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LEGAL ANALYSIS OF CONSTITUTIONAL COURT DECISION 168/PUU-XXI/2023 SECTORAL MINIMUM WAGES ACCORDANCE TO FAIR WAGES

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Abstract

The abolition of the Regency/Municipality Sectoral Minimum Wage (UMSK) under Law Number 6 of 2023 and Government Regulation Number 36 of 2021 created legal uncertainty by eliminating one of the legal instruments protecting workers within Indonesia's wage system. This issue was subsequently subjected to constitutional review, resulting in Constitutional Court Decision Number 168/PUU-XXI/2023, which restored the legal basis for UMSK. This study aims to analyze the Constitutional Court's *ratio decidendi* in deciding the constitutionality of UMSK regulations, examine the juridical implications of the decision for Indonesia's wage system, and formulate a reconstruction of Article 88C of Law Number 6 of 2023 as *ius constituendum*. This research employs a normative legal research method using statutory, conceptual, and case approaches. Legal materials were collected through library research and analyzed using a prescriptive method. The findings indicate that the Constitutional Court applied grammatical, systematic, teleological, and historical interpretation to reaffirm the State's obligation to guarantee workers' constitutional right to fair and decent wages through the reinstatement of UMSK. The decision was subsequently implemented through Government Regulation Number 49 of 2025, which regulates sectoral wage determination based on the Indonesian Standard Industrial Classification (KBLI), occupational characteristics and risks, and business scale. Nevertheless, this study finds that Article 88C still requires normative refinement to ensure legal certainty and regulatory harmonization. Accordingly, this research proposes a reconstruction of Article 88C that explicitly recognizes UMSK and its legal criteria, thereby strengthening legal protection for workers while ensuring legal certainty for employers. This reconstruction is expected to serve as a normative foundation for a more equitable, responsive, and sustainable wage policy

Keywords *:* Constitutional Court Decision, Regency/Municipality Sectoral Minimum Wage, Norm Reconstruction, Fair Wages.

INTRODUCTION

Wages are defined as a sum of money given as compensation for work or services rendered by someone(Saputri, 2024). Agus Wibowo, in his book, states that wages are a form of compensation provided by an employer to a worker who has fulfilled the orders and/or requirements stipulated in a valid agreement according to applicable laws and regulations (D. A. Wibowo, 2024). Further analysis reveals that wages are based on the reciprocal contractual relationship between the employer and the worker/laborer. Law Number 13 of 2003 concerning Manpower defines wages in Article 1, Number 30, which reads:

"Wages are the rights of workers/laborers received and expressed in monetary form as remuneration from an employer to workers/laborers, determined and paid according to an employment agreement, consensus, or statutory regulations, including allowances for workers/laborers and their families for work and/or services performed or to be performed."
The Employment Law not only provides legal certainty regarding wages but also serves as a legal basis for worker protection in industrial relations. Another sources of principality of

proper wages defined by International Labour Organization (ILO), on its 100th convention ILO established universal labour law standards, regulated the form of decent wages, and established the principle of non-discrimination in the work environment for male and female workers. These regulations are stipulated in Article 1, letters a and b, of the 1951 ILO Convention on Decent Wages, which states:

"Article 1- For the purposes of this Convention—

A. The term remuneration includes the ordinary, basic, or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
B. The term equal remuneration for men and women workers for work of equal value refers to rates of remuneration without discrimination based on sex"

The concept of Fair Wages is used as a benchmark for global welfare. Provisions related to fair wages are ratified and implemented by member countries that join the ILO. Indonesia, as one of the ILO member countries, also reflects the standards and legal instruments established by the ILO in national regulations. Indonesia then ratified the 100th ILO Convention on Decent Wages in 1951 in Law Number 80 of 1957 concerning the International Labor Organization Competence Agreement Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. The concept of decent wages developed after Indonesia passed Law Number 13 of 2003. This regulation created the concept of Decent Living Needs (KHL) which adopted and developed the principle of decent wages. KHL then established legal system regulated in Article 89 paragraphs (1) and (2) of the Labour Law, which states:

"(1) The minimum wage as referred to in Article 88 paragraph (3) letter a may consist of:

a. Minimum wages based on provincial or district/city areas;

b. Minimum wages based on sector within the province or district/city area.

