



Legal Protection for Workers for Late Payment of Wages: The Principles of Justice Perspective

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ABSTRACT

This article intends to analyze and review employment agreements that protect workers from late wage payments and oversight of labor engagement over late wage payments for workers. This research is normative juridical research. Legal materials used primary, secondary, and tertiary legal materials. The findings showed that the realization of the principle of justice in working relationships is created through the rights and obligations of the parties to mutual reciprocity (balanced). It contained in the employment agreement, including the imposition of fines as sanctions to avoid arbitrariness on the part of employers. The involvement of labor supervision must be optimal to realize the working relationship by the principle of justice. This research implied that it is mandatory by law in a work bond to enter into a collective agreement as a form of accountability between the entrepreneur and the workforce. It is to protect the rights of each party.

A. Introduction

The protection of workers is an integral part of the protection of citizens as a state obligation. The right to a prosperous life for everyone, including workers, is a protected human right that anyone must respect and should not be harmed. In this regard, it is necessary to fulfill the principle of justice in the life of the nation

and state, which is reflected in every process of state administration and every citizen's life activities, including workers. As a form of government guarantees on the needs of citizens to obtain employment, then in Article 27 paragraph (2) of the Constitution of the Republic of Indonesia of 1945, after this called the 1945 Constitution, contains "Every citizen is entitled to a job and a decent livelihood for humanity." Concerning these protections, workers can work quietly or decently to increase production and welfare for a better quality of life.¹

The realization of the principle of justice in a working relationship, created through the rights and obligations of the parties to mutual reciprocity contained in the employment agreement, namely to carry out their respective rights and obligations in a balanced manner.² Similarly, in the payment of wages in protecting the interests of workers, the agreement is clearly stated.³

A Delay in payment of wages is a violation of human rights because it causes losses for workers who experience delays in meeting their needs. Workers and their families are very dependent on the wages they receive to meet the needs of clothing, food, housing, and other needs.⁴ In addition, delayed payment of wages will also be a barrier for workers to live balanced because workers' income becomes the primary source for prosperous living.

To date, payment of wages. Nurul Listanto argued relates the method of calculation and payment.⁵ Tambunan analyzed also discusses the effectiveness and efficiency in paying the wages.⁶ H. Kurniawan S Rudiarto explained anticipating late wages using the Alogaritma Linear Search.⁷ Yetniwati examined the regulations related to the payment of wages based on the principle of justice.⁸ The previous studies illustrate that few scholars still discuss the late payment of

¹Fathul Muin, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia (Tinjauan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia)", *Jurnal Cita Hukum*, Vol. 3, No. 1, 2015.

²Budi Santoso and Ratih Dheviana Puru, "Eksistensi Asas Kebebasan Berkontrak dalam Perjanjian Kerja", *Jurnal Arena Hukum*, Vol. 6, No. 3, 2012.

³Nono Hartono, "Analisis Ekonomi Islam terhadap Pemenuhan Upah Layak Tenaga Kerja Industri Batik (Studi Kasus: Sentra Batik Kecamatan Plered Kabupaten Cirebon)", *Jurnal Ekonomi Syariah Teori dan Terapan*, Vol. 6, No. 4, 2019.

⁴Oki Wahyu Budijanto, "Upah Layak Bagi Pekerja/Buruh dalam Perspektif Hukum dan HAM", *Jurnal Penelitian Hukum De Jure*, Vol. 17, No. 3, 2017.

⁵Nurul Listanto and Sarwono Hardjomuljadi, "Analisis Faktor Penyebab Keterlambatan Pembayaran Kontraktor Kepada Subkontraktor Pada Proyek Gedung Bertingkat", *Jurnal Konstruksia*, Vol. 10, No. 1, 2018.

⁶Lyandru Togumulia Tambunan, "Analisis Sistem Informasi Akuntansi Penggajian dan Pengupahan Secara Efektif dan Efisien Pada Rumah Sakit Umum Daerah", *Jurnal Ilmiah Maksitek*, Vol. 5, No. 4, 2020.

