

## ***Norma Conflicts About Wage Sistem In Regional Regulation Number 22 Of 2012 Concerning The Employment Organization System In Pasuruan District***

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### ***Abstract***

*Article 88B of the Employment Creation Act expressly stipulates the regulation of workers' wages. In the article there are concepts of wages with results and units of time based on hourly wages. Pasuruan Regency is one of the regencies that has problems with the wage system law. Regional Regulation Number 22 of 2012 namely Article 37 paragraphs 4 and 5 with an additional 5% of the Regency/City Minimum Wage value is synchronized with worker productivity which is a conflict of norms against the implementation of Regional Regulation Number 22 of 2012 concerning the system of labor administration and its enforcement. Implementation of the policy of Regional Regulation Number 22 of 2012 concerning the Employment System in Pasuruan Regency is oriented to the realization of a balance between the interests of the implementer by avoiding potential conflicts over the regulation. This research was conducted using a research method with a conceptual approach and a statutory approach. The research method approaches Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 36 of 2021 concerning Wages which considers the minimum wage. Since the stipulation of District Regulation Number 22 of 2012 concerning the Employment System in Pasuruan Regency, the focus has been on achieving a balance in realizing the interests of the executors by avoiding potential conflicts over these regulations. Legal resolution related to the conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Employment Implementation System in Pasuruan Regency, which currently can only be reached by mediation.*

**Keywords:** *Wage Policy System, Norm Conflict, Minimum Wage, Employment Organizing Regional Regulation*

### **A. INTRODUCTION**

#### **1. Background**

Indonesia is one of the developing countries that has many companies, both from small to large scales. Therefore, Indonesia cannot be separated from

the contribution of workers or workers. This makes Indonesia have to meet market needs and demand workers to work according to the target.<sup>1</sup>

In the 1945 Constitution, it has been regulated regarding the freedom of every citizen to get a job and appropriate remuneration. Employment has been regulated in a constitutional basis, which is mentioned in the preamble and body of the 1945 Constitution. The preamble to the 1945 Constitution contains the inner atmosphere and legal ideals of the 1945 Constitution, which is none other than the source and soul of the Pancasila philosophy. Then, the inner atmosphere and the ideals of the law are explained in the body. The issue of labor has relevance to the contents of the body of the Constitution, which is determined in Article 5 paragraph (1), Article 20 paragraph (2), Article 27 paragraph (2) Article 28 and Article 33 paragraph (1) of the 1945 Constitution.

The Indonesia government needs to handle this labor problem so that it does not become more complicated and hinder Indonesia from becoming a more developed country. In 2021, the minimum wage at both the provincial and district/city levels has been set and decided by each Governor of each province. The regional minimum wage at both the provincial and district/city levels is determined and decided by the Wage Council whose results are then recommended to the Governor to be determined.<sup>2</sup>

Based on Law Number 11 of 2020 related to Job Creation, wages are workers' rights that are received and expressed in the form of money in exchange from employers or employers to workers/laborers, which are determined and paid according to a work agreement, agreement or applicable legislation, including allowances for workers or laborers and their families for a job that has been done.

In article 88B of the Job Creation Law, wage arrangements are strictly regulated. In this article, there is a concept of wages with units of time and results based on hourly wage provisions that must be followed with very strict requirements due to the large potential for exploitation by employers. The work model with an hour-based wage mechanism with the legal basis of Government Regulations also has the potential not to involve balanced stakeholder participation.

In addition, the Job Creation Law also formulates new regulations related to the minimum wage. In Article 89 of the Manpower Law, the minimum wage is set based on sectoral wages as well as wages at the provincial level and wages at the district/city level which are directed at achieving livability. Based

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<sup>1</sup> Firdausi D, Sjamsiar S., Mohammad Nuh, 2020, Conflict Management in Solving Industrial Relations Problems (Study in the Field of Industrial Relations, Pasuruan Regency Manpower Office), Profit Journal, Volume 14 No.1.

<sup>2</sup> Arrista Trimaya, 2014, Implementation of Minimum Wage in the National Wage System to Improve Labor Welfare, Journal of Aspiration, Vol. 5 No.1.

on this article, the provincial minimum wage is set by the governor by taking into account the recommendations of the Provincial Wage Council and/or the regent/mayor. Meanwhile, the calculation of components and the implementation of the stages of achieving the needs of life should be regulated by the Ministerial Decree. However, the Job Creation Law removes the provisions of the Provincial Sectoral Minimum Wage (UMSP) and the Regency/City Sectoral Minimum Wage (UMSK). The determination of the provincial minimum wage is regulated and determined by the Governor based on economic and employment conditions with certain conditions. The elimination of the sectoral minimum wage resulted in no wage difference adjusted to the specifications of expertise per sector. For example, skilled labor is more productive than unskilled workers, but earns equal wages. With the issuance of the Circular Letter of the Minister of Manpower on labor protection, it is hoped that it can accommodate the interests between employers and workers so that labor disputes do not occur.<sup>3</sup>

Dispute resolution is expected to be resolved bipartite first before going to the mediation level of the labor office (tripartite). Mediation or tripartite settlement is one of the alternative dispute resolution between employers and workers mediated by mediators from the Directorate. This was done to help resolve the dispute. In addition, the Directorate is expected to provide input for both parties, which is commonly referred to as the Director's Recommendation.<sup>4</sup>

From 2016 to 2021, the determination of the minimum wage based on Government Regulation Number 78 of 2015, namely the determination of wages is based on the components of the economic growth rate and the inflation rate in one year. In addition, in determining the minimum wage, a formula derived from the Job Creation Law Number 11 of 2020 was adopted. This is also still the record of workers/workers who are members of the trade union. Practically, this wage determination still raises pros and cons, especially from workers who have not received it and entrepreneurs who tend to temporarily accept elements of the government as mediators. So that the determination of this wage has not been able to meet the satisfaction of both parties, especially the workers.<sup>5</sup>

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<sup>3</sup> Kadek Agus Sudiarawan, 2016, *The Concept of Empowerment-Based Industrial Relations Dispute Resolution as an Effort to Improve Legal Protection for Workers in Seeking Justice*.