(2) The minimum wage as referred to in paragraph (1) is directed towards achieving decent living needs."

However, this regulation did not last forever and thus the change of a law began with the existence of regulation number 6 2023 which nullify the existence of Minimum Wages Sector (UMSK). Workers, particularly those in certain sectors, feel that the Job Creation Regulation is biased towards the interests of employers and does not promote public welfare. The role of the UMSK, previously used as a legal system protecting the wage rights of workers in leading sectors, has been eliminated, and wages in these sectors have been made equal to those of workers in non-leading sectors. This provision has sparked conflict and criticism from workers and the workers demanded their rights to the council.

Considering the losses felt by the community, several representatives from labor unions, the Constitutional Court, upheld decision number 168/PUU-XXI/2023, recognizing that the regulation violated community rights. The Constitutional Court then reinstated the UMSK with the requirement that "the governor must establish a sectoral minimum wage for the province and may also be established for districts/cities."

The impact of legal ambiguity results in uneven implementation of the UMSK law. An example of the problem in East Java where the implementation of the UMSK is only carried out in 10 regencies/cities, namely Surabaya City, Sidoarjo Regency, Gresik Regency, Pasuruan Regency, Mojokerto Regency, Tuban Regency, Madiun Regency, Malang Regency, Banyuwangi Regency, and Bangkalan Regency. Meanwhile, as many as 28 other regencies/cities, including Tulungagung Regency, Blitar Regency, Blitar City, Kediri Regency, Kediri City, Trenggalek, Pacitan, Ngawi, Magetan, Ponorogo, Lumajang, Bondowoso, Situbondo, Jember, Bojonegoro, Lamongan, Nganjuk, Jombang, and several other areas, do not receive the determination of the UMSK so that workers in certain sectors only receive protection through the applicable UMK. This condition shows that sectoral wage protection in East Java has not been applied evenly even though the characteristics of the leading sectors are also developing in areas that do not receive UMSK.

The research is a necessity for the development of the wage regulation in Indonesia. This study analyzes the legal considerations of judges in the Constitutional Court Decision Number 168/PUU-XXI/2023 through normative juridical methods and prescriptive approaches. This research is expected to be able to provide constructive legal recommendations for improving the norms of Article 88C of Law Number 6 of 2023 so that they sync with the principle of fair wages and emphasizes optimal protection for Indonesian workers/laborers.

METHODS

The research method used in this study is a normative legal research method. This study also uses a literature study as a technique for collecting normative research data. The primary sources of this study focus on laws and regulations from Law 6/2023, the Constitutional Court Decision, Government Regulation No. 49 of 2025 and other related legal regulations related to employment and wages, making this study use a statutory approach. Secondary sources of this study consist of a collection of journals, books, and news related to employment law, employment history to current employment-related issues, making this study use a historical approach and case studies in the process. The tertiary research materials are taken from the KBBI (Indonesian Dictionary) and the Dutch dictionary to translate related research manuscripts. The legal material analysis technique used to conduct this research is a prescriptive legal material analysis technique.

RESULTS AND DISCUSSION

The concept of wages is a crucial pillar in the world of employment, bringing together various intersecting interests in employment relationships within the scope of labor law. Employment relationships within the scope of labor law encompass three main principles: wages, workers, and orders. Wages are the right of workers or laborers as compensation for work performed. From an economic perspective, wages serve as financial compensation for the sacrifice of energy, time, and expertise expended by labor.

A. **Construction of Norms of Sectoral Minimum Wages before and after the Article 88C Paragraphs (1) and (2) of Law Number 6 of 2023**

Indonesia once had a systematic occupational classification system through the Indonesian Occupational Health and Safety Index (KBLI), established by the Central Statistics Agency (BPS). KBLI is one of the standard classifications issued by the Central Statistics Agency (BPS) for economic activities. Article 1 of Statistics Indonesia Regulation Number 2 of 2020 concerning the Indonesian Standard Classification of Business Fields states, "In this Agency Regulation, the Indonesian Standard Classification of Business Fields is defined as the classification of Indonesian economic activities/actions that produce products/outputs, whether in the form of goods or services, based on the business field used as a standard reference and tool for coordination, integration, and synchronization of statistical data collection. The KBLI (Indonesian Employment Index) is used as a national standard for classifying economic activities based on business sector type. It divides business sectors into major sectors, such as agriculture, forestry, and fisheries; mining and quarrying; manufacturing; construction; wholesale and retail trade; transportation and warehousing; information and communications; financial services; and many more. In the context of labor law, the KBLI classification is crucial because it serves as an objective basis for determining business sectors, which are then used by regional governments to establish and determine wether an occupation categorize as an occupation that uses basic regional minimum wages or they must receive UMSK.The KBLI serves as a link between employment and legal policies, particularly wage policies, linking job types to wage types. Jobs with high working conditions and risks influence the wage levels and types of wages used. Jobs with low risk levels will receive relatively lower wages than workers in higher-risk jobs.

