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"Critical Analysis of the Minimum Wages in Order to Achieve Substantive Justice"¹

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Abstract:

Everyone needs income to meet their needs. Determination of minimum wage for workers always rises social conflict. There is a sharp conflict of interests between employers and workers in determining the minimum wage. Workers demands high wages, but employers tend to keep the wages low. At the beginning of 2012, the Bandung State Administrative Court verdict that defeat Apindo's claim on the revision of Minimum Wages caused a labour strike and this action was followed by the enclosing of highway. The purpose of this study was to analyze whether the law on the minimum wage has reflected the substantive justice? The research method used was sociolegal. This study discusses whether the law on minimum wage can be a legal problem solving for workers to achieve welfare. Has the law on minimum wage been in line with ILO Convention No.131? Have the court's decisions on the minimum wage shown substantive justice? The results of discussion show that the law on minimum wage has not served as legal problem solving yet. Its substances, decent living components as the objects on minimum wage, have not been in accordance with the ILO Convention No. 131. The authority of the Wage Councils (tripartite: workers, employers, government) has not been maximal for only giving recommendation. Procedure on the formulation of minimum wage has not applied the principle of transparency yet. The impact of unfavorable wage system was the action chosen by the labor to strike and shut down the highway as a form of shopping forum. There are two recommendations; the first is by revising the substance of decent living components in the minimum wage. The second is by revising the procedure in determining the minimum wage based on the principle of transparency.

Keywords: minimum wage, decent living components, principles of transparency, substantive justice.

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Introduction

Labor conditions in Indonesia are closely related to the labor market. According to the population census of 2010, the population of Indonesia are 237 641 326 people (<http://www.bps.go.id>). In August 2012, the total labor force are 120.4 million people. Number of people who worked are 110.8 million people. Unemployment Rate / TPT (ratio between the number of job seekers to the labor force) by educational level in Indonesia in August 2012 reached 6.14 percent (Official Statistics, No.75/11/Th. XV, 5 November 2012). The data shows the imbalance between the employment ratio and the number of available labor, this causes high competition for jobs. As a result, employers tend to provide labor the minimum wages to gain their higher profit.

Wage as a source to fulfill the living cost. Everyone needs income to meet their needs (food, clothing and shelter). Low wage in Indonesia, often said to be an attractive factor for investors. In contrast to the Political and Economic Risk Survey (PERC) in 2002. Low wage is not an important factor for investors to invest in Indonesia. These factors are:

(easiness in starting a business, whether there are or aren't any discrimination against new foreign investment, equal treatment to foreign investors that have involved in the local businesses, transparency in investment approvals and permits. (Un)Friendly immigration policies, a mechanism for investors to complain to the government, as well as the level of responsiveness (sensitivity) of government in giving the feed back to investor complaints) (<http://www.unisosdem.org>).

PERC parameters shows that low wage is not a main determinant for the investors to come in Indonesia. There are a tendency that the investor prefer investing in China than Indonesia. The first reason is for low work ethic and there is no legal certainty.

Work ethic Indonesia were the worst in Asia, that is at 7.50 (from number 10 best and worst zero as possible). In comparison, China (3.75), Hong Kong (2.81), India (6.75), Japan (1.50), Malaysia (6.00), Philippines (6.20), Singapore (3.00), South Korea (1.50), Taiwan (3.71), Thailand (6.00) and Vietnam (5.75).

Law enforcement, the position of Indonesia is reflected in the point of 9.83, Australia (1.08), China (8.33), Hong Kong (2.81), India (7.00), Japan (3.67), Malaysia (5.86), Philippines (7.75), Singapore (1.70), South Korea (5.00), Taiwan (6.33), and Thailand (7.78). ([Http://www.unisosdem.org](http://www.unisosdem.org)).

The survey illustrated that it was in line with the opinions of Theo F Toemion, which states that the factors of safety, legal uncertainty, and more influential political risk become the major arguments of investor to invest their capital in Indonesia.

