employees must get a proper payment for everything they have done to their companies. The state must not abandon this continual incident, since... "the state has responsibility"¹³Hans Kelsen said... and "the state must be responsible to the citizens' prosperity"¹⁴.

4. The "physical daily needs" wage paradigm has no improvement, even the regulation has been changed

To decide waging policy ideally must not be taken from one perspective only, but also from many aspects, such as philosophy, norms, history, economy, and socio-anthropology. That waging policy can evade the emerging of other problems. If it is seen from one perspective, the possibility of worse problems of the policy will emerge to the life.

In the history of waging system in Indonesia, there have been many paradigm changes, such as the changing of Minimum Physical Needs to Prosper Living Needs, and then it lastly became Prosper Living Needs. Those changings did not come up by themselves, yet they are the results of comprehensive evaluation to the policy when they were implemented. It is in line with the minimum daily needs paradigm into proper daily needs has surely been discussed deeply to consider the possible consequences and the new paradigm as the best decisions. When the paradigm changing in the waging system in Indonesia has been implemented, the problem is that there is no similar perspective to the essence of the paradigm. A paradigm is born through deep comprehension related to fundamental bases of the employees' standard of minimum waging. The wage is not interpreted as the employees' rights which the companies should give in form of money or others. In proper daily needs definition, it should have valuable fundamental bases which is supposed to be interpreted to the waging system. The wage which is enough to fulfill the proper daily needs is to humanize the human, which is supposed to fulfill not only shelter needs to stay, but also home and sleep which all human need.

The root of the problem which has relation to proper daily needs seems to be interpreted differently from the constitution. In fact, the wage for the employees as the parameter used in the system still refers to the old paradigm, which is to fulfill only the physical daily needs. It can be determined by the indicators which are used in the waging system. All indicators use the lowest levels to wage the employees, such as shelter, food, clothing, education, health, recreation, and others. It implies that the standard of minimum waging policy for the employees is not referred to "the proper daily needs" paradigm as it is recommended by the regulations, yet it is based on the minimum physical needs. If that kind of policy is implemented, it is still the same that human is not human, but human is same as other creatures.

CONCLUSION

The standard of minimum waging policy paradigm in Indonesia is yet to change, which is caused by the less consideration of the government and the employers to enhance the level of employees' prosperity. It is proved by the paradigm which dilutes the emerging of good policy that is oriented to the proper rights of the employees in Indonesia, such as:

1. The standard of minimum waging is still defined as the fulfillment of physical daily needs of a single employee. Even it has changed conceptually from Minimum Physical Requirements, to Minimum Living Needs, and Prosper Living Needs.
2. The policy's orientation about the standard of minimum waging in Indonesia concerns the economic

stability instead of equitability and humanity. The economic stability will save if the employers exist and can exist if the wage is low, yet it is formally legal, even the equitability and humanity principles are abandoned.

3. The standard of minimum waging policy's purpose is not to prosper the employees, yet the employers. If the employers exist, the economic stability will be preserved and the politic stability will be the same.
4. The standard of minimum waging policy's characteristic is unclear and meant to be unclear which makes the national constitution's dream collapsed.
5. The standard of minimum waging policy's form which less concerns the equitability and humanity principles contradicts one regulation to others which also causes the unclear condition of the minimum wage.

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