<sup>4</sup> Abd Latip, Lululily, Ainiyah, 2018, *Mediation as a Solution to Labor Problems in Bangkalan Regency*, *Journal of Competence*, Vol. 12 No.2.

<sup>5</sup> DetikNews, January 26, 2021, *Pandemic and Minimum Wage*, accessed on October 27, 2022 on <https://news.detik.com/kolom/d-5349156/pandemi-dan-upah-minimum>

Apart from the pros and cons of determining wages every year for the last five years, it has been determined by the formula formula. One of them is that legal problems related to the wage system in Pasuruan Regency are very different from other regions in East Java. In addition to referring to Law Number 13 of 2003 and Government Regulation Number 78 of 2015 concerning Wages, there is a Manpower Implementation System in Pasuruan Regency, namely Regional Regulation Number 22 of 2012, namely article 37 paragraphs 4 and 5. Since its enactment, the Regional Regulation in 2012 until now has continued to be a polemic and dispute between employers and the Trade Union. For Entrepreneurs with the rollout of Regional Regulation Number 22 of 2012, especially Article 37 paragraph 4, which is an additional 5% of the applicable MSE value. This makes entrepreneurs feel even harder in doing their business because they have to increase workers' wages which will automatically go into the company's production costs and have an impact on the selling price of the product, besides that the product will be less able to compete in the market.<sup>6</sup>

Meanwhile, according to workers, with the existence of Regional Regulation Number 22 of 2012, the welfare of workers/laborers will increase and they want a more decent life.<sup>7</sup> These problems greatly affect the condition of the company, where the concentration and performance of workers/workers affect the production process.

The high demand for the minimum wage of the provinces, districts/cities greatly affects the thinking of company owners to hold socio-economic mobility. This is done by moving the factory location to an area with a lower wage workforce. Thus resulting in layoffs for workers/laborers in the area.

The consequences of social mobility can cause conflicts between workers and employers, and even the government participates in mediating the problem. As long as the relocation is carried out in Indonesia, it does not have a significant impact on the economy nationally. On the contrary, it can cause economic equality regionally. However, if mobility out of Indonesia is carried out, it will be very detrimental to Indonesia in terms of production and labor. Therefore, to continue to be able to meet the demands of the minimum wage increase that occurs every year, it must be balanced with an increase in worker

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<sup>6</sup> Muhammad Hasan, Muhammad Azis, 2018, *Economic Development & Community Empowerment (Human Development Strategy in Local Economic Perspective)* Second Edition, CV Publisher. Nur Lina.

<sup>7</sup> Hermanto, Darmanah, 2019, *The Effect of Welfare on Employee Job Satisfaction at the Secretariat of the East Oku Council*, Actual Journal of STIE Trisna Negara, Vol. 17 No. 2.

productivity so that the company's sustainability can be maintained because the company's expenses are getting higher.<sup>8</sup>

Several companies in Pasuruan Regency refused to implement Regional Regulation Number 22 of 2012 concerning the Wage System in Pasuruan Regency, including companies in the PT. PIER18, PT. Satoria Agro Industri and PT. YAMINDO. During the Covid-19 pandemic, many companies have laid off their employees.<sup>9</sup>

In Law Number 11 of 2020 concerning Job Creation, Article 156 paragraph (1) is mentioned. In the event of termination of employment, the employer is obliged to pay severance pay and/or service period award money and compensation money that should have been received. The reference amount consists of: a) severance pay (paragraph 2), b) service award money (UPMK) (paragraph 3), and c) compensation money (UPH) such as annual leave and labor cost (paragraph 4). Apart from the problem of determining the minimum wage, which is used as a legal basis in the wage increase system, it must still be decided. Although the Circular Letter of the Minister of Manpower stipulates that wages have not increased or remain the same as the previous year, many components in the workers' salary scale such as transportation money, overtime, allowances, and others still allow companies to increase them. So that there is also a routine increase in wages for workers.<sup>10</sup>

On the other hand, there are still many wage problems, including workers' desire for sectoral wages, companies that postpone wage increases because they cannot cover the burden of company expenses, and companies that have not implemented MSEs. It is hoped that in the future wage determination can provide a balance between the company's ability and decent living needs, and the wage determination can be agreed upon by both parties.

Based on this description, the author would like to elaborate on the conflict of norms in Regional Regulation Number 22 of 2012 concerning the Wage System in Pasuruan Regency. This is done so that there is action against Regional Regulation Number 22 of 2012 concerning the Wage System in Pasuruan Regency.