The different interest in determining the minimum wage. As a protecting effort of workers' wage, a comprehensive minimum wage is determined. There is a conflict of interest between employers and workers in determining the minimum wage. For workers, the wage are to meet their needs and prosperity. Workers assert higher wage. On the contrary, employers see wage as a part of the cost of production. There is definitely a tendency to suppress the wage to minimum rate. Fact, the cost of production is the largest hidden costs or extortion. Recognized by Sofjan Wanandi, the cost can reach 10-12 percent of the cost of production. Hidden costs are the result of weak supervision (<http://www.apindo.or.id>). The amount of minimum wage does not match to the GDP. Indonesia is ranked 16th in the world in terms of GDP, but 69 in terms of wages. ([Http://www.industriall-union.org](http://www.industriall-union.org))

In terms of socio-economic position of the workers are not free, working conditions are determined by the employers (Joseph. E Stiglitz, 2007:6). This situation requires government intervention. One of the government protection to workers is by determining minimum wage. Protection to worker' wage is derived from Article 27 paragraph (2) jo. Article 28 D paragraph (2) UUD'45. Constitutional protections against wage workers should be embodied in the legislation. Unfortunately, the law on minimum wage is still not providing protection for workers.

Minimum wage as a cause to strike solidarity. The determination of the minimum wage each year end always brings solidarity strike / social action. Likewise, when a worldwide celebrate Labor Day that falls on May 1 (May Day). There are always a slight different interest between workers and employers in determining the minimum wage. Frankly speaking, the minimum wage is not sufficient to meet the minimum cost of living. A lot of workers are forced to get another side job after finishing their work hour to meet end needs. As an example, Jamila, workers at the cigarette factory in East Java, forced to work as a massager at night for additional needs (Surya Tjandra, 2006:211). Some people feel socially frustrated and tend to be anarchists.

According Hajrijato, one of contributing factors is the injustice in natural manufacturing. Indonesia is rich in natural resource, but we dont have a pro-poor management (<http://www.republika.co.id>).

"Nglurug" culture has been used as a wrong tool to fight for the workers' demand to "reject the low wages". In early 2012 Bandung State Administrative Court decision that wins Apindo lawsuit about revision on minimum wages, causing disillusionment of workers, resulting in workers' strike and enclosing the highway (<http://gagasanhukum.wordpress.com>). Based on the illustration above, then comes the issue of whether the rule of law on the minimum wage reflects the substantive justice. Of this issue, conducted studies on the minimum wage law, in terms of substance and procedure, and court decisions on the minimum wage is necessary to do.

Research of ¹Methods

The research method used was sociolegal, that is a legal research using social methodology in a broad sense. It is sn alternative approach to evaluate the doctrinal study of law (especially the minimum wage). Steps taken in this study are a textual study, by analyzing the legal rules and policies critically then analyzing and explaining the meaning and the implications of legal subject. Whether the rules or policies are favorable or disadvantage to particular groups (Sulistyowati Irianto, 2009:175-178), especially to labor.

Critics of the rules of substance and procedure of minimum wage

The definition of wage is a worker's right that is received from employer after finishing their works. Wage is:

⁴ payment for labor or services based on time worked or quantity produced; specification, compensation of an employee based on time worked or output of production. Wages include every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, bonuses, and the reasonable value of board, lodging, payments in kind, tips, and any similar a⁴antage received from the employer. An employer must withhold income taxes from wages (Black's Law Dictionary, 2009: 1716).

Wage is payment for worker that produces goods or services; awarded based on work time or quality of production; including commissions, bonuses, lodging, recreation and taxes. While the minimum wage is the lowest wage paid by the employers based on worker's working hour. Minimum wage are the lowest permissible hourly rate of compensation for labor, as established by federal statute and required of employers engaged in inter state commerce (Black's Law Dictionary, 2009: 1716).

Basic adjustment of minimum wage based on constitution is article 27 (paragraph 2) of the 1945 Constitution which says that every citizen has the right to make a living and gets a decent life in sake of humanity and article 28 D (paragraph 2) of the 1945 Constitution, says that every person has the right to get work and receive its benefits and gets fair treatment as well as reasonable payment. Here, fair wage is interpreted as the decent income for humanity (Article 88 paragraph (1) of Law 13/2003). Wage is defined as:

rights of workers / laborers received and expressed in terms of money as a compensation from employers or employers to workers / laborers are determined and paid in accordance with a labor agreement, law or regulations, including allowances for workers / laborers and their families on a job and / or services that have been or will be made. (Article 1 of Law No. 30. 13 of 2003).

