International Journal of Social Science Research and Review

http://ijssrr.com
editor@ijssrr.com
Volume 6, Issue 4
April, 2023
Pages: 416-431

Constitutionalization of Minimum Wage as the Right of Laborers/Workers

H. Karna Wijaya; Budi Santoso; Sihabudin; Setyo Widagdo

Faculty of Law Universitas Brawijaya, Indonesia

E-mail: karna.wijaya2023@gmail.com; budi.santoso@ub.ac.id; sihab@ub.ac.id; widagdo@ub.ac.id

http://dx.doi.org/10.47814/ijssrr.v6i4.1076

Abstract

Setting a minimum wage is part of the annual government agenda and the agenda of labor unions, where aspiration is expressed in either political action or legal action, while this condition has sparked a polemic. Referring to rapid changes in the regulation regarding minimum wage, this research aims to investigate the grounds for the changes in the minimum wage and to discover arguments over the urgency to declare minimum wage as the labor right/worker right to be governed in the Constitution of Indonesia. This research employed normative-juridical methods and statutory and conceptual approaches. The research discovers that the legal norms regarding minimum wage have changed rapidly and they are accessible for modification, following political interests for governments, entrepreneurs, and workers/laborers, where workers/laborers are considered the most vulnerable, compared to governments and entrepreneurs who have their dominant power in a political configuration to influence the formulation of laws. To minimize the dominant political interest, the minimum wage must be declared as part of the human rights of laborers/workers in the 1945 Constitution of the Republic of Indonesia. This urgency principally refers to the following elements: (a) the constitution as a primary norm deciding the norm of laws under the constitution; (b) the constitution with its robust and sustainable standing norm with its long validity compared to the lower laws that are prone to changes; (c) constitution with the values of Pancasila as the leading guidance in national law; (d) the formation and/or the changes of the constitution through a political process that involves the members of parliament and extra-parliament; (e) the constitution as a reflection of gentlemen agreement for the whole elements of the state; (f)… the condition where all the states are experiencing globalization turbulence where the supremacy of capitalism in a mutualistic symbiosis between states is inevitable.

Keywords: *Constitutionalization, Minimum Wage; Labor Rights/Worker Rights*

Introduction

Setting minimum wage has been an annual agenda for both governments and labor unions to gain an aspiration (Sulistiyono, 2014). This aspiration is often expressed in political action, involving

dialogues or demonstrations heavily encouraging governments to raise the minimum wage in the following year as much as what laborers/workers have expected (Dewi, 2018). Labor unions are making an effort to take legal action by filing a lawsuit in court since the minimum wage does not fit their expectation. The struggle that the unions carry out in political action can lead to disharmony in industrial relationships and anxiety among investors about security and assurance in investment, and it also erodes the wisdom of the government (*gezag*). The capture of laborers has often been found, and staging demonstrations requesting wage raise has been common (Caraway dkk., 2019).

Setting a minimum wage only requires a simple role in the partial equilibrium model of corporate behaviors, where a higher wage could mean high marginal cost, lower demands for the workforce, and lower profits. High wage is the cost that the companies are responsible for. However, companies can also expand or increase the size of local markets to increase the amounts of sales or prices and to positively influence the profits and the request for the workforce (Magruder, 2013).

Improved minimum wage should be taken as an acceptable condition. However, rapidly changing regulations have resulted in a polemic affecting several parties, and this situation tends to harm laborers. Departing from the reform era, the minimum wage is outlined in Law Number 13 of 2003 concerning Labor (henceforth referred to as Labor Law). This provision was further elaborated in the Regulation of the Minister of Labor and Transmigration Number 7 of 2013 concerning Minimum Wage amended to the Government Regulation Number 78 of 2015 concerning Wage Payment.

However, Labor Law was further amended to Law Number 11 of 2020 concerning Job Creation elaborated in Government Regulation Number 36 of 2021 concerning Wage Payment (henceforth referred to as Gov Reg 36/2021) whose enforcement is opposed by laborers since it eliminated sectoral minimum wage. The recent amendment was the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation intended to protect the decision on minimum wage 2023 set by governors across Indonesia under the Regulation of the Minister of Labor of the Republic of Indonesia Number 18 of 2022 concerning Minimum Wage of 2023 (henceforth referred to Labor Minister Regulation 18/2022).

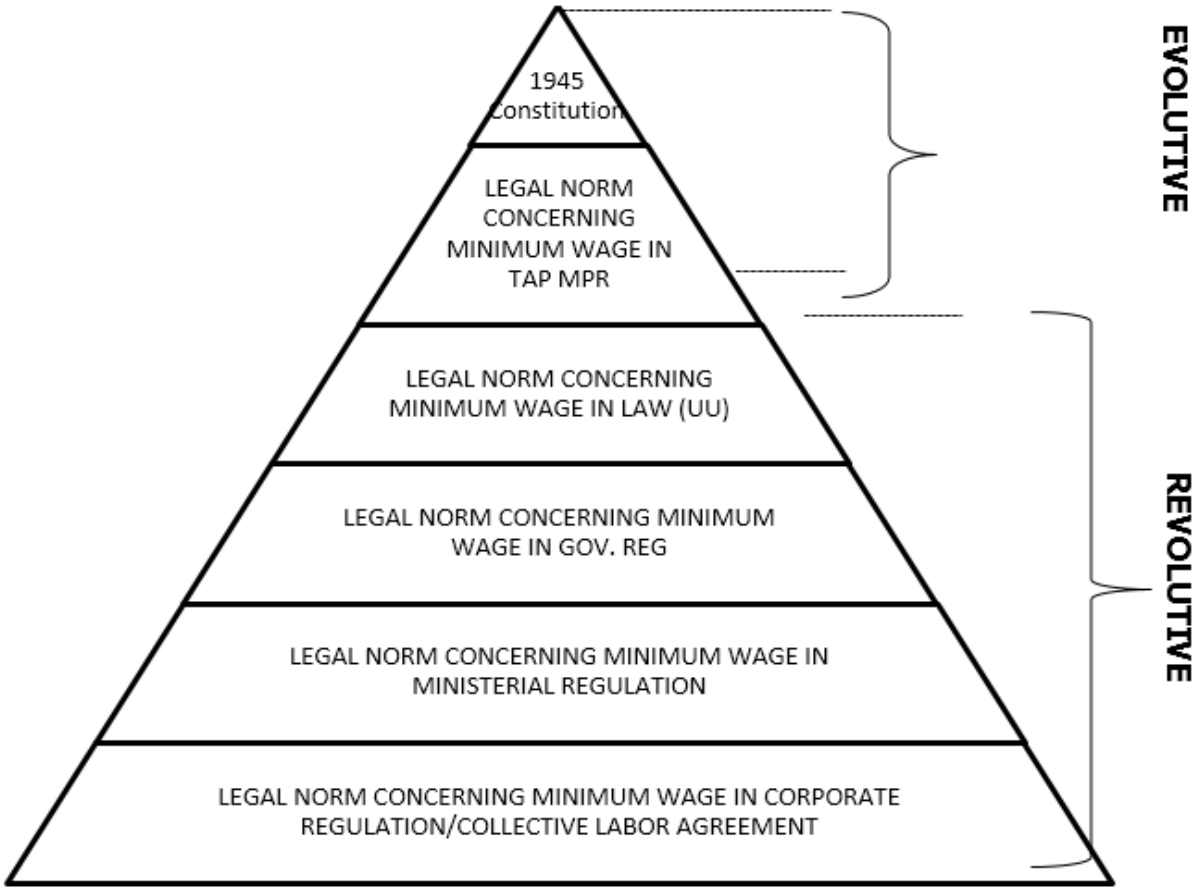
The promulgation of Labor Minister Regulation 18/2022 seems to favor laborers, and this policy amendment was affected by G20 Presidency held in Bali in November 2022 that was intended to bring more foreign investors in to Indonesia. However, the promulgation of the labor Minister Regulation 18/2022 ‘is deemed’ to contravene the principle of *lex inferior derogate lex superior* because the Government Regulation 36/2021 was amended to Labor Minister Regulation 18/2022, while hierarchically, the government regulation is higher than labor minister regulation.

