

# The Legal Policy of the Minimum Wage for Workers' Adequate Subsistence

Anis Rukmawati<sup>a,1,\*</sup>

<sup>a</sup> Faculty of Law, Sebelas Maret University, Surakarta, Indonesia.

<sup>1</sup> anisrukma89@gmail.com\*

\* corresponding author

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## ABSTRACT

This legal study seeks to determine wage policies through minimum wages in Government Regulation 36 of 2021 concerning Wages in order to provide workers with a decent standard of living and to identify legal certainty guarantees. This is a prescriptive type of normative legal research employing a statute-based methodology. Utilized types of legal materials include primary and secondary legal materials. The technique used to collect legal materials is called "literature collection. In the study technique, the technique used for analyzing legal materials is deduction. The study's findings indicate that the minimum wage outlined in Government Regulation Number 36 of 2021 concerning Wages is insufficient to provide a decent standard of living for workers. First, the formulation has eliminated the indicator for the decent living needs component. Second is the decline in worker or laborer participation in determining the minimum wage. Thirdly, the upper and lower limits now incorporate new variables. Fourth, the formula only offers the option of using the inflation rate or economic growth. Regulation No. 36 of 2021 has failed to provide legal certainty. This is based on 3 benchmarks, the first of which is Firstsharmony between regulations. Second, the content of the rules is unclear, resulting in multiple interpretations. Thirdly, laws from worlusersr are rejected when issuing orders/labor.

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## 1. Introduction

The right to wages is one of the rights in an employment relationship and arises from an employment agreement. This right has been protected and regulated constitutionally in Article 27 paragraph (2) and Article 28D section (2) of the 1945 Constitution of the Republic of Indonesia. Wages play an important role in employment relations, and it can be said that wages are the primary purpose of a person doing work for a particular person or entity under other laws. Therefore, the government must participate in dealing with wage issues through various policies in the legislation.<sup>1</sup>

The wage issue is still a crucial aspect to be discussed in employment. The various parties involved in the employment relationship see wages as frontal raisers on their respective sides, giving rise to different views. So, it is necessary to regulate and understand the wage system

<sup>1</sup> Thamrins Thamrins, 'The Role of Wage Councils in Setting Minimum Wages', *Uir Law Review* , 1.01 (2017), 39 <https://doi.org/10.25299/ulr.2017.1.01.152>

so that there are no differences in understanding and interpretation, especially between employers and workers. The government set a Minimum Wage policy<sup>2</sup>.

In practice, the minimum wage cannot meet workers' needs for a decent living and is far from the actual costs incurred by workers to meet their daily needs. The inability of the minimum wage to provide a decent living indicates that it directly offends the interests of workers, employers, and the government simultaneously. The component to fulfill a decent life apart from wages is social security which is the government's responsibility to provide and ensure access for workers. This means that the fulfillment of a decent life is not only the entrepreneur's responsibility but also the government's implementation and responsibility.<sup>3</sup>

Facing many wage problems, the government finally intervened by making a policy in the form of Government Regulation 78 of 2015 concerning Wages. However, since the enactment of the Government Regulation, various parties have had conflicts, especially among workers. The number can see this of demonstrations by workers/laborers. Seeing that there are still many problems in determining the minimum wage, marked by demonstrations every year, the government finally issued a new regulation, namely Government Regulation Number 36 of 2021, concerning Wages. However, after the law was given, there was much contra among workers/laborers<sup>4</sup>. Workers/laborers who are members of the Confederation of Indonesian Trade Unions (KSPI) reject the existence of this regulation. The reason is based on the variable minimum wage calculation, not the field's conditions. In the new law, the government uses new variables such as purchasing power parity, labor absorption rate, and median wage. In addition to these variables, the government provides a choice of only one variable, namely economic growth, or inflation. Rejecting workers/laborers is also based on eliminating the indicator of the Decent Living Needs (KHL) component in calculating the minimum wage.

## 2. Research Method

The legal research used is prescriptive normative legal research using a *statute approach*. The types of legal materials used are primary legal materials and secondary legal materials. The technique of collecting legal materials used is a literature study technique, while the process of analyzing legal materials used is the method of deduction.

