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# **Saving Industry of Garments Solid Works In West Java (Review of SE and SK Determination Policy on West Java UMK in 2020)**

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## **ABSTRACT**

It has become a common tradition that in November every year, each Governor is obliged to set a UMP and can (not must) determine Regental/Municipal Minimum Wage (UMK). This is regulated by PP 78 of 2015 concerning Wages. This wage policy regulates the minimum wage that must be paid by employers to all workers without exception. Every year, this wage arrangement has become a problem for the industry, especially labor-intensive industries. This industry contributed to employment for people who had only low education around the company and its supporting areas. However, wages that were getting higher each year caused companies to enter the non-compliment category of buyers. This choice was what caused many companies to relocate or permanently disband their companies. Deferral of payment was not a solution for the company. In fact, it dragged them to bankruptcy. Governor of West Java's SE No. 561/75/Yanbangsos/2019 concerning the Implementation of MSEs in West Java had become a breath of fresh air for the investment climate in West Java. However, this SE did not last long because of the high pressure of interest on the Governor of West Java. This article was carried out to analyze the impact of the revocation of the SE and the change to a decree, which stagnated the industry and reduced its production resulting in massive layoffs in several Regencies and Cities in West Java.

**Keywords :** *Minimum Wages, Layoffs, Labor-intensive Industries.*

## **INTRODUCTION**

Mass layoffs and the relocation and closure of factories are problems that have plagued employers and workers in labor-intensive industries in West Java. This is also felt by the labor-intensive garment industry entrepreneurs in Bogor and Subang districts. They chose to stay afloat even though the regental/municipal minimum wage (UMK, Upah Minimum Kabupaten/Kota) continued to rise from year to year and they have the burden of having to pay BPJS employment to its

workers. The 2017-2018 period was a tough time for these labor-intensive garment factories to survive. However, many factories chose to disband or relocate outside West Java to survive.

The population reaching 48 million causes West Java to need millions of job opportunities for its residents. Workers' welfare and high minimum wages are like two sides of the same coin for policymakers in West Java. If the industry cannot continue to operate, the industrial workers are at risk of losing their jobs. Two big homeworks for Ridwan Kamil as

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the Governor of West Java are opening as many jobs as possible for his community and maintaining the existing industry to reduce unemployment in West Java, which is already high.

Decree Concerning Special Minimum Wages for 33 Garment Industry Companies in Bogor Regency and Special Minimum Wages for the Plantation Sector in West Java was one of the efforts of the West Java Provincial Government to maintain labor-intensive industries and prevent mass layoffs in these two labor-intensive industries. In addition to the rescue effort by issuing a Special Minimum Wage, the West Java Provincial Government through the Manpower Office initiated the formation of a wage Task Force with ILO related to the Garment Industry and Wages. Concrete steps taken included making preparations by inviting all components of policymakers to discuss the formation of this Task Force.

One of the FGDs conducted by the Government of West Java was Future Search Dialogue, which was attended by the Governor of West Java and the ILO, which was represented by an ILO wage expert based in Bangkok, Mr. Daniel Cozner. Cozner gave an overview of various wage schemes in various countries. Daniel said that the huge wage policy in Indonesia would later become a serious problem for industrial relations in Indonesia, especially in West Java. For example, although the West Java Provincial Minimum Wage (UMP, Upah Minimum Provinsi) was low, in some areas in West Java such as Bekasi and Karawang, the Regental/Municipal Minimum Wage was the highest in Indonesia, even higher than the DKI Jakarta UMP, which was the highest UMP in Indonesia. Therefore, Daniel as a wage expert from the ILO gave awareness to the stakeholders in West Java of the importance of understanding and outlook on wage policy in West Java. This is important because the wage policy is always a demand of the union so it needs to be reviewed so that the policy can be effective.

On this basis, the Provincial Government of West Java in collaboration with the Center for Business and Institutional Policy Studies at Universitas Padjadjaran conducted rapid research on the Garment Industry in West Java to be able to anticipate the Minimum Wage setting scheme in 2020. There are several points in this research, which are:

1. The short-term problem of the garment industry is the pressure from rising labor costs. Labor costs are a major component of COGS in West Java. This will exacerbate EBITDA, which is now negative. If this situation continues, the company has the potential to reduce the level of operations (reduce capacity) to reduce their financial burden, and the financial support from investors and creditors will be low.
2. Furthermore, by reducing the level of production, workers will also lose their jobs. West Java has the potential to be an unattractive location for the garment industry and to be unable to compete with the rapidly growing Central Java.
3. In addition, competition with other exporting countries such as China with a strong industry and Vietnam with its productivity is getting heavier. West Java can lose the opportunity to absorb workers, especially those who have low levels of education. Suitability policies on wages in the short term and other government support for the garment industry over a longer period are needed.