Decent income in this constitution means that the amount of the worker's / laborer's income can meet the needs of workers / laborers and their families appropriately which include food and drink, clothing, housing, education, health, recreation and retirement (elucidation of Article 88 paragraph (1) Law no. 13 of 2003). The government sets a minimum wage based on the needs of decent living and having regard to productivity and economic growth (Article 88 paragraph (4) Law no. 13 of 2003). Violations of the payment, it means the wage is lower than the minimum wage and it is an act of crime, cause the threat of sanction of 1 (one) year imprisonment (or 4 years for maximum sanction) and / or fine of Rp 100,000,000.00 (one hundred million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah) (Article 90 paragraph (1) jo. article 185 paragraph (1) of Law 13/2003).

What are provided for in Article 27 paragraph (2) in conjunction with Article 28 D paragraph (2) of the 1945 Constitution in conjunction with Article 1 paragraph 30 in conjunction with Article 88 paragraph (1) jo. paragraph (4) jo. Pasal 90 paragraph (1) in conjunction with

Article 185 paragraph (1) of Law 13/2003 are in accordance with the provisions of International Labor Organization (ILO) Conventions and Recommendations governing wages, namely:

- 3
 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
 - Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84)
 - Protection of Wages Convention, 1949 (No. 95)
 - Protection of Wages Recommendation, 1949 (No. 85)
 - Minimum Wage Fixing Convention, 1970 (No. 131)
 - Minimum Wage Fixing Recommendation, 1970 (No. 135)
 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)
 - 3
 - Protection of Workers' Claims (Employer's Insolvency) Recommendation (No. 180), 1992
 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
 - Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30)
 - Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
 - Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89)

Article 3 ILO Convention No.131 (Minimum Wage Fixing Convention) determines the minimum wage should be adapted to national conditions with two parameters, namely the necessities of workers' lives and their families, including social security and economy (economic development and productivity levels). More content in Art. 3 C. ILO 131 are:

- 6
- The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include :
- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
 - (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

The duty of the state is to regulate wage any further into the mechanism of legislation, and to report annually to the Governing Body (Art. 22 jo. 35 10 of the ILO Constitution: Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request).

As a follow-up of this adjustment, government issues *Permenakertrans* No.. 13/ 2012 on Implementation Stages in achieving Decent Living Components and Presidential Decree No. 107 of 2004 on Wages Council. For employers who object to the payment of the minimum wage are still allowed if there is a license for Minimum Wage Implementation Suspension (KEP.231/MEN/2003 about Suspension Procedures on Implementation of Minimum Wage).

Critics toward rules of the minimum wage substances

There are two studies on the substance of the minimum wage, namely legal subjects and legal objects. There are three subjects that determine the value of the minimum wage regarding to the study of subject of law, they are: the subject that determines the law of minimum wage, the subject that obligates to pay the minimum wage and the subject that receives the minimum wage. The study on the object is about the components of minimum wage in law.

Studying on the subject of the law that determines the value of the minimum wage are about studying of the represented government. In Indonesia there are two minimum wage, first is provincial minimum wage and the second is distric minimum wage. The authorized subject that legitimate to issues the minimum wage is the governor based on the components of decent life and with respect to three issues of productivity and economic growth (Article 88 paragraph (4) of Law 13/2003 jo. Article 6 paragraph (1) No.13/2012 of *Permenakertrans* about the components and the implementation of phases achievement and considering the recommendation of the provincial councils and / or the Mayor / Regent (Article 89 paragraph (3) of Law 13/2003). Before giving the recommendation, the authorized subject (Wage Council) conducts a survey survey about the price of components and types of the components of decent life. Members of the survey team are the tripartite, constituent colleges / expert, and by involving local Central Statistics Agency (Article 3 paragraph (3) No. *Permenakertran*. 13/2012).

The Board of Wage Council (district) is as the party that gives recommendations. The nature of the recommendation are not binding. The acceptability depends on the governor. Unfortunately, there isn't any regulation that rules the sanction if the Governor does not pay attention to the three conditions, namely productivity, economic growth and recommendation (from provincial councils and / or the Mayor / Regent).

