

## **LAW ENFORCEMENT OF CRIMINAL OFFENSE ON LABOR LAW AS PROTECTION TO LABOR WAGES**

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### **Abstract**

*As the regulator, government protects workers' rights to decent wages by regulating criminal sanctions against parties who violate the provisions regarding wages. This regulation can be found in Article 185 (1) in juncto Article 90 (1) Law Number 13 of 2003 concerning Labor which specifically regulates wages. The aim of this research is to describe law enforcement, article 185 (1) in juncto article 90 (1) and to analyze the effectiveness of article 185 (1) in juncto article 90 (1) in protecting workers' rights of minimum wages. This research is using empirical legal research with a sociological juridical approach. This research is using primary data collected by field research, and secondary data obtained through library research. The results of the study show that in Kediri, the law enforcement for criminal offence in labor law, especially about wages is committed out by the Labor Inspector. However, labor inspection is still conducted by big and medium industries only, while for the small or micro enterprises sectors it is not found. Furthermore, Article 185 (1) in juncto Article 90 (1) it is considered effective protecting labor wages in a big and medium industrial only, because in the small or micro enterprises, there are many workers who get salary below the minimum wages*

**Keywords: Law Enforcement, Effectiveness, Crime, Wages**

### **INTRODUCTION**

Each country is established by having certain objectives. The purpose of the country is important because it will determine the direction of a state organization as a guideline on how the country is governed and controlled and how the lives of its people are regulated according to that goal.<sup>1</sup> In general, the goal of a country is usually to create prosperity, welfare, and happiness for the people.<sup>2</sup> As a country, the Unitary State of the Republic of Indonesia (Negara Kesatuan Republik Indonesia or NKRI) also has a purpose, and this goal can be found in the constitution preamble, in the fourth paragraph of 1945 Constitution of Indonesia to protect all the nation and the whole land of Indonesia, and to improve public welfare, to educate the people and to participate in the establishment of a world order based on the freedom, perpetual peace and social justice.<sup>3</sup> The purpose of this country was then written down in the form of articles in the 1945 Constitution.

One of the objectives of the NKRI is to improve public welfare. One of the articles governing general welfare is article 27, paragraph (2) which states that every Indonesian citizen has the right to work and livelihood that is appropriate for humanity. The actually

<sup>1</sup> I Gde Pantja Astawa and Suprin Na'a, *Memahami Ilmu Negara dan Teori Negara*, PT. Refika Aditama, Bandung, 2009, hlm. 45.

<sup>2</sup> *Ibid.*

<sup>3</sup> Undang-Undang Dasar 1945, Pembukaan (Preamble), paragraf 4.

simple meaning of this article is that all forms of work carried out by Indonesian citizens to meet their needs must be based on humanitarian values that are universally acceptable. The provisions in this article are then reaffirmed by Article 28D paragraph (2). This article states that every person has the right to work and receive compensation and fair and proper treatment in employment relations. From this article, it can be concluded that getting a fair and decent wages is the right of labor which is protected by law.

In Law Number 13 of 2003 concerning Labor (Labor Act), it has been given an understanding that what is meant as labor is any person who is capable of doing work to produce goods and or services both to meet their own needs and for the community. Whereas workers, can be defined as every person who produces goods or services that have economic value whether he receives a salary or works alone involved in manual activities. Or, as workers who work in employment relations with employers by receiving wages and/ or other forms of rewards. As workers, they are entitled to receive wages from employers, while employers are obliged to pay wages to their workforce.

It is unfortunate that the basic rights of workers to receive decent wages that have actually been protected by this law do not seem to have materialized. The existing fact is that the welfare of workers in Indonesia has still not been achieved. Labor conditions in Indonesia are still very weak, poor and marginalized. The wages they receive are often insufficient to support themselves and their families.<sup>4</sup> However the necessities of life are increasing, while the wages they receive are relatively fixed. Even after decades of reformation, workers still face a variety of crucial problems, whether in external contexts such as labor relations with the government and employers or in internal problems from the quality of their resources to the conflict of interests between union officials of workforce. This tends to bring labor to a weak bargaining position.<sup>5</sup>

