

CHAPTER I

INTRODUCTION

1.1 Background

The national development as stated in the 1945 Constitution is implemented in the context of the mankind and Indonesian people's development as a whole community which is prosperous, equitable, and affluent, which evenly distributed both materially and spiritually based on Pancasila. As agents of development goals, workers have a very important role because they have a big role in this national development. The implementation of Indonesia's enormous development focuses on economic development aimed at improving the welfare of the people and the Indonesian state.¹

Law has governed almost all aspects of life, thus the legal aspects that are always embedded into the life of society cause the problem of the effectiveness of the application of the law which becomes very important in order to avoid violation of the law. The Constitution has given legal protection and inherent human rights to the workers for the fulfillment of the basic right as provided for in article 27 paragraph 2 of the Constitution of the Republic of Indonesia 1945 states that "Every citizen shall have the right to work and a decent living for humanity" and Article 33 paragraph 1 stating that "The economy is structured as a joint effort of kinship", thus all of basic rights' infringement which protected by the constitution is a violation of human rights. Indonesia is still experiencing labor

¹ Biro Informasi dan Hukum. *Pemerintah Fokus Melakukan Pembangunan Infrastruktur Untuk Pemerataan Ekonomi*. <https://maritim.go.id/pemerintah-fokus-melakukan-pembangunan-infrastruktur-untuk-pemerataan-ekonomi/>, Accessed on tanggal 4 Desember 2017

issues that have not been able to be resolved, starting from the preparation of labor to the labor market level. The preparation of manpower as an effort to create the skill of the workforce has not been able to answer the market challenge. As a result, the unemployment rate is still high. Latest data from BPS February 2017 states that the number of unemployed reached 7.04 million people.²

There are several things that must be considered in wages, the first is the existence of two parties who have different rights and obligations, but affects and needs each other, which is employers and workers. Second, Entrepreneurs as wage earners have a duty and responsibility to provide wages to their workers from the results of work that have been performed. Third, Workers on the other hand have an obligation to carry out orders or jobs provided by employers and are entitled to receive wages or remuneration from the services provided.³

The determination of the minimum wage was first introduced in 1956 in Indonesia as the core of the national employment policy.⁴ The National Wage Council was established in 1969 and each province has provincial or district wage councils whose functions include conducting surveys and calculating adequate basic needs for workers and their families. Regional and sector minimum wages are valued as a tool to increase workers' wages. Based on Presidential Regulation

² Pramdia Arhando Julianto. *Agustus 2017, Jumlah Pengangguran Naik Menjadi 704 Juta Orang*, <http://ekonomi.kompas.com/read/2017/11/06/153940126/agustus-2017-jumlah-pengangguran-naik-menjadi-704-juta-orang>. Accessed on 25 November 2017

³ Suud Diyah. *Faktor-faktor Yang Mempengaruhi Struktur Dan Tingkat Gaji/Upah*, https://www.kompasiana.com/suudiyah/faktor-faktor-yang-mempengaruhi-struktur-dan-tingkat-gaji-upah_58c9f3cb5693730c5d6d6afe. Accessed on 25 November 2017

⁴ S Saget, C. (2006). *Penentuan Besaran Upah Minimum di Negara Berkembang, Kegagalan dan Pemecahan Masalah*. Jakarta: ILO

No.78 of 2015 on Wages, Decent Living Needs hereinafter abbreviated as KHL is the standard requirement of a single worker / laborer to be able to live physically fit within 1 month. The determination of the Minimum Wage by the Governor is made annually on the basis of KHL and with due regard for productivity and economic growth. Presidential Regulation No.78 of 2015 concerning Wages stipulates that the Minimum Wage calculation formula is the current minimum wage plus the multiplication of the Minimum Wage for the current year with the sum of the national inflation rate for the current year and the growth rate of the gross domestic product of the current year. The KHL standard consists of several components: food and beverages, clothing, housing, education, health, transportation, as well as recreation and savings.⁵

Labor's wages should be given in accordance with the work and also the need for a suitable life, thus it will not harass human rights. The fairness is judged and measured from the Decent Living Needs. Appropriately, construction workers have more decent income than adults today because construction workers not only rely on muscle but also the brain while working. Wages, according to Muchdarsyah Sinungan's book is a reflection of national income in the form of wage money received by workers in accordance with the amount and quality devoted to the making of a product.⁶ Thus, the wage-giving of workers should be increased considering the results of the services provided are not easy and high value. Wages greatly affect the level of welfare of a person that could also affects

