

## Equitable Wages for Labor Based on Government Regulation Number 36 of 2021 Concerning Wages in Terms of Investment Policy

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### Abstract

*Equitable wages for workers based on Government Regulation Number 36 of 2021 concerning Wages in Review of Investment Policy in Law Number 6 of 2023 concerning Establishment of Government Regulations Substituting Law Number 2 of 2022 concerning Job Creation into Law. Law. Faculty of Law, As-Syafi'iyah Islamic University, 2023. The research context in writing this dissertation is that wages are also an important aspect regulated in labor law. Wages are payments given to laborers/workers in return for a job or seen as doing a job. Wages have a significant impact on investment and the economy as a whole. Wages that are too high can also result in high operating costs for companies and impact their profitability. Therefore, it is important to find the right balance between providing fair wages to workers and ensuring the business continuity of the company. The approach in this dissertation research uses descriptive-analytical legal research methods. The approach in legal research used by the author in this research is a statutory approach associated with a conceptual approach. The data collection techniques used are literature study and data analysis techniques. The research findings explain (1) there are still conflicting articles in the system of labor wage arrangements in Indonesia, (2) normative obstacles related to wages for employers interpreting ambiguous words and phrases and new components that cause legal uncertainty, (3) strategies in forming a wage system model for Social justice for Workers and Employers in the framework of Investment Policy.*

Keywords: *Wages, Investment Policy, Normative Barriers, Wage System Model*

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### I. INTRODUCTION

As a country that adheres to the "welfare state". The Indonesian state is responsible for all lines of life including the economic sector and development to provide maximum public welfare.<sup>1</sup>The concept of welfare has a close relationship with legal protection and social justice.<sup>2</sup>

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<sup>1</sup> Eddy Kiswanto, "Welfare State: Restoring the Role of the State in Social Welfare Development in Indonesia," JKAP (Journal of Public Policy and Administration), 2015.

<sup>2</sup> Djauhari, "The Concept of Pre-Independence Welfare State," Journal of Law XV, no. 1 (2005): 572.

The welfare state concept is the result of state thinking that aims to reduce community suffering such as poverty, unemployment, health problems and so on. Therefore, a country that uses the concept of a welfare state has public policies that are services, assistance, protection or prevention of social problems.<sup>3</sup> The number of poor people in Indonesia in March 2023 amounted to 25.9 million people or 9.36 percent of the total population. This figure is down compared to the previous year of around 26.6 million people, but when compared to before the pandemic the poverty rate this year is still higher.<sup>4</sup>

The 1945 Constitution as a legal guideline states unequivocally in Article 28D paragraph (2) that everyone has the right to work and get fair and decent compensation and treatment in labor relations.<sup>5</sup>

However, the words "fair and decent in employment relations" in the 1945 Constitution do not have a clear meaning which has implications for the problem of fulfilling citizens' rights in the field of employment.<sup>6</sup>

The regulation regarding the party responsible for the implementation of social welfare is regulated in Article 24 of Law No. 11/2009, that the responsibility lies with the Government (implemented by the relevant Minister) and local governments.

The government in this case provides protection for workers through this Job Creation Law. PERPPU No. 2 of 2022 which was passed by the president of the Republic of Indonesia on December 20, 2022 was made in order to implement the decision of the Constitutional Court No. 91/PUU-XVIII/2020 which ordered the need to improve Law No.11 of 2020 concerning Job Creation, and on March 21, 2023 it was passed into law. The government drafted 3 major laws using the omnibus law legislation method, one of which is the Job Creation Law. In the Job Creation Law, there will be many rules that are changed and deleted from several articles in Law No. 13 of 2003 concerning Manpower. The 11 clusters of the Job Creation Law include;<sup>7</sup> Simplification of licensing, investment requirements, employment, ease of empowerment and protection of MSMEs and cooperatives, ease of doing business, research and innovation support, government

<sup>3</sup> Miftahul Huda, *Social Work and Social Welfare: An Introduction* (Yogyakarta: Student Library, 2009).

<sup>4</sup> Statistics Indonesia, "Poverty Profile in Indonesia March 2023," *Statistics*, no. 57 (2023): 1-8, <https://www.bps.go.id/pressrelease/2018/07/16/1483/persentase-penduduk-miskin-maret-2018-turun-menjadi-9-82-persen.html>.

<sup>5</sup> People's Consultative Assembly, "The 1945 Constitution of the Republic of Indonesia (Second Amendment)" (Jakarta, 2000).