The government has actually tried to improve the worker condition. One of the government ways to improve the lives of workers is by setting rules regarding wages. The purpose of the government to regulate salary and labor wage is for workers to earn income that meets decent livelihoods for humanity. The role of the government in this case is to establish wage policies that protect workers in order to meet the living needs of the workers and their families.<sup>6</sup>

Labor wage arrangements in Indonesia are regulated in the Article 88 paragraph (3) of the Labor Act. Based on this article, Indonesia follows the concept of wages based on minimum wages. This minimum wage is determined by the government even though the amount depends on each region.<sup>7</sup> This results in that the amount of wages given by employers to workers is not the same in each region. Until now, the issue of wage fixing has always been a crucial problem for labors, the industry and the government.<sup>8</sup> Every year when minimum wages are set in the regions it is always like a “battle” for workers to hope that the wages set by the government in that year will be able to improve their welfare.<sup>9</sup> Wages are the goal of the workforce in carrying out work. Every workforce always expects more wages and increases year by year. Provisions regarding minimum

<sup>4</sup> Rachmad Syafa'at, *Gerakan Tenaga kerja dan Pemenuhan Hak Dasarnya*, In-Trans Publishing, Malang, 2008, hlm. 26

<sup>5</sup> National Geographic, *Persoalan Tenaga kerja Indonesia Setelah Era Reformasi*, <http://nationalgeographic.co.id/berita/2012/04/persoalan-tenaga-kerja-indonesia-setelah-era-reformasi>. Accessed on July 1, 2017

<sup>6</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2009, hlm. 108 - 109

<sup>7</sup> *Ibid*, p. 102

<sup>8</sup> Eggi Sudjana, *Tenaga kerja Menggugat: Perspektif Islam*, Pustaka Sinar Harapan, Jakarta, 2002, hlm. 88

<sup>9</sup> Yusuf Waluyo Jati (Ed), “Buruh Kediri Minta Upah Naik Rp650.000 Tahun Depan, Ini Saran Wali Kota”, <http://industri.bisnis.com/read/20160502/12/543567/buruh-kediri-minta-upah-naik-rp650.000-tahun-depan-ini-saran-wali-kota>, Accessed on June 1, 2016

wages as the first protection of wages in Indonesia are the most important, because the minimum wage is the basis for calculating other kinds of wages.

Labor Act does not only contain labor norms that regulate labor relations and their implications between workers and employers, but also there are sanctions ranging from administrative to prison sentences. The criminal provisions are regulated from articles 183 to 189, but in practice, rarely is the criminal mechanism in this law used by law enforcement officials to implement the existing norms. It is commonplace that often reports or complaints of criminal acts of employment to the authorities, for example the police, cannot be followed up by reasoning that the problem of relations between workers and their employers, can't be followed up. Thus, the criminal offense on labor law that should have been implemented could not be enforced optimally. This happened because of a wrong perception not only from law enforcement instruments but also from other stakeholders on the labor issues.

For example, the provisions in Article 185 paragraph (1) in *juncto* Article 90 paragraph (1) of the Labor Act. This article regulates criminal acts of paying wages below the minimum wage. But in practice, employers who pay their workers less than the minimum wage without going through the mechanism of deferment approved by the local Governor are can still be found.<sup>10</sup> This should not be justified, payment of minimum wages for workers in a company without the approval of the local governor by agreeing to suspend payment of minimum wages in the current year is a violation of the law even though there is agreement with workers and labor union at the company. The provisions in this article are pure criminal acts (not complaints). It means this crime does not need a complaint. The investigation must be carried out by the authorities (Police Investigators and or Supervisory Staff) without having to wait for complaints from victims (worker). It also means that everyone has the right to report this crime, even though he is not a victim. The question is why only few cases of employers paying less than the minimum wage are brought to criminal justice, and most are only settled in the industrial relations court? Even though the provisions of the article above are clear that paying less than the minimum wage is a crime.

Based on the descriptions above, this study aims to describe law enforcement and analyze the effectiveness of the criminal penalties in the Labor Act, especially article 185 (1) in *juncto* article 90 (1) which regulates wages in protecting workers' rights to decent wages for humanities. Thus, the expectation that wages received by workers are decent and fair not only for employers and the government, but especially for the workers themselves is not a grandiose thing, because it returns to the meaning contained in Article 27 paragraph (2) The 1945 Constitution, that every citizen has the right to obtain a decent livelihood for humanity.