⁵ Sidauruk, Markus. (2011). *Kebijakan Pengupahan di Indonesia*. Jakarta: Gramedia

⁶ Muchdarsyah, Sinungan. (2009). *Produktivitas Apa dan Bagaimana*. Jakarta: Bumi Aksara

their own country. In Indonesia, wage issues still often cause disputes between the company and the workers. This is because each party has different interests and is included in human terms.⁷ The entrepreneur certainly wants to get the most profit by reducing the production cost which one of it is wage, while the workers want to get the highest wage in order to get the welfare of life. So, this is where the role of government as a regulator to mediate this problem with as objective as possible.⁸

If we look to neighboring countries such as Malaysia, according to Head of Construction Agency Hedyanto W. Husaini workers get paid Rp. 200,000-300,000 per day.⁹ This number will increase to Rp. 400,000 if the worker has a certificate. While in Indonesia workers only get Rp. 80,000-110,000 per day, with a number that triple this makes many Indonesian workers who bet on living in Malaysia. Indonesian workers working in Malaysia reached 700,000 as data from the Ministry of Public Works.¹⁰ Based on data from the International Labor Organization (ILO), the minimum wage in Indonesia is only Rp. 2.300.000 rupiah.¹¹ This makes Indonesia the 8th of 10 ASEAN countries with the highest minimum wage. Vietnam has a minimum wage of Rp. 2,500,000 and in Malaysia

⁷ Susetiawan. (2006). *Konflik Sosial: Kajian Sosiologis Hubungan Buruh, Perusahaan dan Negara di Indonesia*. Yogyakarta: Pustaka Pelajar

⁸ Dea Avega Editya. *Mengintip Kebijakan UMR Di Malaysia Dan Amerika Serikat*. http://www.kompasiana.com/ve08.blogspot.com/mengintip-kebijakan-umr-di-singapura-malaysia-dan-amerika-serikat_54f82477a33311845e8b460a, Accessed on 11 Oktober 2017

⁹ Miftakhul Jannah. *Upah Rata-rata Buruh Malaysia 4 Kali Lipat Dari Indonesia*, <http://economy.okezone.com/read/2016/05/01/320/1377331/upah-rata-rata-buruh-malaysia-4-kali-lipat-dari-indonesia>. Accessed on 11 Oktober 2017

¹⁰ Ibid.

¹¹ Saget, C. op.cit.

reached Rp. 5,200,000. Wages in Indonesia are only larger than the Cambodian country whose position is an unstable country because of the war. According to the President of the Confederation of Indonesian Workers Union (KSPI), Said Iqbal, it is appropriate for Indonesia to increase minimum wage and not impoverish the people as it is today.

With the increasing number of workers in Indonesia, job creation becomes a very important issue in the development of the employment sector. Employment creation efforts have been undertaken but still insufficient. Indonesia's labor market conditions show that most of the labor force works on informal employment with low levels of education and skills. In this regard, the informal sector actually appears to be quite instrumental in terms of employment in Indonesia. However, while playing a large role in absorbing labor, the general picture of the informal sector is still synonymous with small-scale economic activity, lack of productivity, and has no promising prospects.

The informal sector has a large role in developing countries (NSB) including Indonesia. The informal sector is unorganized, uncoordinated, and generally legal but not listed. In developing countries, about 30-70% of urban labor population work in the informal sector. Thus delivered by Tri Widodo, SE. Mec.Dev during a discussion held by the Center for Economic and Public Policy Studies (ICASEPS). The informal sector has characteristics such as the small number of business units on a small scale, individual or family ownership, simple and labor-intensive technology, low levels of education and skills, access to local financial institutions, low labor productivity and wage rates also relatively lower

than the formal sector.¹² In Indonesia, the informal sector is not the main focus of government policy or attention. The government does not even have a general definition of firms regarding informal sector companies.¹³ Some government agencies, such as the Central Bureau of Statistics, Bank Indonesia, the Ministry of Industry and Commerce, only provide a definition of business scale that is divided into three classifications: small, medium and large enterprises.