Major changes occurred with the enactment of Law Number 11 of 2020 concerning Job Creation (Law 11/2020). There are several massive changes to the employment system that are enacted in this regulation. One of the striking changes is the change in the Indonesian wage mechanism regulated in Law 11/2020 Article 81 Manpower Article 88C paragraph (1), and paragraph (2) which states "The Governor is obliged to determine the provincial minimum wage." "The Governor may determine the district/city minimum wage with certain conditions." In this regulation, it can be seen that the presence of the Job Creation Law eliminates the provisions regarding the minimum wage limit in certain work sectors or UMSK, and the word "can" in the article refers to a new system regarding the provisions for determining the minimum wage where previously the minimum wage was an absolute obligation for employers but after the presence of Law 11/2020 eliminated the obligation for employers to provide wages according to the minimum limit provisions in certain business scale conditions. The provisions of the Job Creation Law concerning the wage system were transferred to Government Regulation 36/2021 concerning Wages because the Job Creation Law was legally determined to be formally flawed and its legal status was conditionally unconstitutional in Constitutional Court Decision Number 91/PUU-XVIII/2021. In this decision, the Constitutional Court judges stipulated that the Job Creation Law would be declared permanently unconstitutional if it was not amended within two years. Government Regulation 36/2021 serves as a legal umbrella to replace the Job Creation Law to ensure that the legal basis for wages is not empty. In Government Regulation 36/2021, the Sectoral Minimum Wage UMSK remains abolished, and the minimum wage is divided into non-mandatory minimum wages for certain business scales in accordance with the wage mechanism established by the Job Creation Law.

Two years after the ratification of Constitutional Court Decision Number 91/PUU-XVIII/2021, the new law was enacted. This regulation, Law 6/2023, was enacted as a response to the revisions requested in Constitutional Court Decision No. 91/PUU-XVIII/2021 concerning wage policy in Indonesia. Similar to the minimum wage system stipulated in Law 11/2020, Law 6/2023 also removes the mandatory element from the minimum wage and eliminates the minimum wage sector. Law 6/2023 has sparked controversy, as it eliminated the sectoral minimum wage, which applies to workers employed by companies registered in the Indonesian Employment Information System (KBLI) as a sector with a specific wage burden, thus setting their wages at par with the minimum wage(Wijaya, 2023). This regulation, which eliminated sectoral workers' rights, drew public criticism, as it was deemed detrimental to the community. The wage reconstruction, which eliminated the UMSK, was deemed contrary to human rights and created an imbalance in the employment relationship, which is based on three main pillars: wages, work, and orders. On the other hand Law 6/2023 also erased the existence of KHL its fundamental aspect. KHL was established in the previous regulation 13/2003 about labour law and emphasizes concept of fair wages, thus it raised question to the people on why did the KHL removed?

The elimination of the UMSK instrument in Law 6/2023 has resulted in new consequences in the form of reduced protection for workers in certain sectors with more demanding work characteristics. Therefore, arguments have emerged that this policy is not fully in line with the objectives of worker protection as mandated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right of every person to work and to receive fair and decent remuneration and treatment in employment relations. This mandate states, "Every citizen has the right to work and a decent living for humanity." "Everyone has the right to work and to receive fair and decent remuneration in employment relations." Based on this description, it is clear that the element of command in employment relations is closely related to the principle of wages.

B. Analysis of the Constitutional Court Decision regarding the Fair Wages Principle reviewed from the perspective of the Decent Living Needs of Indonesian Workers

The command and workload received by workers provide the rationale for wage differentiation through the UMSK mechanism. Therefore, the elimination of the UMSK in Law Number 6 of 2023 raises legal issues because it has the potential to equate the conditions of workers who actually have different levels of responsibility and work risks. This situation prompted the Constitutional Court to improve the legal situation and ratify Decision Number 168/PUU-XXI/2023, reinstating the regulation of the sectoral Minimum Wage as a form of protection for the principles of justice and proportionality in the national wage system.

