

Juridical Implications of the Regulation on Specific Time Work Agreements for Termination of Employment and Overtime Pay in Indonesia



Ferian Luthfi Zakiyya¹, Ani Purwanti²

^{1,2}Master of Law Program, Diponegoro University

ABSTRACT: Government Regulation No. 35 of 2021 concerning work agreements for a certain time, outsourcing, work time and rest time, and termination of employment, hereinafter referred to as the Regulation concerning work agreements for a certain time, raises various fundamental questions which is also the problem raised in this research. The first problem is what are the implications of the Regulation regarding work agreements for a certain time for overtime pay in Indonesia? and the second problem, namely what are the implications of the Regulation regarding work agreements for a certain time on Termination of Employment? These problems were analyzed using normative juridical research methods. Based on the results of the study it was concluded that overtime pay is a right owned by workers/laborers who are given by employers/employers as a consequence of work performed outside working hours. Overtime pay is also an obligation owned by employers/employers to be given to workers/laborers for their work. Wages begin when work begins and end when employment is terminated. Whereas employers/employers who do not fulfill their obligations to pay overtime wages to workers/laborers will be subject to criminal sanctions.

KEYWORDS: Implication; Juridical; Specific Time Work Agreement; Wages; Overtime.

INTRODUCTION

The Indonesian state is based on law (*rechts staat*) not based on mere power (*machts staat*). Generally, a rule of law is defined as a country where both the government and its people's actions are based on (positive) law to prevent arbitrary actions from the rulers of the people themselves. The term rule of law has been known since ancient Greece. According to Aristotle, a legal state is a state that stands above the law and guarantees justice for its citizens. Justice is a requirement for the achievement of the happiness of life for its citizens and as the basis of justice it is necessary to teach a sense of morality to every human being so that he becomes a citizen of his country .¹

Indonesia is a country based on law and is expressly regulated in the Constitution of the Republic of Indonesia Article 1 paragraph (3) which states that " *Indonesia is a country based on law* ". The State of Indonesia is a legal state based on Pancasila, aiming to achieve a just, prosperous and equitable society. The Indonesian state is not only tasked with maintaining public order, but is broader than that. The state is obliged to participate in almost all sectors of people's lives and livelihoods. The concept of a legal state adopted by the Pancasila legal state (Indonesia) is a welfare state. It is this rule of law that is now being embraced by most of the countries in the world.²

In addition, the concept of a rule of law state highly upholds legal certainty, this is a consequence of the recognition of the principle of legality as one of the principles of a rule of law. The existence of the principle of legal certainty is closely related to the positivistic school, meaning that this law requires the release of meta-juridical thinking about law as adhered to by naturalist thinkers. So that every legal norm must exist and be objective as positive norms and is expected to be able to create a law that is concrete and free from abstract conceptions that will create uncertainty. This is in line with the intent and purpose of the principle of legal certainty which guarantees that justice seekers can use a definite and concrete and objective law, without the involvement of speculation or subjective views. As John Austin said, legal certainty is the ultimate goal of legal positivism, therefore legal certainty is something that really needs to be realized to create justice and the benefits of the law itself .³

¹Abu Daud Busroh, *System of Government of the Republic of Indonesia* , (Jakarta: PT. Bina Aksara, 1989) p. 30-31.

²Lukman Santoso Az, *State of Law and Democracy: The Ups and Downs of the Post-Reform Indonesian Law State*, (IAIN Po Press, Ponorogo, 2016) p. 9.

³Mario Julyano, and Aditya Yuli Sulistyawan , " *Understanding of the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning* " , *Crepido Journal: Journal Regarding the Fundamentals of Legal Thought* Vol 01 Number 01 of July 2019, p. 13-22.

