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ABSTRACT

In November 2022, the government issued Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for 2023, despite already having regulations related to wages, namely Government Regulation No. 36 of 2021 concerning Wages. The emergence of this regulation is considered to cause legal uncertainty as there is already a government regulation on wages and it undermines the results of the constitutional review of the Job Creation Law, where the Constitutional Court's decision states that the Job Creation Law remains valid for the next 2 years and does not require additional regulations. This has led to legal uncertainty regarding wage regulations.

The research method employed in this study is the normative legal research method, which involves examining literature or secondary data. The approach used included the statute approach, which analyzes all legislation and regulations related to the legal issues being addressed, and the conceptual approach, which stems from perspectives and doctrines within legal studies. The data used consisted of secondary data obtained through literature reviews and primary data obtained through interviews with respondents and relevant institutions.

The results of this research are expected to provide answers to the dualism in legislation regarding wages, particularly for legal certainty for employers, workers, and investors. The determination of minimum wage is indeed crucial in the economic field, as it relates not only to the purchasing power of the society for wage increases but also to legal certainty needed by employers and investors, including the government's consistency in enacting legislation.

Keywords: Minimum wage determination, legal certainty, minister of manpower regulation no. 18 of 2022.

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INTRODUCTION
The payment for workers represents a form of compensation in the form of money for their work, received directly or periodically. Minimum wage is understood by workers as the calculation of the lowest monthly wage received, with the amount determined by the Governor. Wage agreements typically stem from employment contracts or legislation, including allowances for workers' families.

Regulation regarding wages for labor in Indonesia is also outlined in Law No. 13 of 2003 concerning Manpower, specifically in Article 89 paragraph (3), stating that provincial minimum wages are determined by the Governor, taking into account recommendations from the Provincial Wage Council and/or Regent/Mayor. The anticipated minimum wage aims to meet the basic needs of living while considering productivity growth and economic expansion. Competency enhancement is directly proportional to worker productivity, thus encouraging workers to improve their skills. Meanwhile, economic growth can be influenced by global conditions.

Global economic conditions, inflation, and specific indices have led the government, through the Minister of Manpower, to issue Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for the Year 2023. The government anticipates adjusting the minimum wage in 2023 for each province and district/city across Indonesia, with the government's estimate not exceeding 10%.

Business circles have scrutinized the issuance of Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for the Year 2023. The regulation, issued on November 17, 2022, introduces a new formula for determining the minimum wage for 2023. According to statements from various parties concerned, the policy should be formulated with precision, comprehensiveness, and in accordance with applicable legal frameworks to ensure its implementation in maintaining economic growth momentum. The threat of a global recession arriving sooner than anticipated underscores the need to prioritize legal protection for a conducive business climate and a sense of justice. The objective is to enable businesses to sustainably contribute added value to the economic chain. According to legal experts, under the current legal conditions, Law No. 11 of 2020 concerning Job Creation remains valid for a transitional period of 2 years or until amendments are made as mandated by the Constitutional Court's ruling on the formal review of the Job Creation Law. During the period of amendments to Law No. 11 of 2020, the government is not permitted to issue new implementing regulations related to Law No. 11 of 2020.

In the implementation of Article 81 and Article 185 subparagraph b of Law No. 11 of 2020, the government deemed it necessary to establish government regulations concerning wages. Consequently, Government Regulation No. 36 of 2021 concerning Wages was issued, wherein provincial minimum wages are based on economic and labor conditions.

However, one year later, the government introduced new regulations regarding wages through Government Regulation No. 18 of 2022. This raised questions among business entities as it would inevitably alter the rules regarding minimum wages. Let us see the difference between Governmental Regulation no.36/2021 and Governmental Regulation no. 18/2022.