The results of this garment industry research then become input for the Governor to take appropriate policies in overcoming the Minimum Wage problem in West Java, especially in saving the Garment Industry and suppressing the TPT figure in West Java. Therefore, based on careful consideration, the Governor believes that the West Java UMP can be a basic catalyst for the determination of fair wages by encouraging bipartite negotiations in companies between employers and workers so that companies can structure and scale wages.

In accordance with Government Regulation No. 78 of 2015 on November 1, 2019, the Governor of West Java established and announced the Decree of the Governor of West Java No. 561/Kep.920-Yanbangsos/2019 About West Java UMP 2020. With the West Java UMP increasing 8.51% to Rp. 1,810,0351,36. Twenty days later, on November 21, 2019, the Governor of West Java once again issued a policy in the form of a Circular Letter (SE, Surat Edaran) of Governor of West Java No. 561/75/Yanbangsos Regarding the Implementation of Regental/Municipal Minimum Wages in West Java Province.

The issuance of this SE is a breath of fresh air for investors, export-oriented garment companies, and garment workers because they feel protected by this SE. The news about this was even published in the mass media in South Korea so their investors planned to invest in West Java.

Unfortunately, exactly 11 days since the issuance of the SE for the Implementation of Regental/Municipal Minimum Wages, the policy of saving labor-intensive industries is revoked by the Governor. It was then changed to the Decree of the Governor of West Java No. 561/Kep-983-Yanbangsos/2019 regarding Regental/Municipal Minimum Wages in West Java Province in 2020. This determination eventually became a polemic among investors, factories and labor-intensive industrial workers. Resulting in distrust of foreign investors in law in Indonesia, especially in West Java.

This article analyzes the impact of revoking the SE and replacing it with a decree, which stagnated efforts to save the labor-intensive garment industry and reduced production, resulting in massive layoffs in several regencies and cities in West Java.

## LITERATURE REVIEW

The national development planning system provides workers with protection regarding remuneration. This system is a program for building relationships and

protecting workers in the wage sector. There are two things that are being targeted, which are:

1. Ensuring that the lowest wages paid to laborers are directed towards meeting minimum basic needs in various positions and sectors.
2. Ensuring that wage difference between various positions and sectors is maintained so as not to be excessive for equitable distribution of development results.

Institutionally, other efforts that will be implemented are improvements to wage and implementation regulations, such as payment of wages on time and payment of wages in accordance with the minimum level of physical needs. These things are expected to be established and implemented. In line with efforts in the wage sector are efforts to improve the health and safety of the workforce. In this field, the steps taken are to carry out more effective supervision of the implementation of occupational health and safety norms in companies.

Labor law recognizes various types of remuneration so that it can be understood to what extent the limits of a wage can be classified as fair wages. Therefore, the definition of wages has to be known. Wages are prices for services that have been received or provided by others for the benefit of a person or legal entity (Edwin B. Filipino, 94). Another definition states that wages are defined as payments received by laborers while doing work or deemed to do work (Iman Soepomo, 130). Wages can also be interpreted as payments or rewards made or given by someone/an institution or agency to others for the business, work, and work performance or services they have done, whose forms can vary (Gunawi Kartasapoetra, 94).

The definition of formal remuneration can be found in Article 1 of ILO Convention No. 100, which has been ratified by Law No. 80 of 1957 concerning the ratification of ILO Convention Number 100 regarding equal remuneration between male and women workers for similar fields of work. It is stated that "Wages include regular, basic, or minimum

wages or salaries and any additional income which is in cash or in kind by the employer to the worker in relation to the work of the worker".

Article 1 No. 30 of Law No. 13 Year 2003 states that:

*"Wages are the rights of workers/ laborers received and expressed in the form of money in return from employers for workers/laborers. It is determined and paid according to a work agreement or legislation, including for workers/laborers and their families on a job and/or service that has been or will be done".*

Based on the aforementioned description of wages, it can be concluded that all definitions clearly contain the same intent. They all agree that wages are a substitution of services that have been delivered or deployed by someone to another party/entrepreneur. If a person depends their life on wages received through business or work, the wages they received determine their own and their dependent family members' level of life and their status.