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Wages are the most important thing in the relationship between workers/labourers and employers/wage providers, and therefore it is very important regarding wage arrangements. Wages are given by employers/wages to workers/laborers who are deserving or in accordance with humanity. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia has stated that every citizen without exception has the right to obtain work and a decent living for humanity, with this guarantee, of course, humans have the right to obtain decent work without any discrimination for the welfare of themselves and others. his family. The wage setting itself is regulated in Law no. 6 of 2023 concerning Stipulation of Government Regulation Regulations in lieu of Law Number 2 of 2022 concerning work creation to become a Law and its derivative regulations, namely Government Regulation Number 35 of 2021 concerning Wages.

Regarding the problem of delays in overtime pay, it still occurs frequently, for example in the case of workers in Grobogan whose overtime wages have not been paid since October 2022. This is very detrimental to workers/laborers, where their rights have been violated by the company where they work. From the problems above, given the importance of protecting and fulfilling the rights of workers/laborers. So the author is interested in writing about " The Implications of PP 35 of 2021 Concerning work agreements for a certain time, outsourcing, work time and rest time, and termination of employment related to the Provision of Labor Overtime Wages". Based on this description, this research will specifically discuss how to regulate workers' overtime pay based on PP 35 of 2021 regarding work agreements for a certain time, outsourcing, working time and rest time, and termination of employment? And what are the implications of PP 35 of 2021 regarding work agreements for a certain time, outsourcing, work time and rest time, and termination of employment related to overtime pay?

DISCUSSION

A. Arrangements for Labor Overtime Wages Based on PP 35 of 2021 Concerning work agreements for a certain time, outsourcing, working time and rest time, and termination of employment

The term laborer has been known for a long time, even since the Dutch colonial era, because the term laborer existed before Law no. 13 of 2003 concerning manpower applies. In the Dutch era, the definition of labor was manual workers such as coolies, carpenters, foremen who did menial work. These people are referred to as " *blue collars* ". If people who do work in private and government offices are referred to as "employees/employees" or referred to as " *white collar* ". This distinction has consequences for differences in treatment and rights by the Dutch government which aims to divide indigenous people.

In the development of labor law in Indonesia, efforts have been made to replace the term laborer with the term worker, as proposed by the government (depnaker) at the FBSI II congress in 1985. The government's reason is that the term laborer is not in accordance with the personality of the nation, laborers tend to refer to groups that are always under pressure. and is under another party, namely the employer. However, due to the New Order era, the term workers, especially labor unions, intervened a lot for the benefit of the government, the workers were traumatized by the use of the term so as to accommodate the interests of workers and the government, the two terms were juxtaposed.⁴

Based on PP 36 of 2021 in Article 1 point 1, a worker is any person who works and receives wages or other forms of compensation. The definition of workers based on PP 36 of 2021 is the same as the definition of workers in Law no. 13 of 2003 concerning Manpower. This definition has a broad meaning because it can include all people who work for anyone, both individuals and legal entities by receiving wages or other forms of compensation. Rewards in other forms mean that workers can not only receive wages in the form of money, but can receive rewards in the form of goods.

In general, the state has a very big role in the context of the welfare of its people. This is stated in the Preamble to the 1945 Constitution of the Republic of Indonesia in particular in paragraph 4 which reads:

"To protect the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice".

Article 28 D (2) of the Constitution of the Republic of Indonesia stipulates that:

"Everyone has the right to work and receive fair and proper compensation and treatment in a work relationship."

Every worker/laborer has the same rights and opportunities to obtain a job and a decent living regardless of gender, race, ethnicity, religion and political orientation according to the interests and abilities of the worker concerned, including equal treatment of persons with disabilities.⁵

Based on Article 1 of the Labor Law *in conjunction with* the Job Creation Law, wages have the meaning that:

"Wage is a worker/laborer's right that is received and expressed in the form of money as compensation from the employer or employer to the worker/laborer which is determined and paid according to a work agreement, agreement, or laws and regulations, including benefits for workers/laborers and their families for a work and/or service that has been or will be performed"

⁴Lalu Husni, *Introduction to Labor Law*, (Depok: Raja Grafindo, 2014) Pg, 46

⁵Hardijan Rusli, *Employment Law*, (Ghalia Indonesia: Bogor, 2011) Pg, 9

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This means that wages are remuneration of workers/laborers to employers/employers that are paid based on work agreements, agreements or legislation.