Hereby to the Constitutional Coourt Decision 168/PUU-XXI/2023, "….The norm of Article 88C in Article 81 number 28 of Law 6/2023 stipulates that the governor is obliged to set a provincial minimum wage and can set a district/city minimum wage. However, the Petitioners argue that the elimination of the sectoral minimum wage and the district/city minimum wage (UMK) could reduce worker protection. According to the court, the sectoral minimum wage is an important instrument in ensuring the welfare of workers in certain sectors that have different characteristics and work risks than other sectors. The regulation of the sectoral minimum wage provides more specific and fair protection to workers in these sectors, especially in conditions where certain sectors require higher wage standards due to heavier work demands or required specialization…Therefore, the elimination of the sectoral minimum wage provision contradicts the principle of protecting workers' rights, which are part of human rights, especially the right to work and to receive fair and decent remuneration and treatment in employment relations, as stipulated in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Based on the description of the considerations mentioned above, the regulation in the norm of Article 88C in Article 81 number 28 of Law 6/2023 must still guarantee protection by providing minimum wages for workers/laborers working in certain sectors. According to the Court, Article 88C in Article 81 number 28 of Law 6/2023 is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "including the governor being obliged to determine sectoral minimum wages in the provincial area and can be for districts/cities" Thus, the Petitioners' argument is legally justified in part."

The court dictate that the sectoral minimum wage is a wage protection instrument developed within the Indonesian labor law system in response to differences in characteristics, productivity, risks, and working conditions across business sectors. Contextually, the sectoral minimum wage is the minimum wage standard applicable to workers in specific sectors or fields of work with specific characteristics and set higher than the general minimum wage applicable in a given region. The existence of sectoral minimum wages is based on the premise that not all jobs have the same level of difficulty, responsibility, and risk, thus requiring differentiation in the wage system to ensure fairness for workers.Unlike provincial or district/city minimum wages, which apply generally to all business sectors within a region, the Regional Minimum Wage (UMSK) applies only to specific sectors determined based on specific criteria. Furthermore, the UMSK must be normatively higher than the Regional Minimum Wage (UMK) because its existence is intended to provide additional protection to workers in specific business sectors.

Based on the perspective of justice theory, the existence of the Minimum Wage (UMSK) has a strong philosophical foundation(R. F. Wibowo & Herawati, 2021). Aristotle, in his concept of distributive justice, explained that justice does not necessarily mean giving everyone the same amount, but rather giving something proportionally according to each individual's contribution, responsibility, and circumstances (Kasnelly & Sucitra, 2022). This concept is relevant in the wage system because workers who face greater risks and workloads should naturally receive higher compensation than workers who face less risk and workloads. Therefore, the Minimum Wage (UMSK) embodies the principle of distributive justice in industrial relations.The urgency of the Minimum Wage (UMSK) can also be explained through the theory of wage efficiency. George A. Akerlof and Janet L. Yellen explain that workers who receive wages they perceive as fair and adequate tend to have higher motivation, loyalty, and productivity than workers who feel their compensation is disproportionate to the work they do (Moho, 2022). Therefore, wage increases through sectoral mechanisms not only benefit workers but also have the potential to increase company productivity and promote stable industrial relations.

However, problem arises because the verdict given by the constitutional court which says that “including the governor being must determine sectoral minimum wages in the provincial area and can be for districts/cities”. The verdict given by the constitutional court contradicts with the purpose of optimalizing the workers’ right to be enacted. The terms of “must” and “can” in the court verdict bring question to the legal certainty because the two terms have different legal responsibility. The term “must” is a mandatory that must be implemented and have heavy burden while the term “can” is uses for voluntary action. The existence of the verdict may recreated the existence of UMSK however the difference of legal burden UMSK bring problem to the practical actions and the derived law(Erwanto, 2024).