This research will use empirical legal research as the method. This research will serve to see the law in the real sense and examine how the law works in the society.<sup>11</sup> This research will describe how the law enforcement of the criminal offense in the Labor Act at Kediri Region is, how this law works in the society, whether or not the regulation works and what factors influence the effectiveness. The approach method that will be used in this research is sociological jurisprudence where juridicially the researcher will analyze article 185 (1) in *juncto* Article 90 (1), while sociologically this research will describe law enforcement and examine the effectiveness of the article, how it is

<sup>10</sup> Ady Thea, *Penegakan Pidana Perburuhan Lemah*, <http://m.hukumonline.com/berita/baca/lt555c4802b2e6c/penegakan-pidana-perburuhan-lemah>, Accessed on July 1, 2017

<sup>11</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Empiris dan Normatif*, Pustaka Pelajar, Yogyakarta, 2010, hlm. 280

implemented in the society and how effective it is in protecting labor rights to wages that are appropriate for humanity.

This research was conducted in the Kediri Region in East Java Province. In this research, the data used are: (1) primary data obtained by distributing questionnaires and interviews with informants, (2) secondary data obtained from literature studies on legislation, library books and other documents. The data and information obtained from the results of the study were analyzed by descriptive qualitative method, namely a method of analyzing data by grouping and selecting data obtained from research according to the quality and truth. The data is then connected with theories and legislation obtained from literature studies, so that answers to the problems in this study are obtained.

## DISCUSSION

### Criminal Offense on Labor Act, Wages Sector

It is faced the rapid development of the progress of human life one of whose drivers is the progress in the field of science and technology. The progress of human life certainly affects the social change, which also creates social problems. To overcome these social problems, the state must be able to be present and position itself as a regulator, so that the goals of the state, people' welfare achievements, can be achieved.<sup>12</sup>

Criminal law is included, a new form of law is needed in this field not only limited to the criminal provisions formulated in the Indonesian Criminal Code (here in after abbreviated as *KUHP* or *Kitab Undang-Undang Hukum Pidana*), but spread to various laws and regulations outside the *KUHP* which discuss many new criminal offense formulations that arise due to the development of science and technology. Andi Hamzah argues that the rapid social change needs to be accompanied and followed by legal regulations along with criminal sanctions.<sup>13</sup> This more specific criminal law is created because of several conditions including:<sup>14</sup>

- 1) There is a process of criminalization or a certain act in a community. Developments in a society lead to the changes of the views and judgments of a society on a particular act, where it was originally considered not an evil thing and the act has not been in a statutory regulation. This happens due to changes in norms or can also be caused by technological developments in people's lives.
- 2) The existing law is considered to be inadequate against changes in norms and technological developments in a society, while changes to existing laws are considered time consuming.
- 3) There is an urgent situation so that a special regulation needs to be created to immediately handle it.
- 4) There is a special process of action, where if the existing process is used, there will be difficult to prove it.

One of the regulations that arrange criminal offense that is not contained in the *KUHP*, is Law Number 13 of 2003 concerning Labor (Labor Act) which regulates criminal offense in the employment. Employment is anything related to labor at the time before, during and after the completion of the employment relationship. Labor Act itself actually stands in two sectors of law that is public and private. Labor Act is said to be in the public domain because labor law has a protective, forceful character and

<sup>12</sup> Aristo Prima, "Kebijakan Hukum Pidana Terhadap Tindak Pidana di Bidang Ketenagakerjaan", *Jurnal Mercatoria* 9, No. 2 2016, hlm. 158

<sup>13</sup> Andi Hamzah, *Delik-Delik yang Tersebar di Luar KUHP*, PT. Pradnya Paramitha, Jakarta, 1995, hlm 9

<sup>14</sup> Loeby Loqman, *Delik Politik di Indonesia*, Ind- Hill. Co, Jakarta, 1993, hlm. 11

sanctions.<sup>15</sup> On the other hand it is said to be in the private domain because in Labor Act there is a contractual legal relationship in the context of conducting production activities based on the principle of balance of interests.<sup>16</sup>

