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**LABOR RIGHTS CONCERNING INAPPROPRIATE WAGE PAYMENT  
AGAINST PROVINCIAL MINIMUM WAGE (UMP) BASED ON LAW  
NUMBER 13 OF 2003 CONCERNING MANPOWER**

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**Abstract**

*This research was intended so that the readers understood regarding Provincial Minimum Wage (Upah Minimum Provinsi (UMP)) as in Law Number 13 of 2003 concerning manpower in Indonesia. In that law, there is a provision which states that employers are prohibited from providing wages below the provincial minimum wage that has been stipulated by provincial governors throughout Indonesia. If the employers provide wage which is below the provincial minimum wage that is stipulated by government, the employers will get sanction either in administrative sanction or imprisonment sanctions as what is regulated in article 185 of Law, Number 13 of 2003 concerning manpower and it states that there are administrative sanctions and imprisonment sanctions*

**Keywords:** *Labor Rights regarding inappropriate wage against Indonesian Law Number 13 of 2003*

**A. INTRODUCTION**

According to the Constitution of the Republic of Indonesia Article 27 paragraph (2), a constitutional right for workers / laborers is obliged to be protected legally by the Government. Through government intervention in manpower relations, it makes the character of labor law becomes double, which are the character of public and private law. According to Levenbach, labor law is a regulation that regulates manpower relationship between employers and workers whose work is conducted under the leadership.<sup>1</sup> Scientific developments in labor law can be identified based on changes against structure, substance, and legal culture that develop dynamically as a response of social changes that is occurred in society. This processes place new space for labor law in legal development and it is from private law becomes part of

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<sup>1</sup> Dedi Ismatullah, *Hukum Ketenagakerjaan*. (Bandung: Pustaka Setia, 2013),45.

public law.<sup>2</sup> Therefore, protection for wage payments to labor according to Law Number 13 of 2003 concerning Manpower (Labor Law) can be implemented in three ways, which are; in Civil, in Criminal, and in State Administration.

Criminal protection has juridical consequence for those who are accused of committing criminal act in labor law in which criminal sanctions are also viewed effective in suppressing actions that violate labor law regulations. Basic protection for wages legally in Labor Laws in Indonesia is divided by 2 (two). They are crime and violation which are similar with the difference of criminal acts generally.

Crime or in Dutch language "*Misdrijf*" is a contemptible act and it correlates with "unlawful acts". "*Overtredingen*" or violation means an act that violates something, which relates to law and in other words, it is also "an unlawful act".<sup>3</sup>

Theoretically, criminal conviction for a corporation cannot be done arbitrarily. This is because criminal conviction for a corporation can impact on innocent parties. For example, it will affect to the labors, shareholders, coworkers, and other parties.<sup>4</sup>

A crime against wage payment is regulated in Article 185 of Labor Laws. Crime that is referred to Labor Laws is violation against the provisions of Article 90 paragraph (2), which states that entrepreneurs are prohibited to pay wages below the minimum wage. Minimum wage based on Article 1 number 1 Regulation of Minister of Manpower and Transmigration in Republic of Indonesia (*Permenkertrans*) Number 7 of 2013 concerning minimum wage. It states that the lowest monthly wage is consisted of basic wage including fixed allowance that is stipulated by the Governor as a safety system.

Violation against wage payment according to Labor Law in Article 186 paragraph (1) is a kind of violation against the provision of Article 93 paragraph (2) which states that wage payment is done by entrepreneurs to workers / laborers who do not work when the workers/ laborers are under certain condition. This certain condition as in Article 90 paragraphs (1) and (2) is the entrepreneurs are prohibited from paying wages lower than the minimum wage and those entrepreneurs who cannot be capable to pay the minimum wage can be suspended. Moreover, in order to

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<sup>2</sup>Wahyudi Siswanto, *Modul I: Pengantar Hukum Perburuhan*. (Jakarta: FH Usakti, 2012),11.