Constitutional Court Decision Number 168/PUU-XXI/2023 is a clear example of the legal discovery process (rechtsvinding) carried out by constitutional judges. Legal discovery occurs when judges cannot find a norm that expressly regulates a matter and must therefore interpret and construct the law to fill the gap. In this case, the Court discovered a normative vacuum following the elimination of regulations concerning sectoral minimum wages. This vacuum has the potential to create legal uncertainty and reduce protection for workers in certain sectors. Therefore, the Court did not simply annul the norm under review but instead established a new norm through its ruling, stating that Article 88C paragraph (1) must be interpreted to include the governor's obligation to establish sectoral minimum wages at the provincial level and the ability to establish sectoral minimum wages at the district/city level. Thus, the Court not only acted as a negative legislator, invalidating norms, but also exercised a limited positive legislative function by establishing new constitutional norms through its ruling.

The normative construction established by the Court in this ruling still leaves issues related to the concept of vague norms. In legal theory, a norm is considered vague if its formulation is not clear enough to provide definitive guidance regarding the rights and obligations of legal subjects. This concept is often associated with wording ambiguity, which allows for differing interpretations. The phrase used by the Court, "the governor is obliged to determine the sectoral minimum wage in the province and may determine the sectoral minimum wage in the district/city," indicates a lack of clarity regarding the limits of the governor's authority to determine the minimum wage. The Court did not provide further explanation regarding the conditions under which the governor must determine the minimum wage, the parameters used in making this decision, or the legal consequences if the governor does not. As a result, this norm has the potential to create uncertainty in its implementation in the regions.

This ambiguity becomes even more apparent when analyzed through the perspective of imperative and facultative norms. In legal science, the word "obligatory" indicates an imperative norm, that is, a norm that must be implemented without any other option. Conversely, the word "may" indicates a facultative or discretionary norm, that is, a norm that gives authorized officials the freedom to choose whether or not to take an action. The use of these two terms within the same normative construction creates normative inconsistencies. On the one hand, the governor is required to establish the Regional Minimum Wage (UMSP) and the Sectoral Minimum Wage (UMSP), but on the other hand, the governor can only "set" the Regional Minimum Wage (UMSK). This results in various possible interpretations. Some may interpret the UMSK as entirely discretionary and therefore under no obligation to establish it. Others may interpret it as requiring the governor to establish the UMSK upon a recommendation from the Regional Wage Council. There is even the possibility that the governor can reject the UMSK recommendation even if the substantive requirements have been met. These various possibilities demonstrate that the norm established by the Court is still open to multiple interpretations.

This situation ultimately raises issues regarding the principle of legal certainty. According to Gustav Radbruch, one of the primary objectives of law is to create legal certainty through clear, consistent, and predictable regulations. In the context of labor law, legal certainty is crucial because it concerns workers' economic rights and employers' obligations. When a norm opens up the opportunity for differing interpretations, legal certainty becomes difficult to achieve (Kinanti, 2025). Furthermore, this situation also contradicts the principle of lex certa, which requires that every legal norm be formulated clearly and without ambiguity in its application. The principle of lex certa is part of the principle of the rule of law, which ensures that the public can know with certainty the legal consequences of an action (Uwiyono, 2026). ILO as an International organization that supervises its council member law enacment about labour also dictates that in the term of rights for the worker to have equal remuneration accordance to its 100th convention, which states that

“Article - 1- For the purpose of this Convention–

A. The term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;

B. The term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex”

In the context of fair wages, the above regulation emphasizes the principle of equal remuneration, which encompasses a substantive dimension of justice. The ILO requires not only formal equality but also equality that takes into account the social and economic realities of the work performed. This means that a wage system can be considered fair if it provides equal treatment for work of equal value, while also providing reasonable differentiation for work with higher levels of complexity, responsibility, or risk (Pertiwi, 2021). Indonesia has ratified ILO Convention No. 100 through Law No. 80 of 1957 concerning the Approval of ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. The principle of fair wages is also reflected in Article 88 Paragraph 1 of the Manpower Law, which states, "Every worker/laborer has the right to receive income sufficient to maintain a decent standard of living."

Normatively, the implementation of the ILO fair wages concept is a key issue, as Indonesia ratified ILO Convention No. 100 through Law No. 80 of 1957. This ratification creates a legal obligation for the state to ensure that the principle of equal remuneration for work of equal value is effectively implemented within the national legal system. From an international legal perspective, ratification of ILO conventions is not merely symbolic; rather, it binds states to align their legislation, public policies, and law enforcement practices with agreed-upon international standards.