Labor Act arose because of the inequality of bargaining positions between employers and workers, especially for workers whose bargaining position is weaker than employers.<sup>17</sup> The basic objective of Labor Act is to protect the weak parties, in this case workers from the arbitrariness of employers who can arise in employment relations so it provides legal protection and realizes social justice. To realize the objectives of this law, the process of establishing and enforcing law is needed through legal politics as a means.<sup>18</sup> In this case, legal politics as a basic policy functions as a means to realize the development of national law, where legal politics determines the law that should be applied to regulate various aspects of life of society and the state, which is called legal policy,<sup>19</sup> this legal policy is taken by the government (state) in the field of labor, one of which is using criminal law efforts.

The use of criminal law efforts by the government (state) in the field of labor is seen as one of the efforts that can be used to overcome problems in the field of labor, especially for the purpose of achieving the welfare of workers, and to realize the welfare of society at large.<sup>20</sup> Another reason for the use of criminal law efforts in the field of labor can refer to the purpose of criminal law itself, which is based on Absolute theory (*Vergeldingstheorie*), the purpose of criminal law is to retaliate against perpetrators of crimes that cause misery to others.<sup>21</sup> As well as according to the Relative theory (*Doeltheori*), that the purpose of criminal law is to make deterrent, improve personal convicts and make convicts helpless.<sup>22</sup>

The criminal acts themselves generally consist of 2 (two) types, offense (*rechtsdelicten*) and violation (*wetsdelicten*).<sup>23</sup> These offenses and violations are based on the reason that in reality there are acts that are basically despicable and deserving of being punished, even before being declared so by legislation (offense), and there are also new acts which are against law and are convicted after the legislation states so (violation).<sup>24</sup> This kind of crime is also known in the Labor Act where criminal acts in the form of offenses are regulated in Article 183 paragraph (1), Article 184 paragraph (1), and Article 185 paragraph (1). Whereas criminal acts in the form of violations are regulated in Article 186 (1), Article 187 (1) and Article 188 (1).

Criminal acts relating to self-remuneration are regulated in Article 90 paragraph (1) of the Labor Act. This article stipulates that employers are prohibited from paying wages lower than the minimum wage. On the other hand the criminal provisions are regulated in Article 185 paragraph (1) which states that an act violates Article 90 paragraph (1) is subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and or a fine of at least Rp 100,000. 000.00 (one hundred million rupiahs) and at most Rp.400,000,000.00 (four hundred million rupiahs).

<sup>15</sup> Aristo Prima, *Op Cit*, hlm. 161

<sup>16</sup> *Ibid*,

<sup>17</sup> Rachmad Syafa'at, *Op Cit*, hlm. 26.

<sup>18</sup> Agusmidah, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum*, PT. Sofmedia, Jakarta, 2011, hlm. 1

<sup>19</sup> *Ibid*, hlm. 2-3

<sup>20</sup> Budi Santoso dalam Aristo Prima, *Op Cit*, hlm. 158

<sup>21</sup> Leden Marpaung, *Asas, Teori, Praktik Hukum Pidana*, Jakarta: Sinar Grafika, 2005, hlm. 4

<sup>22</sup> *Ibid*

<sup>23</sup> Adami Chazawi, *Pelajaran Hukum Pidana 1: Bagian 1*, Raja Grafindo Persada, Jakarta, 2002, hlm. 123

<sup>24</sup> *Ibid*.



The criminal sanctions stipulated in Article 185 paragraph (1) of the Labor Law are cumulative, namely imprisonment with a minimum of 1 year and a maximum of 4 years plus a minimum fine of 100 million maximum of 400 million. The criminal sanctions are sufficient and are expected to cause deterrent effects for those who violate them. Workers / labor unions often assume that the threat of criminal sanctions in the labor law is inaccurate, whereas the employers feel that the threat of criminal sanctions in the law in the field of labor is very heavy. The purpose of giving such severe sanctions is to provide protection for workers' rights and to give force to the fulfillment of normative provisions in the field of employment, especially by employers.