<table>
<thead>
<tr>
<th>Government Regulation No. 36 of 2021</th>
<th>Minister of Manpower Regulation No. 18 of 2022</th>
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<tbody>
<tr>
<td>Determination of provincial minimum wage: Based on economic and labor conditions, including purchasing power, employment absorption rate, and median wage. (Article 25, paragraph 4)</td>
<td>Adjustment of minimum wage for 2023: calculated using a formula considering economic growth, inflation, and specific indices. (Article 6, paragraph 2)</td>
</tr>
<tr>
<td>Determination of district/city minimum wage: Refers to local economic growth, with specific conditions such as economic growth or inflation in the respective district/city. (Article 25, paragraph 5)</td>
<td>The adjustment of the minimum wage must not exceed 10% or the highest 10%. However, if economic growth is negative, the adjustment considers only the inflation variable (Article 7)</td>
</tr>
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</table>

Source: Article on Minister of Manpower Regulation no 18 of 2022 and Government Regulation no. 36/2021. The difference lies in the nomenclature of the regulations issued regarding wages. One is termed Government Regulation, while the other is Minister of Manpower Regulation. In terms of the hierarchical order of Indonesian

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legislation outlined in Law No. 12 of 2011 concerning the Formation of Legislation, both Government Regulations and Minister of Manpower Regulations are parts of the implementation of the law.

There is a debate regarding the issuance of Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for the Year 2023, particularly among the Indonesian Employers' Association (APINDO). APINDO argues that the issuance of this Minister of Manpower Regulation violates the decision of the Constitutional Court (MK), which stated to suspend all strategic and widely impactful actions/policies. It is also argued that issuing new implementing regulations related to Law No. 11 of 2020 concerning Job Creation is not justified. Business circles perceive Minister of Manpower Regulation No. 18 of 2022, which references Government Regulation No. 36 of 2021 concerning Wages, as problematic. Government Regulation No. 36 of 2021 is derived from Law No. 11 of 2020. This situation leads to a perceived duality and legal uncertainty regarding Minister of Manpower Regulation No. 18 of 2022. Consequently, business entities contemplate filing substantive legal actions concerning the existence of Minister of Manpower Regulation No. 18 of 2022.

This study seeks to address the following questions:
What are the legal issues arising after the enactment of Minister of Manpower Regulation No. 18 of 2022 concerning the Minimum Wage for 2023?
How does the implementation of Minister of Manpower Regulation No. 18 of 2022 regarding the Minimum Wage relate to Legal Certainty?

METHOD

In this study, the type of research conducted was normative legal research or also known as literature review, which involves examining existing literature or secondary data. The research approach employed included the statute and conceptual approaches. Statute approach was conducted by analyzing all laws and regulations relevant to the legal issue being studied. The statute approach entailed analyzing all relevant legislation and regulations pertaining to the legal issues under examination, facilitating an examination of consistency and compatibility between laws, as well as between laws and the Constitution or regulations with laws. The conceptual approach drew upon evolving legal perspectives and doctrines. By studying these perspectives and doctrines within legal science, researchers could uncover ideas generating legal understandings, legal concepts, and principles relevant to the issues at hand.

DISCUSSION

Legal Issues after the issuance of Minister of Manpower Regulation no. 18 of 2022 on Minimum Wage for 2023

The issuance of Minister of Manpower Regulation No. 18 of 2022 concerning the Minimum Wage for 2023 has led to various debates. However, according to the Ministry of Manpower, represented by the Director General of Industrial Relations and Social Security Guarantee at the Ministry of Manpower, Indah Anggoro Putri, the issuance of this regulation aligns with existing regulations. It is asserted that the regulation adheres to legal principles and has undergone a process of regulatory harmonization. Through this regulation, it is expected that there will be a 10% increase in wages in 2023 compared to the current wage level, despite ongoing debates from both employers and laborers. The government's consideration in issuing Minister of Manpower Regulation No. 18 of 2022 is to maintain the purchasing power of workers while ensuring business sustainability. Additionally, this government effort aims to address concerns raised by various parties regarding the wage formula stipulated in Government Regulation No. 36 of 2021 concerning Wages.

Government Regulation No. 36 of 2021 is derived from Law No. 11 of 2020 concerning Job Creation, and it revokes Government Regulation No. 78 of 2015. Within Government Regulation No. 36 of 2021, the determination of the minimum wage is based on economic and labor conditions. Article 26 of Government Regulation No. 36 of 2021 stipulates that adjustments to the value of provincial minimum wages are made annually, with the government setting the upper and lower limits of the minimum wage in the respective areas.

