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# **The Legal Implication of Home-Based Worker's Wage Regulation in Indonesia Prespective Pancasila**

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## **Abstract**

This research is titled “Maintaining the Use of Sundanese Language in Wayang Golek Performances in Bandung Regency, West Java, Indonesia”. The aim of this research is to explain the methods for maintaining the use of Sundanese language in Wayang Golek performances in the Bandung Regency (henceforth referred to as ‘Kabupaten Bandung’, West Java, Indonesia) and explain the factors that influence them. The method used in this research is the qualitative-descriptive method. The data sources are traditional wayang golek performances in Kabupaten Bandung, West Java. The results of this research show that 1) the methods for maintaining the use of Sundanese language in wayang golek performances include murwa, nyan-dra, antawacana, and tembang, 2) the factors that influence the insistence of maintaining the usage of Sundanese language are (a) to preserve cultural identity, (b) the spatial aspect of the performance; the region where the performance is held, and (c) the aesthetic aspect of the performance.

**Keywords:** language maintenance, arts, traditional, wayang golek

## **La implicación legal de la regulación salarial de los trabajadores a domicilio en Indonesia Pancasila**

### Resumen

El esfuerzo del gobierno indonesio para abordar los derechos de los trabajadores, incluido su derecho a un salario adecuado, significa la noción de que Indonesia tiene un fuerte compromiso en la promoción de los problemas de la humanidad. Con el fin de proporcionar una vida digna para la humanidad, el párrafo 88, párrafo 1), de la Ley del Trabajo es sustancialmente similar al párrafo 28D, párrafo 2), de la Constitución de Indonesia. Para llevar a cabo el mandato y elaborarlo en la legislación laboral, el subpárrafo (2) del párrafo 88 menciona que “para proteger y encarnar el contenido del párrafo, el gobierno ha establecido políticas de lucha, y la materialización de los salarios laborales es estipulado en el párrafo 88 subpárrafo (3) en forma de salario mínimo “. Con respecto a los derechos de empleo, el párrafo 28D subpárrafo (2) de la Constitución de Indonesia menciona que “Toda persona tiene derecho a una ocupación, así como a obtener ingresos y un trato justo y adecuado en las relaciones laborales”. Esta disposición normativa afirma la constitucionalidad del derecho al trabajo y el derecho al trabajo como derechos humanos. El cumplimiento de los derechos de las ocupaciones es la fusión e implementación de los derechos normativos de los trabajadores, como los salarios, la salud, la seguridad, etc. Son derechos que deben otorgarse a las labores, en particular a los trabajadores a domicilio.

Palabra clave: Implicación, salarios, Pancasila

### 1. Introduction

The Labor Law mentions that wages must not be paid under local minimum standard because minimum wage is the lowest wage allowed to be paid to employees in the form of basic wage and fixed allowance. Minimum wage is determined in provincial or municipal level, or based on sectors in provincial and municipal level (Marilyn Carr, 2000)., ” (Pratomo, 2014) It also applies to non-permanent workers including those hired for certain time period and tasks, including workers paid based on produced units in an employment relationship. (Nations, 2002). According to the Labor Law, workers paid based on produced units must be paid at least the amount

equaling the minimum wage for regular work hours (forty hours per week) although the unit-based wage they are supposed to receive is actually lower than the minimum wage. If their unit-based wage is higher than the minimum wage, they must receive the unit-based wage. Hence, even if the unit-based wage of home-based workers only produce three-quarter of the minimum wage in one month, they are legally entitled with the minimum wage for workers who do regular hours (eight hours per day and five days per week, or seven hours per day and six days per week, or the average of 40 hours per week).

The aforementioned wage system is a conduct that tends to ignore justice and humanity values. Nonetheless, every working person wishes for welfare, in terms of decent wage, because welfare is the highest need for every human (García-Mínguez, 2003), (Juwana, 1999) (Magruder, 2013). It is relevant with the mandate of Indonesian Constitution stating that Indonesia was established to create public welfare to all citizens, including home-based workers. Justice and humanity principles in law cannot be put aside in creating a country that wants to prosper its citizens. Indonesia believes in welfare state, (P, 2006) so law is a crucial instrument to actualize the state's objective of bringing prosperity for its citizens as mentioned in the preamble of Indonesian Constitution.

## 2. Research Problem

The Legal Implication of Home-based Worker's Wage Regulation in Indonesia Based on the Philosophy of Pancasila?

## 3. Discussion

Regulations that are made and passed in procedural manners need to pay attention fundamental principles, so their implementation is comprehensively supported by all citizens. One of the principles is that law is hierarchical. The legal position defines that all regulations are made without contrasting the higher rules so that a consistent normative certainty is achieved, not casting doubts and multi-interpretations which eventually obscure the sense of the law to be applied.