### **Enforcement of Article 185 (1) in Juncto Article 90 (1) in Kediri Jurisdiction**

Kediri is a city in East Java Province which is the third largest city in the province.<sup>25</sup> The city itself has an area of 63.40 km<sup>2</sup> with a population in 2012 of 312,331 people with a density of 4,926 people per km<sup>2</sup>.<sup>26</sup> The City Government of Kediri declared "Tri Bina Kota" as the foundation of the development of the City of Kediri which relies on the education, trade, services and industry sectors. Based on that foundation, the Government commits itself to actively promote the industrial sector by strengthening the carrying capacity for industrial development as one of the bases for strengthening the reliable local economy.<sup>27</sup> With its position as a developing urban area, Kediri has many industrial business units with varied business scales, covering large, medium and small industries. Large industries in Kediri are engaged in the sugar and cigarette industries, while for the Small and Medium Enterprises, the majority are engaged in food production and processing of agricultural products.<sup>28</sup>

Data collection in this research was conducted by interviewing relevant parties. The related parties referred to in this study are the officer of Cooperatives, Micro Enterprises, and Labor Service in Kediri. Those agencies carry out regional government affairs in the fields of cooperatives, micro-enterprises, and labor in Kediri based on the principle of autonomy and co-administration. Based on the results of the interview, data was obtained that in Indonesia the task of supervision of the enforcement of Labor Act was carried out by the Labor Inspector. The definition of Labor Inspector can be found in the Labor Act, when labor inspection is the activity of supervising and enforcing the implementation of laws and regulations in the field of labor.<sup>29</sup>

In general, the tasks and authorities of the Labor Inspector are regulated in Law Number 3 of 1951 concerning the Declaration of Applicability of the Labor Inspection Act of 1948 Number 23 of the Republic of Indonesia for the whole Indonesia. In Law Number 3 Year 1951, it is regulated about what are the rights of supervisor employees in supervising employers / companies. Labor inspection is also regulated in articles 176 through article 181 of the Labor Law. The substance of articles 176 through article 181 of the Labor Law was followed up with Presidential Regulation Number 21 of 2010 concerning Labor Inspection.

At present there is a Directorate General of Labor Development and Supervision under the Ministry of Labor. The Director General is a technical work unit tasked with

<sup>25</sup> Kediri Kota, "Selayang Pandang Kota Kediri", <https://www.kedirikota.go.id/halaman/kota-kediri>, Accessed on October 1, 2018

<sup>26</sup> *Ibid*,

<sup>27</sup> Kediri Kota, "Potensi Industri Kota Kediri", <https://www.kedirikota.go.id/read/Investasi/31/1/49/Industri.html#>, Accessed on October 1, 2018

<sup>28</sup> *Ibid*,

<sup>29</sup> Article 176, Law Number 13 of 2003 concerning Labor (Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan)

providing employment protection for workers and employers in Indonesia. The Director General has a vision to create a prosperous and fair industrial society by promoting legal certainty.<sup>30</sup>

Based on Labor Minister Regulation No. Per.03 / Men / 1984 concerning Integrated Labor Inspection, the implementation of supervision aims to:

- 1) Supervise the implementation of labor legislation.
- 2) Provide technical information and advice to employers or administrators and / or workers on matters that can guarantee the effective implementation of the Laws and Regulations in the field of Employment concerning employment relations and employment conditions in a broad sense.
- 3) Collect information materials for the formation and refinement of new labor laws and regulations.

Since the enactment of Law Number 23 Year 2014 amended by Law Number 2 of 2015 concerning Regional Government, Government affairs in the employment sector are a joint matter between the central government and the provincial government. So that labor inspection in the City of Kediri is currently also the duty and authority of the Labor Office of East Java Province.<sup>31</sup> In accordance with its objectives, the existence of labor inspectors is mainly to oversee the implementation of legislation relating to employment. Also included is supervision related to criminal acts in the wage sector. If there are indications of violations of labor criminal law, labor inspectors can be given special authority as investigators of civil servants to initiate investigations into employment crimes.<sup>32</sup> This investigation is intended to get information and find sufficient evidence about the occurrence of criminal acts in the field of employment.<sup>33</sup>