<sup>3</sup>*Ibid*,33.

<sup>4</sup> Kristian, *Sistem Pertanggungjawaban Pidana Korporasi dalam Perkara Tindak Pidana Korupsi Pasca Terbitnya PERMA RI No.13 Tahun 2016*. (Jakarta: Sinar Grafika, 2018),122.

get a suspension of the implementation of minimum wage itself, the entrepreneurs must submit an application for suspension with conditions in accordance with the provisions of Decree of the Minister of Manpower and Transmigration in Indonesia Number KEP.231 / MEN / 2003 concerning Procedures for Suspending the Implementation of Minimum Wages.

Through Criminal Provisions in Labor Laws of Indonesia as a step in implementing legal protection for wage, it also has laws regarding violation against wage provisions which is in Article 90 paragraph (2), which states that giving authority toward General Court to solve the wage payment case. In a criminal case according to article 295, RIB that is only recognized as legal evidence is such as witness, letters, confessions, and instructions.<sup>5</sup>

In Decision of Supreme Court Number 687K / Pid.Sus / 2012 states 1 year in prison and a fine of Rp. 100,000,000 (One Hundred Million Rupiahs) against an entrepreneur of Terang Suara Elektronik Micro Trading Business (*Usaha Dagang (UD)*), Tjioe Christina Chandra who was from Surabaya and paid wages below the Regional Minimum Wage toward her 37 employees. Terminology of Regional Minimum Wage based on the Decree of the Minister of Manpower and Transmigration in Republic of Indonesia Number KEP-226 / MEN / 2000 had been changed, which was for the term of Regional Minimum Wage Level I was changed to be Provincial Minimum Wage (*Upah Minimum Provinsi (UMP)*), the term of Regional Minimum Wage Level II was changed to be Municipal Minimum Wage, Regional Sectoral Minimum Wage Level I was changed to be Provincial Sectoral Minimum Wage (*Upah Minimum Sektoral Provinsi (UMSP)*) and the term of Regional Sectoral Minimum Wage Level II was changed to be Municipal Sectoral Minimum Wage (*Upah Minimum Sektoral Kabupaten/Kota (UMS Kabupaten/Kota)*).

This decision itself was executed for a moment after the review of Tjioe Christina Chandra was rejected with Case Number 13 PK / Pid.Sus / 2014 which was decided on 8 April 2014. This verdict itself was a verdict that was issued after the Cassation of the Public Prosecutor's Office on Decision of the District Court in Surabaya Number 1397 / Pid.B / 2010 / PN.Sby on 31<sup>st</sup> January 2011.

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<sup>5</sup> R. Subekti, *Hukum Pembuktian*. (Jakarta: Pradnya Paramita, 2008).19.

This decision was quite interesting because in this decision, the Supreme Court sentenced an entrepreneur of Micro Trading Company (*Usaha Dagang (UD)*) in violation of wages payment with criminal sanctions. Whereas previously, the Judge's Consideration at Surabaya Court which in amar decision stated error in persona regarding the responsibility of the Micro Trading Company (*Usaha Dagang(UD)*). Then, this decision was annulled by Supreme Court of Justice in cassation level which had its own considerations regarding Responsibility of Micro Trading Company (*Usaha Dagang(UD)*).

Micro Trading Company (*Usaha Dagang (UD)*) is not a legal entity, which legally, Micro Trading Company (*Usaha Dagang (UD)*) is same as its owner. It means that there is no separation of wealth or no separation between the responsibility of Micro Trading Company (*Usaha Dagang (UD)*) and its owner.<sup>6</sup>