Capital usage in informal sector is relatively small when compared with the formal sector thus it's enough to employ people with a little capital. By providing training and skills access, the informal sector can play a major role in human resource development. The informal sector raises the demand for semi-skilled and unskilled labor. Generally, the informal sector uses appropriate technology and uses local resources that will create an efficient allocation of resources.¹⁴

The informal sector is seen as a city destroyer, although there is also a positive side to the growth of the informal sector. In the course of the informal sector must have obstacles in its sustainability. First, the sector has not yet recognized as a sector that has great potential in the economic development of Indonesia. This could be seen from the master plan owned by each city and municipality. In general, the city's master plan actually has a plan to evict and

¹² Humas UGM. *Peran Sektor Informal Di Indonesia*. <https://ugm.ac.id/id/berita/1756-peran.sektor.informal.di.indonesia>. Accessed on tanggal 10 Oktober 2017

¹³ Ibid.

¹⁴ A. Dita Febriyanti. *Pemberdayaan Sektor Informal Sebagai Salah Satu Wujud Manajemen Kota Yang Teratur*. https://www.kompasiana.com/a.ditafebriyanti/pemberdayaan-sektor-informal-sebagai-salah-satu-wujud-manajemen-kota-yang-teratur_550d31c7a33311091b2e3a51. Accessed on 24 November 2017.

concentrate the business unit of the informal sector in one place under the pretext for the beauty, cleanliness, and order of the city. Secondly, local officials and elites usually view the informal sector as a street vendor primarily as a disruption that makes the city dirty and untidy, causing traffic jams, dumping garbage anywhere, disrupting pedestrians, shop merchants' rivals and paying taxes, and spreading diseases through dumped waste, and selling dirty food.¹⁵

As a result, the informal sector is unable to raise the bargaining position of workers in better welfare. Though their existence is not less strong in encouraging the sustainability of economic development of the country, it is this informal sector that existed during the economic crisis of this country. In the informal sector the income level of workers is low, there is no job certainty and the lack of social security.¹⁶ Informal sector workers receive social security only from employers, but no benchmarks or standards of magnitude so that workers need to implement strategies to withstand economic hardship.

The informal sector is often viewed as hindering industrialization, modernization. On the other hand, the informal sector is seen as a channel of entrepreneurial talent that should be encouraged in its development. The informal sector is also seen as independent because its dependence on other factors is so small that it is very adaptable to the circumstances. In the current state of development, the sector of informal needs to be addressed because the informal

¹⁵ Manning dan Tadjuddin. (1991). *Urbanisasi, Pengangguran dan Sektor Informal di Kota*. Jakarta: Pusat Penelitian dan Studi Kependudukan UGM.

¹⁶ Nurhadi. 2007. *Mengembangkan Jaminan Sosial Mengentaskan Kemiskinan*. Jakarta: Media Wacana

sector has a large portion for those who need job assistance. The informal sector should be used as a solution to help accommodate the workforce in order to get a job.¹⁷

In this opportunity, the author will focus on the Certification of Construction Workers in the informal sector who have the opportunity to become a formal sector. The existence of the informal sector has benefited many entrepreneurs and the state, but it does not seem to be felt by the workers. Construction workers have been regulated in law no. 18 of 1999 quiet construction services. The author sees with very high job risks and exceptional employment results, construction workers are still given very low wages and some even under minimum wage. The law states that construction workers must have a certificate issued by LPJK and Training Center for Construction Services.¹⁸ However, in reality there are still many construction workers who do not have a certificate so that in addition to impact on the reduced quality of buildings that are done, also impact on the work of construction workers themselves.

Opportunities to work in the wider part of the country for un-certificated construction workers are very small, as evidenced by construction workers from Indonesia working abroad can only become sand transporters only. Not only abroad, but in the homeland itself, not a few construction workers who rejected and had to import construction workers from Malaysian countries solely because

¹⁷ Rachbini, D. and Hamid, A. (1994). *Ekonomi informal perkotaan*. Jakarta: Pustaka LP3ES Indonesia.

¹⁸ Lembaga Pengembangan Jasa Konstruksi. *Tugas Pokok Lembaga Pengembangan Jasa Konstruksi*. <http://www.lpjk.net/lembaga-2-tugas-pokok-lembaga.html>. Accessed on tanggal 12 September 2017

construction workers in Indonesia do not have a certificate. This certainly affects income due to the lack of scope of work that can be done by construction workers in Indonesia who have not acted firmly on this certification process.