Law enforcement is an important part of the legal system. Enforcement of Labor Law itself is very influenced by 3 (three) parties, each of which plays an important role. These parties are entrepreneurs, workers / labor unions and the government.<sup>34</sup> The upholding of this law is very dependent on human factors, because even though a legal procedure is good with the support of facilities and infrastructure, but with the law enforcers' fragile mentality and low public awareness, the legal product will certainly not be enforced.<sup>35</sup>

Based on the results of the study, in Kediri, law enforcement on Article 185 (1) in juncto Article 90 (1) which regulates criminal offense on wages sector is carried out by the Labor Inspector of the East Java Provincial Labor Office. Based on the results of labor inspection, in Kediri all large and medium industrial entrepreneurs have provided wages in accordance with the provisions of the legislation. Employment advocates conducted in the City of Kediri have only been implemented for the medium and large industrial sectors, while for the micro industries, there is no data on labor inspection.<sup>36</sup>

<sup>30</sup> International Labour Organization: Kantor Jakarta, "Lembar Fakta: Pengawasan Ketenagakerjaan di Indonesia", [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_549703.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_549703.pdf), Accessed on October 1, 2018

<sup>31</sup> Interview with Mr. Dedi Haryadi SH, MH, Head of Industrial Relation Division on Cooperatives, Micro Enterprises, and Labor Service in Kediri, July 5, 2018

<sup>32</sup> Article 182 (1), Law Number 13 of 2003 concerning Labor (Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan)

<sup>33</sup> Article 182 (2), Law Number 13 of 2003 concerning Labor (Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan)

<sup>34</sup> Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, PT. Citra Aditya Bakti, Bandung, 2003, hlm. 180

<sup>35</sup> *Ibid.*

<sup>36</sup> Interview with Mr. Dedi Haryadi SH, MH, Head of Industrial Relation Division on Cooperatives, Micro Enterprises, and Labor Service in Kediri, July 5, 2018

**The Effectiveness of Article 185 (1) in juncto Article 90 (1) of the Labor Act as an Effort to Protect Labor Wages**

Law Number 13 of 2003 concerning Labor (Labor Act), has given the understanding that what is meant by workers is every person who produces goods or services that have economic value whether they receive a salary or work alone involved in manual activities. And a worker is a person who works as in employment relations with employers by receiving wages and/or other forms of rewards. As workers, they are entitled to receive wages from employers, while employers are obliged to pay wages to their workforce.

Wages are defined as workers' rights received and expressed in the form of money in return for employers to workers who are determined or paid according to work agreements, agreements or legislation. Determination of this wage itself cannot be determined unilaterally by the employer, but must follow the provisions on minimum wages in Article 89 of the Law on Labor. This is confirmed by the provisions in Article 90 paragraph (1) of the Labor Act which prohibits employers from giving wages below the minimum wage. The provisions in Article 90 paragraph (1) have criminal sanctions stipulated in Article 185 paragraph (1) of the Labor Act.

The question that arises later is whether this rule is effective in providing protection to all workers so that they get wages in accordance with the provisions of the legislation. According to Lawrence M. Friedman, the implementation of a legal product is influenced by substance, structure and culture.<sup>37</sup> The implementation of a legal product in a community is very good, because it is supported by good culture through community participation (public participation). In a community like this, even though the components of the structure and substance are not very good, the law will continue to work well. Vice versa, if there is no support from the community, no matter how good the structure and substance is, the results will still not be good in implementing the law.<sup>38</sup>

Achmad Ali argues that the effectiveness of the law can be measured by the extent to which the rule of law is adhered to or not obeyed.<sup>39</sup> Achmad Ali further stated that in general the factors that influence the effectiveness of legislation are professionals and the optimal implementation of the roles, authorities and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing these laws.<sup>40</sup>

According to Soerjono Soekanto, "Effective" is the extent to which a group can achieve its objectives.<sup>41</sup> Law can be said to be effective if there is a positive legal effect, at that time the law reaches its goal in guiding or changing human behavior so that it becomes legal behavior. In connection with the issue of the effectiveness of the law, the law is identical not only with the element of external coercion but also with court proceedings. The threat of coercion is an absolute element so that a rule can be categorized as law, so of course the element of coercion is closely related to the effectiveness of a provision or rule of law. Talking about the effectiveness of the law means talking about the power of legal work in regulating, or forcing people to obey the law. Law can be effective if the factors that influence the law can function as well as possible. The effective size of a law that applies can be seen from the behavior of the community. A law or regulation will be effective if the community members behave according to what is expected or desired

<sup>37</sup> Lawrence M. Friedman, *Sistem Hukum: Perspektif Ilmu*, Nusa Media, Bandung, 2009, hlm. 33.