When the Job Creation Law was declared conditionally unconstitutional due to formal defects by the Constitutional Court, its derivative, in this case, Government Regulation No. 36 of 2021, also becomes invalid. The government has

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7 Peter Mahmud Marzuki, Penelitian Hukum, Jakarta: Prenada Media, 2005, p. 133.
8 Ibid, p. 135
10 The upper limit is the highest minimum wage calculated using variables such as per capita consumption and the average number of household members employed. The lower limit of the minimum wage is set at 50% of the upper limit.
declared that it will not use Government Regulation No. 36 of 2021 for wage increases, as indicated by labor unions. Therefore, the government issued Minister of Manpower Regulation No. 18 of 2022 as a replacement for Government Regulation No. 36 of 2021.

The legal basis for the issuance of Minister of Manpower Regulation No. 18 of 2022 concerning the Minimum Wage for 2023 is questionable, particularly considering Government Regulation No. 36 of 2021 on Wages. It is noted that the emergence of Government Regulation No. 36 of 2021 is derived from the Job Creation Law, which the Constitutional Court ruled as having formal defects. Consequently, the constitutional validity of the Minister of Manpower Regulation No. 18 of 2022 could potentially become an issue for the Indonesian state constitution in the future.

On February 20, 2023, the Supreme Court announced a consensus decision rejecting the constitutional review petition of Minister of Manpower Regulation No. 18 of 2022 filed by business associations.\(^{11}\) Previously, 10 business associations had submitted the Constitutional Review Petition Case No. 27 P/HUM/2022 on November 29, 2022. One of the key arguments presented was based on Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation. The petition contended that Minister of Manpower Regulation No. 36 of 2022 amended and added new variables for calculating the minimum wage, which contradicted Government Regulation No. 36 of 2021 concerning Wages. Additionally, the existence of Minister of Manpower Regulation No. 36 of 2022 could lead to uncertainty that might worsen the investment climate.

In its decision to reject the constitutional review, the Supreme Court mentioned that the petitioner, in this case, the business associations, erred in disregarding the context behind the issuance of Minister of Manpower Regulation No. 18 of 2022, which took into account emerging aspirations to maintain the purchasing power of the society. The Supreme Court also noted that Minister of Manpower Regulation No. 18 of 2022 is not an implementing regulation of Law No. 11 of 2020 concerning Job Creation in conjunction with Government Regulation No. 36 of 2021. According to the Supreme Court, Minister of Manpower Regulation No. 18 of 2022 already incorporates philosophical, sociological, and juridical elements. Its philosophical aspect is evident in the policy of setting minimum wages as an effort to realize workers' rights to a decent standard of living for humanity. Meanwhile, its sociological aspect considers emerging aspirations to maintain the purchasing power of society. Its juridical aspect relates to wage policy, which is within the authority of the central government and implemented by the Minister of Manpower.\(^{12}\)

The emergence of Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for 2023, regulated under the authority of the Ministry of Manpower, indicates the Minister of Manpower as the technical administrative implementer. Moreover, in recalling Minister of Manpower Regulation No. 18 of 2022, one of its legal considerations is based on Government Regulation No. 36 of 2021 concerning Wages. This implies that the existence of this Minister of Manpower Regulation still acknowledges the presence of Government Regulation No. 36 of 2021.

Relationship between The implementation of Minister of Manpower Regulation No. 18 of 2022 on Minimum Wage and Legal certainty pertains to efforts made by competent and authoritative bodies to regulate legislation, ensuring that these rules possess juridical aspects that guarantee legal certainty, implying that laws function as rules to be obeyed.\(^{13}\) Concerning legal certainty, APINDO expressed objections to Minister of Manpower Regulation No. 18 of 2022 and urged the government to adhere to Government Regulation No. 36 of 2021.