Departing from the above issue, this research aims to find out why minimum wage regulation was amended too soon, while this amendment harms laborers/workers, and whether the minimum wage should be declared as part of the human rights of laborers/workers and regulated in the Indonesian Constitution. To delve into this matter, this research employed the theories of the statute, constitution, human rights, and constitutionalization.

I. Negative Impacts of Immediate Amendments of the Legal Norm Regarding Minimum Wage on Laborers/Workers

Abdul R. Budiono (Budiono, 2009) found it too soon for the legal norm concerning minimum wage to change and it is also seen as too accessible for modification for the interest of the government, entrepreneurs, and laborers/workers (tripartite interest holders). In this structure, the government can easily do lobbying and or pose pressure against the House of Representatives (DPR) to have the interest concerned as set forth in the law, the government regulation, and the regulation of the labor minister, and even in all levels of regulations except in the Decree of People’s Assembly (TAP MPR) and the 1945

Constitution of the Republic of Indonesia according to the regulatory structure governed in Article 7 of Law Number 12 of 2011 concerning Legislative Formulation as given in the following pyramid:



Pyramid 1. The Evolutive/Revolutive/Sustainable Characteristics of Legal Norm concerning Minimum Wage

The above pyramid indicates that both the president and entrepreneurs hold dominant power in the political configuration to influence the formation of the law by the DPR and the President as the government in the resolution and or in the formation of the legal norm concerning the minimum wage. The dominant role of the government and entrepreneurs is obvious through the elimination of the sectoral minimum wage in the government regulation in lieu of law concerning job creation, while this sectoral minimum wage is important to raise the wage for laborers/workers in particular sectors, considering that the amount should be higher than provincial minimum wage and minimum wage at regency level. This condition is taken as compensation since these particular sectors have superiority compared to those not included in the sectors, they contribute to the state revenue, and of course they increase the income and purchasing power among workers/laborers to achieve welfare. Not only did the government regulation in lieu of law concerning job creation eliminate the sectoral minimum wage, but this regulation also changed the mechanism of the setting of provincial minimum wage and minimum wage at the regency level.

Pyramid 2. Minimum Wage in Law Number 11 of 2020 revoking Sectoral Minimum Wage at Regency level positioned between Regency Minimum Wage and Wage Structure and Scale

The formulation and the change in the legal norm concerning minimum wage tend to negate and degrade the income received by laborers/employers, while this income is an essential element in welfare life. Moreover, in terms of industrial positions, the bargaining position of laborers/employers is lower and weaker than that of entrepreneurs. Budi Santoso asserts: (Santoso & Hassan, 2014)

> "The state needs to intervene in and protect the rights of laborers/workers in terms of wage payment since laborers/workers are more vulnerable than employers'. The minimum wage is believed to be able to increase the wage for workers. The amount of minimum wage that fits the standard of living is an important consideration since it guarantees the safety of workers". However, considering that the position of the workers is not equal to that of employers, the government's intervention is important in deciding the minimum wage, and this approach is to protect for the sake of the welfare of workers. Unfortunately, disobedience and weak law enforcers in Indonesia have hampered the efficacy of the implementation of policy in protecting the income of poor and vulnerable workers"

In addition to the vulnerability of the changes in the legal norm, the minimum wage is the real wage paid by employers to their workers/laborers, meaning that if governors set provincial minimum wage and or minimum wage at the regency level at Rp. X, employers will need to pay their

workers/laborers the same amount, while the minimum wage should be for workers/laborers who have been working for 0-1 year. In other words, workers/laborers having families and or those unmarried but having been working for at least one year should also receive Rp. X plus. Thus, it is common to see demonstrations or unrest accompanying the promulgation of minimum wage in Indonesia.

II. Four Failures of Constitutionalization Regarding Minimum Wage as Human Rights Violations

Indonesia as a constitutional state has experienced a rise and fall in the drafting of the constitution. Since its independence (marked by the proclamation of the Independence on 17 August 1945) to date, Indonesia has been in the dynamic of the formulation of the constitution in four periods, in which the norms regarding minimum wage are not yet set forth as human rights of the workers/laborers. These failures are elaborated as follows:

1. The First Failure

The idea of a minimum wage standard has been around since the Dutch colonial era, and this is in line with the research conducted by A. M. P. A. Scheltema, '*zijn minimuumloonen voor Java en Madoera nu Urgenter dan in 1921'* and the book and pamphlet distributed by Tan Malaka *Naar De Republik Indonesia* in China in April 1925. The chapter of *Partai Komunis Indonesia* (Indonesian Communist Party) (henceforth referred to as PKI) (point C) states: 'Minimum wage, 7 working hours, improvement of working hours, and living standard of laborers' are listed in the program to fight for and to be restated in (letter G) Action Plan (No. 1), demanding 7 working hours, minimum wage, working requirements, and better living standard for laborers (Malaka, 1986).