The study of legal subjects that obligates to pay the minimum wage, employers. Minimum wage should be mandatory for every employer. Unfortunately there are a misunderstanding in defining working relationship which is only limited to the relationship between employers and workers / laborers working under the agreement, which has elements of jobs, wages, and orders (Article 1 paragraph 15 of Law 13/2003). The limitation of Article 1 paragraph 15 of Law 13/2003 is unclear. It could be interpreted narrowly in classifying the employers, it does not bind the job giver who are not entrepreneurs. Entrepreneurs defined under the provisions of Article 1 paragraph 5 of Law 13/2003 are:

- a.. individual, association, or legal entity that operates a self-owned enterprise;
- b. individual, association, or legal entity that independently run company;
- c. individual, association, or legal entity in Indonesia representing the company referred to in paragraphs a and b are domiciled outside Indonesia.

This understanding can be interpreted narrowly that it only gives the obligation to the legal subject that runs the company. The companies based the provisions of Article 1 paragraph 6 of Law 13/2003 are:

- a. any form of business or legal entity, owned by an individual, a partnership, or a legal entity, whether private or state-owned, employing workers / laborers by paying them wages or other forms of remuneration;
- b. social enterprises and other businesses that have the management and employ others by paying them wages or other forms of remuneration.

The legal effect of the formulation of Article 1 paragraph 15 of Law 13/2003 are the employers who are not entrepreneurs because it does not run the company, can not be burdened with the obligation to pay the minimum wage for workers. Against this provision Article 1 number 15 of Law 13/2003 should be revised by replacing the word "entrepreneur" to "employer", so that Article 1 paragraph 15 of Law 13/2003, changed into "the relationship between employers and workers / laborers working under the agreement, the have an element of employment, wages, and command "

The study on the subject of law that are obligated to get the minimum wage of workers. Limitation of employment under Article 1 paragraph 15 of Law 13/2003 has removed the rights

of informal workers who work at employers who are not entrepreneurs (Asri Wijayanti, 2011: 116). The logical consequence of the replacement of the word entrepreneur to 'employer', are guaranteed the right of all workers (not just limited to informal workers) to get the minimum wage, unless the employer under license of suspension of minimum wages by Governor Decree (Article 90 paragraph (2) of Law 13 / 2003). Terms suspension of the implementation of the minimum wage are the presence of:

- a. original manuscript written agreement between the employer and the trade / labor union or workers / laborers the company concerned;
- b. financial statements comprise the company balance sheet, profit / loss and its explanation explanation for 2 (two) years audited by a public accountant.;
- c. copy of the certificate of incorporation;
- d. wage data by occupation worker / laborer;
- e. number of workers / laborers in its entirety and the number of workers / laborers who applied for suspension of the implementation of the minimum wage;
- f. development of production and marketing for 2 (two) years, as well as production and marketing plans for 2 (two) years to come (Article 4 paragraph (1) Kepmenakertrans Kep.231/MEN/2003 on suspension procedures pelaksanaan minimum wage.

Another important issue is the provision of "single" (= not married). Decent living standard is only sufficient for a single worker / laborer that meet end the needs for 1 (one) month (Article 1 paragraph 1 No. Permenakertrans. 13/2012). The minimum wage only for workers who are single / unmarried. Practice employers to implement the minimum wage for workers who are married as well. Workers who did not have any unmarried dependents. For workers who are married early for work, usually given wage minimum wage. Workers who are married, should receive wages greater than the minimum wage, the wages as well as benefits for the family. There are obligations in preparing entrepreneurs and wage structures by observing group, position, length of service, education, and competence. Periodically the wage should be reviewed by taking into account the company's capacity and productivity (Article 92 of Law 13/2003). The purpose of the obligation to ensure the protection of wages for workers who already have a family or married. Unfortunately there are no sanctions for violations. Due to legal employers do not discriminate single status and mating in the minimum wage. All the life of any get minimum wage. Therein lies the violation of Article Article 3 ILO Convention No.. 131.

The study of the law of the component object-based minimum wages and decent living with attention to productivity and economic growth (Article 88 paragraph (4) Uu 13/2003). Permenakertrans 13/2012 (annex) distinguishes 7 types of basic needs (food and beverages; clothing, housing, education, health; transportation; recreation and savings) and 60 components of KHL, as follows:

COMPONENT REQUIREMENTS FOR DECENT LIVING IN A MONTH WITH SINGLE WORKERS K 3000 CALORIES PER DAY

NO	COMPONENTS AND TYPE OF NEEDS	QUALITY / CRITERIA	TOTAL NEEDS	UNITS	UNIT (RP)	VALUE (Rp)
I.	FOOD AND DRINK					
1	Rice	Medium	10.00	Kg		
2	Sources of Protein:	8				
a.	Meat	Medium	0.75	Kg		
b.	Fresh fish	Good	1.20	8g		
c.	Chicken egg	Ras Chicken egg	1.00	Kg		
3	Nuts					
	Tempe/tahu	Good	4.50	Kg		
4	Powder milk	Medium	0.90	Kg		
5	Sugar	Medium	3.00	Kg		
6	Cooking oil	Bulk	2.00	Kg		
7	Vegetables	Baik	7.20	Kg		
8	Fruits (equivalent banana / papaya	Baik	7.50	Kg		
9	other carbohydrates (flour equivalent)	Medium	3.00	Kg		
10	Tea or	Bags	1.00	Content of		
	Coffee	Sachet	4.00	75 gr		
11	Seasoning spices	(value 1 s/d 10)	15.00	%		
	TOTAL					
II.	CLOTHING					
12	trousers / skirt / Muslim clothing	Catoot Medium	6/12	Piece		
13	Shorts	Catoot Medium	2/12	Piece		
14	Belts	Synthetic	1/12	Piece		
15	short sleeve shirt / blouse	cotton	6/12	Piece		
16	T-shirts /BH	Medium	6/12	Piece		
17	Underpants	t-shirt /BH	6/12	Piece		
18	Sheath / long cloth	-shirt /BH	3/24	Sheet		
19	Shoe	Synthetic	2/12	Tide		
20	Sock	catoot, Polyester	4/12	Tide		
21	shoe cleaning equipment:					
a.	shoe shine	Medium	6/12	Piece		
b.	shoe brush	Medium	1/12	Piece		
22	Flip flops	rubber	2/12	Tide		
23	bath towels	100 cm x 60 cm	1/12	Piece		
24	Equipment Worship:					
a.	Sajadah	Medium	1/12	Piece		
b.	Mukenah	Medium	1/12	Piece		
c.	Peci, etc	Medium	1/12	Piece		
	TOTAL					
III.	HOUSING					
25	Rent of room	can	1.00	Month		

26	Couch / bed	No.3, polos	1/48	Piece		
27	Supplies sleep:			Piece		
	a. Foam mattresses	Foam	1/48	Piece		
	b. Foam Pillow	foam	2/36	Piece		
28	Sheets and pillowcases	7 toon	2/12	Set		
29	Tables and chairs	1 table / 4 chairs	1/48	Set		
30	Wood Wardrobe	Wood, medium	1/48	Piece		
31	Sweep	Ijuk Sedang	2/12	Piece		
32	Equipment eat:			Piece		
	a. dinner plates	plain	3/12	Piece		
	b. drinking glass	plain	3/12	Piece		
	c. Spoon and fork	medium	3/12	Set		
33	Cettle almunium	size 25cm	1/24	Piece		
34	Pan almunium	size 32cm	1/24	Piece		
35	Pot almunium	size 32cm	5 12	Piece		
36	Spoon cook wear	Almunium	1/12	Piece		
37	Rice Cooker ukuran 1/2 liter	350 watt	1/48	Piece		
38	Stove and Accessories:					
	a. Gas stove 1 furnace	SNI	1/24	Piece		
	b. Hose and regulator	SNI	1/24	Set		
	c. Gas Tube 3 kg	Pertamina	1/60	Piece		
39	LPG gas tube	@ 3 kg	2.00	Tabung		
40	plastic bucket	fill 20 litre	2/12	Piece		
41	pots Plastik	Medium	1/12	Piece		
42	Electric	900 watt	1.00	Month		
43	Energy-efficient Light Bulbs	14 watt	3/12	Piece		
44	Clean water	Standart of PAM	2.00	Meter cubic		
45	laundry soap	cream/ deterjen	1.50	Kg		
		5				
46	soap dish (dab)	500 gr	1.00	Piece		
47	Siron	250 Watt	1/48	Piece		
48	Shelves Portable plastic plate	Medium	1/24	Piece		
49	kitchen knife	Medium	1/36	Piece		
50	Mirror	30 x 50 cm	1/36	Piece		
	TOTAL					
IV.	EDUCATION					
51	reading/ Radio	Tabloid/ 4 band	4 a 7 1/48	Eks / piece		
52	Ballpoint/pencil	medium	6/12	Piece		
	TOTAL					
V.	HEALTH					
53	health facilities:					
	a. tooth paste	80 gram	1.00	Tube		
	b. bath soap	80 gram	2.00	Piece		
	c. tooth brush	Local produk	3/12	Piece		
	d. Shampoo	Local produk	1.00	Botle 100 ml		
	E bandager or shafer	content 10	1.00	7 s		
			1.00	Set		
54	Deodorant	100 ml/g	6/12	Botle		
55	Anti-mosquito	burn	3.00	Dus		
56	Hair cut	barber/sal	6/12			
57	Comb	reguler	2/12	Piece		
7	TOTAL					
VI.	TRANSPORTATION					
58	Transport workers and other	Public transport	30	dav (PP)		
	TOTAL					
VII	RECREATION AND SAVINGS					
59	Rekreation		2/12	neighborhood		
60	Saving (2% of the 1 s.d 59)		2	%		
	TOTAL					
	TOTAL (I + II + III + IV + V + VI + VII)					