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<sup>8</sup> Detiknews, January 26, 2021, Pandemic and Minimum Wage, accessed on October 10, 2022 on <https://news.detik.com/kolom/d-5349156/pandemi-dan-upah-minimum>

<sup>9</sup> Kumparan, December 4, 2017, Residents of Sambisirah Demo Demand to Be Employed at PT Satoria Agro Industri, accessed on October 11, 2022 on <https://kumparan.com/kabarpasuruan/warga-sambisirah-demo-tuntut-dipekerjakan-di-pt-satoria-agro-industri/full>

<sup>10</sup> DetikNews, January 26, 2021, Pandemic and Minimum Wage, accessed on October 27, 2022 on <https://news.detik.com/kolom/d-5349156/pandemi-dan-upah-minimum>

## **2. Problem Formulation**

Based on the background that has been explained, the problem is formulated is whether Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency contains a conflict of norms?

## **B. DISCUSSION**

### **1. Conflict of Norms in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Law Number 13 of 2003 concerning Manpower**

Discussion of the conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Law Number 13 of 2003 concerning Job Creation Related to Wages. In terms of empirical terms, Law Number 13 of 2005 is used to describe the social impact on legal uncertainty, especially regarding the minimum wage based on living needs, between *das sollen* and *das sein*.

The legal principle of wages as stated in the provisions of Article 28D paragraph (2) of the 1945 Constitution, that compensation for the results of work in the employment relationship between workers and employers must meet the needs of a decent living and fair treatment. There are 4 main components that can be seen in terms of textual and grammatical as elements of a decent living wage, namely basic wages, fixed (functional) allowances, non-permanent allowances (work stimuli based on worker attendance), old-age security allowances, and the form of these components is manifested in the form of money and other rewards, such as old-age security investments.<sup>69</sup> These four components are the accumulation and manifestation of the fulfillment of the needs of a decent living in the employment relationship between workers and employers.<sup>11</sup>

From this description, it gives an overview and understanding that the legal principle expressed in Article 28D paragraph (2) of the 1945 Constitution, namely the right of a person (worker) to receive remuneration (money) and fair and proper treatment in employment relations, at the level of *das sollen*<sup>70</sup> is a legal principle that cannot be contradicted with the laws and regulations at the level under the 1945 Constitution (*lex superior derogat legi inferior*) and vice versa the legal rules that domiciled under the 1945 Constitution, are obliged to carry out the mandate, without having to oppose. For this reason, the wage system must be in accordance with the mandate of

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<sup>11</sup> Rachmad Abduh, 2022, Labor Welfare Perspective with the Model of Minimum Wage Determination in City Regency, IURIS STUDIA: Journal of Legal Studies, Vol.3 No.1.

the 1945 Constitution. In other provisions, the understanding of wages uses the minimum wage pattern and the stage pattern in achieving the needs of a decent life. This is in accordance with the provisions of Law Number 13 of 2003.<sup>12</sup>

Based on Law Number 13 of 2003 concerning Manpower and the Job Creation Law in Chapter IV, discussing employment related to wages, the difference can be seen in the second paragraph of Article 88 which originally read "To realize income that meets a decent livelihood for humanity as referred to in paragraph (1), the government establishes a wage policy that protects workers/laborers" changed to "The Central Government stipulates wage policy to be an effort to realize the right of labor or workers to a decent livelihood".

In addition, in the third paragraph related to wages, in paragraph two, there is a difference which initially has 11 (eleven) points and then reduced to 7 (seven) points.<sup>13</sup> Between Article 88 and Article 89 of the Job Creation Law, 5 (five) new articles are inserted that discuss wages, where wages must not be lower than the provisions that have been stipulated by the law and if they are lower, the law is null and void. In addition, there is also a paragraph that regulates sanctions if there is negligence in providing work wages. In addition, Article 88A of Job Creation states that wages are determined based on units of time and/or units of output, meaning that they can be in the form of hours, days, weeks, and or months based on the results of the work performed.

Meanwhile, in article 88C, it is emphasized that the governor is obliged to set the Provincial Minimum Wage and can set the City/Regency Minimum Wage with certain conditions. The Job Creation Law limits the determination of the minimum wage by districts/cities and formulates it based on inflation and economic growth. The minimum wage of the district or city is in accordance with the Job Creation Law with certain conditions. With this article, it answers workers' concerns about wages, but the minimum wage itself is set based on inflation, economic growth and employment in a place.<sup>14</sup>

With the existence of new articles, the Job Creation Law abolishes Article 89 and Article 90 contained in the Manpower Law. However, the provision of

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<sup>12</sup> Hukumonline.com, April 12, 2018, Difference Between Das Sollen and Das Sein, Accessed on December 23, 2022 on <https://www.hukumonline.com/klinik/a/perbedaan-idas-sollen-i-dengan-idas-sein-i-lt5acd738a592ef>

<sup>13</sup> Katadata, October 16, 2020, Waiting for Government Regulations to Overcome Wage Polemics in the Job Creation Law, accessed on October 28, 2022 on <https://katadata.co.id/pingitaria/berita/5f8981d8a5e73/menunggu-peraturan-pemerintah-atasi-polemik-upah-dalam-uu-cipta-kerja>

<sup>14</sup> Agus Surya Manika, 2022, Juridical Study Related to the Determination of the Amount of Workers' Wages, Based on Article 88 C of Law Number 11 of 2020 concerning Job Creation, Journal of Legal Communication, Vol. 8 No.2.

the minimum wage contained in the Job Creation Law provides an exception for Small and Micro Enterprises contained in Article 90B. In this sector, wages are determined not based on provincial regulations, but based on agreements between workers and employers.