However, the idea of 'minimum wage' as part of the human rights of workers/laborers is discussed and validated in the 1945 Constitution of the Republic of Indonesia because:

1. there were no labor activists although KH. Agus Salim favored and represented the Islamic Group but it was not recorded in the session minute mentioning minimum wage for workers/laborers. Then, *komunisto phobia* grew, or at least a priori attitude towards the Soviet Union was apparent, proclaiming it as a communist state following the revolution of Bolshevik in October 1917 because the communist state only favored the working class or proletarian people. This principle, however, was thought to contravene familial concepts (Simanjuntak, 1997) that give soul (*staatidee*) to the Constitution that was underway (Bahar dkk., 1995; Kusuma, 2004; Yamin, 1960).
2. The atmosphere apparent during the promulgation of the Constitution mixed with the air of revolution and under the shadow of Japan and allies could be identified in the Speech brought by Soekarno when opening the session of the Second Preparatory Committee for Indonesian Independence (PPKI) at 12.46 on 18 August 1945, stating:

   "....the Constitution that we are now making is only provisional; this is a flash constitution. Later when this state is more peaceful, we will definitely re-gather the representatives in the People's Consultative Assembly, so we can improve this Constitution with more comprehensive substantive points …this is a provisional and flash constitution, or we can even say that this is *revolutie grondwet*. Later we will make a more comprehensive and complete Constitution..... (Bahar dkk., 1995; Kusuma, 2004; Yamin, 1960)".

3. The movement of the fight brought by laborers in the 1920s was organized and consolidated in PKI, with its culmination of the rebellion by the communist party taking place in November 1926 and January 1927, sweeping all the areas of East Java and West Sumatera islands. The impacts of this failing rebellion took the suppression of the chief and the members of the party, and some

were thrown, jailed, and sent to Digoel by the Dutch colonials (Shiraishi, 1997). In the time approaching independence (in the beginning and the mid-decade of the 1940s), PKI and its *onderbouw* (Ingleson, 2013) were banned by the Dutch colonials (Ingleson, 2013) on 23 March 1928 (Subhan Sd, 1996). When Japan invaded Indonesia, the government of Japan in Indonesia stayed alert to communist parties and it was anti-communists, and, thus, the fight for laborers faded away and got biased. It is obvious in the composition and the membership of Investigating Committee for Preparatory for Preparatory Work for Independence (BPUPKI) and PPKI where there were almost no laborers (Subhan Sd, 1996) participating in the committee. Thus, in the formulation of the 1945 Constitution and its validation, no voice represents laborers fighting for their aspirations.

The formulation and validation of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "Each citizen shall be entitled to an occupation and an existence proper for a human being", and the phrase "an occupation and an existence proper for a human being" is believed to be from the genealogy of Tan Malaka in *Naar De Republik Indonesia*.

2. The Second Failure (The Constitution of the United States of the Republic of Indonesia & The 1950 Provisional Constitution)

Following the validation of the 1945 Constitution on 18 August 1945, the Indonesian revolution was still boiling due to the external causes from abroad, involving the return of the dutch colonials wishing to colonialize Indonesia, especially from the results of the Dutch-Indonesia Round Table Conference (KMB) held in Den Haag, the Netherlands. These results changed the foundation of the constitution of Indonesia, and Indonesia was declared the United States of Indonesia. In addition to these external causes, it also resulted from separatist rebellion spoiling political stability and national security in Indonesia. This rebellion included those committed by the communist party in Madiun in 1948 led by Muso and the rebellion by Darul Islam/Tentara Islam Indonesia led by Karto Suwiryo (Adryamarthanino, 2021).

Both external and internal revolution upheaval in Indonesia positioned the struggle of laborers to focus on maintaining the stability of the Unitary State of the Republic of Indonesia and promoting economic development instead of standing independently as workers (Ford & Sirait, 2016).

This form of the United States of Indonesia remained until an agreement between the government of the United States of Indoensia and the government of the Republic of Indonesia to found the Unitary State of the Republic of Indonesia took place. This agreement was outlined in a single document of a joint agreement on 19 May 1950, agreeing on the re-foundation of the Unitary State of Indonesia as a follow-up for the unitary state proclaimed on 17 August 1945 (Asshiddiqie, 2005).

The declaration of the re-foundation of the Unitary State of the Republic of Indonesia and the promulgation of the 1950 Provisional Constitution took place simultaneously, where the latter was promulgated under Law Number 7 of 1950. The 1950 Provisional Constitution replaced the Constitution of the United States of the Republic of Indonesia, and its provision not only reflected the amendments to the Consitution of the United States of Indonesia in 1945 but also replaced the draft of the Constitution of the United States of Indonesia with the new draft under the name of 1950 Provisional Constitution.

The 1950 Constitution was intended to be a temporary constitution (Soenarko, 1954) put in place until the promulgation of the permanent Constitution that was supposed to be promulgated by the representatives that made it. Therefore, the Provisional Constitution mentioned an institution responsible for drafting a permanent Constitution that is the most comprehensive and can take all the aspiration of Indonesian citizens, including the rights of laborers. The institution assigned by the 1950 Provisional Constitution to draft the permanent Constitution was the '*konstituante'* together with the government.

To establish this *konstituante*, a general election was held on 15 December 1955 (Nasution, 2001), then on 10 December 1956, the *konstituante* was inaugurated by President Soekarno to draft the temporary Constitution (Joeniarto, 2001). The 1950 Provisional Constitution was better and it was also closer to the juridical ideality as a constitution and more comprehensive in terms of limiting the power and regulating human rights where the right to go on strike was recognized compared to the 1945 Constitution. However, within the context of this research, substantively, both the Constitution of the United States of Indonesia and the 1950 Provisional constitution did not govern the norm of the minimum wage as part of human rights.

