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Legal Analysis of Fines for The Companies That Failing to Provide Wages under Government Act No. 36 of 2021

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ARTICLE INFO	ABSTRACT
<p>Keywords : Wages, Fines, Companies, Workers</p> <p>Submitted: 2023-06-14</p> <p>Last revised: 2023-11-01</p> <p>Accepted: 2023-12-06</p> <p>DOI : 10.25077/alj.v8i2.46</p>	<p>This study investigates the legal framework surrounding unpaid wages and the subsequent efforts of workers to secure their rightful compensation. Companies employ various tactics to avoid fulfilling their wage obligations, such as delaying payments and making unilateral deductions. In response to these practices, workers, as victims of wage non-payment, persist in seeking their due rights even after fulfilling their job responsibilities. One avenue pursued by workers is engaging in mediation with government intermediaries. The study focuses on the legal context shaped by the government to address the issue, particularly through the enactment of Government Act Number 36 of 2021 on Wages. This legislation plays a crucial role in outlining the government's responsibilities and measures to curb non-payment of wages by companies. Government Regulation No. 36 of 2021 on Wages elucidates the government's role in imposing sanctions, including fines, on companies failing to fulfill their wage obligations to workers. The research aims to shed light on the effectiveness and implications of these legal measures in safeguarding the rights of workers and ensuring fair compensation for their labor.</p>

1. Introduction

Indonesia, as a country that has a population of more than 250 million, has another task besides being an independent country, namely the welfare of the people. This task has been explained through the preamble section of the 1945 Constitution. The purpose contained in the preamble to the 1945 Constitution explains that the state must provide welfare for all citizens in various sectors of life.

The State guarantees that every citizen can obtain welfare in their own way as long as it does not violate applicable rules, especially related to the implementation of the rights and obligations of every citizen. One way that people can get welfare is to get a job so they can get wages. Therefore, the government, as the holder of the highest power, must be able to ensure the availability of jobs for its citizens so that social inequality does not occur.

As a way of realizing the guarantee of getting a job for every citizen, the state has provided a regulation in Article 27, paragraph (2) of the 1945 Constitution, which explains that "Every citizen has the right to work and get a decent living for humanity." With this Regulation, the state, as the highest power holder, guarantees the freedom of its citizens to have jobs. If there are citizens who want to work as workers in a company, of course, it will consume energy, time, and skills mastered. Furthermore, there will be a demand for wages for obligations carried out by workers/laborers.

The demand for wages by workers to employers is one of the important factors because it concerns the welfare of workers, not only for themselves but also for their families. The government, as a third party related to employment relations, needs to prove its ability to provide guarantees in the form of protection of wage payments from employers to workers. If the obligation is not carried out on time, it can be sanctioned in the form of imposition of fines due to these actions. Moreover, it can cause a sense of injustice to workers' right to be paid.

A sense of justice must be created regarding the employment relationship between employers and their workers in the form of employment agreements and must have legal force. A sense of justice can be formed if employers and workers are willing to carry out the contents of existing work agreements. The delay in providing wages to workers by employers is part of a sense of injustice, so inevitably, employers will bear the risk related to delays in paying wages to their workers. Another reason for the delay in the payment of wages by employers to their workers will be an obstacle for workers to create a prosperous life.

This can happen because workers/laborers depend on employers benefitting from the company's profits. The right to create a prosperous life is a basic right that must not be

interfered with and must be respected by anyone. Related to this, a sense of justice must be created to realize national and state life.

Justice was created because it is used as the goal of the existence of law, whose function is to guide the community in making social contacts. Especially in Indonesia, the sense of justice is reflected in Pancasila, which is used as a benchmark for the nation and state to realize justice for all Indonesians. The precept that discusses justice is the fifth precept, namely, Social Justice for All Indonesian People. Regarding the sense of justice, of course, based on the importance of understanding justice for all humans, which in practice creates a relationship between man and himself, man with other humans, man with society, man with nation and state, and most importantly the relationship of human justice with God as the creator.

As the starting point of Pancasila as a philosophy of life of the nation and state, it is necessary to have a philosophical foundation related to industrial relations between workers and entrepreneurs, namely Pancasila. The normative basis is the various forms of legal rules related to Pancasila industrial relations, such as the need for the enactment of basic law, namely the 1945 Constitution and various other regulations, as a way of implementing the values contained in Pancasila. Therefore, if there is a violation in applying various laws and regulations, it can be called deviating from Pancasila, which is used as a philosophical basis.

In the opinion of Pancasila industrial relations, of course, there is a balance between rights and obligations between parties involved in a company's business activities. The balance can be formed not from the side of the balance of power but from the side of justice and propriety. In addition, Pancasila industrial relations also creates an opinion that every company result that has been achieved is the result of cooperation between workers/laborers and employers, and the results obtained must be enjoyed fairly, evenly, and equally following the work of each party.

Regarding the relationship between rights and obligations between workers/laborers and employers, the government will certainly carry out its duties and functions as an implementer of rules, among others, by issuing laws and regulations related to employment. This intends to guarantee the importance of legal certainty related to rights and obligations between employers and workers. Related to this, the importance of protection for workers is an inseparable part of citizen protection. Fundamental human rights must provide protection everywhere for every citizen working everywhere. In the end, workers can get a decent life as human beings in accordance with Article 28 D paragraph (2) of the 1945 Constitution, which explains that "Everyone has the right to do work and to be rewarded and treated fairly and appropriately related to employment relations."

Regarding labor relations, rights, and obligations between cooperating parties, of course, there is reciprocity. Various matters related to workers' rights are the responsibility of employers to be fulfilled immediately; on the contrary, various things that are the rights of employers are the responsibility of workers. Different from the element of the employment agreement at the beginning of the employment relationship, the employer's responsibility is to provide work that can be done by workers and pay wages to workers, while the responsibility of workers is to do work properly, correctly, honestly and professionally because workers must not demand their rights alone.