⁷Hendra Kurniawan and Sabar Rudiarto, "Aplikasi Penghitung Upah Lembur Berdasarkan Jumlah Waktu Lembur dengan Menggunakan Algoritma Linear Search", *Petir: Jurnal Pengkajian*, Vol. 12, No. 1, 2019.

⁸Yetniwati, "Pengaturan Upah Berdasarkan atas Prinsip Keadilan", *Jurnal Litigasi*, Vol. 18, No. 2, 2017.

wages. Therefore, this study aims to complement existing research by focusing on two issues: legal protection for workers who experience delays in paying wages. Second, Employment Supervision Involvement in the form of agreements. This research contributes to providing insight to employers and workers about the importance of collective labor agreements that each party has agreed. It is done to avoid legal problems in the future. In addition, the government as a supervisor must ensure the implementation of the principle of justice in providing work wages.

This description. Arguments related to delays in payment of wages as regulated in the Legislation can be resolved through the court. However, in several cases of delay in payment of wages that end in settlement of industrial relations, the worker/ laborer is in a weak position or is disadvantaged by the entrepreneur due to the absence of a clause containing a fine for late payment of wages by the employer.

B. Method

As a form of legal certainty for workers, collective labor agreements are rarely made and carried out by employers. This study explores how legal protection for workers in maintaining their rights in wages is often paid late. At the same time, the government has given a signal about a work agreement. The employer is obligated to include a clause regarding wages and the delay in the agreement. This study uses normative juridical.⁹ Data is collected through study materials in the form of library research. The data collected is analyzed using contestation to understand judges' implementation in making decisions regarding legal protection for workers.¹⁰

C. Finding and Discussion

1. Protection of Workers Against Late Payment of Wages In Employment Agreement

The protection of workers is an integral part of the protection of citizens as a state obligation. Fundamental rights as human beings must be fulfilled by getting protection wherever they work to get their fundamental rights. So that they get decent life as a human being by Article 28 D paragraph (2) of the 1945 Constitution contains the rule that "Everyone has

⁹Soerjono Soekanto, 2019, *Metode Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Rajagrafindo Persada, Depok.

¹⁰Peter Mahmud Marzuki, 2019, *Metode Penelitian Hukum*, Prenadamedia Group, Jakarta.

the right to work and get fair and decent compensation and treatment in working relationships."¹¹

In principle, the parties express their will in a treaty-based on an employment relationship's particular purpose or purpose. The treaty's purpose is based on agreed will in the form of a covenant in a series of words containing promises or capabilities spoken or written. The agreement has one party binding itself to the other party.¹² The essence of a treaty is the agreement made will become law for those who make it. So that the parties must respect the substance or content of the treaty as it is worthy of an Act. It is referred to as the basis of binding the contract (*pacta sunt servanda*) concluded in Article 1338 paragraph (1) *Burgerlijk Wetboek* after this called BW13. The agreement is not enough to use only unwritten media and must be made in written form. The parties can use a written agreement to supervise the other party to obey and submit to the agreement's contents. The disobedience of one party to the content of the employment agreement will harm the other party's interests.¹⁴

The agreement in question is an employment agreement between workers or employers containing the parties' terms of employment, rights, and obligations. It gives rise to an employment relationship based on the employment agreement, which has elements of employment, wages, and orders as contained in Article 1 number 15 of Law No. 13 of 2003 Employment Law. The number of rights and obligations of each party in a working relationship must be balanced, which is the right of workers is the obligation of employers. Conversely, the rights of employers are the obligations of workers.

A balance should be reflected in an employment agreement to prevent the unfairness of either party to the employment agreement. The balance will create justice, where the essence of justice is the fulfillment of everything that is its right and duty. Justice requires that action be proportionate, a government regulation appropriate, balanced, in harmony with the rights of every person.

¹¹Fathul Muin, *Op. Cit.*

¹² Sokhib, "Aspek Hukum atas Tuntutan Tenaga Kerja terhadap Perusahaan Menurut UU No. 13 Tahun 2003 tentang *Ketenagakerjaan*", *Jurnal Justisi*, Vol. 1, No. 1, 2019.