3. The Third Failure (*Konstituante* 1955)

Since the beginning of the foundation of the Unitary State of the Republic of Indonesia, an agreement has been made, implying that the Republic of Indonesia was a state of constitutional democracy. To mark the implementation of constitutional democracy, a general election was held in 1955 as the first election and it was deemed to be the most democratic along the periods of the old order to the new order. The results of the election were organized by an institution responsible for the making of the constitution to replace the 1950 provisional Constitution—the *konstituante* over which the debate in terms of the formulation of the human rights and the rights of the laborers mentioned in the permanent Constitution took place (Soemantri, 2006a).

The debate in the *konstituante* over the minimum wage was quite intriguing, worth-talking about, and it covered several logical arguments on politics and laws; it reflected the partiality that leaned more towards the welfare of laborers. The aspiration of workers/laborers was distributed almost across political parties winning the election, including PNI, Masyumi, NU, and PKI (Nathaniel, 2021).

Recommendations and debates regarding the essence of human rights and minimum wage to be governed in the Constitution (replacing the 1950 Provisional Constitution) were expressed by the member of the *konstituante* as recorded in a Doctoral Dissertation written by Adnan Buyung Nasution (Nasution, 2001) as follows:

1. Iskandar Wahono of Partai Nasional Indonesia (PNI) stated that the International Labor Organization (ILO) report indicated that the wage received by laborers in Indonesia was the lowest in the world, he demanded that the *Konstituante* improve the welfare of laborers in Indonesia and guarantee **the rights to go on strike and to receive decent wage**;
2. Sawirudin (Republik Proklamasi faction) describes how **laborers in Indonesia fought for improved wage and social security and stood against reduced income**, against rising prices of staple foods, and against arbitrary redundancy;
3. Raja Rangga Andello (Catholic Party) believed that regarding the basic rights of workers, he demanded that the right to decent life was guaranteed, including **the right to adequate wage to guarantee the life of laborers' families according to human dignity, the wage adequate to buy food, clothes, and a house;**
4. According to Sabilal Rasjad (PNI), laborers should be entitled to, inter alia, **the rights to get an adequate wage for one individual and his/her family;**
5. Hermanu Adi Kartodiredjo (Partai Komunis Indonesia) stated that the 1945 revolution aiming to sweep exploitation done by the colonials and feudal people and to realize a just and prosperous Indonesia is not yet achieved. Therefore, there should also be other rights including social, economic, and cultural rights such as **the right to a decent life and adequate social security** (Nasution, 2001).

The recommendations and the notions expressed by the members of the *konstituante* mentioned above indicate that there was an effort to fight for the aspiration of workers/laborers in ensuring that the

minimum wage was to be regulated in the Constitution as part of human rights or in the constitutionalization regarding minimum wage as part of human rights. However, this proposal, opinion, and debate regarding the constitutionalization of the minimum wage as part of human rights failed due to the legal politics in the era of Soekarno issuing the Presidential Decree on 5 July 1959 concerning the re-enforcement of the 1945 Constitution.

4. The Fourth Failure (Amendment to the 1945 Constitution 2000-2002) (Moh. Mahfud M. D, 2007)

Looking back, this research has found out that the discourse to amend the constitution has been around since the time of the new order, in the 1970s, when there were abundant discussions on mass media regarding research results on the amendments to the constitution. This discourse and thought were expressed by Harun Alrasid in his writing: ***UUD 1945 Terlalu Sumir*?** (Alrasyid, 1972) meaning that the 1945 Constitution is too brief and simple, stating: *"Although the 1945 Constitution of the Republic of Indonesia is categorized as the shortest constitution ever written worldwide, it does not mean that the constitution cannot be amended"*. It implies that this is a discourse on the changes in the 1945 Constitution of the Republic of Indonesia put in scientific elaboration.

The discourse on the amendments in the 1945 Constitution kept going and was crystalized in the era of this reform. It represented a chamber for the thoughts and the will initiated by Soekarno on 18 August 1945 during PPKI session as *revolutiegrondwet* (Bahar dkk., 1995). Soekarno's commitment (together with other founding fathers) to having legitimated Constitution in a political and juridical scope was set forth in Article 3 of the 1945 Constitution: "People's Consultative Assembly (MPR) set the Constitution and the Primary Points of Country's Policy, while the mechanisms of the amendments were set forth in Article 37, indicating that the 1945 Constitution was flexible (Where, 2003). Not only did it regulate the mechanism of amendments, but Article 37 of the 1945 Constitution also assertively used the term "change", not "amendment". The use of the term 'change' was parallel to and represented the inheritance of the spirit of constitutionalism of the Founding Fathers who demanded originality.

The reform era glowed in 1998 and reached its culmination, marked by the 1999 general election which further produced the members of MPR as the highest institution of the state under the regime of the 1945 Indonesian Constitution, and, Article 37 of the 1945 Constitution implies that MPR held the authority to amend the Constitution (Soemantri, 2006b). With varied political dynamics and laws, the 1945 Constitution was amended four times, resulting in Article 28D as one of the changes made. Seen from a historical perspective, Article 28D paragraph (2), a focus in this research, was modified from the phrase in the Decree of the MPR Number XVII/MPR/1998 concerning Human Rights part II of the Universal Declaration of Human Rights Article 9, stating: "Every person in labor relations is subject to just and proper income and treatment", and Human Rights Law was principally adapted from the Universal Declaration of Human Rights (UDHR).

However, four-time amendments have not accommodated the aspiration and expectation of workers/laborers especially regarding the guarantee of the minimum wage as the right of laborers/workers, while laborers participated in initiating and fighting for the reform by going on strike and staging demonstrations in the time approaching the reform. One of the issues voiced was wage raise. Vedi R. Hadiz opined that workers voiced their opinions implying that not a single political party was really pro-workers, and it is not surprising to see political parties labeling themselves pro-labor fail in an election held in June 1999 (Hadiz, 2005).

The failure that also affected laborers consolidated the aspiration and the voice appeared in a general election in 1999, reducing the number of political parties voicing their aspirations in the amendment to the 1945 Constitution in MPR. This situation became one of the factors where the construction of the legal norm regarding human rights was not optimal in four amendments of the 1945

Constitution, especially in the effort of upgrading the legal norms concerning 'minimum wage as the human rights of workers/laborers'.