The establishment of an employment agreement can be categorized as a fundamental legal institution when viewed from the elements of Manpower and its most needed nature from the existence of Manpower, namely the birth of legal relations in the form of employment relationships between workers and employers. When the paper agreement has been agreed regarding the rights and obligations between employers and workers, it is required to carry out the contents of the agreement in a good, directed, honest, and professional manner.

The existence of an employment agreement between employers and workers is a sign of legal certainty to carry out the contents of the work agreement properly and stay consistent. Therefore, in the work agreement, the main discussion is that employers must determine the various terms and conditions of work for workers and not violate applicable rules. This reason prevents industrial relations disputes between workers and employers because of differences in the meaning of the content of the work agreement. According to the legal side, the agreement is known with several important principles that must be of concern to the parties when agreeing, including the principle of consensualism, the principle of freedom of contract, the principle of personality, the principle of *facta sunt servanda* and the principle of good faith.

Wages are one of the factors in the occurrence of labor relations that often occur in disputes. For example, there is a delay in the payment of wages to workers by employers for various reasons and the absence of action from the authorities in the form of sanctions or fines to companies to pay wages to workers/laborers. Regarding the delay in payment of wages, it has been regulated in Article 95 paragraph 2 of Law No. 13 of 2003 on Manpower, which was later amended into Article 88 A paragraph 6 of Law No. 11 of 2020 concerning Job Creation which regulates "Employers who due to elements of intentionality or negligence result in late payment of wages, are subject to fines following a certain percentage of workers/laborers' wages.

Another reason is the existence of rules regarding the right of workers/laborers to get wages from employers regularly and intact depending on the payment date period as stipulated in Article 18 of Government Regulation No. 78 of 2015 on Wages, which was

later amended again in Article 55 of Government Regulation No. 36 of 2021 on wages, in the future referred to as Government Regulation No. 36 of 2021 and Article 20 on wages which was later amended into article 54 paragraph 2 of Government Regulation No. 36 of 2021. After the elaboration of the Regulation governing the process of imposing fines for late payment of wages to workers by these employers, it can be said that the rights of workers/laborers have been protected by law, which requires employers to carry out their obligations to pay wages to workers following the agreed time.

If there is a delay in the payment of wages by employers to workers, sanctions can be imposed in the form of fines for violating workers' rights, so it can also be said that there is still justice as the intention of the final goal of the law. In practice, there are still many employers who ignore existing provisions, and in the end, disputes occur and end up in court. One example of such a case is the claim of a former worker of PT. Dunkindo Lestari (Dunkin Donut) was laid off without clear information, which required the company to pay wages for the 2020-2021 period. However, until mid-2022, only total wages were paid, while the total fines to be paid by the company were not paid. In addition, former workers also demanded to be hired again because their status before being laid off was an Indefinite Time Work Agreement (PKWTT).

The events mentioned above often occur in most companies, where the panel of judges rejected allegations related to the imposition of fines for delaying payment of wages referring to Article 53 of Government Regulation on the Wage, subsequently changed to Article 59 paragraph 1 of Government Regulation No. 36 of 2021 which also regulates the imposition of fines for delays in the wages of workers/laborers can only be done if it has been regulated in the work agreement between employers and workers/laborers.

Related to the explanation above, it is necessary to find a legal construction related to the problem of delays in payment of workers' wages because it is complex in terms of the factors causing delays in payment of wages. However, it may be another reason through a legal review by a judge, or it can also be analyzed from an interpretation related to the meaning of delays in payment of wages, which is also possible that there will be differences between those previously described in legislation with the meaning of the understanding carried out by judges based on what happens related to the payment of wages of workers/laborers in a company.

From the explanation above, there is a legal construction that will still stand in order to find the meaning of justice as an ultimate goal of the existence of law. A sense of justice can be realized through legal protection for workers/laborers related to wage delays. These violations can cause losses to workers who will later be hampered to meet their living needs. In addition, the worker's family is very dependent on workers who work in a company for various necessities of life.

After the description above, it can be said that the main problem in the business world today is the absence of good intentions of employers to pay wages to workers so that the position of workers becomes weak and cannot do anything even though it is regulated in Government Regulation No. 36 of 2021.

2. Method

The method used in this study is normative and descriptive. Normative research is research whose source data is obtained from libraries. It is descriptive because it discusses the data obtained more deeply to create consistent conclusions.

3. Legal Position of Wages in Indonesia

As a constitutional state of law, Indonesia has formulated all community actions through laws and regulations. The existence of workers and employers in the provisions of laws and regulations has been explained in various literature or related laws, in this case, which regulate workers and employers. The existence of Manpower is actually to protect and maintain the dignity and prestige of workers so that slavery does not occur. So, it is very important to regulate wages in employment relations to avoid actions that can harm workers/laborers.

In Article 1 Number 30 of Manpower, wages are defined as workers/laborers' rights received and expressed in the form of money in return from employers or hirers to workers/laborers determined and paid according to a work agreement, agreement or legislation, including benefits for workers/laborers and their families for a job and/or service that has been or will be issued. The provisions in Article 88, paragraph (1) of the Labor Law guarantee legal protection for workers, which states, "Every worker/laborer has the right to earn an income that meets a decent living standard for humanity." Further elaborated in paragraph (2) and paragraph (3) in the provisions of the article above, the policy of protection of workers' wages is realized with provisions regarding:

3.1. Minimum wage

The government has established wage policies that protect workers so that workers can meet their life and family needs. The minimum wage is regulated in the Regulation of the Minister of Manpower Number: PER-01/MEN/1999 on Minimum Wage jo. Decree of the Minister of Manpower and Transmigration Number: KEP-726/MEN/2000 concerning Amendments to Article 1, Article 3, Article 4, Article 8, Article 11, Article 20, and Article 21 of the Regulation of the Minister of Manpower Number: PER-01/MEN/1999 on Minimum Wage. The minimum wage is the lowest monthly wage, and the basic wage includes fixed allowances. Provincial minimum wage, which is the minimum wage that applies to all districts/cities in one province.