In the Job Creation Law, there are still a lot of things that need to be clarified related to employment. There are at least three Government Regulations that regulate the implementation of employment, namely:

- 1) Government regulations that regulate the use of foreign workers, employment relations and termination of employment (PHK), as well as working hours and work breaks.
- 2) Government Regulation is specifically to partially revise Government Regulation Number 78 of 2015 concerning wages, which includes regulating the Wage Board, Provincial Minimum Wage, Regency/City Minimum Wage, and the determination of minimum wage rules.
- 3) Government Regulations that regulate the implementation of the Job Loss Insurance (JKP) program.

This has an influence on the difficulty of attracting investment to Indonesia because of the need to balance wages and productivity in Indonesia with other countries, because Indonesia is already less competitive with other countries. From the employers' side, they hope that the Labor Law can be reviewed to better reflect a good balance between social safety net, wage levels, productivity and flexibility in changing jobs and the labor market in the industrial era 4.0.<sup>15</sup>

Wages play a very important role and are a characteristic of a labor relationship, even it is said that wages are the main goal of a worker who does work on other people or legal entities. That is why the government participates in dealing with this wage problem through various policies outlined in laws and regulations. Every worker has the right to earn a decent income for humanity. To realize a decent income, the government establishes protection with wages for workers. The realization of decent income is carried out by the government through the determination of a minimum wage on the basis of decent needs.

Wage arrangements are determined on the basis of an agreement between employers and workers. According to Law Number 13 of 2003, it is stated that the minimum wage is only intended for workers with a working period of 0 (zero) to 1 (one) year. From this definition, there are two important elements of the minimum wage, namely:

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<sup>15</sup> [Bisnis.com](https://ekonomi.bisnis.com/read/20191025/12/1163252/apindo-negosiasi-bipartit-jadi-solusi-polemik-kenaikan-ump-2020), October 25, 2019, Apindo: Bipartrit Negotiations Become a Solution to the 2020 UMP Increase Polemic, accessed on November 1, 2022 on <https://ekonomi.bisnis.com/read/20191025/12/1163252/apindo-negosiasi-bipartit-jadi-solusi-polemik-kenaikan-ump-2020>



- 1) The starting wage is the lowest wage that a worker must receive when he is first employed.
- 2) The amount of minimum wage must be able to meet the minimum living needs of workers, namely the need for clothing, food and household needs.<sup>16</sup>

The order of employers to pay the minimum wage is affirmed in Article 90 paragraph (1) of Law Number 13 of 2003 concerning Manpower emphasizes that "Employers are prohibited from paying wages lower than the minimum wage as referred to in Article 89". However, this provision still provides space as stated in Article 90 paragraph (2) of Law Number 13 of 2003 concerning Manpower by providing an opportunity for employers to suspend the payment of the minimum wage. The explanation of Article 90 paragraph (2) of the Manpower Law states that the suspension of the implementation of the minimum wage for companies that cannot afford it is intended to exempt the company concerned.

Wages are one of the most important aspects of worker protection. This is expressly explained in Article 88 paragraph (1) of Law Number 13 of 2003 that every worker or laborer has the right to earn an income that meets a decent livelihood for humanity. According to Article 1 number 30 of Law Number 13 of 2003, wages are the rights of workers or laborers that are received and expressed in the form of money in return from employers or employers to workers or laborers determined and paid according to employment agreements, agreements, or laws and regulations, including allowances for workers or laborers and their families for a job and/or services that have been or will be performed.<sup>17</sup>

Employers are required to provide a minimum wage that is valid for a certain period of time. If the suspension ends, the company concerned is obliged to implement the minimum wage that applies at that time but is not obliged to pay the fulfillment of the minimum wage provisions that apply at the time the suspension is given.<sup>18</sup>

However, in this regard, the Constitutional Court in Decision Number 72/PUU-XIII/2015 stated that the phrase "... but is not obliged to pay the fulfillment of the minimum wage provisions that apply at the time of the suspension" is contrary to the 1945 Constitution and does not have binding legal force. This means that the Court affirmed that the difference in the shortfall in payment of the minimum wage during the suspension period must

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<sup>16</sup> B. Siswanto Sastrohadiwiryono, Indonesia Manpower Management Administrative and Operational Approaches, Cet. 2, p.15

<sup>17</sup> Suhartoyo, 2019, Legal Protection for Workers in the National Labor Law System, Administrative Law & Governance Journal, Vol. 2 No.2.

<sup>18</sup> Griselda Nadya Billy, Ibrahim R, Employers' Obligations in Providing Minimum Wages, Workers After the Constitutional Court Decision Number: 72/PUU-XIII/2015.

still be paid by the employer." The uncertainty of the provisions of Article 90 paragraph (1) of Law Number 13 of 2003 concerning Manpower is contained in the words "Employers are prohibited from paying wages lower than the minimum wage." whereas in the provisions of Article 1 Number 4 of Law Number 13 of 2003 concerning Manpower, employers are one of the subjects who can provide work to workers and pay wages as clearly seen in Article 1 number 4 of the Manpower Law which states "Employer is an individual, employer, legal entity, or other body that employs workers or state administrators who employ civil servants by paying salaries, wages, or other forms of compensation".