<sup>6</sup> Panji Mulkillah Ahmad and Andy Omara, "Interpretation of the Phrase Fair and Decent in Employment Relationship in Article 28D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia," *Law Journal of Gadjah Mada University* (2021): 192-214.

<sup>7</sup> Central Government of Indonesia, "Law Number 6 of 2023 Stipulating Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law."

administration, application of sanctions, land acquisition, conversion of defense agricultural land and other related issues, investment and national strategy projects, and finally economic zones.

The Job Creation Law as a law, is present in addressing a major issue of the Indonesian economy which is getting worse, economic growth which is currently experiencing a slowdown and only reaches a figure in the range of 5% is considered insufficient in avoiding the threat of the Middle Income Trap (MIT). One of the important things that the government should do is to create new policies that encourage investment. In this context, economic growth is considered the basis for improving employment status and increasing income.<sup>8</sup>

In the current situation, the government is faced with various unstable economic conditions such as pandemics, global supply chain disruptions, high inflation, aggressive interest rate hikes, and the threat of recession.<sup>9</sup> According to data obtained by the Central Statistics Agency (BPS), Indonesia experienced a decline in economic growth in 2020 of -2.07 percent. The Indonesian economy in 2020 experienced a deflationary impact or a drastic decline because economic development in Indonesia has a less stable movement. Covid-19 is the main factor that affects this.

The decline also occurred in investment, which initially amounted to 3.25 percent to 1.94 percent. The Indonesian economy was severely affected by this decline. The decline in investment is greater than the effect of reduced employment.<sup>12</sup>

From this description, it is very clear that the formation of a legal product is to strengthen the nation's economy, so that it will provide sufficient employment opportunities for Indonesia. This should be the mainstream in the academic paper of the Job Creation Law. Adrian Sutedi<sup>13</sup>, in his book states that work is part of the human rights of citizens in accordance with Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

## **II. LITERATURE REVIEW**

Based on the background that has been described, the author would like to conduct dissertation research by taking the title: **EQUITABLE WAGES FOR LABOR BASED ON GOVERNMENT REGULATION NUMBER 36 OF 2021 CONCERNING WAGES IN TERMS OF INVESTMENT POLICY.**

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<sup>8</sup> PHAM HONG MANH, HA THI THIEU DAO, and NGUYEN VAN NGOC, "Relationship between Economic Growth and Employment in Vietnam," *Journal of Economics Development* 222, no. October (2014): 40-50.

<sup>9</sup> Erika Feronika Br Simanungkalit, "The Effect of Inflation on Economic Growth in Indonesia," *Journal of Management: Small and Medium Enterprises (SMEs)* 13, no. 3 (2020): 327-340.

### III. METHODOLOGY

The type of research in this study is descriptive-analytical legal research, namely by describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law related to the problem.<sup>10</sup> The method used is normative juridical or commonly known as doctrinal legal research, namely research conducted by examining library materials and secondary data consisting of primary legal materials, and secondary legal materials and using prescriptive research typology, namely a writing intended to provide arguments to solve problems, regarding what should be done. Given that legal science is an applied science, legal research in the context of academic activities must produce prescriptions that can be applied.<sup>11</sup>

The author also uses juridical-empirical methods to support the research. Juridical-empirical research is legal research that contains the enactment or implementation of normative legal provisions directly on each specific legal event that occurs in society.<sup>12</sup>

### IV. RESULT AND DISCUSSION

#### 1. Labor Wage Setting and Investment Policy in Indonesia

##### a. Regulation of Labor Wages in Indonesia

Minister of Manpower Ida Fauziyah said that the substance of manpower regulated in the Perppu which has been passed into law is a step to improve the previous regulation. The government aims to provide labor protection and business continuity to answer the challenges of the development of labor dynamics.<sup>13</sup> The changes to the wage regulations are described in the following table<sup>14</sup>:

**Table 1.** Changes in Wage Regulations in Indonesia

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<sup>10</sup> Robby Alexander, "The Effect of Provincial Minimum Wage on Investment in Indonesia," *Journal of Budget* 5, no. 2 (2020): 2020.

<sup>11</sup> Adrian Sutedi, *Labor Law* (Jakarta: Sinar Grafika, 2009).

<sup>12</sup> Ronny Haniatjo Soemitro, *Legal Research Methods and Jurumetry* (Jakarta: PT Ghalia Indonesia, 1990).