Evaluation is a chain of public policy processes. James P. Lester and Joseph Stewart explained that policy evaluation is intended to see the causes of failure of a policy or to find out whether the public policies that have been implemented have the desired impact (James P. Lester & Joseph Stewart, in Budi Winarno 165: 23). Therefore, policy evaluation has the task to determine what consequences are caused by a policy by describing the impact and assessing the success and failure of a policy based on predetermined standards or criteria.

## RESEARCH METHOD

### Problem Approaches

Problem approaches are the process of solving problems through stages that have been determined to achieve the research objectives. The problem approaches used in this research were:

1. Normative Juridical Approach  
The juridical normative approach was conducting legal research by examining library materials or secondary data as a basis for research by conducting a search of regulations and literature regarding the problem.
2. Empirical Judirical Approach  
An empirical juridical approach was carried out by examining directly to see firsthand the application of legislation or legal rules regarding law enforcement, accompanied by conducting interviews with several respondents who were considered to be able to provide information regarding the implementation of the law enforcement.

### Sources and Types of Data

This legal research used primary data and secondary data, with the following details:

1. Primary Data  
Primary Data are the main data obtained directly from the research field by conducting interviews with informants to get the data needed in research.
2. Secondary Data  
Secondary data are important in normative legal research. The data examined are legal material that contains normative rules.

Data collection procedures used in this research were as follows:

1. Data Collection  
In this legal research, obtaining relevant legal materials required the collection of legal materials with literature research or document research techniques. This legal material collection technique was by reading, studying, and taking notes from books, laws and regulations, writings, and scientific publications related to employment.
2. Field Study  
Field study was carried out through direct research in the field to obtain relevant information needed by conducting interviews and providing questions that have been prepared.

### 3. Data Analysis

The data obtained were then analyzed descriptively by a qualitative approach. Qualitative descriptive analysis was conducted by describing data and facts generated from a field study with an interpretation, evaluation, and general knowledge. The data were then analyzed by the inductive method, which was a way of thinking based on general facts followed by drawing conclusions that were specific to the suggestions.

## RESULTS AND DISCUSSION

The fall in the exchange rate of the rupiah against the US dollar, which tended to stagnate and decline, could create opportunities or threats to the Indonesian economy in general. Even so, it was not certain that a strengthening of the rupiah would automatically make a profit for economic actors. Public pressure that had continued to increase in recent years must be acknowledged to have caused the Government's economic team to try to carry out marathon actions to reduce the widespread public pessimism.

Practically, the Government must respond to hot issues in a matter of weeks. The issues were the depreciation of the rupiah, the scarcity of food supply due to import restrictions, the issue of the threat of mass layoffs in the labor-intensive industrial sector, the current account deficits and commodity price pressures on the international market, the actions of evil corporations that burned down forests, the tax targets that were not expected to be achieved, the demands to reduce fuel prices, and the negative sentiment over the rise of investment from China.

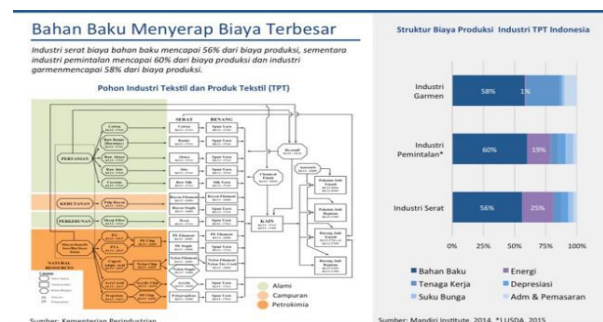
Along with the publication of the economic policy package volume 3, BKPM released a collaboration with 16 labor-intensive investments that will absorb more than 120 thousand workers to ward off the issue of the threat of mass layoffs. Unexpectedly, the appreciation of the rupiah reached 8 percent in a matter of days. Not a single explanation could

satisfy public curiosity. The media then began to publish news about the Government's plan to release a four-volume economic policy package. It was not wrong indeed, but if this strategy was carried out repeatedly, it was estimated that the government would be carried away by the flow of hysteria spearheaded by the media and would lose its long-term perspective. The giant textile industry with a massive number of workers drained foreign exchange for decades due to the large volume of imports of raw materials. Vulnerability to exchange rate pressures had to be overcome with export orientation. This was also the reason why most investments in this sub-sector were generally dominated by foreign investors.

Jokowi's government seems so ambitious to rebuild the glory of the large labor-intensive industries. In a short time, this policy choice can seem to be a quick win. However, if it is not limited, in the end, it will create quite serious problems such as those experienced by the New Order.

There are several pitfalls caused by this policy choice.