Based on the Regulation of the Minister of Manpower Number PER-01/MEN/1999 jo. Decree of the Minister of Manpower and Transmigration Number KEP-226/MEN/2000, the coverage of the area where the minimum wage applies includes: Provincial Minimum Wage (UMP) applicable in all districts or cities in 1 (one) provincial area; The minimum wage of the district or city (UMK) applies in 1 (one) district or city area.

Regarding the minimum wage for workers, the provisions in Regional Regulation Number 22 of 2012 Article 37 paragraphs (4) and (5) are contrary to Article 90 paragraph (1) jo. Article 92 paragraph (2) of Law Number 13 of 2003 jo. Article 13 paragraph (3) of the Ministerial Regulation PER-01/MEN/1999, where Law Number 13 of 2003 does not require companies/employers to differentiate the amount of wages of workers/workers based on their marital status in terms of increasing wages by 5% of the minimum wage. The minimum wage limit that must be paid to workers is the Pasuruan Regency Minimum Wage. In substance, the formulation of Regional Regulation Number 22 of 2012 Article 37 paragraph (4) can be detailed, namely employers are obliged to increase wages at least 5% (five percent) greater than MSEs for married workers/workers and workers/workers who already have a working period of 1 (one) year or more.

In the provision of wages, there are two principles that should be considered by entrepreneurs who own companies, namely the principle of feasibility and the principle of fairness. Here's the explanation:

1) Eligibility Principles; The principle of feasibility referred to here is a comparison of whether the amount of wages is appropriate or not. The feasibility of the wages provided can be reviewed from two sides, namely the fundamental difference in the size and size of workers' wages in a company when compared to the wages of workers/laborers with the same company in other similar companies. Then the second side, namely, the difference in the wages of workers/laborers when doing a job compared to the wages of workers/laborers with other workers in the same company.

2) Principles of Justice; The principle of justice referred to here is not the equality of nominal amounts in the distribution of wages. However, the wages given are based on the sacrifices and/or contributions that have been made by workers in carrying out their work duties. The greater the sacrifice and contribution made by the worker, the greater the wages should be received by the worker.<sup>19</sup>

Judging from the amount of wages by considering the size of standards in other companies that are still in the same type of business, and also considering the amount of wages between workers and other workers in one company. The diverse wage system causes differences in the determination of the minimum wage, so sectoral policies are carried out that consider several aspects that affect, including the following:

- 1) Aspects of the company's condition,
- 2) Aspects of labor skills,
- 3) Aspects of the standard of living,
- 4) Aspects of the type of work.<sup>20</sup>

Improving worker welfare Welfare for workers is important because it will indirectly affect their work results, while employers have an obligation to improve worker welfare with welfare facilities and also labor social security. The Manpower Law explains in article 1 number 31 that:

Worker welfare is a fulfillment of physical and spiritual needs and/or needs, both inside and outside the employment relationship, which can directly or indirectly increase work productivity in a safe and healthy work environment.

Welfare facilities for workers/laborers are non-wage income (Circular Letter of the Minister of Manpower Number SE-07/MEN/1990) provided indirectly by employers or employers. Article 100 paragraph (1) of Law Number 13 of 2003 states: "To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities".

In the formulation of the Provincial Minimum Wage (UMP), the Regional Government establishes a Provincial Wage Council consisting of government representatives, offices/agencies, related units, trade union organizations, employer organizations, and academics.<sup>21</sup>The Provincial Wage Council functions to conduct surveys and collect data on the prices of staples

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<sup>19</sup> Emmanuel Kurniawan, 2013, Do You Know the Rights of Permanent and Contract Employees, Jakarta: Dunia Cerdas, p. 23.

<sup>20</sup> R. Joni Bambang, 2003, Employment Law, Introduction to Dedi Ismatullah Bandung: Pustaka Setia, p. 233.

<sup>21</sup> Syarifa Mahila, 2015, Analysis of the Mechanism for Determining the Minimum Wage in Jambi Province in 2015, Scientific Journal of Batanghari Jambi University, Vol. 15 No. 3.

in the surrounding areas, in the components of groups of decent living needs, which include components of clothing, food, housing, health, transportation, recreation, and savings. The results of the survey on the need for a decent living will later become the basis for the formulation of the Provincial Minimum Wage. The proposed minimum wage submitted by the wage council is the result of a survey of the living needs of a single worker.<sup>22</sup>

The latest provisions for the living needs of a single worker are regulated in Permenakertrans Number 13 of 2012 concerning the components and determination of the needs of a decent living. In this regulation, the government stipulates 7 (seven) groups and 60 (sixty) components of needs for workers or single workers which are the basis for conducting price surveys and determining the amount of minimum wage value.<sup>23</sup>

The review of the amount of the Provincial Minimum Wage and the Regency/City Minimum Wage is held once every 1 (one) year or in other words the minimum wage is valid for 1 (one) year. Based on the needs of a person's life, the provisions of Article 37 paragraph (4) of Regional Regulation Number 22 of 2012 are very difficult and risky for entrepreneurs/companies to implement. As an example, what if there are 2 (two) workers who are married and the other is single apply for the same job and both are accepted, or what if a single worker turns out to be more productive than a worker who is already married, just because of married status then the employer has to pay 5% (five percent) more than the single worker is a loss to the company. Thus, the provisions in Article 37 paragraphs (4) and (5) of Regional Regulation Number 22 of 2012 actually exceed the provisions that have been regulated in higher laws and regulations and therefore cause conflicts with the provisions of Article 90 paragraph (1) jo. Article 92 paragraph (2) of Law Number 13 of 2003 jo. Article 13 paragraph (3) of the Ministerial Regulation PER-01/MEN/1999.