Micro Trading Company (*Usaha Dagang (UD)*) is built on the basis of entrepreneur's will which the entrepreneur self has enough capital to do business in trading and he/she already feels expert or has experience.<sup>7</sup> As an entrepreneur of Micro Trading Company (*Usaha Dagang (UD)*), he/she cannot expect expertise from others because either the entrepreneur or his/her manager is himself/herself. If the capital is small, he/she can work alone, but if the capital is much enough and his/her business activities are getting harder, he/she will need to use several workers as his/her helpers. Expertise, technology, and management are conducted by the entrepreneur himself/ herself, as well as the profit and loss, which entirely it becomes his/her burden. Legal basis for Micro Trading Company (*Usaha Dagang (UD)*) is in articles 6 and 18 of Commercial Law Act due to customary law and jurisprudence.<sup>8</sup>

Regarding responsibility of criminal act in a business entity in Law Number 13 of 2003, we have viewed business entity concept in that law. Besides, in Law Number 13 of 2003 itself, there is no definition about business entity but there is definition about a company. The business entity itself is only known in Article 150

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<sup>6</sup>Diana Kusumasari, "Perbandingan Badan Usaha Berbentuk Usaha Dagang dan Perseroan Terbatas", <http://www.hukumonline.com/klinik/detail/c13894/perbandingan-badan-usaha-ber-bentuk-ud-dan-pt>. Downloaded on 10-7-2018, at: 13.00:32

<sup>7</sup>*Ibid.*

<sup>8</sup> R. Subekti & Tjitrosudibio, *Kitab Undang-Undang Hukum Dagang dan Undang-Undang Kepailitan*. (Jakarta: Pradnya Paramita, 2008).4-5.

which in this article, it has absolutely no correlation with legal responsibility from a business entity that states:

*“Ketentuan mengenai pemutusan hubungan kerja dalam undang-undang ini meliputi pemutusan hubungan kerja yang terjadi di badan usaha yang berbadan hukum atau tidak, milik orang perseorangan, milik persekutuan atau milik badan hukum, baik milik swasta maupun milik negara, maupun usaha-usaha sosial dan usaha-usaha lain yang mempunyai pengurus dan mempekerjakan orang lain dengan membayar upah atau imbalan dalam bentuk lain.”* (Provisions concerning termination of manpower in this law include termination of manpower that is occurred in either legal business entities or non-legal business entities which are owned by individuals, associations, or legal entities which are private and state owned, as well as social businesses and other businesses that have manager and employ others by paying wage or other forms of remuneration).

The company itself according to Article 1 number 6 letter a in Labor Law is any form of legal entity business or not that is owned by an individual, an association, or a legal entity in either private or state agency which employs workers/laborers by paying wages or other remuneration. Based on this explanation, it can be concluded that companies that can be asked for liable in the Labor Law are not only companies with legal status, but also those without legal status.

Besides, it is emphasized in Labor Law that those who control company are entrepreneurs and entrepreneurs according to the provisions in Article 1 number 5 of Law Number 13 of 2003 are:

1. An individual, an association, or a legal entity that operates a self-owned enterprise means that the purpose of this article is they who are capital owners operate their own businesses. This can be a Trading Company, Civil Alliance, or Firm.
2. An individual, an association, or a legal entity that independently operates a company which is not their own, which means that those who have an authority to operate business entity that is not theirs. Those people are Directors in Limited Liability Companies, Ally in limited partnership, or who are employed to operate business entities which are owned by other

people, including those who operate foreign companies or their representatives.

Moreover, there is an understanding of employer in Article 1 number 6, which states that: employer is an individual, entrepreneur, legal entity, or other agencies which employ workers by paying wages or other forms of remuneration. This understanding can be meant that employer does not only encompass entrepreneurs but also legal agency and other agencies that employ workers. Thus, it can be concluded that the understanding of employers is broader than entrepreneurs.

Criminal responsibility means a person who has committed a crime does not mean that he/she has to be convicted. He/she must be responsible for what he/she has done if it is found a violation/offense against him/her because a crime is consisted of criminal act (*actus reus*) and a criminal intent (*mens rea*). If we view the criminal law system in Indonesia recently, there is a form of criminal liability in corporate crime based on existing regulations. Then, it also can be charged to the organs or corporate management who commit acts or those who act as leaders in committing crime, as what is regulated in Article 20 paragraph (2) Law Number 31 of 1999 concerning Corruption and Law Number 31 of 2004 concerning Fisheries. Then, the next possibility is it can be charged either to the corporate management as the order giver or leader or to the corporation, for example as in Article 20 paragraph (1) of Law Number 31 of 1999.