¹³Novi Ratna Sari, "Komparasi Syarat Sahnya Perjanjian Menurut Kitab Undang-Undang Hukum Perdata dan Hukum Islam", *Jurnal Repertorium*, Vol. 4, No. 2, 2017.

¹⁴ Aryo Dwi Prasnowo and Siti Malikhatun Badriyah, "Implementasi Asas Keseimbangan Bagi Para Pihak dalam Perjanjian Baku", *Jurnal Magister Hukum Udayana*, Vol. 8, No. 1, 2019.

Labor problems in Indonesia related to unbalanced labor relations between employers and workers in labor agreements often occur. Unbalanced in making agreements and the climate of increasingly tight business competition causes companies to make the cost of production efficient. Thus the company seeks to save expenses in financing human resources (HR) working in the company concerned.¹⁵

Concerning the theory of justice, if it is associated with the existence of labor, then the position of workers is in a weak position compared to the position of employers. Thus, justice aims to balance the position of the two. The balance of both positions can be measured on the fairness of the distribution of rights and obligations. The worker should work by the employer's orders and the worker's rights to compensation by his services or obligations. The rights of employers to get satisfactory work results from workers, while the obligation is to pay wages or workers' rights.¹⁶

The rights theory of justice in the context of the working relationship is Aristotle's theory of justice, namely the fairness of distribution that is the distribution following the value of performance results, namely the value of its liability, namely its value by employers who pay wages. The balance between rights and obligations is a condition of upholding justice itself, so injustice will arise if one party does not carry out the obligations or does not fulfill the rights of others.¹⁷

Based on the case of government regulation to answering this study, researchers examined the case of the continued payment of wages that have permanent legal force to workers on behalf of Cecep Gumilang and Fransisca Fitri Iswayningsih against PT Media Favorit Internasional. The case was registered at the Industrial Relations Court at the Central Jakarta District Court on September 20, 2018, with registration number 269 / Pdt. Sus-PHI / 2018 / PN. JKT. PST, which was decided on February 25, 2019.

The legal facts show that the imposition of fines is not explicitly formulated in employment agreements, company regulations, or collective labor agreements. Therefore, Article 53 government regulation on wages as

¹⁵Kadek Surya Diatmika, Made Sarjana, and Ketut Markeling, "Perlindungan Hukum terhadap Perkerja Outsourcing Berdasarkan Perjanjian Kerja (Studi Kasus: PT. Bali Dana Sejahtera Denpasar)", *Jurnal Ilmu Hukum*, Vol. 4, No. 3, 2015.

¹⁶Junan Gunawan Panjaitan, "Analisis Yuridis Upah Pekerja dalam Proses Pemutusan Hubungan Kerja Berdasarkan Putusan Hakim", *Journal of Law and Policy Transformation*, Vol. 4, No. 1, 2019.

¹⁷Wandi Arifin and Ridwan Arifin, "Asas Keadilan Upah Guru Honorer dalam Perspektif Hukum", *Riau Law Journal*, Vol. 3, No. 1, 2019.

amended in Article 59 paragraph 1 of Government Regulation No. 36 of 2021 can be considered to invalidate the provisions. Article 95 paragraph 2 of the Labor Law as amended in Article 88A paragraph 6 of the Copyright Law, which contains the rule that "Employers who due to intentionality or negligence result in delays in payment of wages, are fined by a certain percentage of workers' wages."

In this case, the Panel of Judges based its consideration on Article 53 government regulation on wages as amended in Article 59 paragraph 1 of Government Regulation No. 36 of 2021, which judged that throughout the trial. There was no evidence from the parties that showed any arrangements for the imposition of fines for the negligence of late payment of wages. Thus, there is insufficient evidence to grant the plaintiff's claim to impose late wage fines; therefore, the plaintiff's claim is not legally reasonable and deserves to be rejected.