When examined, there are several components of KHL which are not suitable. On the type of food and beverage needs, the amount of demand for protein sources is very limited. Within a month it takes only 0.75 kg of meat; fresh fish of 1.2 kg, and 1 kg of chicken eggs. Normally, every man needs 3 meals a day and eat 90 times in one month. The amount is very inadequate to the standard of a decent meal. Fruits are determined as equivalent to banana and papaya. Why is it not apple, durian, or wine. The two fruits are general types of fruit in Indonesia with relatively cheapest price.

Psychologically, this standard put workers in a position of low social strata. Most importantly, the food and beverage component does not include the need for mineral water (per gallon is). In the kind of housing need, why is the first component is limited to rent, not leasing. The question is, how long can workers resist the urge to have a house as a residence. On the kind of educational needs, why is the cost of school / education or access to education not determined.

In the type of health care needs, there is a lack of sufficient value to the sanitary pads. To maintain the hygiene of the female reproductive organs, in one day they require at least 4 pieces of sanitary pads. In 7 days, the length of a normal menstrual period takes at least 28 pieces instead of 10 pieces of sanitary pads. The determination of anti-mosquito, the type of health needs are not fitting. It should be a remedy for the workers, not a cure for animals (mosquitoes). Including the type of deodorant health needs is not suitable, since it is not the basic need of every man, but merely a need of cosmetics. The type of recreational needs are limited to the cost of the ticket to enter recreation facilities. The question is how about the needs of transportation to the recreation arena and the cost of food and beverage needs for recreation? They are not yet formulated. The most important thing is the single parameter. It should be replaced with a parameter of family with two children (along with family planning and welfare). Basic wage determination used in Indonesia include living wages (living wage) and nutritional needs. Living wage puts reasonable needs of the average unskilled workers. Staples / subsistence is based on the need to maintain minimum physical health. The nutritional requirements are used as the basis for the nutritional needs of adults in doing heavy work + 3000 calories. (ILO, 1997:11-12)., and does not include the cost of round trip transportation to the recreation spot. The detailed minimum physical needs of workers is as follows:

1. KFM for Single Workers, is 2600 calories per day.
 2. KFM (K-0) for workers with a wife without children is 4800 calories per day.
 3. KFM (K-1) for workers with a wife and one child is 6700 calories per day.
 4. KFM (K-2) for Labour with a wife and two kids are 8100 calories per day.
- (Devanto SP, 2011: 279).

Thus the number of KHL should be counted two or three times as much as that determined by *Permenakertrans* 13/2012.

Criticism against the rules of minimum wage procedure

Studies on the procedures are related to the process or formulation stage means the value of the minimum wage and the legal suit against infringement. The procedure of determining the value of the minimum wage based is based on *Permenakertrans* 13/2012, namely:

1. The founding of KHL Survey Team by the Chairman of the Board or the Regent / Mayor consisting of 1 (one) element of businessmen, 1 (one) of workers / laborers, 1 (one) of Government, and 1 (one) person from the local BPS;
2. The Implementation of the Survey.
 - a. Questionnaires
 - b. The choice of survey location is in the traditional market. Price surveys are conducted in the market tradisional selling goods at retail, not wholesale market or supermarket.

The Criteria of traditional market as the target of price surveys: The physical building of the market is relatively large. Located in areas commonly visited by workers / laborers. Commodities sold vary many shoppers. There are relatively long shopping crowds.