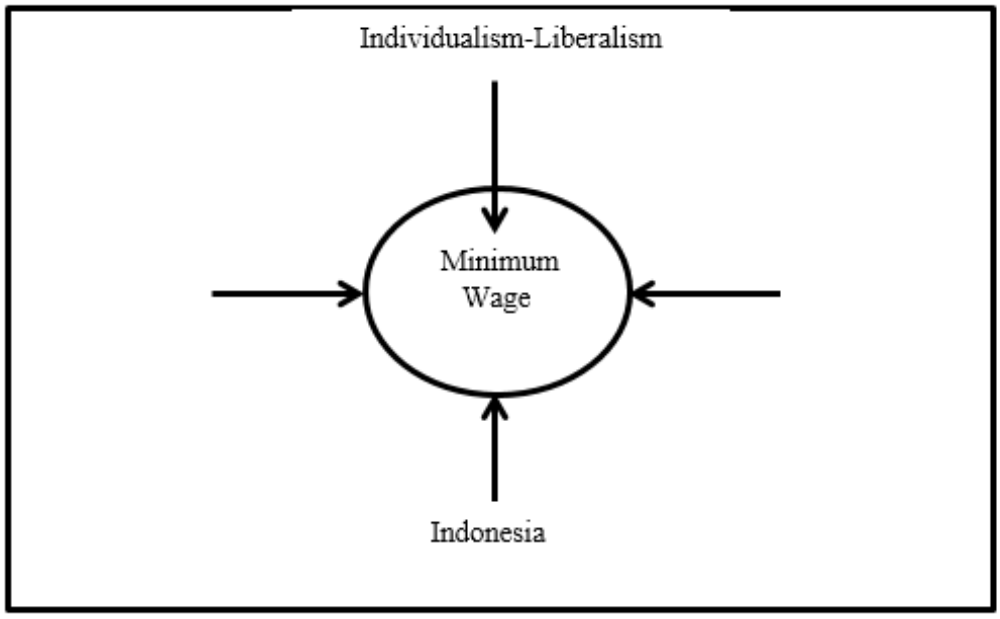
III. The Constitutionalization of Minimum Wage as Part of Human Rights

A. Minimum Wage as Part of Human Rights

Legal experts in constitutional law jointly agreed that the constitution has made regulations compulsory. There are four thoughts of human rights: human rights are assumed as (first) the individualism-liberalism product; (Second) communism-socialism; (third) Islam; and (fourth) the synthesis of human rights in Pancasila paradigm with its values of integralism and families performed by the drafters of the constitution (Indonesia) (Mutaqin, 2017).

In countries adhering to capitalism as a manifestation of individualism-liberalism, the minimum wage serves as a primary instrument to realize the welfare of the people (Wilson, 2017). Similarly, in communist-socialist countries, the minimum wage becomes an instrument to distribute the results of the production that all citizens can enjoy. This is apparent in Islamic countries like the Middle East and Indonesia (Ghofur, 2019). In other words, the minimum wage is recognized in all countries as the human right and theoretically, it is within the circle of four of the thoughts and conception of human rights: liberalism-individualism, socialism-communism, Islamism, and Pancasila in the paradigm of the values of integralism or families. All these serve as proof of the universality of minimum wage as part of human rights within the circle of four thoughts of human rights (Broecke dkk., 2017).

Diagram 7.The universality of Minimum Wage as Part of Human Rights



B. Upgrading the Norm of "Minimum Wage as Part of Human Rights" in the Constitution

The regulation regarding the protection of workers/laborers in the Constitution of Indonesia is set forth in two articles, namely Article 27 paragraph (2) and Article 28D paragraph (2) (Manan, 2001) of the 1945 Constitution of the Republic of Indonesia, stating that "every person is entitled to occupation as well

as to get **income**[1] and a fair and proper treatment in labor relations". The phrase "proper treatment' and 'income' spark 'bias' in the interpretation, affecting the successor norms (laws, government regulations, ministerial regulations, and many more) or the practices of labor relations, where 'every worker/laborer must be entitled to reward, but this reward does not always meet the minimum standard of prosperous life'. The bias in this interpretation was seen as an opportunity by every element in the tripartite paradigm (governments, entrepreneurs, and/or workers/laborers) or (in the term of Marxism) 'class' to get 'profits' and/or to categorize interest.

Moreover, in the two regulatory formulations in Article 27 and 28D of the 1945 Constitution, '**there are no guarantee from the state**' and explicit remarks about the minimum regulation as part of human rights (Kusuma, 2004), while 'minimum wage' should be part of universal human rights as the standard to live a prosperous life. The correction over the legal loophole and/or incompleteness of the guarantee of (minimum) wage protection was expressed by **Abdullah Sulaiman** (Sulaiman, 2016) stating that: "this sentence (Article 27 and Article 28 D of the 1945 Constitution of Indonesia) does not highlight the responsibility to the government to consider the occupations and proper life of the citizens, and, thus, in the fifth amendment it should be changed into: "The state must be responsible to provide proper occupation and life for humanity. This must be included in the fifth amendment of the Constitution of the Republic of Indonesia". These two articles are seen as the perspective of labor, requiring the state to assure the occupation of each citizen and to provide proper income as economic support for laborers. Thus, the state is required to; first, provide the right for each citizen to get a job, and the state is required to provide occupation for each citizen. Second, the state must provide income to assure proper life for humanity, and, as a consequence, the government must provide a proper life for its citizens, and, third, the government must give rights to laborers for higher capital and production tools. This leads to the consequences affecting the government in ensuring that laborers are not merely seen as the production factor, but their dignity as human beings must also be entirely assured (Sulaiman, 2016).