The court's ruling provides an idea that the legal protection of workers for late payment of wages through the imposition of fines against employers as a form of the principle of justice can only be obtained through agreements between workers and employers. Regarding delays in payment of wages, whose formula must be regulated explicitly in work agreements, company regulations, or collective work agreements. A labor agreement is so important. So that, to provide legal protection reasonably to workers for late payment of wages, there must be an agreement on the imposition of fines as stipulated in the formulation of labor agreements, company regulations, or collective labor agreements.

2. Employment Supervision Involvement

The involvement of labor supervision is an effort to prevent potential conflicts in industrial relations disputes. It is one form of legal protection provided by the government to prevent violations before the occurrence of violations. Preventive legal protection aims to protect workers through Legislation. It covers various aspects of employment, such as protections regarding welfare, health protection, occupational safety protection, and legal protection in association, given the rampant dangers, abuses, or inequalities caused by the agreement that are very detrimental to workers. With legal

protection, it is expected that workers can work quietly to increase production and welfare for a better quality of life.¹⁸

According to researchers, optimization of employment coaching and supervision is one of the government's preventive efforts through the Directorate General of Employment Development and Supervision under the Ministry of Manpower, which needs to be optimized for employee coaching and supervision.

Coaching, in general, is an activity of briefing and mentoring to achieve specific goals. In the field of employment, the goals to be achieved include the protection of labor. In particular, in the context of law enforcement as described in Article 1 number 14 of The Minister of Manpower Regulation No. 33 of 2016 concerning The Procedure of Supervision of Employment from now on referred to as Minister of Manpower Regulations No. 33 of 2016 contains the rule that "coaching is a series of activities carried out by labor supervisors to improve the understanding and ability of workers, employers, administrators, or members of labor institutions on laws and regulations."

Employment supervision is a community function of the employment administration in International Labour Justification that ensures the implementation of labor regulations in the workplace. The primary purpose is to convince social partners of the need to review workplace employment rules and their interests through prevention, education, and law enforcement measures.

Labor supervision is the most crucial device in designing, encouraging, and contributing to developing a culture of prevention that covers all aspects of employment such as industrial relations, wages, working conditions, occupational safety, and health and problems related to employment social security. Further, as explained in Article 1 number 9, Minister of Manpower Regulations No. 33 of 2016 contains the rule that "Employment Supervision is an activity to supervise and enforce the implementation of laws and regulations in the field of employment."

The implementation of labor supervision is carried out through several stages. It is as explained in Article 9 Minister of Manpower Regulations No. 33 of 2016, which contains the rule that:

¹⁸Yuhaeni, "Implementasi Politik Hukum Kaitannya dengan Fungsi Pemerintah dalam Penetapan Upah Pekerja dalam Perspektif Asas Keadilan dan Asas Kepastian Hukum", *Jurnal Soshum Insentif*, Vol. 3, No. 1, 2020.

- (1) The implementation of labor supervision is carried out through the stages of: (a) Preventive education is a coaching activity as a preventive effort through disseminating Employment Norms, technical advisory, and mentoring. (b) Repressive non-judicial is a forced effort outside the court institution to meet the provisions of labor laws and regulations in the form of a Memorandum of Examination as a warning or a statement of ability to comply with labor laws and regulations on examination and/or testing. (c) Judicial repressive is a forced effort through the court institution by conducting an investigation process by the labor supervisor.
- (2) The implementation of Labor Supervision is carried out through activities: Construction, Inspection, Testing, and/or Investigation of Employment Crimes.

Regarding these provisions, one of the stages of the implementation of labor supervision is preventive educative. Coaching activities are carried out at this stage to improve compliance with labor norms through technical advisory activities, socialization, training, consultation meetings, discussions, and mentoring. It is explained in Article 17 Minister of Manpower Regulations No. 33 of 2016.