First, Rapid needs without restrictions caused this policy to give birth to the architecture of the TPT industry, which was vulnerable to external shocks. The Textile Product and Textile Industry (TPT) in Indonesia ultimately had a high sensitivity to imported raw materials, especially industries that were oriented towards the domestic market. For the fiber industry, the cost of raw materials reached 56 percent of production costs, while reaching 60 percent for the spinning industry and 58 percent for the garment industry.



Source: Kementerian Perindustrian, Mandiri Institute

In the TPT industrial tree published by the Ministry of Industry, in the upstream sector of the TPT industry, some raw materials were sourced from natural fibers, both from plants and animal fur (cotton, wool, and other vegetable fibers). In addition, there were synthetic fibers that came from the petrochemical industry, and some were a mixture of vegetable and chemical (pulp rayon). Despite having large tracts of land, Indonesia did not have an adequate base of vegetable fiber production. The existence of the petrochemical and rayon industries was also still dominated by a handful of producers and export-oriented.

Second, the presence of a large textile industry would reduce the supply of raw materials for small and medium industries. If this were allowed, small and medium industries would grow to serve the local market segment under the pressure of raw material prices. In a certain period, there would be what was called a discouple economy. However, large industries were forced to take an export share in order to reduce the pressure on imported raw material costs. Workers in the large textile industry were paid cheaply to serve the needs of the middle class of other countries. In other segments, small and medium industries were forced to deal with cheap imported products, which rushed in amid the increasingly pressing raw materials. The case of the dominance of Chinese textile products in the Tanah Abang market was a clear example.

Third, the presence of a large domestic-oriented textile industry would disrupt not only the availability of raw materials but also the market of small and medium industrial products. Past decades of experience had taught people that labor-intensive industries were also relatively easy to move (footloose industries) and later giant labor-intensive industries applied the pattern of outsourcing. This pattern began to cause the emergence of home-based workers with very poor health and safety conditions. Most of them were women. They had to provide their own equipment without adequate compensation. Even worse, BPJS was

not equipped with instruments to enter the realm of informal workers like this. Existing schemes relied heavily on freelance initiatives to register directly.

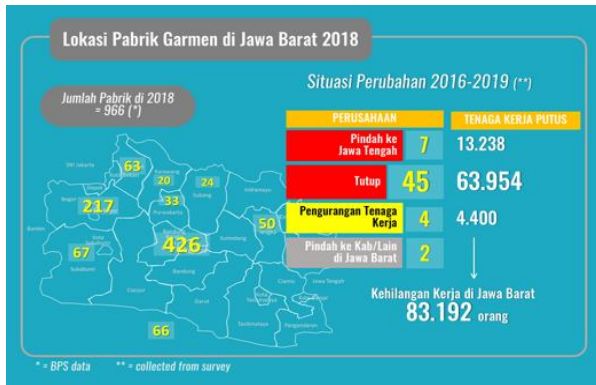
Throughout 2017 to 2018, it was recorded that 21 factories closed. They left Karawang and chose to settle in the Central Java region as their new production site. Based on reports from labor inspectors, in the range of 2012-2018, the total number of factories closed and leaving West Java had reached 120. Of these, the average was automotive, garment, textile factories; which employed workers in large numbers, or commonly referred to as labor-intensive industries. By 2018, seven textile-garment factories were closed: PT. Sandratex in South Tangerang, PT Inductorindo Utama in Serpong, South Tangerang, PT SJ Mode Indonesia in Subang Regency, PT Kaho Indah Citra Garment in North Jakarta, PT Dream Sentosa Indonesia in Karawang, PT Dada Indonesia in Purwakarta and finally PT Matahari Sentosa Jaya in Cimahi City.

### **Reason for Factories to Close and Move**

Various reasons were put forward to explain the many cases of factory decision. One reason that was often cited was the wages were too high. The Center for Business, Policy, and Institutional Development Studies at Universitas Padjadjaran, in its study of the garment industry in West Java, stated that high wages were one of the factors that changed the market of labor-intensive industrial zones in the West Java region. Labor-intensive companies found it difficult to enter areas with high minimum wages. The only way to survive was to use more machines and reduce labor.

This situation could increase unemployment in West Java (at this time 7.73%) - around 1.84 million people - higher than the national unemployment rate (5.01%). The pressure to increase UMK was expected to worsen financial performance and business continuity in West Java.





Source: The Center for Business, Policy, and Institutional Development Studies at Universitas Padjadjaran, 2019

For example, the high wages in the Karawang regency from 2017 to 2018 had caused 21 companies to move from Karawang because they were unable to pay high wages in Karawang (Data of Manpower and Transmigration Office of Karawang Regency in 2018). This was what caused relocation and expansion to be one of the strategies to maximize profits by reducing production costs. The purpose of relocation, to areas where labor was cheap, was to reduce production costs, but was referred to as an effort to boost export values.