According to the National Wage Council, wages are a reward from employers to recipients of work for a job/service that has been and will be carried out and functions as a guarantee for the continuity of a decent life for humanity and production.⁶

Receiving labor wages is a consequence of workers who have surrendered their energy to work. Wages are workers' rights after they do their work. The opposite of giving wages in an employment relationship is the obligation of the employer or employer to pay the workers. The existence of an obligation to provide wages means that it can be interpreted as an obligation to provide work.⁷

Article 2 PP 36 of 2021 stipulates that:

- (1) Every Worker/Labourer has the right to a life that is worthy of humanity.
- (2) Every worker/ laborer has the right to receive equal treatment in the application of the wage system without discrimination
- (3) Every Worker/laborer has the right to receive the same Wages for work of equal value.

The article above means that every worker/laborer has the same rights without discriminating, including the right to wages received by workers. Workers' or laborers' rights begin when the working relationship between the worker/laborer and the entrepreneur ends when the employment relationship is terminated. Workers/laborers are entitled to a decent income to live for humanity, namely being able to meet the necessities of life for workers/laborers and their families in a reasonable manner which includes food and drink, clothing, housing, education, health, recreation, and old age insurance.⁸

Regarding the determination of the high and low wages, of course there are several factors that can have an effect. The factors are as follows:

- 1) Supply and Demand A supply of labor is high because it has skills/expertise, while the demand for recruits is small, so the wages offered tend to be higher. Vice versa, if there is a low supply/Under Skill condition while there is a lot of demand, the wage condition tends to be lower.
- 2) Labor Union Organization Weak or strong trade unions in bargaining will affect the level of wages.
- 3) Ability to Pay Even though there are demands from workers if there is no ability to pay, wages may not necessarily increase, this is because wages are a component of the price of production which is very calculated by an entrepreneur/employer.
- 4) Productivity In essence, wages are a form of reward for work performance, meaning that the higher a person's achievement, the reward given will also tend to be high, but there is no official standard for standardizing work performance so that implementation cannot be carried out properly.
- 5) Living Costs The living environment will certainly have an influence on one's living needs. Therefore, wages tend to follow the cost of living where the worker lives. For example wages in big cities will tend to be higher, because the cost of living is also high in those areas.
- 6) Government Government policy in labor regulations can also have an impact on the level of wages.⁹

Article 5 paragraph (2) of PP 36 of 2021 stipulates that the wage policy includes:

- a. Minimum wage
- b. Pay structure and scale
- c. Overtime Wages
- d. Wages are absent from work and/or do not do work for certain reasons
- e. form and method of payment of wages
- f. things that can be calculated with wages, and
- g. wages as the basis for calculation or payment of other rights and obligations.

This wage policy aims to achieve income that fulfills a decent life for humanity. If this policy is not carried out by the Government and employers, it will be detrimental to workers/laborers.

One of the wage policies based on PP 36 of 2021 is overtime pay. Overtime pay is regulated in article 39 PP 36 of 2021 which reads:

"Overtime wages must be paid by employers who employ workers/labor over working hours, on weekly breaks, or on official holidays as compensation to the worker/laborer concerned in accordance with the provisions of laws and regulations".

Whereas in PP 35 of 2021 the definition of overtime pay is:

"Wage paid by Employers to Workers/Labourers who carry out work during Overtime Work Time."

⁶ Ruslan Abdul Ghofur, *The Concept of Wages in Islamic Economics*, (Arjasa Pratama: Jakarta, 2020) p. 37.

⁷ Asri Wijayanti, *Synchronization of Labor Law against ILO Conventions*, (Karya Putra Darwati: Bandung, 2012) Pg 20.