If we look at what is formulated in Article 20 paragraph (2) of Law Number 31 of 1999 concerning Corruption and in Labor Law, there are similarities in which the corporate responsibility is charged to organs or corporate administrators who commit crime or those who act as leaders in committing crimes.

## **B. RESEARCH METHOD**

Legal research is a process to find the rule of law, legal principles, and legal doctrines in order to confront the legal issues which are faced.<sup>9</sup> Meanwhile, according to Soerjono Soekanto's book, legal research is a scientific activity that is

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<sup>9</sup>Dyah Ochtorina Susanti. *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2014), 3.

based on certain methods, systematics, and ideas which aim at learning one or several specific legal phenomena by analyzing it/ them.<sup>10</sup>

In conducting this approach, the thing that needs to be understood by researcher is ratio decidendi, which is legal reason that is used by a judge to reach his/her decision. This ratio decidendi shows that science of law is prescriptive science, not descriptive science; meanwhile, dictum is a decision that is descriptive thing. Therefore, case approach does not refer to the dictum of court decisions, but it refers to the ratio decidendi, while, dictum is a decision that is descriptive thing. That is why, case approach does not refer to the dictum of court decisions, but it refers to the ratio decidendi.

Regarding type of data itself, Peter Mahmud Marzuki divides it into two materials, which are primary and secondary data and the difference of them was in the character of primary legal material. Primary legal material is authoritative, which means that it has authority.<sup>11</sup> Primary legal material is consisted of legislation, official records or reports in making of legislation, and decisions of judges.

Secondary legal material primarily is a textbook because a textbook contains basic principles of legal studies and classical views from scholars which have high qualification.<sup>12</sup>

Peter Mahmud Marzuki also emphasizes that results of the dialogue is not a legal material. However, if the substance is a legal substance and not a socio-legal substance as what is often broadcasted on television, then, results of the legal dialogue are published, so the results of the dialogue can become secondary legal material.

Although the witnesses in court proceed verbally, the witnesses are always recorded carefully. That is why, the witnesses of legal experts who become expert witnesses in a court of law can become secondary legal material.

Furthermore, data that will be used are:

1. Primary Legal Material

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<sup>10</sup> Soerjono Soekanto. *Pengantar penelitian hukum*, (Jakarta: Penerbit Universitas Indonesia (UI-Press), 2008), 43.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, (Jakarta: Kencana Prenada Media Group. 2011), 181.

<sup>12</sup> *Ibid.*, 195.

Primary legal materials are binding legal materials, which are in form of laws and regulations, jurisprudence, and other regulations that can support this research.<sup>13</sup> In this case, researchers used primary legal material in legislation form that relates to manpower such as: Labor Law in Indonesia, Government Regulation Number 8 of 1981 concerning Wage Protection, and many more. Legislation that relates to Micro Trading Company (*Usaha Dagang (UD)*), such as KUHD, also a copy of Surabaya PN Decision Number 1397 / Pid.B / 2010 / PN.Surabaya and Supreme Court Decree Number 687 K / PID.SUS / 2012.

## 2. Secondary Legal Material

Secondary legal material is material that closely relates to primary legal material and it can be used to analyze primary legal material, such as books, scientific papers, legal experts' writings, seminar papers, and documents that have significant relevance with the research.<sup>14</sup> Secondary legal material that is used in this study is textbooks which are written by legal experts, legal journals (such as business law journals), articles (through newspapers and magazines that relate to business competition law, price fixing agreements and cartels), internet (that is obtained through internet), and other sources that have correlations to support this research.