## 3. Results and Discussion

### *Minimum Wage Policy in Government Regulation Number 36 of 2021 concerning Wages*

The minimum wage policy aims to realize a decent income for workers/laborers so they can live appropriately without neglecting productivity, economic growth, and company capabilities<sup>5</sup>. Furthermore, this minimum wage policy aims to protect workers/laborers who

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<sup>2</sup> Bin Ni and Kyosuke Kurita, 'The Minimum Wage, Exports, and Firm Performance: Evidence from Indonesia', *Journal of Asian Economics*, 69 (2020), 101218 <https://doi.org/10.1016/j.asieco.2020.101218>

<sup>3</sup> Oki Wahyu Budijanto, 'Decent Wages for Workers/Labourers in the Perspective of Law and Human Rights', *De Jure Legal Research Journal*, 17.3 (2017), 395 <https://doi.org/10.30641/dejure.2017.v17.395-412>

<sup>4</sup> Filippo Belloc and Massimo D'Antoni, 'The Elusive Effect of Employment Protection on Labor Turnover', *Structural Change and Economic Dynamics*, 54 (2020), 11–25 <https://doi.org/10.1016/j.strueco.2020.04.001>

<sup>5</sup> Selien De Schryder, Gert Peersman, and Joris Wauters, 'Wage Indexation and the Monetary Policy Regime', *Journal of Macroeconomics*, 63.November 2018 (2020), 103166 <https://doi.org/10.1016/j.jmacro.2019.103166>

have just started work<sup>6</sup>, have no work experience, have low education, have less than one year of service, and are single/unmarried. With the minimum wage policy, it is hoped that no entrepreneur will pay wages unreasonably to workers/ laborers who start to work<sup>7</sup>.

The minimum wage, according to Government Regulation Number 36 of 2021, is calculated using the minimum wage adjustment formula. The formula for adjusting the value of the minimum wage has also not been able to fulfill a decent living for workers/laborers. The procedure has eliminated the Decent Living Needs (KHL) component. At the same time, the components in the Decent Living Needs (KHL) are components that consist of the basic needs of workers/laborers to fulfill a decent life. If the KHL component is removed, of course, it will also eliminate the worker/laborer's proper living component. Whereas in the previous wage regulations, the Decent Living Need (KHL) was still a consideration, it was eliminated in the new policy so that there is a setback in realizing a decent life in the procedure of Government Regulation No. 36 of 2021.

The loss of the Decent Living Needs (KHL) indicator in Regulation Number 36 of 2021 also results in the loss of workers' rights to determine the minimum wage. Workers who, in this case, are represented by trade unions/labor unions have lost their bargaining position. The minimum salary setting policy in Regulation 36 of 2021 is not much different from Government Regulation 78 of 2015. Even though Government Regulation Number 78 of 2015 still uses the indicator of Decent Living Needs (KHL), which has been accumulated with the inflation rate, the data that data used are derived from the Central Statistics Agency (BPS), so there is no prior survey conducted by the wage council which results in the loss of worker/laborer participation.

Furthermore, a review of the formula for adjusting the minimum wage value in this Government Regulation Number 36 of 2021 has provided new provisions in the form of a Lower Limit and an Upper Limit. The upper limit is used to provide the highest limit for the value of the set minimum wage, while the lower limit is used to provide a reference so that the minimum wage is not lower. This Upper Limit provision is very detrimental to the workers/laborers<sup>8</sup>. This is because the minimum wage cannot exceed the predetermined Upper Limit. In addition, this provision does not explain the wage is set lower than the predetermined Lower Limit. This new minimum wage formula makes the minimum wage cheap, which cannot create a decent living for workers/laborers. The government is not serious about making a minimum wage policy<sup>9</sup>. The minimum wage with this new adjustment formula cannot be used as a safety net so that the wages of workers/laborers do not fall further. A decent living for workers/labor is getting further and further to be realized through a minimum wage policy. The new minimum wage adjustment formula can also limit the annual

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<sup>6</sup> David Lee and Emmanuel Saez, 'Optimal Minimum Wage Policy in Competitive Labor Markets', *Journal of Public Economics*, 96.9–10 (2012), 739–49 <https://doi.org/10.1016/j.jpubeco.2012.06.001>

<sup>7</sup> Alice Krozer, Juan Carlos Moreno Brid, and Juan Cristóbal Rubio Badan, 'Inequality and Minimum Wage Policy: Not Even Talking, Much Less Walking in Mexico', *Investigacion Economica*, 74.293 (2015), 3–26 <https://doi.org/10.1016/j.inveco.2015.10.001>

<sup>8</sup> Alessandra Scalioni Brito and Celia Lessa Kerstenetzky, 'Has the Minimum Wage Policy Been Important for Reducing Poverty in Brazil? A Decomposition Analysis for the Period from 2002 to 2013', *Economia*, 20.1 (2019), 27–43 <https://doi.org/10.1016/j.econ.2019.02.002>

<sup>9</sup> Adam M. Lavecchia, 'Minimum Wage Policy with Optimal Taxes and Unemployment', *Journal of Public Economics*, 190 (2020), 104228 <https://doi.org/10.1016/j.jpubeco.2020.104228>

wage increase<sup>10</sup>. The reason is that the new formula for calculating the minimum wage gives the option of using only the inflation rate or economic growth.