- c. Time of the Survey
 - The survey was conducted in the (first) week of every month.
 - The time was set such that the survey is not affected by price fluctuations due to changes in market conditions, for example, among others, the eve of the fasting month and religious holidays.
- d. Respondents
- e. Methods of price Survey

- f. The determination of the Specification of needs type (Price Parameter)
- g. The determination of Quality / Brand Of all types of goods and services

3. Processing data (from questionnaires filled into a form sheet of KHL as in the Appendix 1 of Minister Regulation in order to obtain a numerical value in one month.

4..Reporting

- Wage Council District / Town or Regent / mayor submit a survey report in the form of KHL to the provincial councils every month.
- Provincial councils deliver the of value KHL recapitulation of all regencies / cities in the concerned province to the National Wage Council periodically every month.

Once the values of KHL obtained and determined from the results of the surveys, the Governor should address simultaneously and consider the following factors:

- a. macro productivity is the ratio between the total Gross Domestic Product (GDP) by the amount of labor in the same period;
- b. Economic growth is the growth in the value of GDP;
- c. labor market conditions is the ratio of employment to the number of job seekers in certain areas during the same period;
- d. business conditions are least able to (marginal) indicated by the development of marginal existence of the number of businesses in a certain area at a certain period. (Article 6 paragraph (2) of *Permenakertrans* 13/2012).

The parameter of a survey conducted in the first week of each month is less objective, given the traditional market price is influenced by the number of demands. The results would be different if the survey is conducted in the morning, afternoon and evening. Towards the closing of the market selling price goes down.

The procedure of KHL value determination is conducted periodically every month by the Board remuneration. Unfortunately there is no requirements yet on the openness access for the public who want to know the performance of the councils. The Councils performance just exists at the end of the year before the enactment of minimum wage by the Governor. As a result of the lack of accessibility to the information about the performance of councils, the councils' objective is questioned.

The existence of Governor's decree of minimum wage does not yet ensure that stakeholders receive. Cases that occurred in West Java in which Apindo filed a legal sue on Governor Decree because the decision process is a flawed administration. Based on the Governor Decree No.561/Kep.1540-Bansos/2011, dated 21 November 2011, On Minimum Wage Regency / City in West Java in 2012 concerning UMK Bekasi 2012. MSE Bekasi is Rp 1,491,866, -, wage group II Rp 1,715,645, - and group I Rp 1,849,913. Governor Decree was sued by Apindo Bekasi and granted by the Decision of Bandung State Administrative Court dated January 26, 2012 Number: 128/G/2011/PTUN.BDG. It was this decision which triggered massive worker strike (<http://news.detik.com>). The workers expressed their disappointment by blocking Cikampek highway at Km 21 and Km 30, Friday (27/01/2012). The two-way blockade done by the workers caused total traffic of Cikarang to Jakarta direction (<http://megapolitan.kompas.com>).

Bandung State Administrative Court is not authorized to examine, hear and decide this dispute, because the decree as the object of the dispute is individual, not final and is still general settings. The considerations of judges are that Governor's decree are intended to all workers in regencies / cities in West Java and is not directed at a particular employee, are general and non-personal and can not be the object of a lawsuit in the State Administrative Court and the Administrative Court is not authorized to examine and judge.

The impact of regulations and court decisions concerning Minimum Wage

The law is multilayer. Bruggink divided laws into three layers, namely the law of dogmatic law, legal theory and philosophy of law. A rule of law contained in the law should be in accordance with the dogmatic legal theory and philosophy of law. The rule of law relating to minimum wages is not yet in accordance with the theory of law. Parameter of decent living by *Permenakertrans* 13/2012 is based on the status of workers who are single / not married. This is contrary to Article 3 ILO Convention. 131 which sets KHL for workers and their families.

The absence of sanctions for violations of the employer who give wages less than minimum wage. There is only the penalties for employers who violate. There is no guarantee of

access to information and transparency in determining the value of KHL. There is no guarantee of legal protection mechanisms for the (worker or employer) against a decision of the Governor that is not fair enough. Access to justice as the remedy of any breach of law as one of the characteristics of the rule of law has not been seen in the setting of minimum wages. The complexity of the inappropriate rule of law and legal efforts that result in workers prefer shopping forum as a mechanism to remedy injustices in the determination of wages. At the beginning of 2012 the workers succeeded in making administrative court loses its factual and material strength. Although the judges' juridical judgment on the bases of Administrative Court absolute competence is correct.