PERBANDINGAN UMK DI JAWA BARAT, JATENG, JATIM & BANTEN			
Province	UMK 2019		Kab/Kota
Jawa Barat	Highest	4.234.010	Kab. Karawang
	Lowest	1.688.217	Kota Banjar
Jawa Tengah	Highest	2.498.587	Kota Semarang
	Lowest	1.673.500	Kab. Sragen
Banten	Highest	3.913.078	Kota Cilegon
	Lowest	2.498.068	Kab. Lebak
Jawa Timur	Highest	3.871.052	Kota Surabaya
	Lowest	1.763.267	Kab. Magetan

Sumber: The Center for Business, Policy, and Institutional Development Studies at Universitas Padjadjaran, 2019

The more relocation of factories was certainly an onslaught of demands for wage increases. Noting the situation and conditions of wages in the West Java Province with the highest and lowest wage gap by regency/city reaching 251%, the high level of closure and relocation of factories in labor-intensive

industries, the slowdown in the global economy, and considering policies to attract real investment that could reduce the level of open unemployment, the Governor of West Java issued a Governor of West Java's SE Number 561/75/Yanbangsos/2019 concerning the Implementation of UMK in West Java.

The main points of this SE were as follows:

1. Starting in 2020, the Governor of West Java only set a Provincial Minimum Wage, which was the basis of law enforcement and compliance for all wage employment relationships in the West Java Province.
2. Workers who already had a higher wage than the UMP/UMK/UMSK/Special Minimum Wage in 2019 could not have their wages reduced due to the absence of UMK 2020.
3. The Provincial Minimum Wage that had been set only applied to workers/laborers with a working period of less than one year at the company concerned, in accordance with Article 90 of Law No. 13 Year 2003 concerning Employment jo. Article 41 to Article 42 Government Regulation of the Republic of Indonesia No. 78 of 2015 concerning Wages.
4. Wages for Workers who have worked for more than one year work period were determined based on the results of negotiations or agreements between the Company and Workers or Trade Unions/Labor Unions, in accordance with Article 42 section (2) Government Regulation of the Republic of Indonesia No. 78 Year 2015 concerning Wage jo. Article 3 section (2) Regulation of the Minister of Manpower No. 1 of 2017 concerning Wage Structure and Scale.
5. The wage provisions for workers above one year of service mentioned in the 4th point above also applied to workers with a Specific Time Work Agreement (PKWT, *Perjanjian Kerja Waktu Tertentu*) and/or other forms of employment that indicated the worker had



worked for more than one year in the same company, or having work experience of more than one year in the same field even in a different company, evidenced by a letter of work experience.

6. To improve work productivity, companies had to prepare and implement Wage Structure and Scale with due regard to class, position, tenure, education, and competence and must be notified to all Workers/Laborers in accordance with Article 14 section (2) and (3) Government Regulations of the Republic of Indonesia No. 78 Year 2015 concerning Wages.
7. The government encouraged each company to carry out bipartite negotiations to determine wages and the amount of the increase and be reported to the Regental/Municipal Manpower Office, in accordance with Article 91 of Law No. 13 Year 2003 concerning Manpower.
8. Workers and/or Trade Unions/Labor Unions in each company optimized wage negotiations that were fair and aimed at the welfare of workers, taking into account the company's capabilities and business continuity.
9. Companies that did not have Trade Unions/Labor Unions but had fulfilled the requirements as mentioned in Article 106 section (1) of Law No. 13 Year 2003 concerning Manpower were encouraged to form a Bipartite Cooperation Institution and activated the role of these institutions in wage negotiations.
10. Companies that had not fulfilled the requirements referred to in Article 106 section (1) of Law No. 13 of 2003 concerning Manpower were encouraged to establish a communication forum between the Company and Workers' representatives as a means of negotiation.
11. Labor Inspection Employees at the West Java Provincial Manpower and Transmigration Office were expected to provide the necessary guarantees for workers/laborers to voluntarily associate

and carry out their union functions.

12. Wage Board at the Provincial and Regental/Municipal levels were expected to form a Commission that conducted a wage survey in each sector, which could be a reference for negotiating the determination of the amount of wages at the company level.
13. Provincial and Regental/Municipal Wage Councils were expected to work closely with Industrial Relations Mediators to facilitate the knowledge and processes needed by companies and workers to carry out wage negotiations at the company level.