Protection for home-based workers particularly regarding their wage includes provision that their wage must be paid according to the applicable regulations, that decent wage is regulated by the authorities, and that it complies with Indonesian positive law and regulation. In parallel with the description above, wage in labor system is inseparable from justice. Etymologically, justice in Indonesian is "keadilan", derived from the Arabic words of "adl". In English justice has the same meaning as Latin word of "justitia", rooted from the word "jus", which means law or rights. In conjunction with

the concept of justice, the word is interpreted as (1) the quality of being righteous, honest; (2) impartial, fair in representing facts, (3) vindictive, rewarding, sound in reasoning, rightful, and valid, and (6) just or lawful. Roman jurists formulated justice as *justitia est constant et perpetua voluntas jus suum cuique tribuendi*, justice is the constant and perpetual will to render to each man what is his due. This is relevant with the formulation written in *Black's Law Dictionary* (Black, 1990), which defines justice as the constant and perpetual disposition to render every man his due. The same definition is also coined by the Institute of Justinian, in which justice is the constant and continual purpose which given to everyone his own. (Lester, 2006) (Kwon, 2014).

Government policy that regulates wage is the Government Regulation number 78 of 2015 regarding wage, signed by President Joko Widodo on October 23, 2015. According to the Minister of Workforce and Transmigration, this government regulation is a part of the legal instruments that implement labor law, particularly those regarding the basis of waging for Indonesian workers or labors. However, a number of regulations prior to the enactment of the government regulation number 78 of 2015 have been passed, especially regarding matters related to waging instrument; they are presidential decree on the Board of Waging, ministerial decree on minimum wage, (Carter, 1998), (Chieh-Hsuan Wang, 2018) (Gallen, 2018) ministerial decision on components for the attainment of the needs for decent life, and other wage-related regulations. The interesting thing from the enactment of the regulations, according to the Minister of Workforce and Transmigration, is that the new regulation is believed to provide more protection for workers from receiving lower wages, provide unemployed labors opportunities to enter the labor market, and provide businesses with opportunities to develop and create more employments. (Kwon, 2014), (Magruder, 2013) Hence, this regulation benefits both labors and business. With the enactment of the new policy, problems that occur in every year will be eliminated. (Baldwin, 1992) (Bhorat, 2014) (Gallen, 2018). The legal argumentation from thoughts that foreshadow the birth of waging policies is regarded as idealistic in its objective, but the judicial facts found in the regulation's content is not always relevant. For instance, the regulation mentions that "the needs for decent life is evaluated every five years". The needs for decent life are the basis for determining the amount of minimum wage. (García-Mínguez, 2003) Therefore, to determine the amount of wage, indicators of the need for decent life is used as the basis. The indicators are the result of a survey on the price of living needs conducted in markets.

The matter that must be criticized is the consideration behind the determination of the five-year period. In fact, the price of the living needs can significantly change at any time. The arrangement is clearly not oriented to the welfare of workers (Mavromaras, 2004), particularly home-based workers, (Salgado, 2005) but bringing them into more difficult conditions. (Suci Flambonita, 2019), (Iskandar, 2016) (D, 2014).

The government regulation also mentions that the raise of the minimum wage only applies for workers who have been working for at least one year. Those who have been working less than one year will not receive any raise.” (Benjamin, 2015), (Gorry, 2013) This is unfavorable for home-based workers because they work by request using certain-time system. (Pratomo, 2014) (Shalini, 2016) (Skedinger, 2015) It means that home-based workers do their job according to the need of the employers, and the employment time is limited. (Juwana, 1999) (Knight, 2016). Therefore, although they have been employed for nearly one year, or over, the regulation does not apply to them. The rationale of the rule seems to ignore humanity. Wage raise in its essence is the form of wage adjustment to inflation and economic growth. (LUND, 2010), (Lester, 2006). (Magruder, 2013) If wage is not raised, the receiver will not be able to fulfill their living needs, and it is not humane. (W, 2014) (Y, 2017). The wage raise should apply not only to certain workers but also to all workers, including home-based workers, so the raise can meet decent wage for social justice.

#### 4. Conclusion

The legal implication of this study is that, in order to initiate a fair wage for home-based workers, interference from the state is required, as mandated by the constitution Paragraph 27 subparagraph (2) and Paragraph 28D subparagraph 2 and reinforced by consideration D of labor law mentioning that “protection for labors is meant to guarantee the basic rights of workers or labors and guarantee equal opportunities and treatments without any discrimination of any basis to bring prosperity for workers or labors and their families without ignoring business development. Further, regarding the legal implication of fair wage for home-based workers, the rights of workers and the right for decent wage can be interpreted as that Indonesia is a country with a strong commitment in promoting humanity issues. On order to fulfill the needs for decent life for humanity, the scope of Paragraph 88 subparagraph (1) of the Labor Law is substantially similar with the formulation of Paragraph 28D subparagraph (2) of Indonesian Constitution. Government policy that regulates wage is Government Regulation number 78 of 2015 on waging, which is a part of legal instruments

for the implementation of labor law particularly related to the basis of wag-ing for Indonesian labors or workers. The legal can be used as a reference for employers to determine decent wages for home-based workers.

## 5. Recommendations

Recognition of the legal status of home-based workers, which is required for initiating wage uniformity for home-based workers, can be done by revising the current regulations, so the new legal implications can create balances between the right and obligations of both parties in employment relationships.

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