Why workers dare to mobilize action by closing 20 KM and 30KM highway? Their actions are the results of their disappointment to Indonesions Entrepreneurs Associations (*Apindo*). Facts show: up to 2011 in Bekasi there are about 5000 companies; there are only about 300 who join DPD APINDO companies (about 5% of the total company in Bekasi district), while members of Apindo who give authorization to sue Governor decree are about 125 companies (only about 2% of the total company in Bekasi district). And there are only 16 companies that reported the suspension of the implementation of the MSE in 2012 (0.3% of the total enterprises in the district. Bekasi). So the question is: For whose interest is the law suit against the decree of West Java Governor to the administrative court filed up by Apindo District Council Bekasi? ([Http://wikisopo.wordpress.com](http://wikisopo.wordpress.com)).

The initial success in 2012 seems to be a teacher for the struggle of workers. At the end of 2012 there were the mobilization of workers rally in Surabaya. Unfortunately the demonstration had caused the destruction in which the fence of East Java provincial office collapse in 20 November 2012 (<http://nasional.news.viva.co.id>). The actions result in the rise of minimum wage in Surabaya initially proposed by the Wage Councils from Rp. 1.425.000 to Rp. 1.567.000, after workers rally towards the amount of Rp. 1.74.000 in 2013. According to the representative of Wages Council M Hadi Subhan, labor wages are 10% of the production costs which can be overcome by increasing productivity and price adjustment. (Jawa Pos 26 November 2012).

Unlike Apindo, a minimum wage increase of 40% from 2012 hit the employers. The increase in the minimum wage for workers at low level will result in the wage increases for workers at the next level. To this, Apindo is determined to sue the Governor of East Java.

Fair Wages

Wages are very important. For workers, wages are the source of living to meet the need of the workers and their families. For the employer wages are the cost of production. For the state, they are parameter of economic success. Decent wages for workers who have been guaranteed by the constitution is still very relative. It is the government's obligation to establish the feasibility of parameter types and components of wages. Unfortunately the parameters of *Permenakertrans* No 13, 2012 is not in accordance with Article 3 of the ILO Convention No. 131.

Appropriate steps have been made by Jakarta Governor Jokowi who takes into account the value of KHL (decent living) with the predictions of inflation until December 2012 (not only up to September 2012 - a recent survey), added with the projected inflation in 2013 until the end of the year. The result is KHL value of Rp 1,987,789, which is closer to the numbers single workers' real needs in the coming year. According to Surya Tjandra, provincial efforts latter on to decide Jakarta UMP 2013 amounted to Rp. 2.2 million (or 11 percent above the KHL) provides an important leap forward to address the wage gap. (<http://www.facebook.com/bajingkirek>)

Sometimes, social justice felt by the workers result in structural injustice for employers, if, because of the political structure of the socio-economic coercion, the employers are not allowed to pay less than minimum wage (Budiono Kusumohamidjojo, 1999:134-135). Uncertainty of the rules on the minimum wage is evidence that law gives more problem rather than solve the problem of justice (Satjipto Rahardjo, 2009:1).

East Java Governor Decree for the minimum wage in 2013 will be sued to the administrative court by Apindo. Based on the experience of lawsuit against West Java Governor Decree on minimum wage won by Apindo, and resulted in the blockade of highway by the

workers, judges are hoped to judge with their conscience. For example Bismar Siregar who first of all, heard the verdict of his conscience, and afterwards, seeking the articles of legislations to provide a legal basis for the verdict of his conscience (Satjipto Rahardjo, 2009:82).

Conclusion

- Basically, the components of decent living as the objects of minimum wage has not been in accordance with ILO Convention No.. 131. Wages Councils Authority (tripartid elements: workers, employers, government) have not been significant for they merely give recommendation. The procedures of formulating the minimum wage has not applied the principle of transparency.
- The impact of poor remuneration system is the workers' choice to strike and shut down the highway as a form of forum shopping.

Suggestion

- There are two Recommendations: Firstly is the revision of the component substance of decent living in the minimum wage.
- Secondly, the revision of the procedure on determining the minimum wage based on the principle of transparency.

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