Governor of West Java's SE No. 561/75/Yanbangsos/2019 concerning the Implementation of MSEs in West Java had become a breath of fresh air for the investment climate in West Java. However, this SE did not last long because of the high pressure of interest on the Governor of West Java. Therefore, he issued a Decree of West Java Governor No. 561/Kep.983-/Yanbangsos/2019 regarding Regental/Municipal Minimum Wages in West Java Province in 2020 dated 1 December 2019.

### **Position of Circular Letter Viewed from an Indonesian Legal Perspective**

The 1945 Constitution of the Republic of Indonesia was a written basic law domiciled as the basic law for each formation of the existing Statutory Regulations. The hierarchy of laws and regulations had only begun to be recognized since the formation of Law No.1 of 1950, which was the Regulation on the Types and Forms of Regulations issued by the Central Government established on 2 February 1950. Article 1 of Law No. 1 of 1950 was formulated as follows:

#### **Article 1**

Types of Central Government regulations were:

- a. Laws and Government Regulations in Lieu of Laws
- b. Government Regulations
- c. Ministerial Regulations

## Article 2

The level of strength of the regulations of the Central Government is in the order Article 1.

Furthermore, the hierarchy of legislation was regulated in **TAP MPRS No. XX/MPRS/1966** as follows:

- a. The 1945 Constitution
- b. TAP MPR
- c. Laws/Government Regulations in Lieu of Laws
- d. Government Regulations
- e. Presidential Decree
- f. Other Implementing Regulations such as Ministerial Regulations and Ministerial Instruction

In addition, the ordering of legislation was changed again with TAP MPR No. III/MPR/2000 to:

- a. The 1945 Constitution
- b. TAP MPR
- c. Laws
- d. Government Regulations in Lieu of Laws
- e. Government Regulations
- f. Presidential Decree
- g. Local Regulations

They were then renewed with Law no. 10 of 2004 (Law No. 12 of 2011 was revoked). **Law Number 10 of 2004** concerning the Formation of Regulations.

Article 7 stated that:

- (1) The types and hierarchy of legislation are as follows:
  - a. The 1945 Constitution;
  - b. Laws/Regulations in Lieu of Law;
  - c. Government regulations;
  - d. Presidential decree;
  - e. Local regulation.
- (4) Types of Legislation other than those referred to in section (1) have their existence recognized and have binding legal force insofar as it is ordered by higher Regulations.
- (5) The legal force of statutory regulation is in accordance with the hierarchy as referred to in section (1).

**Law No. 12 Year 2011** constituted the

Formation of Laws and Regulations that were in force at this time.

## Article 7

- (1) Types and hierarchy of legislation consist of:
  - a. The 1945 Constitution of the Republic of Indonesia;
  - b. Decree of the People's Consultative Assembly;
  - c. Laws/Regulations in Lieu of Law;
  - d. Government regulations;
  - e. Presidential decree;
  - f. Provincial Regional Regulations; and
  - g. Regental/Municipal Regulations.
- (2) The legal force of legislation is in accordance with the hierarchy referred to in section (1).

## Article 8

- (1) Types of Legislation other than those referred to in Article 7 article (1) include regulations stipulated by the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, the Minister, equivalent body, institution or commission established by Law or Government by order of the Law, Provincial Regional Representative Council, Governor, Regental/Municipal Regional Representative Council, Regent/Mayor, Village Head or equivalent.
- (2) Legislation as referred to in article (1) is recognized and has binding legal force insofar as it is ordered by higher Regulations or formed based on authority.

What is the position of the Circular Letter in the legal system of the Unitary State of the Republic of Indonesia: Implementation of the Establishment of Legislation?

Legal products in the form of "Circular Letter" both before and after the enactment of Law no. 10 of 2004 concerning the formation of legislation **were not categorized as statutory regulation**. Since the Circular Letter was not a statutory regulation, thus its existence

was not bound by the provisions of Law No. 10 of 2004.

In the General Guidelines for Manuscripts of the Official Paper printed in January 2004 Edition I and Ministerial Regulation No. 22 of 2008 issued by the Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia, the definition of Circular Letter was **official documents containing notifications about certain things that were considered important and urgent.**

In addition, the Ministry of Home Affairs regulation no. 55 of 2010 article 1 point 43 explained that Circular Letter was a service document that contains **notifications, explanations, and/or instructions on how to carry out certain things that were considered important and urgent.**

Considering that the contents of the Circular Letter were only in the form of notifications, the content of the contents by itself was not a legal norm as is the norm of statutory regulation. Therefore, Circular Letters could not be used as a legal basis for annulling Ministerial regulations, let alone a presidential decree. It was only to clarify the meaning of the regulations to be informed.