## C. DISCUSSION

Definition of labor law is very dependent on positive law of each country. Therefore, it is not surprising if the definition of labor law that is explained by legal experts is also different, especially concerning their breadth. This is because the breadth of the scope in labor law (manpower) in each country is also different. In addition, differences in perspectives also cause legal experts provide different definitions of labor (labor) law. The following will be presented several definitions of labor law (manpower) by several experts. NEH van Esveld as quoted by Iman Soepomo states that labor law (manpower) also includes work that is done by hired workers at their own responsibility and risk.<sup>15</sup>

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<sup>13</sup>*Ibid.*,181.

<sup>14</sup>*Ibid.*,195.

<sup>15</sup> Iman Soepomo, "Hukum Perburuhan Undang-undang dan Peraturan-peraturan", Jambatan, Jakarta, 1972, p. 2.



Meanwhile, Molenaar emphasizes that labor (manpower) law is part of applicable law that principally regulates the relationship between workers and employers, between workers and workers, and between workers and authorities.<sup>16</sup>

There have been many laws that regulate workers (laborers) that have been issued by the government, until recently is in Law Number 13 of 2003 concerning manpower. However, in regulation about laborers or workers, legal sources are needed. Legal sources are anything which we can find provisions or rules regarding labor or manpower matters.

Legal source can be differentiated by:

- (1) Material legal source and
- (2) Formal legal source

Material legal source or source of legal content (because the source determines the legal content) is legal awareness of the society, which is legal awareness in society about something that should be. Sudikno Mertokusumo states that material legal source is a factor that helps in forming law.

Meanwhile, formal legal source is a place where we can find law. Formal legal source is place or source from which a rule obtains a legal force.<sup>17</sup>

Sources of labor law (manpower) in formal sense are:

- (1) Legislation;
- (2) Habits;
- (3) Decision;
- (4) Treaty; and
- (5) Agreement.<sup>18</sup>

According to article 90 of law number 13 of 2003 concerning manpower:

1. Entrepreneurs are prohibited from paying wages lower than the minimum wage as what is referred to Article 89.
2. For entrepreneurs who are unable to pay the minimum wage as what is referred to Article 89, they can submit for a suspension.

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<sup>16</sup>*Ibid.*, p. 1.

<sup>17</sup>Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, Penerbit Liberty, Yogyakarta, 1988, p. 63.

<sup>18</sup>Abdul Rachmad Budiono, *Hukum Perburuahan di Indonesia*, Penerbit Raja Grafindo Persada, Jakarta, 1999, p. 13

3. The procedure for suspension as what is referred to paragraph (2) is regulated by Ministerial Decree.

Furthermore, there is a criminal sanction if the employers/ entrepreneurs pay wages below the provincial minimum wage for the workers/ laborers, which is Article 185 of Law number 13 of 2003:

1. Anyone who violates the provisions as what is referred to 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), are subjected to minimum of 1 (one) year imprisonment and maximum of 4 (four) years and/ or fine minimum of Rp 100,000,000.00 (one hundred million rupiah) and maximum of Rp. 400,000,000.00 (four hundred million rupiah).
2. The crime that is referred to paragraph (1) is a criminal offense.

#### **D. CONCLUSION**

The provisions of labor law regulates a prohibition about entrepreneurs who are prohibited from paying wages below the provincial minimum wage that has been stipulated by the government because there are provisions which regulate the labor rights, especially regarding wages as what is stipulated in law number 13 of 2003 concerning manpower and Law number 2 of 2004 concerning the settlement of industrial relations. If the provision is violated by the entrepreneurs or employers, there are sanctions either in administrative sanctions or in imprisonment sanctions. The administrative sanctions are a fine minimum of Rp 100,000,000.00 (one hundred million rupiah) and maximum of Rp 400,000,000.00 (four hundred million rupiah). Meanwhile, imprisonment sanctions are for minimum of 1 (one) year and maximum of 4 (four) years.

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