<sup>13</sup> Public Relations of Cabinet Secretariat, "Minister of Manpower: Perpu Cipta Kerja Protects Workers Against Employment Dynamics," Cabinet Secretariat, last modified 2023, <https://setkab.go.id/menaker-perpu-cipta-kerja-lindungi-pekerja-hadapi-dinamika-ketenagakerjaan/>.

<sup>14</sup> Central Government of the Republic of Indonesia, "Law of the Republic of Indonesia No. 13 of 2003"; Central Government of the Republic of Indonesia, "Law (UU) Number 6 of 2023 Stipulating Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law."

No.	Difference	Law 13 of 2003 on Manpower (Labor Law)	Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law)	Government Regulation Number 36 of 2021 concerning Wages (PP Wages)
1	Wage Component	Basic wage, fixed allowances, and non-fixed allowances.	Basic wages and fixed benefits provided to workers/laborers and their families.	<p>a. Wages without benefits;</p> <p>b. Basic wage and fixed allowances;</p> <p>c. Basic wages, fixed allowances and non-permanent allowances; or</p> <p>d. Basic wages and allowances are not fixed.</p>
2	Wage Determination	There are no wage-setting arrangements.	Determined based on outcome and time units.	Determined based on outcome and time units.

3	Sectoral Minimum Wage and Regency/City Minimum Wage	Minimum wages are set at the Provincial, District/Municipal and Sectoral levels. Based on Article 89 of the UUK, each region is granted the right to set their own	a. The Governor shall set the minimum wage province.	Not regulated.
		minimum wage policy at both the provincial level and district/municipality level.	b. The Governor may set the minimum wage district/city.	
4.	Minimum wage determinants	Determined by productivity, inflation, economic growth and marginal effort.	Considering growth variables economy, inflation, and certain indices.	a. Provincial minimum wage Based on economic (purchasing power parity, employment rate, and median wage) and employment conditions
				b. District/city minimum wage Based on economic conditions, employment, and certain conditions (economic growth and inflation in the district/city concerned).

The Central Government establishes a wage policy as one of the efforts to realize the right of workers/laborers to a decent livelihood for humanity. T

wage policy as intended is a national strategic program. (Article 4 paragraphs (1) and (2) of the Wage Regulation). The wage policy is aimed at achieving an income that meets a decent livelihood for humanity. The clause "income that meets a decent livelihood for humanity" is the amount of receipt or income of Workers/Laborers from the results of their work so as to be able to meet the reasonable living needs of Workers/Laborers and their families The income referred to is obtained in the form of Wages; and non-Wage income. (Article 6 of Wage Regulation)

**b. Investment Policy Arrangements in Indonesia**

**2. Evaluation of Factors affecting Investment in Indonesia**

Factors that affect investment in Indonesia include:

a. The imposition of interest rates in Indonesia.

In general, the likely effect of a rise in interest rates is that it can suppress credit growth as higher interest rates tend to make loans more expensive for customers. Rising interest rates may also make companies feel less motivated to take out credit and continue investment or business expansion. The increase in money supply that occurs in Indonesia will have an impact on the policies that will be taken by Bank Indonesia. Bank Indonesia will tend to respond to an increase in money supply by lowering interest rates in order to increase consumption and investment activity. Currently, the interest rate (SBI) is still quite low at 6%.

b. National income per capita

Per capita income at the national level and GRDP per capita at the provincial and district or city levels. Currently, per capita income is still at 4,400 US dollars (around Rp 70,000,000 per person per year). With this per capita income. Indonesia has entered the class of *upper medium income country*. In 2019 Indonesia entered the ranks of *upper middle income* countries. Then in 2020-2021 Indonesia fell to a *lower middle income country*. The main cause of the decline was because at that time the COVID-19 pandemic hit the whole world, including Indonesia. However, in 2022 Indonesia re-entered the *upper middle income country* level.

c. Minimum wage.

The relationship between investment cannot be separated from the minimum wage factor determined by a country. Minimum wage has a negative and statistically significant effect on investment. This means that any increase in the



minimum wage price will cause a decrease in the value of investment. Vice versa, if the minimum wage price is low, it will cause an increase in the value of investment.

d. Facilities and infrastructure.

Investment is certainly inseparable from supporting facilities and infrastructure, many damaged roads, collapsed bridges, and old and inadequate ports are some small examples of poor facilities and infrastructure that interfere with the investment climate.

e. Licensing Bureaucracy.