**A circular letter had a higher degree than ordinary letters** because circular letter contained instructions or explanations about things that had to be done based on existing regulations. A circular letter was a notification; there was no sanction because it was not the norm.

In Indonesian Legislation, legal norms include:

- a. The behavioral norms, which were divided into four:
  - Prohibition
  - Order (must or mandatory)
  - Permission (can do something)
  - Exemption of an order
- b. The authority norms, which were divided into three:
  - Authorized
  - Unauthorized
  - Can but not necessary

- c. The establishment norms, which were divided into two:

- The time the law came into force
- Determination of place of an institution, etc.

The Position of Ministerial Regulation, Ministerial Decree, Circular Letter, and Presidential Instruction in the Law System of the Unitary State of the Republic of Indonesia. A circular letter was an ORDER for certain officials to subordinates/people under their guidance. Circular Letters were often made in the form of Minister Circular Letters. Circular Letters had no binding power because the issuing official had no legal basis for issuing circular letters. Officials that issued Circular Letters did not require a legal basis because Circular Letters were regulations issued solely based on free authority. However, several factors as a basis for consideration of their issuance had to be considered:

- a. It had to be issued only due to urgent circumstances
- b. There were unclear related regulations that needed to be interpreted
- c. The substance did not conflict with statutory regulations
- d. It could be morally accounted for by the principles of good governance.

Therefore, Circular Letter was **an order or explanation with no legal force and legal sanctions for those who did not comply.**

This means that the appeal for the establishment of UMK as a basis for wages in West Java could not be brought into the jurisdiction. Therefore, Even though it was not carried out, companies could still pay the minimum wages in accordance with the Joint Agreement agreed between employers and workers/unions. The Wage Scale and Wage Structure also had to be prepared. This was based on the ability of the company to pay workers. However, even though the Circular had no legal force, **it can still indirectly impose sanctions.** For example, if companies were found not having a Joint Agreement and Wage Scale Structure, the West Java Provincial

Government, in this case, the Manpower and Transmigration Office could order labor inspectors to investigate and take action against companies paying wages below the UMK.

### **The authority of the Governor of West Java**

As the Head of the Region, the Governor carried out government affairs according to the principle of regional autonomy based on the principles of decentralization and assistance tasks. In carrying out his governmental affairs according to regional autonomy, the Governor had the authority to regulate and manage his own government affairs. This authority to regulate and manage government affairs was based on the principle of decentralization, which meant that only government affairs that had been given to the autonomous region could be carried out, which were those outside the affairs of Foreign Politics, Defense, Security, Justice, National Fiscal Monetary, and Religion.

In relation to creating legal products in implementing regional autonomy, the Governor had the authority to regulate and manage. That authority to regulate was an act to create generally accepted and abstract legal norms. The forms of Regional Government Law, as the legal products of the regulatory authority, were (Benjamin Hoessein: 154):

- a. Regional Regulation (*Perda*, *Peraturan Daerah*), which was a decision of the Regional Head with the approval of the DPRD;
- b. Regional Head Regulation (*KDH Regulation*), which was a decision of the Regional Head without the approval of DPRD.

On the other hand, with the authority to manage, the Governor as the Head of the Province was able to create legal norms that apply concretely and individually. In the Regional Government Law, there was a legal product resulting from the management, which was the Decree of the Regional Head. Decisions of the Regional Head were legal products resulting from the management, which were stipulated (*beschikking*). The term used under

the State Administrative Court Law was the State Administrative Decree. The authority possessed by the Governor both to regulate and to manage formed three legal products. These legal products were only to carry out government affairs that had been given from the Government to the Regional Government based on the principle of decentralization.

Government matters that were not given to the autonomous region could only be carried out based on the principle of deconcentration, which meant by the delegation of government authority from the government to the Governor as the representative of the government and/or by assigning to the regional government with the principle of Co-administration.

The Governor as a representative of the government has the duty and authority to carry out:

- 1) Fostering and overseeing the administration of regental/municipal regional governments;
- 2) Coordinating the implementation of Government affairs in the provincial and regental/municipal regions;
- 3) Coordinating the supervision of the implementation of co-administration tasks in provincial and regental/municipal regions. The Governor as the representative of the government also carried out government affairs in the province, which were the authority of the government in accordance with the legislation.

In this case, the Governor as the representative of the Government can carry out government affairs that were the affairs of the government, which are Foreign Politics, Defense, Security, Judicial, Monetary and National Fiscal, and Religion. This could only happen if the government delegated the governor based on deconcentration or co-administration principles.