Provisions regarding the minimum wage are determined based on the needs of decent living and considering productivity and economic growth (Article 88 paragraph (4) of the Manpower). In the future, there will be two types of minimum wages, namely, provincial and municipal minimum wages. The implementation and determination of the minimum wage is based on the components of decent living needs (KHL) regulated in the Ministerial Regulation. Decree of the Minister of Manpower No. 17 of 2005 regulates KHL as many as 46 types, which were later changed to 60 types in Decree of the Minister of Energy No. 13 of 2012. Under the provisions of Article 90, the payment of the minimum wage is not allowed to be lower than the provincial minimum wage and the municipal district minimum wage. Further explained in the provisions of Article 185 of the Manpower, violations of minimum wage provisions are categorized as criminal offenses that are subject to a maximum penalty of one year and a maximum of four years in prison and/or a fine of at least Rp100.000.00,- and maximum Rp400.000.000,-

3.2. Overtime payment

The Manpower has regulated employers who employ workers above the 8-hour working provision with the consent of the worker/laborers concerned and a maximum working time of 3 hours per day and 14 hours per week (article 78 of the Manpower). Employers must pay overtime wages whose provisions are stipulated in Ministerial Decree No. 102/MEN/VI/2004 in the amount of 1/173 multiplied by a month's wages (100% basic wage + fixed allowance). Regarding the search for more detailed calculations can be seen in this Ministerial Decree.

3.3. Wages do not come to work because they are unable to work

This provision has been stipulated in Article 93 of the Manpower, which requires employers to pay wages if:

- a. Female workers/laborers who experience pain on the first and second days of their menstruation so that they cannot work;
- b. workers/laborers who do not come to work because workers/laborers marry, circumcision, baptize their children, wives give birth or miscarriage, husband or wife or children or children or parents or in-laws or family members in one house die;
- c. workers/laborers cannot do work because they are carrying out obligations to the State;
- d. workers/laborers cannot do their work because they carry out the worship ordered by their religion;
- e. workers/laborers are willing to do the work that has been promised, but the employer does not hire them, either because of his fault or obstacles that the employer should be able to avoid;

- f. workers/laborers exercise the right to rest;
- g. workers/laborers carry out the duties of trade unions with the approval of employers;
- h. workers/laborers carry out educational duties for the company.

Wages are also still paid if workers exercise their right to work rest periods, namely on holidays and leave. In addition, wage policy also includes the form and method of payment of wages, fines, and deductions, things that can be taken into account with wages, proportional wage structure and scale, wages for severance payments, and wages for income tax calculations.

3.4. Living Wage

Article 4 of Government Regulation No. 78 of 2015 (Government Regulation on Wages) regulates decent income as the amount of income or income of workers/laborers from the results of their work to meet the needs of workers/laborers and their families reasonably. However, if we reflect on the minimum wage policy consisting of 60 items that are intended only enough for a single worker, as explicitly mentioned in Article 43 of the Government Regulation of Wage as follows:

- a. The determination of the minimum wage, as referred to in Article 41, shall be carried out annually based on the needs of decent living and considering productivity and economic growth.
- b. The need for decent living, as referred to in paragraph (1), is the standard need for a single worker/laborer to live physically decent for the needs of 1 (one) month.

On the employer's side, the basic wage plus fixed allowance is the same as the minimum wage (basic wage 75% + fixed allowance 25% = minimum wage), while from the labor side, the basic wage is the same as the minimum wage, so the wage is the minimum wage 75% plus the non-fixed allowance 25% (wage = minimum wage + fixed allowance 25%), so there will be an additional wage of 1/3 of the minimum wage.

4. The Government's Role in Applying Fines to Employers Who Do Not Pay Wages to Workers Based on Government Regulation Number 36 of 2021 on Wages

The existence of elements of workers/laborers that have been fulfilled is to do work with an order from their leaders in the form of wages and in other forms. Workers/laborers receiving rewards depend on the level of the economy, as well as socio-culture in each region, so as to cause differences. Differences in wages to be received by workers in different regions cause a widespread problem.

This happens because there is no legal certainty related to regulations that can provide rights and obligations for workers with certainty. One of the rights and obligations that must be fulfilled with certainty is regarding the wages that will be received by workers, who are also the main source in meeting the needs of life properly.

The existence of unmet needs for a decent life indicates that workers urgently need protection for their rights and obligations. In addition to legal certainty related to the rights and obligations of workers, the work region of private workers results in no supervision from the government. Referring to the issues already mentioned, this will also affect the wages given to workers. The need for protection and legal certainty aims to resolve these problems and not harm workers. Until now, there has been no specific law that discusses the protection of the rights and obligations of workers in detail.

Unwritten employment agreements often exist between employers and workers for reasons of family relationships. This term is often referred to as a hybridist relationship, where this hybridist relationship will prioritize relationships that have a familial nature. In law, such relationships are more accurately referred to as hybridist relationships because the relationship between them is not solely intended as a legal relationship, that is, a relationship that has legal consequences, but rather prioritizes the formation of familial relationships.