### ***Legal Assurance of Minimum Wage Policy in Government Regulation***

A legal certainty protects against arbitrary actions, which in this case means that someone will get something expected in certain circumstances<sup>11</sup>. Then Yetniwati, who departs from Lon Fuller's theory, argues that the characteristics of wage arrangements based on the principle of legal certainty are that these regulations must be accepted by the community without any rejection, so that the formation of these regulations must be based on a sense of community justice. The existence of labor regulations in labor law is one manifestation of legal certainty. Employment law is the basis used to regulate matters relating to the world of employment<sup>12</sup>. Society needs legal confidence in wages to achieve a decent life. Legal certainty is required to protect workers/laborers from arbitrary actions by employers in providing wages<sup>13</sup>. If there is no certainty about wages, there will be many gaps between workers/labor, resulting in wage inequality. A decent living for workers/laborers can be fulfilled if the wages received are also included in the living wages<sup>14</sup>.

Currently, the regulation of wages is regulated in Government Regulation Number 36 of 2021 concerning Wages. The enactment of this regulation has replaced Regulation Number 78 of 2015 regarding Wages which previously held wage policies. Government Regulation Number 36 of 2021 has also provided stipulations that every worker/ laborer has the right to live a decent human life and obtain the right to equal treatment without discrimination in the application of the wage system. This provision is contained in Article 2 of Government Regulation 36 of 2021.

As for Law No. 13 of 2003, Article 89 states that the minimum wage is directed at achieving the needs of a decent living. In addition, the Minister of Manpower Regulation Number 15 of 2018 concerning Minimum Wages Article 2 explains that the minimum wage is set annually based on the Decent Living Needs (KHL) regarding productivity and economic growth. Then in the Minister of Manpower Regulation Number 21 of 2016 concerning Decent Living Needs, Article 2 also states that the determination of the minimum wage carried out annually by the governor is based on Decent Living Needs (KHL) and with attention to productivity and economic growth.

Regulation No. 36 of 2021 has caused disharmony in the regulation of minimum wages. This disharmony will impact obstacles to implementing legal certainty regarding the minimum wage. This will also affect the implementation of the minimum wage to fulfill a decent living

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<sup>10</sup> Dongmin Kong, Ni Qin, and Junyi Xiang, 'Minimum Wage and Entrepreneurship: Evidence from China', *Journal of Economic Behavior and Organization*, 189 (2021), 320–36 <https://doi.org/10.1016/j.jebo.2021.06.047>

<sup>11</sup> Nur Hidayah Che Ahmat, Susan W. Arendt, and Daniel W. Russell, 'Effects of Minimum Wage Policy Implementation: Compensation, Work Behaviors, and Quality of Life', *International Journal of Hospitality Management*, 81.April (2019), 229–38 <https://doi.org/10.1016/j.ijhm.2019.04.019>

<sup>12</sup> Giovanni Olivei and Silvana Tenreyro, 'Wage-Setting Patterns and Monetary Policy: International Evidence', *Journal of Monetary Economics*, 57.7 (2010), 785–802 <https://doi.org/10.1016/j.jmoneco.2010.08.003>

<sup>13</sup> Jennifer Cobbe and Jatinder Singh, 'Artificial Intelligence as a Service: Legal Responsibilities, Liabilities, and Policy Challenges', *Computer Law and Security Review*, 42 (2021), 105573 <https://doi.org/10.1016/j.clsr.2021.105573>

<sup>14</sup> Yulia Adella Sari, 'Pengaruh Upah Minimum Tingkat Pengangguran Terbuka Dan Jumlah Penduduk Terhadap Kemiskinan Di Provinsi Jawa Tengah', *Equilibrium : Jurnal Ilmiah Ekonomi, Manajemen Dan Akuntansi*, 10.2 (2021), 121–30 <https://doi.org/10.35906/je001.v10i2.785>

for workers/laborers<sup>15</sup>. Using the Decent Living Needs (KHL) indicator in determining the minimum wage is an effort by the government to meet the needs of workers/laborers to realize a decent life. If, in the new wage regulation, the KHL indicator is omitted, it will result in not meeting the need for a decent life through the minimum wage policy<sup>16</sup>.