For entrepreneurs, time is money, efficiency is life. A fast and efficient bureaucracy is what all entrepreneurs aspire to. Convolved permit processing is feared to disrupt the course of business activities carried out. Sometimes due to the convoluted licensing bureaucracy, entrepreneurs/investors take shortcuts, namely giving bribes or gratuities to related officers and officials. This indirectly provides an opportunity for corruption.

f. Human Resources.

In addition to the development of infrastructure facilities and infrastructure, human *development* by the government is also important.

### 3. Policy to Increase Investment in Indonesia

The Indonesian government has policy directions that support Investment, including:

a. Simplification of Regulations

In the appendix of the Presidential Regulation of the Republic of Indonesia No.18 of 2020 concerning the National Medium-Term Development Plan (RPJM), there are five presidential directives, one of which is the simplification of regulations with an *omnibus law* approach (merging several provisions of laws into one law by canceling previous laws). This regulatory simplification has been carried out through the ratification of Law (UU) Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, one of which contains rules for simplifying business licensing and investment requirements. Previously, there were many incidents of foreign investors withdrawing due to complicated regulations, so the government through the law intends to shorten regulations for foreign investors to accelerate investment.

b. Establishment of Investment Management Institution

Law (UU) Number 6 of 2023 concerning the Stipulation of Government



Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation also regulates the establishment of an Investment Management Institution that functions to manage investments and aims to increase and optimize the value of investments managed in the long term in order to support sustainable development. The LPI is tasked with planning, organizing, supervising and controlling and evaluating investments.

c. *Tax Holiday and Tax Allowance Policy*

The government also issued *tax holiday* and *tax allowance* policies in the form of tax reduction facilities to attract foreign investors. The *tax holiday facilities* stipulated in PMK 35/2018 include 100% *tax holiday* without range, the higher the investment the longer the tax holiday, 50%.

income tax for 2 years since the tax holiday is completed, *pioneer* industry criteria expanded to 17 industry coverage with 153 types of business fields. This policy will increase revenue from investment, but reduce tax revenue. However, on the other hand, this policy can also create more jobs, increase state income, encourage equitable growth in regions in Indonesia, and open access to foreign markets.

d. *Improving the Quality of Human Resources*

Improving the quality of human resources as one of the important aspects of accelerating investment. This will be realized through population control policies and strengthening population governance, strengthening the implementation of social protection, improving health services towards universal health coverage, increasing equitable distribution of quality education services, improving the quality of children, women and youth, alleviating poverty, and increasing productivity and competitiveness. Excellent human resources are expected to be able to meet the needs of the workforce.

e. *Infrastructure Equity*

The government is also improving infrastructure equity with an infrastructure budget allocation in the 2024 State Budget of IDR422.7 trillion. This value is up 5.8% from the projected realization of the 2023 infrastructure budget of Rp399.6 trillion. The budget allocation for infrastructure equity is directed at the cost of building regional roads, building the Archipelago Capital, renovating stadiums, and building educational and health facilities and infrastructure.

**4. Socially Equitable Wage System for Workers and Employers in the Framework of Investment Policy**

A wage determination system that reflects social justice for workers and employers

is a wage payment system that takes into account the ability of workers, can meet the needs of workers and their families, pay attention to humanity and justice for workers, and still consider the company's ability to sustain the company's activities so that social justice for workers and employers can be realized. There are several efforts that can be made by the government in establishing a wage system that is socially just for workers and employers, among others:

**a. Efforts to Determine the Principles of Wage Law**

Legal principles that function as a philosophical basis that is applied dogmatically in legislation to determine policy and legal certainty. Some of the wage principles that have been regulated in the Job Creation Law and Wage Regulation include the principle of balance in work (Article 84 of the Job Creation Law), the principle that workers/laborers have the right to a decent livelihood for humanity. (Article 88 paragraph (1) of the Job Creation Law), Minimum Wage Principle, employers are prohibited from paying wages lower than the minimum wage provisions, (Wages are not paid if workers/laborers do not do work or called the *no work no pay* principle. (Article 40 of Wage Regulation)

**b. Efforts to Establish a Wage System Based on Social Justice**

From the worker's side, wages are a right that is generally seen from the amount, while from the employer's side, it is generally associated with productivity. This is still a problem that is difficult to bridge. The problem stems from the desire to earn high wages, while productivity is still low due to inadequate levels of education and skills. When viewed from the interests of each party, this is a dilemma for the government as part of the Tripartite to overcome, namely to intervene to harmonize existing industrial relations.<sup>18</sup>

Provisions mandating the determination and payment of wages to workers must reflect the values of justice and a decent living for workers and their families. These provisions include:

**5. Constitution of the Republic of Indonesia 1945**

Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every citizen has the right to work and a livelihood that is decent for humanity. In addition, Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to work and to receive fair and appropriate compensation and treatment in employment.