The construction service system is growing with the demands of the quality of production, good governance, and the challenges of construction services. This is in line with the rampant construction that has been open and globalized, especially with the establishment of the Single Market MEA, Trans-pacific Partnership and so forth. In addition, the scope of strategic construction services has changed significantly so that it requires harmonization of legislation. As an effort to improve the aspects of coaching, organizing, law / order enforcement, community participation, and safety, health, safety and sustainability (K4), construction must receive the attention of all parties involved in construction services.¹⁹

As is known, the construction service sector is a community activity that embodies a building that serves as a supporter or infrastructure of socio-economic activities in order to support the realization of national development goals. Similarly, in the implementation of construction services must ensure order and legal certainty and the existence of Law No. 18 of 1999 on Construction Services has not been able to meet the demands of good governance and dynamics of development of construction services, is part of the basis of consideration of the legislation Number 2 Year 2017 on Construction Services.

¹⁹ Bina Konstruksi. *DJBK Dorong Asosiasi Kawal Cita-cita UUJK*. <http://binakonstruksi.pu.go.id/v5/baca/NTguNjQ=>. Accessed on tanggal 4 Desember 2017

Implementation of Construction Services is conducted based on the principles contained in chapter 2 of Law no. 2 year 2017 is honesty and fairness, benefits, equality, harmony, balance, professionalism, independence, openness, partnership, security and safety, freedom, sustainable development, and environmentally sound. This Act regulates the operation of Construction Services with a view to providing direction for growth and development of Construction Services to create a robust, reliable, high-competitive business structure and the results of quality Construction Services. This embodies the orderly implementation of Construction Services that ensures equality of position between Service Users and Service Providers in exercising their rights and obligations, and improving compliance in accordance with the provisions of legislation.²⁰ In addition, to realize the increase of public participation in the field of Construction Services, as well as arranging the system Construction Services that are able to realize public safety and create a comfortable environment built. Then this Act is also to ensure good governance of Construction Services and create value-added integration of all stages of construction services.²¹

1.2 Formulation of Issue

1. How is the regulation of Work Competency Certification in the field of construction increase employment opportunity and wages?

²⁰ Referred to Article 2 of Law No. 2 Year 2017 regarding Manwork

²¹ Referred to Article 3 of Law No. 2 Year 2017 regarding Manwork

2. Whether or not by enactment of Law no 2 of 2017, construction workers will become formal sector workers?

1.3 Purpose of Research

The purpose of this study is specifically aimed for:

1. To knowledge the implementation of wage paying for labor in construction workers system.
2. To recognize the constraints faced by construction workers in performing job competence certification.
3. To knowledge the efforts that can be done to solve the barriers that exist in the implementation of certification.

1.4 Advantage of Research

1.4.1 Academically

Academically, the research benefits of this thesis are:

1. To fulfill and complete one of the tasks and academic requirements to obtain a Bachelor of Law degree at the Law Faculty of Universitas Pelita Harapan
2. Knowing more deeply also provides a critical attitude regarding Ministerial Regulation no. 7 of 2013 is also the law of employment,
3. Knowing the problems encountered around for the sake of the progress of the state of Indonesia.

1.4.2 Practically

Practically, the research benefits from this thesis in order to be an input for the reader, as well as consideration for further research for the academic who are associated with in employment and human rights, and able to contribute thoughts about the workers to the community in Indonesia in order to avoid themselves from action- unselfish action.

1.5 Systematic of The Research

CHAPTER I : INTRODUCTION

This chapter consist of background of the problems, problems, aims of the research, benefits of the research, and systematic of the research.

CHAPTER II : THEORETICAL FRAMEWORK

In this chapter, the contains of theoretical framework is about theories which used by the writer based on Law No. 2 of 2017 which underlies this research.

CHAPTER III : RESEARCH METHOD

In this chapter of the research method, the discussion relates to the following points of research consisting of primary law, secondary law, and tertiary law, then technique and data analysis that can be used for research based on the topics that the authors discuss in the thesis.

CHAPTER IV : RESEARCH AND ANALYSIS

In this Chapter IV of the thesis, writer will explains the juridical analysis of the problems discussed in this thesis.

CHAPTER V : CONCLUSION AND ADVICE

This is the last chapter of this thesis writing, contains the conclusions of the results of research that has been discussed starting from Chapter I to Chapter V and suggestions from the author.