Thus, the relationship shows that there are still various social in society. State obligations that have not been appropriate in the context of wage arrangements. Workers' wages are often paid by employers lower than the minimum wage. In addition, there are many differences regarding the nominal wages paid to workers even though they are in the same region. This shows that there is no legal certainty from the government regarding transparent wage arrangements.

Rules regarding the provision of workers' wages have been made in several laws issued by Government Regulation Number 36 of 2021 on Wages. In addition, there needs to be an obligation to treat workers following International Labour Organization (ILO) standards with special regulations. Special regulations for workers can later be used as a key to protect the rights of these workers. Blackett argues that these special regulations are key to protecting their rights. The three main reasons for this are:

- a. Special regulations recognize that workers are involved in an employment relationship and contribute to the economy.
- b. Special regulations can deal with a variety of specific problems faced by workers.

This wage can later be in the form of money or goods. Wages are paid following work agreements, corresponding even regulations. Previously, in Law Number 13 of 2003 on Manpower, the wage discussion was not explained in detail about the law's applicability

to informal workers. In the Academic Paper, the provision of wages or salaries is given based on the rules that are voluntary law, namely, "The provision of wages/salaries is not based on Manpower or UMP. However, it can be analyzed that the wage level is created or formed based on rules that form voluntary law.

The law regulating or volunteer is a law that regulates relationships between individuals and applies where the person concerned does not use other alternatives" (Gischa 2020). Thus, following the development of its application in people's lives, it will grow or develop following the dynamics of people's lives. The dynamics of community life develop in the environment of indigenous peoples, both in rural and urban areas.

The dynamics of community life can develop due to the need factor, where parties need each other. In addition to volunteer law, workers' wages are adjusted according to the agreement between the parties, namely, "The agreement on wages/salaries is usually based on previous behavior that occurred to workers in certain different areas, adjusted to the standards of local community agreement so that it can be concluded that wages/salaries are set voluntarily between workers and employers and/or other forms of compensation."

The agreement to determine this wage must be contained in the work agreement that has been agreed upon between the parties. This agreement needs to be mutually agreed upon following the social and cultural conditions and conditions of the area where the workers are located. This is done because workers' wages cannot be regulated in general. Without regulating the wages of workers in general, the wages of workers can be paid by taking into account several components usually received by workers. This is done considering that workers need accommodation, shelter for workers who stay overnight, personal needs, health, and food. In addition, the wages of the workers also calculate the working hours.

Determining the wages of workers cannot be based on Law Number 13 of 2003 on Manpower or the Provincial Minimum Wage and District/City Minimum Wage. The alternative that can be done is to create a new minimum wage set as a special sector imposed for workers. Based on the Academic Paper to be ratified, workers declared as formal workers should be entitled to wages following Government Regulation Number 36 of 2021 on Wages.

These alternatives are certainly following the social and cultural conditions and conditions of the area where the workers are located. Therefore, the determination of wages should be made as easily as possible so as not to cause disagreements or harm both parties. In addition, in its determination, sociological elements and cultural background are considered. Workers in Indonesia need laws that specifically regulate the rights that must be granted.

The need for this special law aims to enable workers to be recognized as legal workers in the eyes of Indonesian law, legislatively able to deal with special problems often faced by workers, and provide supervision to workers related to the implementation of regulations that have been made. The determination process requires consideration related to the conditions of workers who are vulnerable to exploitation, discrimination, and violence. It also considers state obligations following applicable national laws, international standards, and cultural and labor issues experienced by workers.

5. The importance of recognizing the role of workers according to Indonesian law, who are entitled to wages in the form of fixed benefits in accordance with applicable laws and regulations

In Indonesian society, workers are considered ordinary workers or ordinary employees, especially in the non-formal sector. This assumption is because the working relationship between parties is a kinship relationship. As a result of this kinship, the community pays little attention to workers' rights as long as the workers do not experience problems with employers. Along with the developments that occur in people's lives, the services of workers are needed by employers, but protection and certainty regarding workers' rights still need to be improved.

The rights of these workers are not obtained because of the assumption that workers are part of the management structure of a company. Workers are bound by an agreement with the employer and must obey all employer orders. People think of being a worker as a way to support various necessities of life. This is because by working, you can get a decent wage. Therefore, workers can work in the formal and informal sectors, and significantly more people in the informal sector.

The term informal sector was initially known from one of the ILO's studies in Ghana, Africa, around the 1970s. The definition of informal work that is known at first is simple, namely, "The popular definition of informal work at first is simple, that is, a job that is very easy to enter, without applying, without permission, without contracts, without any formalities, using local resources, either as laborers or self-managed and self-employed businesses, micro-size, makeshift technology, to labor-intensive, adaptive technology, with decent capital and sufficient buildings."

Thus, work in the informal sector is usually not structured and not protected by law, even though it only has limited skills and skills. In its limitations, the informal sector is considered a helper in supporting life. In addition, it can also provide support for the current socio-economic conditions of the community. This affects the reduction of unemployment in Indonesia. Job demand from companies with qualified educational qualifications and skills is an obstacle to getting a job.

In addition, the number of job seekers who need to be balanced with the availability of jobs increases the unemployment list. The informal sector has indeed been able to reduce the unemployment rates in Indonesia, but it has faced discrimination and a lack of attention from the government. The government focuses on the global economy, fiscal, foreign investment, and money markets.

Another reason for the government's stance is "that with the development of the informal sector, tax revenues will not develop." Indeed, in the government's view, the informal sector can disrupt the country's economic growth, where no taxes are paid to the state. However, without the informal sector, unemployment will increase and affect the community's poverty rate.

Adverse conditions in the labor market have an impact, one of which is on the wages that workers will receive. This is because the minimum wage policy can reduce the list of unemployed if the minimum wage policy reduces the employment rate in the modern sector to below the growth of the labor force". Thus, it provides a clue that the minimum wage policy's impact will affect workers' welfare in both the formal and informal sectors.