⁸ Zaeni Asyhadie, *Work Law Labor Law in the Field of Work Relations* (Rajagrafindo: Jakarta, 2007) Pg 89.

⁹ Soedarjadi, *Labor Law in Indonesia: A Guide for Employers, Workers and Prospective Workers* (Pustaka Yustisia: Yogyakarta, 2008) p. 73-74

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This means that the wages paid are a consequence of work performed outside working hours.

PP 35 of 2021 also regulates overtime work, which reads:

“Overtime is work time that exceeds 7 (seven) hours a day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week or 8 (eight) hours a day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week or working hours on weekly rest days and/or on official holidays determined by the government.”

Further overtime hours are regulated in articles 26 and 27 of PP 35 of 2021 which read:

- (1) Overtime can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.
- (2) Provisions on overtime work as referred to in paragraph (1) do not include overtime work carried out during weekly breaks and/or official holidays.

Article 27

- (1) Entrepreneurs who employ workers/laborers beyond their working hours as referred to in Article 21 paragraph (2) are required to pay overtime wages.
- (2) The obligation to pay Overtime Wages is excluded for Workers/Labourers in certain positions.
- (3) Workers/Labourers in certain job categories have responsibilities as thinkers, planners, executors and/or controllers of the Company's operations with unlimited working time and receiving higher wages.
- (4) Arrangements for certain positions are regulated in the Work Agreement, Company Regulations or Collective Bargaining Agreements.
- (5) If a certain position class is not regulated in the Work Agreement, Company Regulations, or Collective Labor Agreement, the Employer is obliged to pay Overtime Wages.

The form of wage protection is time worked. Based on the provisions of Article 78 of the Job Creation Law, it is stated that employers who employ workers/laborers beyond the working time limit as referred to in Article 77 paragraph (2) must meet the following requirements:

- a. there is the agreement of the worker/laborer concerned
- b. overtime can only be done for a maximum of 4 (four) hours in 1 (one) day and 14 (fourteen) hours in 1 (one) week.

Entrepreneurs/employers who employ workers/laborers beyond their working hours as referred to in paragraph (1) are required to pay overtime wages. Provisions for overtime work as referred to in paragraph (1) letter b do not apply to certain business sectors or jobs. Provisions regarding overtime work time and overtime pay as referred to in paragraphs (2) and (3) are regulated by a ministerial decree.

The Ministerial Decree in question is Kepmenakertrans No. KEP 102/MEN/VI/2004 Concerning overtime work time and overtime pay. Based on the provisions of Article 1 number 1 Kepmenakertrans No. KEP.102/MEN/VI/2004, overtime is work time that exceeds 7 (seven) hours a day and 40 (forty) hours 1 (one) week or 8 (eight) hours a day, and 40 (forty) hours 1 (one) week for 5 (five) working days in (one) week or working hours on weekly rest days and/or on official holidays determined by the Government.

Based on Article 4 of Kepmenakertrans No. KEP 102/MEN/VI/2004, employers who employ workers/laborers beyond working hours are required to pay overtime wages. For workers/laborers who fall into certain positions, they are not entitled to overtime pay as referred to in paragraph (1), provided that they receive higher wages. Included in a certain class of positions as referred to in paragraph (2) are those who have responsibilities as thinkers, planners, implementers and controllers of the company's operations whose working time cannot be limited according to the working time determined by the company in accordance with the laws and regulations. apply.

Article 7 contains requirements that employers must fulfill if they are to oblige workers to overtime. Article 7 (1) of Kepmenakertrans No. KEP 102/MEN/VI/2004 reads:

- (1) Companies that employ workers/laborers during overtime work are obliged to:
 - a. pay overtime wages;
 - b. provide an opportunity to rest adequately;
 - c. provide food and drink of at least 1,400 calories if overtime work is done for 3 (three) hours or more.