The urgency of implementing fair wages has become increasingly apparent in the context of sectoral minimum wages following Constitutional Court Decision No. 168/PUU-XXI/2023. In this decision, the Court opened the way for the establishment of sectoral minimum wages in recognition of differences in the characteristics and risks of work across sectors. However, the Court did not provide clear parameters for assessing the value of work and the level of sectoral risk. As a result, the implementation of this policy in implementing regulations has created legal uncertainty and differing mechanisms across regions. From the perspective of the ILO's fair wages approach, this situation demonstrates the extreme urgency of adopting a consistent fair wage approach. Without objective parameters for assessing the value of work, sectoral wage policies have the potential to violate the principle of substantive justice because wage differences are no longer based on measurable work value but rather on inconsistent administrative policies (Febrianti et al., 2026). This contradicts the spirit of ILO Convention No. 100, which demands objectivity, transparency, and non-discrimination in the wage system.

One of the fellow members and one of Indonesia neighbour country who also ratified ILO regulation, Malaysia also use fair wages as an integrated system to operate proper minimum wage, Malaysia, who similarly have an integrated sectoral minimum wage not only with a worker with heavy labour but also to the regular worker and even Gigs worker as well. One of the regulation of Malaysia's labour law is legalized in Act 732 National Consultative Council law 2011 that accordance to clause 2 of article 4 that the national wages consultative council is responsible to make sure that both minimum wages for regular worker, gigs, and the workers from a certain sector ensured to get their proper payment. By the time of 2026, Malaysia enacted minimum wages for worker to be 1.700 RM, or if calculated in Rupiah then it has the same value as seven billion six hundred rupiah. It is one point 4 percent higher than the highest minimum sectoral wage in Jakarta which has value as five billion and four hundred rupiah. In late 2025, Indonesia also has 52 percent rate of workers who get minimum wages even less than UMP. It is a concerning matter with the problem of workers minimum case in Indonesia. Ensuring the rights of worker's wage is a fundamental issue that must be solved at once. Indonesia must immediately reconstruct the renewal of minimum wages law in Indonesia to strengthen the legal ensurity.

A more consistent reconstruction of the norm, consistent with the goal of protecting workers' constitutional rights, would be to amend the constitutional meaning of Article 88C of Law Number 6 of 2023 to read:

"Unless interpreted, the governor is obliged to determine the provincial sectoral minimum wage and the district/city sectoral minimum wage based on business scale, work risks, and standard business field classifications in accordance with statutory provisions."

This formulation better reflects the principle of legal certainty because it eliminates the dualism between imperative and optional norms contained in Constitutional Court Decision Number 168/PUU-XXI/2023. Furthermore, this formulation also provides clear parameters regarding the basis for determining the UMSK, eliminating reliance on the subjectivity of local governments. The UMSK is not determined arbitrarily, but based on indicators recognized in the national legal system: business scale, work risks, and the Indonesian Standard Business Field Classification (KBLI).

From a legal perspective, this reconstruction also has a strong normative basis because it does not create a new, stand-alone norm but utilizes existing legal instruments. Law Number 6 of 2023 and its implementing regulations recognize business classifications based on micro, small, medium, and large business scales. Furthermore, Government Regulation Number 49 of 2025 also stipulates that certain sectors can be defined based on the KBLI (Indonesian Workers' Social Security) and work risk characteristics that differ from other sectors. Therefore, the use of indicators of business scale, work risk, and business classification is not a new concept, but rather a form of harmonization between the Constitutional Court ruling and existing wage regulations.

This normative reconstruction also addresses concerns about rising production costs, which are often cited as a reason for rejecting the implementation of the Minimum Wage (UMSK). In practice, not all companies will be subject to the obligation to pay the UMSK because the Indonesian legal system differentiates companies' capabilities based on their business scale. Article 90B of Law Number 6 of 2023 even provides an exception to the minimum wage provisions for micro and small businesses. Therefore, the obligation to implement the UMSK is normatively relevant only to business sectors that have the economic capacity to provide higher compensation to workers commensurate with their level of risk and productivity.

CLOSING

The normative research gained by analyzing the considerations of judges in Constitutional Court Decision Number 168/PUU-XXII/2024 related to the extermination of sectoral minimum wage law in article 88C, there are several considerations of judges that can be further considered to ensure compliance with constitutional principles and applicable laws and regulations.