In line with the thought of Abduullah Sulaiman, criticizing the vulnerability of the position of workers/laborers in the legal system (or constitution) above, Hugh Collins suggests that the legal system of labor is designed to protect capitalists (investors/entrepreneurs):"*Legal regimes steer markets or capitalist societies through many legal measures designed to protect their economic institutions and mechanisms* (Collins, 2011)". This is definitely not something new when it is traced down to the past; there have been some thinkers in law identifying or portraying the improper wage received by workers/laborers. Adam Smith identified that the wage received by workers/laborers was below the minimum standard of the welfare of workers/laborers back in 1776; he wrote: "*In Great Britain the wages of labour seem, in the present times, to be evidently more than what is precisely necessary to enable the labourer to bring up a family. In order to satisfy ourselves upon this point it will not be necessary to enter into any tedious or doubtful calculation of what may be the lowest sum upon which it is possible to do this. There are many plain symptoms that the wages of labour are nowhere in this country regulated by this lowest rate which is consistent with common humanity* (Smith, 1776)

The thought of Adam Smith was then developed by Karl Marx, expressing a thesis statement: "A state (and a law) is the tool for capitalists to protect their interest and use up workers/laborers (Suseno, 2001)". This thesis statement holds the truth corresponding with the historical fact of labor law, explaining that the history of the movement of laborers/workers mingles with struggles to live a prosperous life. Labor law came to protect workers/laborers from slavery and the intimidation against human beings done by other human beings as informed by Soekarno: The Indonesian revolution is

[1] The bold was given by the author. In the formulation of Article 27 and 28D of the 1945 Constitution, there is no statement highlighting the minimum wage, while this wage should be the reference of the standard of prosperous life, and, within the contemporary context, this right has shifted to part of human rights of workers/laborers.

heading for the New World without *exploitation de l'homme par l'homme* and *exploitation de nation par nation* !" (Soekarno, 1964).

To bring welfare to workers/laborers (as the primary element) is by setting minimum wage as a prerequisite for a worker/laborer to live a prosperous life. However, in the amendments in labor law, the legal norm regarding minimum wage has rapidly changed following the legal politics of the economy of the government as set forth in the legislation that may harm workers/laborers. The elimination of sectoral minimum wage at a regency level or municipal level and the setting of the minimum wage that requires the consideration of economic and labor conditions, and the relevance to regional economic growth or inflation based on Statistics Indonesia indicate that (in terms of legal psychology) the restriction of minimum wage raise (that tends to put laborers/workers as aggrieved parties) may lead to the involvement of bipartite negotiation involving entrepreneurs and workers/laborers like in Scandinavian countries.

The concern above is considered paranoid or even a utopia, but in legal studies, this matter needs to be studied as an anticipation of legal intellectual and responsibility to develop laws. Therefore, the formulation and the assertion of minimum wage as part of the human rights of workers/laborers should not only be set forth in a law or any regulation under it but it should also be upgraded or constitutionalized into the 1945 Constitution as the highest and primary norm different from ordinary laws or any regulations under the constitution (constitutionalization):

a. Constitution serves as a primary norm determining the legal norms under it (Rogers dkk., 2020), while Law serving as the secondary norm made by the DPR is not (often) parallel to the people's aspiration. This is obvious in the amendment to the law regarding Corruption Eradication Commission, which is considered controversial simply because it is deemed to weaken the Corruption Eradication Commission, the Amendments to Law concerning MPR, DPR, DPD, and DPRD. These elements are 'deemed' to strengthen the position of the DPR, in which the investigation of the members of the DPR involved in the legal case should get approval from the president;
b. Constitution has a robust or frequent standing norm that lasts relatively long compared to the laws under it, and these laws are prone to changes. A standing norm is vulnerable to changes due to political configuration in the parliament that tends to be transactional, and there have often been 'trades' in articles/paragraphs of laws in the parliament/DPR. For example, 'tobacco' is categorized as a narcotic drug, but it was gone or revoked from the Law submitted by the DPR to the government (state secretariat) to be promulgated when the DPR was headed by Agung Laksono;
c. The formation and/or the changes in the constitution through the political process involving parliament (DPR and DPD) and extra parliament: state figures, scholars, religious figures, activists, and other elements stemming from MPR (as the institution responsible to form the constitution in a legal and formal scope), while the formation of law represents authority and it can be to the interest of the DPR and the government. Although the process of the formulation of the law involved panels consisting of experts' notions, public review, use of aspiration, and the like are (often) intended to cancel a responsibility;
d. Constitution with the formulation of Pancasila as the leading guidance in the national law, capable of creating just and civilized humanity, narrowing the gap between the powerful and the vulnerable, and protecting the vulnerable in dealing with the powerful parties from abroad or domestically, while the formation of law is easily intervened with and set by certain groups especially capitalists because, in liberal democracy, capitalists/entrepreneurs are often elected as the members of the DPR. In some cases, the Law is often ordered by capitalists and it threatens the interest of workers/laborers in determining minimum wage;
e. Constitution represents the reflection of gentlemen's agreement of all the state elements since the era of the founding fathers, but these days there seems to be a degradation in gentlemen's

agreement especially among the members of the DPR due to the pragmatism and political configuration of liberal democracy.

f. All the states today are experiencing economic globalization turbulence that requires the existence of capitalism with the mutualistic symbiosis between states. Capitalism is required in the development and improvement of the economic growth of a state. The economic development of a state relies on economic systems, and these systems are controlled by the primary subsystem—industrial relations with the minimum wage as its backbone. This wage represents the manifestation of the protection given by a state to the people (workers/laborers) from being the victims of 'capitalism' (Kristeva, 2015). The economic system in Indonesia these days refers to Neoliberalism that revokes subsidies and protection programs for people and applies deregulation. To anticipate the negative effects brought by neoliberalism, the constitutionalization of the legal norm concerning minimum wage as part of the human rights of workers/laborers is required to assure legal protection for the majority of people. The workforce in Indonesia reached 144.01 million people in February 2022 (Badan Pusat Statistik, 2022) or 69.06% of the total population of working-age people which accounts for 208.54 million people of the total citizens of Indonesia (275.77 million people) to mid-2022 (Annur, 2022). If the data of the number of the population last used is compared to the number of quantities of the workforce, the workforce number is approximately 52% of the total population in Indonesia. The comparison between the population and workforce is important as a database to strengthen the legal argument, implying that in a logical perspective of democracy requiring the validity of a decision or a legal product, the approval involving the majority or at least fifty percent plus one vote of a community will validate the constitutionalization of a legal norm regarding minimum wage as part of the human rights of the workers/laborers in the 1945 Constitution as the principle of a democratic state.

