

Penangguhan pelaksanaan upah minimum pasca Putusan Mahkamah Konstitusi Nomor 72/PUU-XII/2015 = Suspension of minimum wages after post Constitutional Court Decision Number 72/PUU-XII/2015

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Abstrak

ABSTRAK

Adanya kebijakan Penangguhan pelaksanaan upah minimum sebagaimana diatur Pasal 90 ayat (2) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dan Penjelasannya telah menimbulkan penolakan dari para pekerja karena dianggap bertentangan dengan larangan bagi pengusaha untuk membayar upah lebih rendah dari upah minimum. Pengujian ketentuan Penangguhan pelaksanaan upah minimum itu pun dimohonkan para pekerja kepada Mahkamah Konstitusi. Namun Mahkamah Konstitusi melalui Putusan Nomor 72/PUU-XII/2015 tetap mempertahankan ketentuan penangguhan pelaksanaan upah minimum tersebut dan hanya merubah Penjelasan dalam Pasal 90 ayat (2) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan. Atas Putusan tersebut permasalahan yang diangkat dalam penelitian ini adalah, Apakah akibat hukum Putusan Mahkamah Konstitusi Nomor 72/PUU-XII/2015 terhadap ketentuan penangguhan pelaksanaan upah minimum dan perlindungan bagi pekerja? dan Bagaimana analisis sistem hukum penangguhan pelaksanaan upah minimum pasca Putusan Mahkamah Konstitusi Nomor 72/PUU-XII/2015? Tesis ini menggunakan penelitian normatif dengan pendekatan kasus (case approach) dan pendekatan konseptual (conceptual approach). Penangguhan pelaksanaan upah minimum tidak serta merta menghilangkan kewajiban pengusaha untuk membayar upah pekerjanya berdasarkan upah minimum dan penangguhan pelaksanaan upah minimum justru merupakan upaya perlindungan terhadap pekerja atas hak mendapatkan pekerjaan sebagaimana dijamin oleh konstitusi, yang terancam apabila perusahaannya bangkrut/merugi karena tidak mampu membayar upah pekerjanya berdasarkan ketentuan upah minimum, selain itu sistem hukum penangguhan pelaksanaan upah minimum yang ada saat ini belum mengakomodir maksud dan tujuan Putusan Mahkamah Konstitusi Nomor 72/PUU-XII/2015 karena terdapat beberapa masalah dalam substansi, struktur dan budayanya sehingga tentu berdampak pada implementasinya.

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ABSTRACT

The minimum wage policy that serves as a safety net for workers to keep their income from declining in a way that endangers workers' nutrition is subject to legal uncertainty, since Article 90 section (2) of Law Number 13 Year 2003 on Manpower provides that minimum wage provisions may be disregarded with the policy of Suspension of The implementation of the minimum wage and supported by the Elucidation of that article which allows employers not to pay the wage difference in the period of suspension, thereby creating a contradiction to the prohibition for employers to pay wages lower than the minimum wage. It is certainly rejected by workers because the suspension of the minimum wage is considered to be a "trick" of employers to pay their workers under the minimum wage provisions so that a test against the provision of suspension of the implementation of the minimum wage to the Constitutional Court is then submitted. However, in fact, the Constitutional Court through Decision Number 72/PUU-XII/2015 retains the provisions concerning the suspension of the minimum wage exercise and only changes the Elucidation in Article 90 paragraph (2) of

Law Number 13 Year 2003 on Manpower. On the verdict, the question arises, what is the purpose and objective of the provision of suspension of minimum wage implementation especially after the Constitutional Court Decision Number 72/PUU-XII/2015 and what is the relevance to the protection for workers so that the provision is still maintained? This will be further elaborated in this thesis. This thesis uses normative research with case approach and conceptual approach as well as aims to test the hypothesis that the current legal system for deferring the minimum wage is insufficient to accommodate the purpose and objectives of Constitutional Court Decision Number 72/PUU-XII/2015 because there are several gaps described in the elements of the legal system according to Lawrence M. Friedman consisting of substance, structure and culture.