The presence of Government Regulation Number 36 of 2021 has also changed the provisions regarding the determination of district/city minimum wages. According to this provision, the governor can determine the district/city minimum wage if certain conditions are met. So that not all districts/cities can set a minimum salary every year. Government Regulation Number 36 of 2021, Article 25 paragraph (3) explains that certain conditions in the district/city minimum wage include regional economic growth or inflation in the relevant district/city. However, Article 34 states that determining the district/city minimum wage in adjusting the minimum wage value uses economic growth or inflation at the provincial level.

The provisions in Articles 25 and 34 have given unclear content and intent. This is not by implementing legal certainty from a regulation that must have explicit content and not cause ambiguous meaning. The two articles have given rise to different interpretations, namely determining the district/city minimum wage using economic growth and inflation at the district/city level or using economic growth and inflation at the provincial level. The difference in interpretation will affect the implementation of the district/city minimum wage<sup>17</sup>.

To ensure legal certainty, a regulation must be announced to the public and acceptable to the public<sup>18</sup>. However, since Government Regulation Number 36 of 2021 was issued and ratified on February 2, 2021, there have been many contras among the people. The labor union members of the Federation of Indonesian Trade Unions (FSPI) strongly reject Government Regulation 36 of 2021. FSPI considers that Government Regulation 36 of 2021 concerning Wages cannot be applied because it causes problems. This is because the provincial minimum wage is used as a benchmark to determine the regency/city minimum wage amount. As a result, it will cause problems in its implementation. Furthermore, FSPI also rejects the formulation of the minimum wage adjustment that eliminates the Decent Living Needs component (KHL), which will result in a tremendous wage decrease. The regulation has been flawed in its procedure, so the results cannot be implemented<sup>19</sup>.

There are still many workers/laborers who refuse Government Regulation No. 36/2021, proving that there has been an imbalance between policies or regulations and the actual situation. The refusal action is also evidence that the law has not been able to provide legal certainty regarding the minimum wage for workers/laborers to fulfill their needs. Decent

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<sup>15</sup> Liam Sigaud and others, 'The Effects of Recent Minimum Wage Increases on Self-Reported Health in the United States', *Social Science and Medicine*, 305.April (2022), 115110 <https://doi.org/10.1016/j.socscimed.2022.115110>

<sup>16</sup> Mónica Jiménez Martínez and Maribel Jiménez Martínez, 'Are the Effects of Minimum Wage on the Labour Market the Same across Countries? A Meta-Analysis Spanning a Century', *Economic Systems*, 45.1 (2021) <https://doi.org/10.1016/j.ecosys.2020.100849>

<sup>17</sup> F. Alexandre and others, 'Minimum Wage and Financially Distressed Firms: Another One Bites the Dust', *Labour Economics*, 74.September 2021 (2022), 102088 <https://doi.org/10.1016/j.labeco.2021.102088>

<sup>18</sup> Radek Šauer, 'The Macroeconomics of the Minimum Wage', *Journal of Macroeconomics*, 56.December 2017 (2018), 89–112 <https://doi.org/10.1016/j.jmacro.2018.01.003>

<sup>19</sup> Naibao Zhao and Meng Sun, 'Effects of Minimum Wage on Workers' on-the-Job Effort and Labor Market Outcomes', *Economic Modelling*, 95.December 2019 (2021), 453–61 <https://doi.org/10.1016/j.econmod.2020.03.012>

living. Moreover, for workers/laborers who only rely on minimum wage paychecks, it is insufficient to meet their daily needs adequately<sup>20</sup>.

#### 4. Conclusion

The minimum wage policy regulated in Government Regulation Number 36 of 2021 has not been able to fulfill a decent living for workers/laborers. This is based on an analysis of the minimum wage adjustment formula, which still has many problems, including: first, the formulation has eliminated the indicator of the Decent Living Needs (KHL). Second is the loss of participation of workers/laborers in setting minimum wages. Third, there are new variables in upper and lower limits. Fourth, the formula provides the option to use only the inflation rate or economic growth. Government Regulation Number 36 of 2021 concerning Wages have not been able to provide legal certainty to fulfill a decent life for workers/laborers. This is based on 3 (three) benchmarks; firstly, there is disharmony between regulations. Second, there is a lack of clarity in the contents of the rules, which results in multiple interpretations. Third, laws are rejected by workers/laborers after they are issued.

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