Wages are used as one of a person's goals in working to meet the needs of a decent life. The definition of wages following Article 1 Number 30 of Law Number 13 of 2003 on Manpower, which has the exact definition as Article 1 Number 1 of Government Regulation Number 36 of 2021, shows that workers are entitled to wages in the form of money and other forms. The wages or rewards workers receive will later be adjusted to the component policy regarding wages.

The wages to be received are distinguished in several components. The previous wage component was differentiated based on the income earned by workers. This is contained in Article 6, paragraph (2) of Government Regulation Number 36 of 2021 on Wages, which states that "Income, as referred to in paragraph (1), is obtained in the form of Wage Income and Non-wage Income. The income component is regulated in Article 7, paragraph (1) of Government Regulation Number 36 of 2021, which states that:

- a. Wages consist of components;
- b. Wages without allowances;
- c. Basic wages and fixed allowances;
- d. Basic wage, fixed allowance;
- e. irregular allowances or Basic wages and allowances are not fixed.

In determining the amount of the wage component, it is further regulated in Article 7 paragraphs (2) and (3) of Government Regulation Number 36 of 2021 on Wages, which states that "(2) If the wage component consists of basic wages and fixed allowances as

referred to in paragraph (1) point b, the amount of basic wages is at least 75% (seventy-five percent) of the total basic wages and fixed allowances. (3) If the wage component consists of basic wages, fixed allowances, and non-fixed allowances as referred to in paragraph (1) point c, the amount of basic wages shall be at least 75% (seventy-five percent) of the total basic wages and fixed allowances."

Meanwhile, Article 94 of Law Number 11 of 2020 on Job Creation also regulates the wage component. The Manpower section states, "In this case, the wage component consists of basic wages and fixed allowances. The amount of basic wages is at least 75% (seventy-five percent) of the amount of basic money and fixed allowances." In the wage component, the company or employer provides allowances related to work.

The allowances provided by the company or employer are in the form of fixed allowances and irregular allowances. Allowances that are fixed are known as fixed allowances. The definition of fixed allowance according to the Circular Letter of the Minister of Manpower No. SE-07/MEN/1990 on Wage Grouping states, "Fixed allowance is a payment made by employers to workers/laborers and their families regularly related to their work.

This fixed allowance will be paid regularly or routinely and with a fixed amount within the same time as the payment of basic wages received by workers or can be adjusted by agreement between parties. Fixed allowances cannot be linked to attendance or achievements made by workers at work. Meanwhile, irregular allowances, according to the Circular Letter of the Minister of Manpower No. SE-07/MEN/1990 on Wage Grouping, which states, "Non-fixed allowances are payments of benefits either directly or indirectly to workers/laborers with an irregular amount, and are paid according to units of time that are not the same as basic wages and fixed allowances."

In addition, allowances can be interpreted as non-wage income in the form of income that workers will earn. The benefits workers will get as non-wage income are usually in the form of religious holiday allowances. This has been regulated in Article 8 paragraph (1) of Government Regulation Number 36 of 2021 on Payroll, which states, "Non-wage income in the form of religious holiday allowances." In providing religious holiday allowances to workers, there is a provision that employers or employers are required to provide these allowances 7 (seven) days before the religious holiday takes place.

This is in accordance with Article 9 paragraph (2) of Government Regulation Number 36 of 2021 on Wages, which states, "Religious holiday allowances must be paid no later than 7 (seven) days before religious holidays". Procedures for providing religious holiday allowances are more detailed in the Regulation of the Minister of Manpower Number 6 of 2016 on Religious Holiday Allowances.

In addition to religious holiday allowances, companies or employers can also provide some non-wage income. The non-wage income has been regulated in Article 8 paragraph (2) of Government Regulation Number 36 of 2021 on Wages, which states, "In addition to religious holiday allowances as referred to in paragraph (1), employers can provide non-wage income in the form of Incentives; Bonus; Money in place of work facilities; and/or Service money on certain businesses." Non-wage income is used to support the provision of wages.

Allowances as an effort to increase motivation at work can affect worker productivity. This influence can provide a sense of security and is intended for workers and families of workers, "Allowances are components of income other than salary that can provide a sense of security to employees if they experience something unwanted both themselves and their families that have been recorded by the company as an object of coverage."

Thus, the allowances are an obligation without distinction of position and job responsibilities provided by entrepreneurs or employers. Obligations, in the form of allowances, should be carried out by all employers or employers in both the formal and informal sectors. In addition to being an obligation, benefits become one of the workers' rights. This is regulated in Article 7 of the Regulation of the Minister of Manpower Number 2 of 2015 on the Protection of Formal and Non-Formal Workers, which states that have the right:

- a. obtain information about users;
- b. get good treatment from users and their family members;
- c. obtain wages according to the employment agreement;
- d. get healthy food and drinks;
- e. get enough rest time;
- f. obtain leave entitlements following the agreement;
- g. get the opportunity to perform worship following the religion and beliefs he adheres to;
- h. get holiday allowances; and
- i. communicating with his family.

In this case, domestic workers are entitled to holiday allowances. In addition, there are allowances in the form of food and transport allowances in the form of fixed allowances. Food allowance and transport allowance are adjusted in the Circular Letter of the Minister of Manpower No. SE-07 / MEN / 1990 on Wage Grouping which states, "Food Allowance and Transport Allowance can be included in the fixed allowance component if the provision of such allowance is not associated with attendance and is received permanently by workers according to units of time, daily or monthly."

