



**THE SUMMARY OF DECISION
CASE NUMBER 72/PUU-XIII/2015**

Concerning

Suspension of Payment of Regional Minimum Wage

- Petitioner** : Sukarya and Siti Nurrofiqoh
- Type of Case** : Judicial Review of Law Number 13 of 2003 on Manpower (Law 13/2003) against the Constitution of the Republic of Indonesia 1945 (1945 Constitution)
- Subject Matter** : Article 90 paragraph (2) of Law 13/2003 and its Elucidation is contrary to Article 28D paragraph (2) of the 1945 Constitution
- Verdict** :
1. The Petitioners' petition is granted in part
 - 1.1. Elucidation of Article 90 paragraph (2) regarding the phrase "*but is not obliged to pay the fulfilment of the minimum wage provisions in effect at the time the suspension is granted*" of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia Number 39 of 2003, Supplement to State Gazette of the Republic of Indonesia Number 4279) is contrary to the Constitution of the Republic of Indonesia of 1945
 - 1.2. Elucidation of Article 90 paragraph (2) regarding the phrase "*but is not obliged to pay the fulfilment of the minimum wage provisions in effect at the time the suspension is granted*" of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to State Gazette of the Republic of Indonesia Number 4279) does not have binding legal force
 2. The Petitioners' petition against Article 90 paragraph (2) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) cannot be accepted
 3. To dismiss the rest of the Petitioners' petition
 4. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate
- Date of Decision** : Thursday, September 29th, 2016
- Overview of Decision** :

The Petitioners are a group of people, Indonesian citizens, who have an equal interest in fighting for the rights and interests of labours and their families.

Whereas in relation to the jurisdiction of the Court, based on the provisions of Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) *junto* Article 29 paragraph (1) letter a of Law Number 48 of 2009 concerning Judicial Power, the Court has the jurisdiction to adjudicate at the first and last levels whose decisions are final to examine the Law against the 1945 Constitution. Since what the Petitioners are requesting for is an examination of the Law, in this case Article 90 paragraph (2) of Law 13/2003 together with its Elucidation against the 1945 Constitution therefore the Court has the jurisdiction to adjudicate the Petitioners' petition.

Whereas regarding the legal standing of the Petitioners, each of the Petitioners is a leader of a trade/labour union. The Petitioners are a group of people, Indonesian citizens, who have the same interest in fighting for the rights and interests of labours and their families as stated in Article 7 of the Articles of Association of the Independent Trade Unions Association and Article 7 of the Articles of Association of the Rising Labour Union. The Petitioners argue that they have constitutional rights granted by the 1945 Constitution. According to the Petitioners, their constitutional rights have been impaired by the enactment of Article 90 paragraph (2) of Law 13/2003 and its Elucidation on the grounds that the Petitioners have the right to work and to receive compensation as well as fair and proper treatment in an employment relationship. In this regard, there is the potential that the constitutional rights of the Petitioners will be impaired by the enactment of Article 90 paragraph (2) of Law 13/2003 along with its explanation and the said loss according to reasonable reasoning can certainly occur, if the employer does not pay wages as stipulated in the applicable regulations. Whereas the constitutional losses of the Petitioners will not occur if the Petitioners' petition is granted. Thus, according to the Court, the Petitioners have a legal standing to act as the Petitioners in the petition *a quo*.

Whereas the Petitioners argued that Article 90 paragraph (2) of Law 13/2003 and its Elucidation are contrary to the 1945 Constitution, on the grounds that in essence they stated that the granting of a permit for any suspension of wages so that the companies does not pay wages to the workers/labours in accordance with the minimum wage shall results in workers/labours being unable to meet their needs of decent standard of living as regulated in Article 28D paragraph (2) of the 1945 Constitution. Against Article 90 paragraph (2) of Law 13/2003, the Petitioners argue that the suspension of payment of the minimum wage by the company as regulated in Article 90 paragraph (2) of Law 13/2003 shall results in the workers being unable to meet their needs of decent standard of living as mandated in Article 28D paragraph (2) of the 1945 Constitution. Regarding this matter, the Court has considered in its Decision Number 61/PUU-VIII/2010, dated November 14th, 2011. Therefore, although the basis for the examination proposed by the Petitioners is different, in principle the Court has given considerations regarding the suspension of payment of the minimum wage by employers to workers/labours. Thus, according to the Court, the legal considerations in Decision Number 61/PUU-VIII/2010, dated November 14th, 2011 *mutatis mutandis* also applies to the petition *a quo*.