At this preventive educational stage, it is necessary to socialize and assist workers and employers related to the content contained in the labor agreement to create a balance of rights and obligations and educate them about the importance of an agreement. The essence of an agreement will become law for those who make it. Furthermore, primarily related to late payment of wages, as in this study, socialization and assistance regarding the clause of the imposition of fines for late payment of wages are very important. Considering that there are inconsistencies in the provisions' laws and regulations, with optimal socialization and assistance, it is expected that both workers and employers know that the imposition of late payment of wages must be done contained in the employment agreement.

Legal protection for workers for late payment of wages through the imposition of fines on workers for late payment of wages can only be obtained through an agreement in the form of a collective work agreement. Starting from the ratio of the Panel of Judges on the first PHI case to the fourth PHI case mentioned above, the formulation of a work agreement is so important. So that, to provide proper legal protection to workers/ laborers for late payment of wages, there must be an agreement on the imposition of fines.

We are looking at the legal basis used by the Panel of Judges in deciding the case, that there are inconsistencies in the provisions regarding late payment of wages. This condition has been *lex superior derogate legi inferior*, i.e., higher regulations override lower laws and regulations. But in reality, the principle is not regulated and still refers to

Article 53 Government Regulation on Wages as amended in Article 59 paragraph 1 government regulation No. 36 of 2021 and the exclusion of Article 95 paragraph 2 of the Labor Law as amended in Article 88A paragraph 6 of the Copyright Law. Thus, the consequences of this inconsistency can cause conflict, including conflicts over the imposition of fines for late payment of wages, as discussed in this study.

If there is a delay in the payment of wages for workers, are: First, workers who experienced delays in payment of wages may file a lawsuit for industrial relations disputes, which previously had to be resolved through bipartite negotiations formally. Second, Deliberation to reach a consensus. It is referred to in article 3 paragraph 1 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The types of industrial relations disputes related to the implementation of work agreements are rights disputes.

Second, there is no realization of the principle of justice in working relationships. If there is a delay in paying workers' wages, the principle of justice will not be realized. Such injustice can be seen in conditions where workers/laborers have carried out orders, while employers do not pay wages on time and are not subject to the consequences of paying a fine as a sanction.

Third, injuring the welfare of workers. Wages are one indicator of the creation of worker/ labor welfare. If there is a delay in the payment of wages, it will injure the welfare of workers—considering that wages are used to meet the necessities of life. In addition, if welfare is not created, it will impact the performance and final output of the company. Thus, employers are expected to pay wages according to the agreement, and workers carry out their orders or obligations properly to create prosperity.

D. Conclusion

Work agreements protect workers from delays in payment of wages in the form of fines if stated in the work agreement as the agreement is a source of law for the parties who have jointly bound themselves. The rights and obligations of each party are clearly stated. As an institution in charge of supervising, the government has a role in creating justice through supervision of work contracts made by employers.

This research is focused on the form of protection for workers in carrying out their obligation. This protection is limited to protection in work safety and granting rights in the form of payment of workers' wages. This research is limited; without limiting the scope of the research, it will be difficult to understand the imposition of sanctions in the late payment of wages.

Employment agreements protect workers against delays in payment of wages in the form of fines when contained in the employment agreement. The balance will create justice, where the essence of justice is the fulfillment of everything that is its right and duty. Justice requires a proportionate, balanced action in harmony with the rights of every person contained in the employment agreement because the essence of an agreement is a law to those who make it. The parties must respect the substance or content of the treaty as it deserves a law. The involvement of labor supervision needs to be optimized so that employers and workers know that the imposition of late payment of wages must be contained in the employment agreement. This study recommends that the employer include a clause in the agreement containing the payment of wages. This clause is essential considering that it relates to the principle of justice, which is also the workforce's right. In addition, with this clause, workers who are always in a "weak position" can get legal certainty when problems occur, especially regarding delays in paying wages

The limitation of this study is related to the dualism of the Government Regulation of fines for payment of wages. There are two conflicting regulations in paying fines. It becomes a problem in court in Government Regulation sanctions for entrepreneurs if later there is a delay. It is hoped that further research will discuss the Government Regulation's dualism in providing fines for payment of wages.

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