These allowances can be provided following the agreement between parties through a work agreement, and if the work agreement is not implemented, the workers will not get their rights as workers to the maximum. The provision of benefits to workers is entitled to workers because benefits become a complete component of wages. If workers get wages in the form of money or other forms, then workers should be entitled to holiday allowances, food allowances, transport allowances, and other allowances.

Often, allowances are not provided because there is no employment agreement between the two parties, namely the employer and the worker. This is because it is not regulated by special regulations. The specific regulation must regulate the pay in detail. These efforts are made to regulate not only wages appropriately but also the benefits to be received. The arrangement is aimed at employers who employ domestic workers in their homes.

The provision of allowances can only be separated from wages if wage arrangements for workers have been arranged. This will affect the provision of benefits because allowances must be given in the wage component. Allowances should be an obligation that must be fulfilled by every company or employer in both the formal and informal sectors.

This is due to elements in the employment relationship, where there are elements of work, orders, and wages. Although there is often no employment agreement between the employer and the worker, there is an employment relationship between the two, and the employer must fulfill this element.

6. The form of legal settlement for companies that do not pay workers' wages based on government regulation No. 36 of 2021

In everyday life, termination of employment between workers and employers, usually known as PHK, can occur because a specific agreed time has expired and can also occur due to disputes between workers and employers, the death of workers, or other causes. In practice, termination of employment due to the expiration of the time stipulated in the agreement does not cause problems for both parties (employers and workers) because both have realized this.

Unlike termination due to a dispute, this situation will impact both parties, so termination of employment for workers will have psychological, economic, and financial effects. The selection of alternative prevention measures needs to be carried out through bipartite dialogue to obtain agreement between employers and workers/laborers and/or trade unions/trade unions so that the possibility of termination of employment can be prevented.

If efforts to prevent termination of employment have been carried out, but termination of employment cannot be avoided, the settlement of termination disputes is carried out in accordance with the provisions of laws and regulations. To carry out termination of employment by employers against workers, a series of procedures must be fulfilled first.

The procedure is contained in Article 151 of Law No. 11 of 2020 on Job Creation. The length of the procedure that must be taken and also the reason for termination of employment must be based on the Manpower Law, so many companies finally take solutions to lay off their workers. Laying off as a form of deviation from the article has a provision that the company must still be obliged to pay wages along with other rights that are usually received by workers/laborers. Settlement of labor disputes through bipartite negotiations can be used as an alternative by the disputing parties.

In bipartite negotiations, the disputing parties sit together to discuss their problems and try to resolve them by means of deliberation; this method has been known in various cultures of the Indonesian nation. In Indonesian culture, deliberation is an effort to resolve disputes that have been known for a long time and live in traditional societies. The procedures for bipartite negotiations have been regulated in the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Per. 31/Men/XII/2008 on Guidelines for Settlement of Industrial Relations Disputes through Bipartite Negotiations.

Bipartite negotiation is a negotiation between workers/laborers or trade unions/trade unions with employers to resolve industrial relations disputes in one company. In conducting bipartite negotiations, the parties shall:

- a. Have good faith;
- b. Be courteous and non-anarchic, and
- c. Comply with the agreed negotiation rules.

Furthermore, in carrying out negotiations, it is necessary to take the following steps:

- a. Both parties inventory and identify problems;
- b. Both parties may draft and agree on a written order and an agreed schedule for negotiations;
- c. In the order, the parties may agree that as long as negotiations are conducted, both parties continue to perform their obligations as appropriate;
- d. the parties conduct negotiations in accordance with the agreed rules and schedule;
- e. in the event that one party is not willing to continue the negotiation, then the parties or one of the parties can record the dispute to the agency responsible for

- the field of labor of the district/city where the worker/laborers work even though it has not reached 30 (thirty) working days;
- f. after reaching 30 (thirty) working days, bipartite negotiations can continue as long as agreed by the parties;
 - g. at each stage of negotiations, a minute shall be signed by the parties, and if one of the parties is unwilling to sign, the matter of such unwillingness shall be recorded in the said minutes;
 - h. the final result of the negotiation shall be made in the form of final minutes containing at least the full names and addresses of the parties, the date and place of the negotiations, the subject matter or object in dispute, the conclusion or result of the negotiations, the date and signatures of the parties to the negotiations;
 - i. The final draft minutes are made by the Entrepreneur and signed by both parties or one of the parties if the other party is not willing to sign it.

There are other solutions to dealing with problems due to work disputes, and employers, workers/unions, and the government must be able to establish cooperation that anticipates layoffs. Dialogue The parties in the employment relationship between employers and workers/trade unions need to conduct a transparent dialogue so that companies that, due to the nature of the industry, require the presence of workers must regulate the work system by prioritizing occupational safety and health.

In addition, bipartite dialogue also needs to discuss anticipation of the worst conditions of labor relations between them, such as efficiency, Regulation of working hours, and division of labor. This dialogue is the main door to building mutual understanding and facing disputes for both companies and workers.

The role of the government as a mediator must be a party capable of mediating dialogue between employers and workers and trade unions to prevent layoffs. The role of the government can be pursued as a mediator to find solutions agreed upon by both parties, primarily related to the fulfillment of workers' rights, if layoffs are inevitable. In this case, the government can form a Task Force for Handling Layoffs to better respond to employer and worker problems so that they can be anticipated and resolved early.

The government, in this case, the Ministry of Manpower, must be active in providing policy information for work and conducting periodic policy reviews. In addition, the government also needs to carry out a labor mitigation plan. This can be done by implementing government programs that can absorb a large workforce and skill development support programs such as providing Pre-Employment Cards for people who have just graduated from school and are looking for work.

The International Labour Organization (ILO) says disputes between entrepreneurs and employers will affect certain groups vulnerable to the labor market and declining employment, as well as the quality of work such as wages and social protection. The layoff option could be the last step to take. This step becomes a dire situation, especially for workers. Layoffs will have a severe impact on the economy of working families. On the other hand, employers are also in a difficult position because they have to fulfill obligations for employees who experience layoffs.