In addition, work effectiveness and productivity are also influenced by the level of skills and competencies possessed by workers. Because qualified skills and competencies must be possessed by workers. This is so that workers are able to support the company's wheels in producing goods/services.<sup>24</sup>

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<sup>22</sup> Rizki Citra Pratiwi, Siti Hajati Hoesin, 2022, Protection of Workers' Rights Related to the Provision of Wages Below the City Minimum Wage, PALAR (Pakuan Law Review), Vol. 08 No. 01.

<sup>23</sup> Nanang Setyono, 2018, Reconstruction of Decent Living Needs (KHL) Through Employee Cooperatives in the Study of Law Number 13 of 2003 concerning Manpower.

<sup>24</sup> The Bangka Belitung Province Legal Documentation and Information Network, Determination of a Fair Provincial Minimum Wage for Workers and Employers, accessed on December 23, 2022 on <https://jdih.babelprov.go.id/penetapan-upah-minimum-provinsi-yang-berkeadilan-bagi-pekerja-dan-pengusaha>

If the wheels run smoothly, the company will get a large profit and can expand its business in other sectors. The increase in competence is always directly proportional to the high productivity of workers. Because in the hands of competent workers, a job can be completed. So that all workers must actively strive to improve their competence.

From the above explanation, it is clear that there is a conflict of norms between Regional Regulation Number 22 of 2012 which is contrary to the provisions of Article 90 paragraph (1) jo. Article 92 paragraph (2) of Law Number 13 of 2003 jo. Article 13 paragraph (3) of the Ministerial Regulation PER-01/MEN/1999 concerning worker productivity and worker status so that it affects the wages of workers by companies. In addition, it makes the provisions of Article 88 paragraph (1) of Law Number 13 of 2003, jo. Article 28D paragraph (2) of the 1945 Constitution, when faced with Article 88 paragraph (4), and Article 89 paragraph (2), and paragraph (4) of Law Number 13 of 2003.

The ambiguity is getting thicker with the presence of the clause "life achievement deserves to pay attention to productivity and economic growth and the level of ability of the business world". This statement contains the connotation of fulfilling a decent living wage is highly determined by employers (service users). Every company has a responsibility for improving and developing worker competencies through job training.<sup>25</sup>

This is guaranteed in Article 11 of Law Number 13 of 2003 concerning Manpower, "Every workforce has the right to acquire and/or improve and/or develop work competencies in accordance with their talents, interests and abilities through job training". So that the Provincial Minimum Wage that has been set by the Governor, from the side of employers who will pay workers' salaries/wages, feel benefited because they get high worker productivity and maintained work quality. Finally, it is recommended that the government and provincial governments must be more active in carrying out labor supervision, minimum wage and the implementation of the wage system on a regular basis. All companies, both large and small, are expected to provide salary/wage protection for workers and their families by meeting the set Decent Living Needs and Minimum Wages so that welfare can be achieved for them.<sup>26</sup>

Provisions that prohibit employers from paying wages below the minimum wage as regulated in Article 90 paragraph (1) of Law Number 13 of 2003 concerning Manpower cause uncertainty and injustice and do not meet

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<sup>25</sup> Gede Fajar Aryesha Wiguna, The Effectiveness of Work Competency Development at the Krisna 5 Singaraja Tourist Object Based on Law Number 13 of 2003 concerning Manpower.

<sup>26</sup> Gajimu.com, April 07, 2021, Work and Wages, accessed on December 19, 2022 on <https://gajimu.com/pekerjaan-yanglayak/pengupahan>

the principles of both material and the principles of the formation of laws and regulations and result in a weak business climate due to the inability and fear for employers to hire workers, This resulted in the nullity of the employment agreement, fines and criminal sanctions as well as the emergence of lawsuits for lack of unpaid wages and other demands related to termination of employment. The provisions of Article 90 paragraph (1) of Law Number 13 of 2003 need to be reformulated by adjusting the principles and principles in Law Number 12 of 2012 concerning the Establishment of Laws and Regulations, Pancasila Values and the Constitution of the Republic of Indonesia of 1945.

The conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Law Number 13 of 2003 concerning Job Creation related to wages creates a vertical norm conflict where there is an inconsistency between higher norms and lower norms and has an impact on the wages of workers and company owners.

## **2. Conflict of Norms Between Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency and Law (UU) Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law**

The discussion regarding the conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Law Number 11 of 2020 concerning Job Creation related to wages. In the provisions of Article 37 paragraphs (4) and (5) in Regional Regulation Number 22 of 2012 that "Employers are obliged to increase the wages of labor workers who are already above the MSE, at least according to the nominal amount of the MSE increase unless it is better regulated in the Company Regulation or Collective Labor Agreement". Meanwhile, in practice, the provisions of Article 37 paragraph (4) of Regional Regulation Number 22 of 2012 are very difficult and risky for entrepreneurs/companies to implement. As an example, what if there are 2 (two) workers who are married and the other is single apply for the same job and both are accepted, or what if workers who are single turn out to be more productive than workers who are already married, it certainly causes losses to the company. Because based on Article 37 paragraph (4) of Regional Regulation Number 22 of 2012, wages are seen based on productivity and the status of the worker.