Arrangements regarding employers' obligations for overtime workers are also regulated in Article 29 PP 35 of 2021.

In paragraph 2 of the article also explains that the food and drink provided cannot be replaced with money. The purpose of providing food and drink of at least 1400 calories if overtime work is carried out for 3 (three) hours or more is to maintain the health of workers. To determine the type of food and drink given to workers during overtime of at least 1400 calories in consultation with a nutritionist.¹⁰

In PP 35 of 2021 Article 61 reads:

- (1) Entrepreneurs who violate the provisions of Article 15 (1), Article 17, Article 21 (1), Article 22, Article 29 paragraph (1) letters b and c, Article 53, and/or Article 59 are subject to sanctions in the form of:

¹⁰Asri Wijayanti, *Post-Reform Labor Law*, (Sinar Graphic: Jakarta, 2017) Pg, 113.

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- a. written warning;
- b. restrictions on business activities;
- c. Temporary suspension of part or all of the means of production; And
- d. Suspension of business

meaning that if the company/employer cannot fulfill their obligations, namely providing sufficient rest and not providing nutritious food and drink, then the entrepreneur/employer may be subject to administrative sanctions in accordance with article 61 PP 35 of 2021.

Article 8 paragraph (1) of Kepmenakertrans No. KEP 102/MEN/VI/2004 explains that the calculation of overtime pay is based on monthly wages. And paragraph (2) explains that an hour's wage is 1/173 of a month's wage. Articles 9 and 10 of Kepmenakertrans No. KEP 102/MEN/VI/2004 explains the calculation of overtime pay. Article 9 reads:

(1) In the event that the worker/laborer's wages are paid daily, the calculation of the monthly wage is the daily wage multiplied by 25 (twenty five) for workers/laborers who work 6 (six) working days in 1 (one) week or multiplied by 21 (twenty one) for workers/laborers who work 5 (five) working days in 1 (one) week.

(2) If the wages of workers/laborers are paid based on production units, then the monthly wage is the average wage for the last 12 (twelve) months.

(3) In the event that workers/laborers work for less than 12 (twelve) months as referred to in paragraph (2), then the monthly wage is calculated based on the average wage while working, provided that it is not lower than the local minimum wage.

Article 10 reads:

(1) If wages consist of basic wages and fixed allowances, then the basis for calculating overtime wages is 100% (one hundred percent) of wages.

(2) In the event that wages consist of basic wages, fixed allowances and non-fixed allowances, if the basic wages plus fixed allowances are less than 75% (seventy five percent) of the total wages, then the basis for calculating overtime wages is 75% (seventy five percent) of the total wages.

The Labor Law also regulates overtime pay . The calculation of overtime wages is as follows:

1. If overtime work is carried out on working days:

a.) for the first hour of overtime, wages must be paid in the amount of 1.5 (one and a half) times the hourly wage.

b.) For each subsequent overtime hour, wages must be paid in the amount of 2 (two) times the hourly wage.

2. If overtime work is carried out on weekly rest days and/or statutory holidays for a working time of 6 (six) working days 40 (forty) hours a week then:

a. The calculation of overtime pay for the first 7 (seven) hours is paid 2 times the hourly wage, and the eighth hour is paid 3 (three) times the hourly wage and for the ninth and tenth hour 4 (four) times the hourly wage.

b. If the official holiday falls on the shortest working day, the first 5 (five) hours of overtime pay are paid 2 (two) times the hourly wage, the sixth hour is 3 (three) times the hourly wage and the seventh and eighth hours are 4 (four) times the hourly wage.

3. If overtime work is carried out on weekly rest days and/or statutory holidays for a working time of 5 (five) working days and 40 (forty) hours a week, the overtime pay calculation for the first 8 (eight) hours is paid 2 (two)) times the hourly wage, the ninth hour is paid 3 (three) times the hourly wage and the tenth and eleventh hour 4 (four) times the hourly wage. Article 11 letter c that if overtime work is carried out on weekly rest days and/or statutory holidays for a working time of 5 (five) working days and 40 (forty) hours a week, then the overtime pay calculation for the first 8 (eight) hours is paid 2 (two) times the hourly wage. The ninth hour is paid 3 (three) times the hourly wage and the tenth and eleventh hour is 4 (four) times the hourly wage.