Employer responsibility related to providing wages to workers According to I.G. Rai Widjaya, the employer, as the owner of the company, is responsible for employee wages based on his assets. The role of employers is undoubtedly higher than the company's management in terms of determining workers' wages, for example, in terms of providing wages in other forms, such as necessities and annual bonuses outside of basic wage.

The standard for providing workers' wages is the Minimum Wage, which consists of the basic wage, including fixed allowances set by the Governor as a safety net. At the same time, the Provincial Minimum Wage (UMP) is the Minimum Wage that applies to all districts/cities in one province. This Provincial Minimum Wage is the minimum standard used by employers or industry players to provide wages to employees, employees, or laborers in their business or work environment. Based on the provisions of Article 15 on Regulation of the Minister of Manpower and Migration No. 7 of 2013 jo Article 90 paragraph 1, it is stated that "Employers are prohibited from paying wages lower than the minimum wage as referred to in Article 89."

There are still business actors who pay wages under the provisions of the UMR on the grounds of small-scale businesses, so they cannot afford to pay according to the applicable UMP provisions. Ironically, many workers also accept this provision, considering the difficulty of finding work, especially permanent jobs and in large companies. In fact, if the Entrepreneur violates the provisions of Article 90 paragraph (1), according to the provisions of Article 185 paragraph (2), the Entrepreneur is classified as having committed a criminal act.

Furthermore, Entrepreneurs may be subject to criminal sanctions as stipulated in Article 185 paragraph (1), which reads: "Whoever violates the provisions as referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143 and Article 160 paragraph (4) and paragraph (7) shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000 (one hundred million rupiah) and a maximum of Rp. 400,000,000 (four hundred million rupiah).

When workers have carried out their obligations to the company, the company should fulfill the rights of its workers as stipulated in Law No. 13 of 2003 on Manpower. Labor law sources have stated that in terms of employment, autonomous rules (employment agreements, company regulations, and collective labor agreements) must not conflict with heteronomous rules (laws and regulations). Therefore, the role of the government in determining laws and regulations will be very influential in the labor system. One of the things that plays the role of the government is the issue of wages.

The Manpower Law regulates wages in one section, starting from Article 88 to Article 98. Some of the main points include the following:

1. The government sets a minimum wage;
2. Employers are prohibited from paying wages lower than the minimum wage;
3. Employers arrange the structure and scale of wages by taking into account class, position, length of service, education, and competence;
4. Employers conduct periodic wage reviews by taking into account the company's capabilities and productivity;
5. In the event that the wage component consists of basic wages and fixed allowances, the amount of basic wages shall be at least 75% (seventy-five hundredths) of the total basic wages and fixed allowances.

One thing that will be discussed in this task is related to the Minimum Wage. Minimum Wage is the minimum standard used by employers in providing wages to workers or employees. Minimum Wage Policy has become an essential issue in employment issues in several countries, both developed and developing.

The goal of this minimum wage policy is to cover the minimum living needs of workers and their families. The minimum wage policy in Indonesia itself was first implemented in the early 1970s. However, its implementation could have been more effective at that time. The Indonesian government only began to pay more attention to the implementation of the minimum wage policy in the late 1980s.

This is mainly due to international pressure regarding issues regarding violations of labor standards that occur in Indonesia related to the minimum wage policy, which has undergone various changes both before and after regional autonomy. Before regional autonomy, the central government set the minimum wage rate of each province based on recommendations from local governments (provinces). Meanwhile, after regional autonomy was implemented in 2001, local governments had the freedom to determine the minimum wage level.

Therefore, after autonomy, we often hear the term Regional Minimum Wage (UMR). Each provincial or regency/city has a different number of UMR, depending on the

situation and economic conditions of the region. This UMR is determined by the Wage Board and then determined by the Governor. Analysis of the Provisions of Article 185 paragraph (1) jo. Article 90 paragraph (1) of the Law. No.13 of 2003 on Manpower Related to this Minimum Wage Law. No.13 of 2003 has clearly regulated it in Article 89 paragraph (1), which states that: "The minimum wage may consist of:

1. Minimum wage based on provincial or district/city area;
2. Minimum wage based on sector in the province or district/city.

In Article 90, paragraph (1) states that: "Employers are prohibited from paying wages lower than the minimum wage as referred to in Article 89." The provisions mentioned above mean that every employer must pay wages for workers or employees higher or at least equal to the UMR set by the government.

Currently, every existing employer has implemented this. Law No. 13 of 2003 on Manpower states that what is regulated in Article 90 paragraph (1) above, if violated, will get criminal sanctions. In Article 185, paragraph (1) of Law No. 13 of 2003 on Manpower clearly states that: "Whoever violates the provisions as referred to in Article 90 paragraph (1), shall be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least IDR 100,000,000 (one hundred million rupiah) and a maximum of IDR 400,000,000 (four hundred million rupiah)." This provision provides legal certainty that if there is an employer who provides wages to workers or workers below the minimum wage, then the employer can be criminalized.

The existence of criminal provisions that will be imposed on employers who pay below the UMR further emphasizes that labor rights, especially in terms of wages, become a very central thing and must be adequately fulfilled by employers. If the provisions for sanctions against employers who provide wages below the UMR do not exist, employers may provide wages that are far from the limits of fairness. In addition, the existence of sanctions provisions in Article 185 paragraph (1) of Law No. 13 of 2003 on Manpower also seems to reinforce the government's presence in protecting workers/laborers.