Meanwhile, in the Employment chapter of the Job Creation Law, there are changes to articles related to wages. There are several things that have changed in terms of wages. First, the loss of the "necessities of a decent life".

According to the Regulation of the Minister of Manpower Number 21 of 2016 concerning the Need for a Decent Life, what is meant as a Decent Living Necessity is the standard of a worker/single laborer to be able to live a decent life physically in 1 (one) month as a consideration for determining the minimum wage. Wage policy is essentially inseparable from the state's obligation to make a decent living for its people. As also stated in Article 88 of the Manpower Law, "Every worker/laborer has the right to a decent livelihood for humanity". Furthermore, "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." This promise of a decent livelihood in the Manpower Law is explained further in Article 89 concerning the minimum wage which in paragraph (2) states that: "The minimum wage is directed towards the achievement of the needs of a decent life.

However, the analysis of Article 89 was abolished in the provisions of the Job Creation Law, which then inserted Article 88D which stipulates that: "(1) The minimum wage is calculated using the minimum wage calculation formula. (2) The minimum wage calculation formula contains economic growth or inflation variables." It is important to note that the provisions related to the calculation of the minimum wage in the Job Creation Law no longer use "the need for a decent living" as a consideration. The calculation is solely based on the variable of economic growth or inflation.<sup>27</sup>

Related to the minimum wage. Article 88C paragraph (1) of the Job Creation Law states that "The Governor is obliged to set the provincial minimum wage." Furthermore, paragraph (2) states that "The Governor may set the minimum wage of the district/city with certain conditions." This means that the Job Creation Law only provides the obligation to set the minimum wage at the provincial level, while at the district/city level it is optional or optional. In fact, the provincial minimum wage is the lowest minimum wage among all the district/city minimum wages in the province.

This is because of the provision that the district/city minimum wage must be set higher than the provincial minimum wage. This means that the provincial minimum wage may not be representative of the needs of a decent living in a district/city, because there is a possibility of disparities in socio-economic conditions between districts/cities in a province. The Job Creation Law also abolished the sectoral minimum wage that was previously in the Employment Law. The elimination of the sectoral minimum wage is also not based on a clear reason. In fact, so far the sectoral minimum wage is considered

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<sup>27</sup> Agus Surya Manika, 2022, Juridical Study Related to the Determination of the Amount of Workers' Wages, Based on Article 88 C of Law Number 11 of 2020 concerning Job Creation, Journal of Legal Communication, Vol. 8 No.2.

more representative because it represents conditions in certain sectors. The sectoral minimum wage was also previously mandatory to be set higher than the provincial minimum wage. So again, the elimination of the sectoral minimum wage tends to be detrimental to workers.<sup>28</sup>

The Job Creation Law changes the scope of wage policy in Article 88 paragraph (3). Previously, in the Manpower Law, the wage policy consisted of:

- a. Upah minimum;
- b. Overtime wages;
- c. Wages do not go to work because of obstacles;
- d. Wages do not go to work because they do other activities outside of their job;
- e. Wages for exercising their right to work breaks;
- f. Form and method of wage payment;
- g. Fines and wage deductions;
- h. Things that can be accounted for with wages;
- i. Proportional wage structure and scale;
- j. Wages for severance pay;
- k. Wages for income tax calculations.

In the Job Creation Law, these types of wage policies are trimmed so that they only include:

- a. Upah minimum;
- b. Structure and scale of wages;
- c. Overtime wages;
- d. Wages for not going to work and/or not doing work for some reason;
- e. Form and method of wage payment;
- f. Things that can be accounted for with wages;
- g. Wages as the basis for calculating or paying other rights and obligations.<sup>29</sup>

### **3. Conflict of Norms Between Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency and Government Regulation Number 36 of 2021 concerning Wages**

In this sub-chapter, it will be discussed about the conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Law Number 36 of 2021 concerning wages. According to Government Regulation Number 36 of 2021 concerning Wages, it discusses several of them, namely:

1. Policies in wages;

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<sup>28</sup> *Ibid*, p. 634.

<sup>29</sup> Heylaw Edu, 17 January 2021, Problematic Points Related to Employment Law in the Job Creation Law, Accessed on 20 December 2022 on <https://heylawedu.id/blog/poin-poin-bermasalah-terkait-hukum-ketenagakerjaan-di-uu-cipta-kerja>



2. Determination of wages based on units of time and/or units of results;
3. Structure and scale of Wages;
4. Upah minimum;
5. The lowest wage in micro and small businesses;
6. Wage Protection;
7. Form and method of payment of wages;
8. Things that can be taken into account with wages;
9. Wages as the basis for calculating or paying other rights and obligations;
10. Wage Board; and
11. Administrative Sanksi.<sup>30</sup>

Wages are one of the essential elements in employment relations, considering that the existence of wages is always associated with a source of income for workers or laborers to achieve a decent level of livelihood for themselves and their families.<sup>31</sup> According to Article 1 number 30 of Law Number 13 of 2003 concerning Manpower (Law 13/2003), Wage is a worker's right that is received and expressed in the form of money as a reward from an employer or employer to a worker determined and paid according to a work agreement, agreement, or legislation, including allowances for workers and their families for a job and/or service that has been or will be performed.<sup>32</sup>

Government Regulation Number 36 of 2021 concerning Wages as a regulation in the field of wages is required to answer the challenges of globalization dynamics and information technology transformation that have an impact on changes in the social and economic order, including changes in the pattern of employment relations in the field of employment. In Government Regulation Number 36 of 2021 concerning Wages, Article 32 explains the calculation of MSEs based on the purchasing power parity ratio, labor absorption rate, median wage ratio, and calculating the average relative value of MSEs.