From the explanation above, besides PP 3 5 of 2021 concerning wages, there are also other regulations regarding overtime pay, namely Kepmenakertrans No. KEP 102/MEN/VI/2004 and PP 36 of 2021 concerning Wages. Overtime pay is given by employers/employers to workers/overtime for the consequences of employers/employers providing work outside of predetermined working hours. Overtime pay is also the right of workers/laborers to make ends meet. The amount or nominal of overtime pay is in accordance with applicable regulations.

B. Juridical Implications of the Regulation on Specific Time Work Agreements for Termination of Employment and Overtime Pay in Indonesia

The implication that arises from the issuance of PP 36 of 2021 is that there will be sanctions if someone violates it. An example of a company late paying overtime pay is the alleged case of a worker in Grobogan whose overtime pay was not paid which went viral on social media, which has gone through mediation and investigation mechanisms. The Office of Manpower and Transmigration (Disnakertrans) of Central Java Province continues to try to resolve this problem. This was conveyed by the Head of the Central Java Manpower and Transmigration Office, Mumpuniati, when confirmed by telephone, Monday (6/2/2023). According to him, even though they did not reach an agreement, the company claimed that it would pay the workers overtime wages. Mumpuniati said that his party had carried out inspection efforts on Friday (3/2/2023). From the results of the initial investigation, it was found that

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violations had been committed. Based on the investigation, it is suspected that the company has not paid overtime wages since October 2022. Based on this, the Central Java Manpower Office ordered a re-calculation of the nominal overtime pay since September 2022. This is done so that there is an early investigation, considering that the number of employees in this labor-intensive company reaches 3,000 people. Mumpuniati said, according to Perppu 2/2022, failure to pay overtime wages could result in companies being subject to criminal sanctions. However, he said it was carried out in stages. Every year, around 700 complaints are received and resolved through mediation, or legal channels. Mumpuniati revealed, in 2022, through the LaporGub channel and social media, there were 745 reports in the form of complaints and requests for information. Meanwhile, at the beginning of 2023 there were 56 reports, consisting of 41 complaints and 11 requests for information. Meanwhile, from the cases at the beginning of 2023, a total of 44 cases or 78.57 percent were completed. Meanwhile, 12 of them (21.43 percent) are in the process of completion. According to data from the Central Java Manpower and Transmigration Agency, in 2022, the Instagram channel will be the social media most widely used by workers for reporting. Meanwhile, the Facebook channel ranks second, followed by the Twitter channel.¹¹

Based on the case above, employers/employers can be subject to criminal sanctions if they cannot fulfill their obligations for workers/laborers to pay overtime wages. This criminal sanction is regulated in Article 187 of the Work Copyright Act which reads:

“Whoever violates the provisions referred to in Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), paragraph (2), or paragraph (3), Article 85 paragraph (3), or Article 144 shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least Rp. 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah).”

CONCLUSION

Based on the description in the discussion in this study, the following research conclusions can be put forward; whereas overtime pay is a right owned by workers/laborers who are given by employers/employers as a consequence of work performed outside working hours. Overtime pay is also an obligation owned by employers/employers to be given to workers/laborers for their work. Wages begin when work begins and end when employment is terminated. Whereas employers/employers who do not fulfill their obligations to pay overtime wages to workers/laborers will be subject to criminal sanctions.

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¹¹ <https://jatengprov.go.id/public/case-dugaan-upah-lembur-buruh-tak-dibayar-pemprov-jateng-telah-Jadi-mediation-dan-investigation/> accessed on 04/04/2023 at 22.46 WIB