**1) Law No. 39/1999 on Human Rights (HAM)**

Article 28 of Law No. 39/1999 on Human Rights stipulates that:

- a. Every citizen, in accordance with his or her talents, skills and abilities, shall have the right to decent work.
- b. Everyone has the right to freely choose the occupation he prefers and to fair conditions of employment.
- c. Every person, whether male or female, who performs the same, comparable, equal or similar work, shall be entitled to the same wages and terms of employment.
- d. Every person, whether male or female, in performing work commensurate with his or her human dignity shall be entitled to a fair wage commensurate with his or her achievements and capable of ensuring the survival of his or her family.

**2) Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law)**

Article 88 of the Job Creation Law reads:

- a. Every worker/laborer is entitled to a livelihood that is decent for humanity.
- b. The Central Government stipulates wage policies as an effort to realize the right of workers/laborers to a decent livelihood for humanity.

**3) Government Regulation Number 36 of 2021 concerning Wages (PP Wages)**

Article 2 of the Wage Regulation reads:

- a. Every worker/laborer is entitled to a livelihood that is decent for humanity.
- b. Every Worker/Laborer has the right to obtain equal treatment in the application of the wage system without discrimination.
- c. Every worker/laborer has the right to receive the same wage for work of equal value.

**6. Components of Minimum Wage in Equitable Wages**

So far, Indonesian labor regulations have used the Decent Living Needs Standard (KHL) in determining the Minimum Wage. The components of decent living needs (KHL) are the components of the fulfillment of daily living needs needed by a single worker for one month. Before the provincial minimum wage is set, the wage council consisting of representatives of trade unions, employers, government, and neutral parties from academia will conduct a survey of decent living needs (KHL) which is based on the components of living needs and the KHL standardization mechanism to determine the Minimum Wage.

The legal principle regarding KHL is clearly stated in Article 28D paragraph (2) of the 1945 Constitution, that compensation for the results of work in labor relations between workers and employers must meet the needs of a decent life and fair treatment.

However, the Standard of Living Needs (KHL) component was removed after the stipulation of the Job Creation Law and the Wage Regulation. The wage regulation does not recognize the component of the Standard of Living Needs (KHL). Previously, KHL, which was regulated in Minister of Manpower Regulation Number 18 of 2020 concerning Amendments to Minister of Manpower Regulation Number 21 of 2016 concerning Decent Living Needs, stipulated 64 components of decent living needs in the 2020 periode.

## V. CONCLUSION

Based on the description as presented in the previous chapters, the following conclusions can be drawn:

1. There are still conflicting articles in the labor wage regulation system in Indonesia. Government Regulation No. 36 of 2021 on Wages should be formed as a derivative regulation of Law No. 6 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law.
2. There are normative obstacles related to wages for employers and workers in Law No. 6 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law), namely the interpretation of ambiguous words and phrases and new components that cause legal uncertainty.
3. Some of the strategies in shaping the wage system model for Social Justice for Workers and Employers in the framework of the Investment Policy include: decent wages, consideration of business capabilities and development of umkm, minimum wage variables that are relevant to the times, active participation and transparency in the formation of regulations, appreciation of productivity and skills of workers/laborers, protection of vulnerable workers, performance evaluation systems and active supervisory institutions, effective law enforcement, commitment to anti-discrimination principles, and education and training of workers/laborers to increase productivity.

### **Suggestions**

The suggestions that the author conveys to encourage the improvement of the situation related to the problem studied are as follows:

1. The DPR, government, relevant institutions, and legal experts can conduct intensive coordination to ensure that all regulations related to wages are in line and do not contradict each other. In addition, it is advisable to make more detailed and precise derivative regulations as implementing rules of Law No. 6 on Stipulating Government Regulations in Lieu of Law No. 2 of 2022 on Job Creation into Law.
2. The government can issue more detailed derivative rules to help understand and apply the provisions in the law more precisely. The derivative rules are expected to evaluate and clarify the definitions of words and phrases that are considered ambiguous or can lead to diverse interpretations and can ensure that the terminology used in the law has a clear and specific meaning so as to achieve legal certainty that can support the investment climate.

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