One of APINDO's considerations for not approving the implementation of Minister of Manpower Regulation No. 18 of 2022 is related to Constitutional Court Decision No. 91/PUU-XIX/2021 dated November 3, 2021. In its decision, it stated that Law No. 11 of 2020 concerning Job Creation remains in effect until its reformation is enacted within the specified two-year period, as determined in the decision. It also stated the suspension of all strategic and wide-ranging actions/policies and prohibits the issuance of new implementing regulations related to Law No. 11 of 2020 concerning Job Creation.\(^{14}\)

Given the Constitutional Court's decision, the existence of Minister of Manpower Regulation No. 18 of 2022 raises questions regarding legal certainty in labor regulations in Indonesia, particularly concerning wages. The government

\(^{11}\) [https://www.kompas.id/baca/ekonomi/2023/04/03/sepanjang-2023-upah-minimum-mengacu-permenaker-nomor-182022, Sepanjang 2023, Upah Minimum Mengacu Permenaker Nomor 18 tahun 2022](https://www.kompas.id/baca/ekonomi/2023/04/03/sepanjang-2023-upah-minimum-mengacu-permenaker-nomor-182022)


should refrain from issuing labor-related regulations/policies for two years following the Constitutional Court's decision on the Job Creation Law because the prohibition on issuing new implementing regulations related to the Job Creation Law is also a government obligation. The legal certainty of the existence of Minister of Manpower Regulation No. 18 of 2022 concerning wages is questionable. However, when ten business owners associated with the APINDO filed a Constitutional Review Petition with the Supreme Court on November 29, 2022, with Case Number 72/P/HUM/2022, this regulation was deemed to alter and add new variables for calculating the minimum wage, contradicting Government Regulation No. 36 of 2021 concerning Wages. On February 20, 2023, the Supreme Court rejected the review petition of Minister of Manpower Regulation No. 18 of 2022, stating among its considerations that this regulation is not an implementing regulation of Law No. 11 of 2020 concerning Job Creation in conjunction with Government Regulation No. 36 of 2021.

This means that the rejection of the constitutional review petition confirms the continued validity of Minister of Manpower Regulation No. 18 of 2022. In one of the judges' considerations regarding the legal certainty questioned by the plaintiffs (ten entrepreneurs), the Panel of Judges deemed the filed petition inadmissible because it was premature. Premature filing is related to one of the bases for the emergence of this Minister of Manpower Regulation, which is Law No. 11 of 2020 concerning Job Creation. At the time this substantive review petition was filed, the Job Creation Law was conditionally unconstitutional for 2 years. In the process, the Government Regulation in lieu of Job Creation Law emerged, which is currently undergoing substantive constitutional review in the Constitutional Court. Because the petition regarding Minister of Manpower Regulation No. 18 of 2022 was deemed inadmissible, a new petition or a resubmission of the same petition can still be filed, albeit with the same legal basis and subject matter. The nature of the inadmissible petition is not due to the court rejecting the substance of the petition, but rather, it rejects the formal aspects of the petition's submission. Therefore, a new petition can be filed with the condition that any procedural errors are corrected in the subsequent petition.

CONCLUSION
The issuance of Minister of Manpower Regulation No. 18 of 2022 concerning the Determination of Minimum Wage for 2023 coincided with the Constitutional Court's conditional unconstitutionality declaration of Law No. 11 of 2020 on Job Creation (Cipta Kerja). The existence of Minister of Manpower Regulation No. 18 of 2022 is also influenced by the enforcement of Government Regulation No. 36 of 2021 concerning Wages. However, the promulgation of Government Regulation No. 36 of 2021 is inseparable from Law No. 11 of 2020 on Job Creation, which has been conditionally unconstitutional for 2 years. Therefore, the emergence of legislative products that are still pending the Constitutional Court's decision on the substantive review of the related laws should, for the sake of legal certainty, refrain from any legislative product issuance.

In the field of labor, with the Constitutional Court's decision regarding the conditionally unconstitutional Law on Job Creation, legal certainty is necessary to determine which legal products can be utilized, as this relates to investor confidence in Indonesia's economic climate. Minister of Manpower Regulation No. 18 of 2022 has been decided to remain valid while awaiting the Constitutional Court's decision on the substantive review of the Government Regulation in Lieu of Job Creation Law.

REFERENCES
[1] Books
[5] Law No. 11 of 2020 on Job Creation
[7] Minister of Manpower Regulation No.18 of 2022 on Minimum Wage for 2023
[8] External Link