The constitutionalization of a legal norm regarding the minimum wage in the 1945 Constitution as the highest norm is in line with the idea of Hans Kelsen:

> "The hierarchical structure of the legal order of a State is roughly as follows: Presupposing the basic norm, the constitution is the highest level within national law. The constitution is here understood, not in a formal, but in a material sense. The constitution in the formal sense is a certain solemn document, a set of legal norms that may be changed only under the observation of special prescriptions, the purpose of which it is to render the change of these norms more difficult. The constitution in the material sense consists of those rules which regulate the creation of the general legal norms, in particular the creation of statutes. The formal constitution, the solemn document called "constitution," usually contains also other norms, norms which are no part of the material con stitution. But it is in order to safeguard the norms determining the organs and the procedure of legislation that a special solemn document is drafted and that the changing of its rules is made especially difficult. It is because of the material constitution that there is a special form for constitutional laws or a constitutional form. If there is a constitutional form, then constitutional laws must be distinguished from ordinary laws" (Kelsen, 2006).

The difficulty in the formation, amendments, and revocation of a legal norm in the constitution represents a particular characteristic of the constitution that is intended not only to protect the norms that form organs and procedures essential in the law concerned as expressed by Kelsen, but, in this case, but also to protect the legal norm of minimum wage as the human rights of workers/laborers. Thus, it will not be easily changed or revoked, and, mutatis mutandis, to protect the workforce in Indonesia.

The comparison between the population and workforce serves as a database to reinforce the legal argument, implying that in the logical perspective of democracy requiring the validity of a decision or a legal product, the majority or at least fifty percent plus one vote given by people will allow the

constitutionalization or the formulation of the legal norm regarding minimum wage as part of human rights of workers/laborers in the 1945 Constitution to serve as the principle of a democratic state.

C. The Instrument of Constitution of Minimum Wage

There is no democracy without political parties since political parties also serve as the instrument of democracy with their position (status) and role important in every democratic system. Parties serve as strategic connectors between governmental processes and citizens. Most people even argue that democracy depends on politics (Hendrianto, 2020). Therefore, parties serve as vital pillars that reinforce the degree of institutionalization in each democratic political system (Asshiddiqie, 2005) and as a 'collective instrument of efforts' of all people including laborers to help grow democracy.

In a constitutional system as governed in the 1945 Constitution after amendments, amending, adding, eliminating, or completing articles in the 1945 Constitution are under the authority of MPR. The MPR consists of the members of the DPD and DPR. The members of the DPD are directly elected in each province, while those of the DPR are voted by people through political parties. Departing from this constitutional system, workers/laborers are required to refer to DPD and DPR as the institutions, which can express the aspiration to fight for the constitutionalization of minimum wage as part of human rights in the upcoming fifth amendment to the 1945 Constitution by the MPR. The assertion of the minimum wage in the constitution is not something new. Several countries in Europe and Asia, including Ireland, Italy, South Korea, and India declare that 'minimum wage is part of the human rights of workers/laborers' explicitly (Klaveren dkk., 2015).

Conclusion

The minimum wage is a legal issue that has always emerged as a topic of discussion. The rapid and dynamic changes in the regulations concerning minimum wage have resulted in a polemic in society. This condition is mainly caused by the changes in minimum wage policy, involving the political interests of stakeholders such as the governments and entrepreneurs, and these changes tend to harm laborers/workers as vulnerable parties. Throughout the history of the constitution in Indonesia, there have been four failures in governing the regulations concerning minimum wage as part of the human rights of laborers/workers. Therefore, the regulation concerning minimum wage in the Constitution of Indonesia is paramount. This urgency refers to six grounds: (a) the constitution as a primary norm deciding the norm of laws under the constitution; (b) the constitution with its robust and sustainable standing norm with its long validity compared to the lower laws that are prone to changes; (c) constitution with the values of Pancasila as the leading guidance in national law; (d) the formation and/or the changes of the constitution through a political process that involves the members of parliament and extra-parliament; (e) the constitution as a reflection of gentlemen agreement for the whole elements of the state; (f).. the condition where all the states are experiencing globalization turbulence where the supremacy of capitalism in a mutualistic symbiosis between states is inevitable.

Therefore, the MPR plays a vital role in encouraging and giving recognition through the fifth amendment to the constitution in the time to come, implying that minimum wage is part of human rights.

References

Adryamarthanino, V. (2021, April 27). *Daftar Pemberontakan di Indonesia*. Kompas.com. https://www.kompas.com/stori/read/2021/04/27/184127479/daftar-pemberontakan-di-indonesia

Alrasyid, H. (1972, Maret 18). *Harun Alrasid dalam Seminar Mahaiswa Hukum Negeri se-Jawa dan Bali 16 maret 1972*.

Annur, C. M. (2022, Juli 7). *Terus Meningkat, Jumlah Penduduk RI Tembus 275, 77 Juta hingga Pertengahan 2022,*. databoks. https://databoks.katadata.co.id/datapublish/2022/07/07/terus-meningkat-jumlah-penduduk-ri-tembus-275-77-juta-hingga-pertengahan-2022.

Asshiddiqie, J. (2005). *Kemerdekaan Berserikat Pembubaran Partai Politik dan Mahkamah Konstitusi*. Konstitusi Pers.

Badan Pusat Statistik. (2022). *Keadaan Ketenagakerjaan Indonesia Februari 2022*. Badan Pusat Statistik.

Bahar, S., Kusuma, A. B., & Hudawati, N. (Ed.). (1995). *Risalah Sidang Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia (BPUPKI), Panitia Persiapan Kemerdekaan Indonesia (PPKI), 28 Mei 1945-22 Agustus 1945* (Cet. 1., ed. 3). Sekretariat Negara Republik Indonesia.

Broecke, S., Forti, A., & Vandeweyer, M. (2017). The Effect of Minimum Wages on Employment in Emerging Economies: A survey and Meta-Analysis. *Oxford Development Studies*, *45*(3), 366–391. https://doi.org/10.1080/13600818.2017.1279134.

Budiono, A. R. (2009). *Hukum Perburuhan*. Indeks.

Caraway, T. L., Ford, M., & Nguyen, O. K. (2019). Politicizing the Minimum Wage: Wage Councils, Worker Mobilization, and Local Elections in Indonesia. *Politics & Society*, *47*(2), 251–276. https://doi.org/10.1177/0032329219838917.

Collins, H. (2011). Theories of Rights as Justifications for Labour Law. Dalam B. Langille & G. Davidov (Ed.), *The Idea of Labour Law*. Oxford University Press.