CONCLUSION

The Constitutional Court judges' considerations in Decision Number 168/PUU-XXI/2023 are substantially in line with the principle of fair wages, recognizing that workers in certain sectors with varying characteristics, risk levels, competencies, and productivity are entitled to fairer wage protection. These considerations also reflect the implementation of the values of ILO Convention Number 100, ratified by Indonesia, and the concept of Decent Living Needs as the basis for national wage policy. However, the principle of fair wages has not been fully realized in practice due to the lack of detailed regulations regarding the determination formula, priority sector indicators, evaluation mechanisms, and standards for the implementation of Sectoral Minimum Wages nationally. This condition causes the implementation of the UMS to still depend on the policies of each regional government, so that protection for workers in certain sectors has not been optimally implemented. Therefore, the improvement of the norms of Article 88C and its implementing regulations is an urgent need so that the principle of fair wages does not merely remain a legal consideration of the Constitutional Court but is also effectively implemented in the national wage system.

ADVICE

a. Employers

Employers are expected to view the minimum wage (UMS) not merely as a company expense, but as an investment in the quality of human resources and the sustainability of industrial relations. Wage determination should take into account the level of job risk, productivity, worker competence, and company capabilities, while adhering to the principle of fair wages to create harmonious working relationships, increase company productivity, and minimize the potential for industrial relations disputes.

b. Workers

Workers and labor unions are expected to improve their understanding of their constitutional rights in the wage sector and actively participate in bipartite negotiation mechanisms, wage councils, and the oversight of the implementation of the UMS policy. Such participation is necessary to ensure that the wage policy truly reflects the real conditions of the employment sector and ensures the equitable fulfillment of decent living needs.

c. Legislators

Legislators, together with local governments, need to improve Article 88C of Law Number 6 of 2023 and its implementing regulations by formulating more explicit norms regarding the status of the UMS. These improvements should include the obligation to determine the minimum wage (UMS), criteria for sectors eligible for the UMS, a formula for determining sectoral wages, a periodic evaluation mechanism, and synchronization between laws, government regulations, and other implementing regulations to create legal certainty, uniform application, and optimal legal protection for workers and employers.

d. Constitutional Court Judges

In future decisions on both conditionally constitutional and conditionally unconstitutional matters, the Constitutional Court is expected to use clearer, more operational, and less open-ended formulations of norms, particularly those related to citizens' socioeconomic rights. Legal considerations should not only focus on restoring the constitutionality of the norm but also consider the effectiveness of the decision's implementation within the legal system to avoid legal uncertainty at the implementation level and to provide concrete legal protection for all parties in industrial relations.

BIBLIOGRAPHY

Book:

Wibowo, D. A. (2024). *Hukum Perburuhan* (D. S. T. Joseph (ed.)). Yayasan Prima Agus Teknik.

Maiyestati. (2025). *Hukum perburuhan dan ketenagakerjaan* (1st ed.). Universitas Bung Hatta.

Journal:

Erwanto. (2024). *Perlindungan Hukum Pekerja Atas Upah Minimum Sektoral , Pertambangan Minyak dan Gas Bumi di Kota Dumai Berdasarkan Peraturan Menteri Ketenagakerjaan Nomor 15 Tahun 2018 tentang Upah Minimum*. *8*, 4084–4094. https://share.google/ubhboqKXGfv5fgGQS

Febrianti, L., Syafrinaldi, S., Ibnususilo, E., Suparto, S., & Febrianto, S. (2026). *Fair Wages and Decent Living Standards : A Critical Analysis of Indonesia ' s Labor Law Framework*. *14*(04), 751–757. https://doi.org/10.18535/ijsrm/v14i04.lla01

Kasnelly, S., & Sucitra. (2022). Analisis Upah Kerja di Indonesia. *Al-Mizan Jurnal Ekonomi Syariah*, *5*(1), 61–70. https://r.search.yahoo.com/_ylt=Awr1UYTIVFxqbQIAyAvLQwx.;_ylu=Y29sbwNzZzMEcG9zAzEEdnRpZAMEc2VjA3Ny/RV=2/RE=1785645513/RO=10/RU=https%3A%2F%2Fejournal.an-nadwah.ac.id%2Findex.php%2Falmizan%2Farticle%2Fdownload%2F414%2F343%2F/RK=2/RS=WwRB6reqNX3YQtlAxbJ8e0Xl5EE-

Kinanti. (2025). Hukum Formal dan Praktik Sosial dalam Mengurai Kesenjangan Upah Gender di Sektor Informal Indonesia. *Media Hukum Indonesia*, *4*(1), 316–323. https://doi.org/https://doi.org/10.5281/zenodo.17861862

Moho, H. (2022). Hakikat Upah Dalam Hubungan Ketenagakerjaan. *Panah Keadilan*, *1*, 117–126.