In substance, in Regional Regulation Number 22 of 2012 Article 37 paragraph (4) it is explained that employers are obliged to increase wages at least 5% (five percent) greater than MSEs for married workers/workers and workers/workers who have had a working period of 1 (one) year or more. In Article 34 paragraph (3) that the adjustment of the minimum wage value is carried out based on the value of economic growth or inflation at the provincial

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<sup>30</sup> Jogloabang, PP 36 of 2021 concerning Wages, accessed on December 19, 2022 on <https://www.jogloabang.com/ekbis/pp-36-2021-pengupahan>

<sup>31</sup> Gajimu.com, accessed on December 18, 2022 on <https://gajimu.com/pekerjaan-yanglayak/pengupahan/pertanyaan-mengenai-gaji-atau-upah-kerja-1>

<sup>32</sup> Gajimu.com, accessed on December 23, 2022 on <https://gajimu.com/pekerjaan-yanglayak/pengupahan/pertanyaan-mengenai-gaji-atau-upah-kerja-1>

level. Meanwhile, in Government Regulation Number 36 of 2021, it can be seen in the Table that wages are calculated based on hourly wages. The wage issue triggers a conflict of norms between these two regulations, where between the two there are differences in guidelines that should have a follow-up to these regulations.

#### **4. Conflict of Norms Between Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency and Law (UU) Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law**

In this sub-chapter, it will be discussed about the conflict of norms contained in Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency with Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation.

According to Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation, it is hoped that with job creation, it is hoped that it will be able to absorb the widest possible workforce in Indonesia in the midst of increasingly competitive competition and the demands of economic globalization as well as the existence of global economic challenges and crises that can cause disruption to the national economy.

In supporting job creation, it is necessary to make adjustments from various aspects of regulations that are related to the protection, convenience, and empowerment of cooperatives and micro, small, and medium enterprises, including improving the protection and welfare of workers. In order to strengthen the protection of the workforce and improve the role and welfare of workers or workers in order to support the investment ecosystem, this Government Regulation in Lieu of Law is carried out to change, delete, or establish several new provisions.

In this Government Regulation in Lieu of Law, changes have been made to several articles, one of which is the provisions in Law Number 13 of 2003 concerning Manpower (Statute Book of the Republic of Indonesia Number 39 of 2003, Supplement to Statute Book of the Republic of Indonesia Number 4279) in article 88D related to the determination of wages. It is stated that in the Government Regulation in Lieu of Law that in Paragraph (2) that in the formulation of the calculation of the Minimum Wage as referred to in Paragraph (1) it is carried out by taking into account the variables of economic growth, inflation, and certain indices.

In this article, it is not explained what certain indices are used as considerations in the formulation of the minimum wage, which causes a lot of

understanding in guessing the article. This is further emphasized by the addition of a paragraph in article 88F, namely in certain circumstances the Government can set a minimum wage calculation formula that is different from the minimum wage calculation formula as referred to in Article 88D paragraph (2). The emergence of these multiple interpretations will cause a conflict of norms with Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency.

The conflict of norms in Government Regulation in Lieu of Law Number 2 of 2022 against Regional Regulation Number 22 of 2012 concerning the Manpower Implementation System in Pasuruan Regency is the existence of multiple interpretations of wages mentioned in the amendment to Article 88D and Article 88F. The difference in the preparation of the structure and wage scale between the Manpower Law and the Job Creation Law is in consideration of class, position, working period, education, and worker competence. The Labor Law states that the preparation of wage structures and scales must pay attention to the class, position, length of service, education, and competence of workers. However, the Job Creation Law negates these considerations and delegates the preparation of wage structures and scales only based on the company's ability and productivity.

### **C. CONCLUSION**

Since the enactment of Regency Regional Regulation Number 22 of 2012 concerning the Manpower System in Pasuruan Regency, it has focused on realizing a balance in the realization of the interests of the implementer by avoiding potential conflicts over the regulation. However, in reality, since the enactment of Regional Regulation Number 22 of 2012, Pasuruan Regency has been unequal and caused a conflict of norms. In Regional Regulation Number 22 of 2012 Article 14 is contrary to article 7 paragraph (4) and paragraph (5) of the Ministerial Regulation PER.22/MEN/IX/2009 which is the Elaboration and Implementation of Law Number 13 of 2003 concerning Apprenticeships, Law Number 13 of 2003 concerning Job Creation Related to Wages, Law Number 11 of 2020 concerning Job Creation Related to Wages, Law Number 13 of 2003 concerning Manpower Related to Retirement Wages, Government Regulation Number 36 of 2021 concerning Wages. The regulation has limited the duration of the apprenticeship to be shorter. The internship time is required for a minimum of 1 year because it is not enough to guide workers if only for a short time.

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### **Legislation**

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