The provisions in Article 185 paragraph (1) will be able to provide fresh air to millions of workers in Indonesia. Also, there is legal certainty that workers cannot be paid arbitrarily, and if that happens, employers will get criminal sanctions. For further information, it can be explained as follows: according to Article 90 paragraph (1) of Law No. 13 of 2003 on Manpower (Manpower Law), employers are prohibited from paying wages lower than the minimum wage, both the minimum wage (UM) based on the province or city district area (which is often called the Regional Minimum Wage, UMR) and the minimum wage based on the sector in the provincial or district/city area (Sectoral Minimum and Wage, UMS).

Based on the aspect of civil law, on Article 52 paragraph (1) letter d of the Labor Law and Article 1320 paragraph 4 to Article 1337 of the Civil Code, the agreement in an agreement, including an employment agreement, must not conflict with laws and regulations. In other words, the agreement (consensus) of the parties must be valid and clear, within the meaning of a prohibited causa, if prohibited by law.

Thus, promising wages below the minimum wage (UMR/UMS) is null and void (Article 52, paragraph (3) of the Manpower Law). From the aspect of administrative law, based on Article 90 paragraph (2) of the Manpower Law jo, Article 2 paragraph (2) to Article 3 paragraph (2) of Regulation of the Minister of Manpower and Transmigration No. Kep-231/Men/2003 and Article 2 paragraph (3) Regulation of the Minister of Manpower and Transmigration No. Per-01/Men/I/2006, if the employer is unable to pay the minimum wage and there has been an agreement to pay deviation/less than the minimum wage provision, then the agreement (between workers/laborers and employers) must be based on the approval of suspension from the competent authority (in this case the local Governor).

In other words, even if there is an agreement, if it does not / has not received approval (suspension), it cannot be applied. Based on the foregoing, therefore, the basis of agreement alone is not sufficient as a basis for paying wages deviating from the existing minimum wage provisions. Workers who have not received wages based on government regulation are protectors of their rights guaranteed by the government and protect them from the arbitrary actions of companies or employers.

The wage government regulation is the main highlight in its implementation in the field, as well as how to coordinate, implement, and interpret the government regulation in accordance with what is written. The implementation of Government Regulation No. 36 of 2021 on Wages for workers whose wages are not paid in practice has yet to be implemented.

This is mainly related to wage policies and payment of rights and obligations because there are still many irregularities in the implementation of government regulation. This is evident from the complaints and concerns of sweeping workers who report to the government, especially to the Ministry of Manpower, regarding employers who often delay the payment of workers' wages so that workers' rights cannot be fulfilled.

In addition to not being fulfilled, the implementation of Government Regulation Number 36 of 2021 on Wages in practice, when viewed from the attitude and implementation of the policy, also does not have the principle of justice in its implementation where workers have carried out their obligations but wages as the rights of workers have not been paid.

7. Conclusion

Juridical analysis of the provision of fines against employers for not paying workers' wages based on Government Regulation Number 36 of 2021 on Wages. Based on the author's analysis of providing fines to employers who do not pay workers' wages, the business actors in this study are:

1. The concept of wage regulation in labor law is an effort by the government to protect workers/laborers to avoid inequality in the employment relationship between workers and employers or companies. Therefore, every company in Indonesia implements a wage system based on company operational standards (SOP) by taking into account the provisions of applicable laws and regulations, such as Labor Laws and Government Regulations on wages. Article 88 of the Labor Law has explicitly regulated wages where wages are intended as an effort to realize income that meets a decent living for humanity.
2. The concept of imposing fines on a company arises because of the employment relationship built by employers with workers. The existence of government regulation number 36 of 2021 on wages is a form of legal protection for the rights of every worker/laborer so that there is no unilateral termination in the status of labor relations and to ensure the protection of workers' wage payments. So, the existence of Government Regulation on Wages is beneficial for workers from the actions of employers who do not pay workers' salaries/wages by a company. Legal provisions and guarantees for the payment of employers' losses to workers are guaranteed by laws and regulations, which in government regulations on wages impose the application of sanctions on business actors and workers/laborers, namely administrative sanctions and fines in the provisions of paragraph 59 paragraph (1) state: "Employers or workers/laborers who violate the provisions in the work agreement, regulations, or collective labor agreement due to their intentional or negligence are subject to fines if expressly stipulated in the work agreement, company regulations or collective labor agreement." In addition, the application of fines to employers or workers/laborers is used only for the benefit of workers/laborers based on the qualifications of the types of violations that can be subject to fines, the amount of fines, and the use of fine money regulated in work agreements, company regulations or cooperation agreements by taking into account the principles of the provisions of applicable laws and regulations. As for employers who are late in paying fines, the total amount that can be fined is 5% for each day of delays, 1% is added to 5% if the delay reaches eight working days, and if it is one month late, business actors are charged interest rates for unpaid fines.
3. The qualification concept of imposing fines on employers who are late in paying fines is actually intended to protect the rights of workers. The amount that can

be imposed on business actors who are late in paying employee wages is stipulated in the provisions of article 62 as outlined as follows: (1) a fine of 5% for every delay in wages that should be paid, (2) if the delay has reached eight working days, it will be added 1% for every day of the total 5%, (3) if it reaches one month of delay, a penalty for late payment of the highest interest rate will be imposed Valid for government banks. In addition, fines are also applied on religious days to business actors who are late in providing religious day allowances based on the provisions of Article 62 paragraph (1), which explains as follows: "Employers who are late in paying religious holiday allowances to Workers/Laborers are subject to a fine of 5% (five percent) of the total religious holiday allowances that must be paid since the expiration of the deadline for employers' obligations to pay". And paragraph (2) as follows: "The imposition of fines as referred to in paragraph (1) does not eliminate the obligation of employers to continue to pay religious holiday allowances to workers/laborers".

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