Pertiwi, D. A. (2021). PENERAPAN UPAH MINIMUM PEKERJA PERUSAHAAN JASA. *Lex LATA: Jurnal Ilmiah Ilmu Hukum*, 377–387. https://share.google/7Ueh55mGcp8S8R7gQ

Saputri, A. F. D. (2024). *ANALISIS YURIDIS PERTIMBANGAN HAKIM TERHADAP DISKRIMINASI SYARAT USIA KERJA BERDASARKAN UNDANG UNDANG DASAR 1945 DAN PERATURAN PERUNDANG UNDANGAN (STUDI PUTUSAN MK NOMOR 35/PUU-XXII/2024)*. Journal Of Labour Law and Industrial Relation Faculty of Law, Universitas Negeri Surabaya. https://journal.unesa.ac.id/index.php/ijllir/article/view/38772

Uwiyono, A. (2026). *When Uniform Standards Are Missing : Judicial Inconsistency in Wages During Termination Proceedings in Indonesia THE INDONESIAN JOURNAL OF SOCIO-LEGAL STUDIES (IJSLS) When Uniform Standards are Missing : Judicial Inconsistency in Wages*. *5*(2). https://doi.org/10.54828/ijsls.2026v5n2.1

Wibowo, R. F., & Herawati, R. (2021). Perlindungan Bagi Pekerja Atas Tindakan Pemutusan Hubungan Kerja (PHK) Secara Sepihak. *Jurnal Pembangunan Hukum Indonesia*, *3*(1).

Wijaya, K. et all. (2023). Constitutionalization of Minimum Wage as the Right of Laborers/Workers. *International Journal of Social Science Research and Review*, *6*(4), 416–431. https://doi.org/https://doi.org/10.47814/ijssrr.v6i4.1076

Website:

Effendy. (2024). Tuntut penetapan UMSK, 50 ribu buruh ancam mogok kerja selama 3 hari. *Koran Perdjoeangan*. https://www.koranperdjoeangan.com/tuntut-penetapan-umsk-50-ribu-buruh-ancam-mogok-kerja-selama-3-hari

Nugraha. (2025). Kecewa dan tolak keputusan Dedi Mulyadi soal upah minimum sektoral, perwakilan buruh ancam gelar demo. *Liputan6*. https://www.liputan6.com/news/read/6245050/kecewa-dan-tolak-keputusan-dedi-mulyadi-soal-upah-minimum-sektoral-perwakilan-buruh-ancam-gelar-demo

Sandy, F. (2024). Pengusaha teriak kesal gegara penetapan upah minimum sektoral 2025. *CNBC Indonesia*. https://www.cnbcindonesia.com/news/20241220123255-4-597621/pengusaha-teriak-kesal-gegara-penetapan-upah-minimum-sektoral-2025

STATUTORY REGULATIONS

The 1945 Constitution of the Republic of Indonesia.

Law Number 80 of 1957 concerning the Agreement on the International Labor Organization Convention Concerning Equal Remuneration for Male and Female Workers for Work of Equal Value, State Gazette of the Republic of Indonesia Number 171 of 1957, Supplement to the State Gazette of the Republic of Indonesia Number 1492.

Law Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia Number 39 of 2003, Supplement to the State Gazette of the Republic of Indonesia Number 4279.

Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, State Gazette of the Republic of Indonesia Number 41 of 2023, Supplement to the State Gazette of the Republic of Indonesia Number 6856.

Government Regulation Number 49 of 2025 concerning the Second Amendment to Government Regulation Number 36 of 2023. 2021 concerning Wages, State Gazette of the Republic of Indonesia 2025 Number 187, Supplement to the State Gazette of the Republic of Indonesia Number 7148.