Dewi, S. G. (2018). The Effects of Minimum Wage Throughout the Wage Distribution in Indonesia. *Signifikan: Jurnal Ilmu Ekonomi*, *7*(2), 221–232. https://doi.org/10.15408/sjie.v7i2.6125.

Ford, M., & Sirait, G. M. (2016). The State, Democratic Transition and Employment Relations in Indonesia. *Journal of Industrial Relations*, *58*(2), 229–242. https://doi.org/10.1177/0022185615617956.

Ghofur, R. A. (2019). Pengupahan dalam Sistem Upah Indonesia dan Islam. *AL-'ADALAH*, *15*(2), 263. https://doi.org/10.24042/adalah.v15i2.2623.

Hadiz, V. R. (2005). *Dinamika Kekuasaan Ekonomi Politik Indonesia Pasca-Soeharto* (Cet. 1). LP3ES.

Hendrianto, S. (2020). Constitutionalized But Not Constitute: The Case of Right to Social Security in Indonesia. *Constitutional Review*, *6*(2), 241. https://doi.org/10.31078/consrev623.

Ingleson, J. (2013). *Perkotaan, Masalah Sosial, dan Perburuhan di Jawa Masa Kolonial*. Komunitas Bambu.

Joeniarto. (2001). *Sejarah ketatanegaraan Republik Indonesia* (Cet-5). Bumi Aksara.

Kelsen, H. (2006). *General Theory of Law & State* (H. Kelsen & A. J. Treviño, Ed.; 1 ed.). Transaction Publishers. https://doi.org/10.4324/9780203790960.

Klaveren, M. van, Gregory, D., & Schulten, T. (2015). *Minimum Wages, Collective Bargaining and Economic Development in Asia and Europe: A Labour Perspective*. Palgrave Macmillan.

Kristeva, N. S. S. (2015). *Kapitalisme, negara, dan masyarakat* (Cetakan I). Pustaka Pelajar.

Kusuma, A. B. (2004). *Lahirnya Undang-Undang Dasar 1945 (Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha[2] Persiapan Kemerdekaan)*. Badan Penerbit, Fakultas Hukum, Universitas Indonesia.

Magruder, J. R. (2013). Can minimum wages cause a big push? Evidence from Indonesia. *Journal of Development Economics*, *100*(1), 48–62. https://doi.org/10.1016/j.jdeveco.2012.07.003.

Malaka, T. (1986). *Menuju Republik Indonesia*. Yayasan MASSA.

Manan, B. (2001). *Perkembangan Pemikiran dan Pengaturan Hak Asasi Manusia di Indonesia*. Yayasan Hak Asasi Manusia, Demokrasi, dan Supremasi Hukum.

Moh. Mahfud M. D. (2007). *Perdebatan Hukum Tata Negara*. LP3ES.

Mutaqin, Z. Z. (2017). The Strong State and Pancasila: Reflecting Human Rights in the Indonesian Democracy. *Constitutional Review*, *2*(2), 159. https://doi.org/10.31078/consrev221.

Nasution, A. B. (2001). *Aspirasi Pemerintahan Konstitusional di Indonesia Studio Sosio-Legal atas Konstituante 1956-1959*, (Cetakan kedua). Pustaka Utama Grafiti.

Nathaniel, F. (2021, Oktober). *Partai Buruh Baru, antara Mengulang atau Mendobrak Sejarah*. tirto.id. https://tirto.id/partai-buruh-baru-antara-mengulang-atau-mendobrak-sejarah-gkhe.

Rogers, M., Siregar, G. T. P., & Amri, S. (2020). Existence of Pancasila as a Stats fundamental Norm of the Nation and State of Indonesia in Facing Economic Globalization Challenges. *Journal of Advance Research in Dynamical & Control Systems*, *12*(6).

Santoso, B., & Hassan, K. H. (2014). *Enforcing Minimum Wage Trough Criminal Sanctions: A Case of Indonesia*. *8*(1).

Shiraishi, T. (1997). *Zaman Bergerak (Radilaisme Rakyat di Jawa 1912-1926)* (Cet-1). Pustaka Utama Grafiti.

Simanjuntak, M. (1997). *Pandangan Negara Integralistik* (Cet. 2). Pustaka Utama Grafiti.

Smith, A. (1776). *An inqury in to the nature and causes on the wealth of nation, book I, (Chapter VIII, of the wage of labour)*.

Soekarno. (1964). *Dibawah Bendera Revolusi Jilid II*. Dabara Publishers.

Soemantri, S. (2006a). *Mengawal Konstitusi (Pengabdian Seorang Guru Besar)* (Cet. 1). Unpad Press.

Soemantri, S. (2006b). *Prosedur dan Sistem Perubahan Konstitusi dalam Batang Tubuh UUD 1945: Sebelum dan Sesudah Perubahan UUD 1945* (Ed. 2., cet. 1). Alumni.

Soenarko. (1954). *Susunan Negera Kita, Jilid I*. Djambatan.

Subhan Sd. (1996). *Langkah Merah (Gerakan PKI 1950-1955)* (Cet. 1). Yayasan Bentang Budaya.

Sulaiman, A. (2016). Fundamen Hukum Perburuhan Terhadap Pemberian Penghasilan Dalam Era Globalisasi di Indonesia. Dalam N. Elmiyah & R. Agustina (Ed.), *Dalam Erman Rajagukguk 70 Tahun Hukum Ekonomi Indonesia (Kumpulan Karangan)*. FH UI Press.

Sulistiyono, T. (2014). Analysis for Overwhelming Issues in the Decision and Implementation of Minimum Wage Standard in Indonesia. *South East Asia Journal of Contemporary Business, Economics and Law, 4*(3).

Suseno, F. M. (2001). *Pemikiran Karl Marx (Dari Sosialisme Utopis ke Perselisihan Revisionisme*. Gramedia.

Where, K. C. (2003). *Konstitusi-Konstitusi Modern*. Pustaka Eureka.

Wilson, S. (2017). The Politics of 'Minimum Wage' Welfare States: The Changing Significance of the Minimum Wage in the Liberal Welfare Regime. *Social Policy & Administration, 51*(2), 244–264. https://doi.org/10.1111/spol.12286.

Yamin, M. (1960). *Naskah persiapan UUD1945 Djilid Ketiga*. Yayasan Prapantja.