Whereas in relation to the Elucidation of Article 90 paragraph (2), the Petitioners argue that the Elucidation of Article 90 paragraph (2) of Law 13/2003 has provided space for employers to not be obliged to make payments for wages that are suspended for a certain period of time. This is contrary to Article 28D paragraph (2) of the 1945 Constitution which guarantees a decent life for workers. According to the Court, the minimum wage is not only a basic protection for workers/ labours, but also as a safety net which is intended so that wages do not fall to their lowest level. In principle, employers are prohibited from paying wages lower than the minimum wage as determined by the Governor or the official concerned because the stipulation by the Governor/official has taken into account the recommendations from the Wage Council and/or Regent/Mayor. In fact, not all employers can afford to provide minimum wages to workers/labours, as considered by the Court in Decision Number 61/PUU-VIII/2010, dated November 14, 2011. Therefore, the suspension of the payment of the minimum wage by the employer to the workers/labours is possible in

order to provide protection both to the relevant employer and to the relevant workers/labours. From the employers' point of view, suspension of payment of the minimum wage provides an opportunity for the employers to fulfil the obligation to pay wages according to their abilities for a certain time period or interval. As from the workers/labours' point of view, suspension of payment of the minimum wage provides protection for workers/labours to continue working at the company as well as providing legal certainty regarding the continuity of the employment relationship.

Whereas Article 90 paragraph (1) of Law 13/2003 states that "*Employers are prohibited from paying wages lower than the minimum wage as referred to in Article 89*" Violation to these provisions is a criminal offense punishable by imprisonment and/or fines as regulated in Article 185 paragraph (1) and paragraph (2) of Law 13/2003. Based on these considerations, the payment of minimum wages by employers to workers/ labours is mandatory and cannot be reduced. The suspension of payment of the minimum wage as regulated in Article 90 paragraph (2) of Law 13/2003 fundamentally does not necessarily eliminate the obligation of employers to pay the difference between the minimum wage and payments made by employers during the period of suspension. In other words, the difference between the minimum wage and the payment made by the employer during the suspension period is the employer's debt that must be paid to the workers/labours. This is in order to provide legal protection and legal certainty for workers/labours to be able to receive decent income for humanity while at the same time giving responsibility to the employers so that the relevant person does not take refuge behind such incompetence. Payment of wages below the minimum wage by the employers based on the determination of an authorized official/Governor at the request of the employers is very vulnerable to abuse of power by the authorities. Therefore, the difference between the minimum wage and the payments made by the entrepreneur remains the employer's obligation to pay.

Whereas there is a norm inconsistency between Article 90 paragraph (1) and Article 90 paragraph (2) of Law 13/2003 with the Elucidation of Article 90 paragraph (2) of Law 13/2003 which has given rise to different interpretations regarding the suspension of payment of the employer's minimum wage to workers/labours. Such a situation is contrary to Article 28D paragraph (1) of the 1945 Constitution which states, "*Everyone has the right to recognition, security, protection and legal certainty and equal treatment before the law*" which has threatened the workers' rights to fair and decent rewards in the employment relationship, so that the provision *a quo* also contrary to Article 28D paragraph (2) of the 1945 Constitution. In order to avoid legal uncertainty and to achieve justice for employers and workers/labours, the Court must affirm that the Elucidation of Article 90 paragraph (2) of Law 13/2003 regarding the phrase "*but is not obliged to pay the fulfilment of the minimum wage provisions in effect at the time the suspension is granted*" is contrary to the 1945 Constitution"

Whereas based on these considerations, the Court has rendered the following verdicts on Thursday, September 29th, 2016 which stated:

1. To grant the Petitioners' petition in part;
 - 1.1. Elucidation of Article 90 paragraph (2) regarding the phrase "*but is not obliged to pay the fulfilment of the minimum wage provisions in effect at the time the suspension is granted*" of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia Number 39 of 2003, Supplement to State Gazette of the Republic of Indonesia Number 4279) is contrary to the State Constitution of the Republic of Indonesia of 1945;
 - 1.2. Elucidation of Article 90 paragraph (2) regarding the phrase "*but is not obliged to pay the fulfilment of the minimum wage provisions in effect at the time the suspension is granted*" of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) does not have binding legal force;

2. The Petitioners' petition against Article 90 paragraph (2) of Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) cannot be accepted;
3. To dismiss the rest of the Petitioners' petition;
4. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;