It had a connection with the issuance of a Governor Decree containing wage matters, namely the Decree of the Governor of West Java Number 561/Kep-983-Yanbangsos/2019

concerning Regental/Municipal Minimum Wages in West Java Province in 2020. The decree was the decision of the Regional Head, which was then considered as a legal product of the management results that were stipulated (*beschikking*). The term used under the State Administrative Court Law was the State Administrative Decree. The Decree of the Regional Head was individual, concrete, and final.

Individual means that the decision was not intended for the public, but for special circles. The decision was directed or addressed to someone, several people, or many people who had been predetermined. In this case, the decision was regarding Regency/City Minimum Wage. Furthermore, the decision was concrete, which meant that the decision regulated actions that were already real. The decree not only prohibited the payment of wages below the wages stipulated by the government, which could trigger and/or cause disturbance to the security and order of the people of West Java but also had been concreted into provisions. Furthermore, the decision was final, which meant that the decision could immediately take effect even without the approval of the superiors.

Thus, the Governor of West Java's Decree No. 561/Kep-983-Yanbangsos/2019 Concerning Regental/Municipal Minimum Wages in West Java Province in 2020 was a legal product of the Regional Head (Governor), which came from the authority of the Regional Head as a result of management in the form of stipulation or State Administrative Decree. The decree was a decree containing labor affairs, which was the prohibition to pay the wage below the agreed minimum wage stipulation.

Considering that labor affairs were the government's authority, the provincial government had to be authorized to issue legal products either through the act of regulating or taking care of those concerning labor affairs. This kind of government's affairs had been delegated from the government to the provincial government in accordance with their position as government's representatives in the

province. It was based on the principles of deconcentration or co-administration. Therefore, it can be said that the governor did not exceed his authority in issuing the decree.

## CONCLUSION

The Regulation of the Minister of Manpower and Transmigration No. 15 of 2018 concerning Minimum Wages, states that:

1. The Governor must determine the UMP. Article 8 (1).
2. The UMP is determined and announced by the governor on November 1 by a Governor Decree. Article 9 (4).
3. In the event that November 1 falls on a Sunday or national holiday, the UMP is determined and announced by the governor 1 (one) day before Sunday or national holiday. Article 9 (5)
4. The Governor can determine the UMK. Article 10 (1)
5. UMK is established and announced by the governor no later than November 21 with the Governor's decision. Article 11 (5)

Therefore, in accordance with the Regulation of the Minister of Manpower and Transmigration No. 15 of 2018, on 1 November 2019 the Governor of West Java established and announced the Decree of the Governor of West Java No. 561/Kep.920-Yanbangsos/2019 Regarding West Java UMP 2020.

In accordance with the Regulation of the Minister of Manpower and Transmigration No. 15 of 2018 Article 10 (1) and Article 11 (5), on 21 November 2019, the Governor of West Java may (not compulsorily) determine the UMK. Therefore, he issued the Governor of West Java's SE No. 561/75/Yanbangsos Regarding the Implementation of Regental/Municipal Minimum Wages in West Java Province.

However, on Sunday, 1 December 2019, the Governor of West Java revoked SE No. 561/75/Yanbangsos Regarding the Implementation of Regental/Municipal Minimum Wages in West Java Province and replaced it with West Java Governor Decree

No. 561/Kep-983-Yanbangsos/2019 regarding Regental/Municipal Minimum Wages in the Province of West Java in 2020.

Based on the foregoing, then:

1. Governors are obliged to stipulate a UMP, but they are **able** to stipulate UMK. On this basis, it can be understood when the governor issued a "beleidsregel" in the form of a Circular Letter (SE).
2. Even though in the form of a Circular Letter, the Governor had set up UMK before. However, the legal binding power was not as strong as SK.
3. Thus, the governor did not pass the deadline for determination.
4. When the governor issued an SK (*beschikking*) ten days after the SK's time limit was set, then the SK on the Minimum Wage Determination was legally flawed because:
  - a. The time limit was passed
  - b. It was established on Sunday
  - c. It caused legal uncertainty
  - d. 7D Dictum was contrary to PP No. 78 of 2015 concerning Wages.
  - e. The Minister of Manpower and the Minister of Home Affairs as superiors of the Governor of West Java must provide a "reprimand" and order the Governor to revoke the Decree of the Governor of West Java No. 561/Kep-983-Yanbangsos/2019 regarding Regental/Municipal Minimum Wages in West Java Province in 2020.\*\*\*

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