<sup>38</sup> Azmi Fendri, "Perbaikan Sistem Hukum dalam Pembangunan Hukum di Indonesia", *Jurnal Ilmu Hukum*, Volume 2, No. 2, 2011, hlm. 12

<sup>39</sup> Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan Vol.1*, Kencana, Jakarta, 2010, hlm. 375

<sup>40</sup> *Ibid*,

<sup>41</sup> Soerjono Soekanto, *Efektivitas Hukum dan Penerapan Sanksi*, CV. Ramadja Karya, Bandung, 1988, hlm. 80



by or the legislation which reaches the desired goal, then the effectiveness of the law or legislation has been achieved.

Then how is the effectiveness of the provisions in Article 185 paragraph (1) in *juncto* Article 90 paragraph (1) of the Labor Act in Kediri which is the location of the research? The city of Kediri itself can be classified as a developing urban area. The city of Kediri has many industrial business units with varied business scales, covering large, medium and small industries. Large industries in the City of Kediri are engaged in the sugar and cigarette industries. While for Small and Medium Enterprises, most of them are engaged in food production and processing of agricultural products.<sup>42</sup> Based on the classification of the non-oil and gas industry sub-sector set by the Ministry of Industry, the actual condition of the industrial sector in Kediri City in 2011 was 563 business units and 46,248 workers.<sup>43</sup> Whereas in the Small and Medium Enterprises, there are 560 business units and 5,825 workers.<sup>44</sup>

Based on the primary data obtained from interviews conducted at the Department of Cooperatives, Micro Enterprises and Labor of the City of Kediri, data were obtained that there were no problems regarding wages in the City of Kediri. In the sense that there has never been a complaint report regarding the wage issue that occurred in the City of Kediri, both about the provision of wages given below the minimum wage, and about other benefits.<sup>45</sup> The cases of industrial relations that took place in the City of Kediri and handled by the Industrial Relations Division in the Department of Cooperatives, Micro-Business and Labor of the City of Kediri were mainly related to unilateral termination of employment, and severance pay.

Even so, it does not mean there are no employers who provide wages to workers below the minimum wage. For medium and large industries, all have paid wages in accordance with the Kediri minimum wage. Conversely, there are still entrepreneurs in the micro business sector who provide wages below the minimum wage.<sup>46</sup> The reason for the entrepreneurs is very simple, that the business income is still insufficient to pay workers according to the minimum wage stipulated in the City of Kediri. If forced, their business will be bankrupt and will be closed.

Most micro business/ entrepreneurs who have not provided wages in accordance with the minimum wage provisions generally have a low education background and do not have knowledge about the law. They knew about the minimum wage imposed in the City of Kediri, but did not have knowledge of the existence of the Labor Law and Article 185 paragraph (1) in *juncto* Article 90 paragraph (1) which regulates wages. Some entrepreneurs with a higher education background know about the provisions regarding wages, but cannot provide wages according to the provisions due to the limited business income they have. Another reason was stated that this wage was agreed upon in a work agreement between employers and workers, so employers assumed that as long as workers could receive the wages given, it would not be a problem if the employer paid wages under the provisions. The existence of the micro business employer that provides workers with wages below this minimum wage is not without the knowledge of the authorities (in this case the Kediri Cooperative, Micro and Labor Office), but based on

<sup>42</sup> Kediri Kota, "Potensi Industri Kota Kediri", <https://kedirikota.go.id/read/Investasi/31/1/49/Industri.html>, Accessed on October 1, 2018

<sup>43</sup> *Ibid*,

<sup>44</sup> *Ibid*,

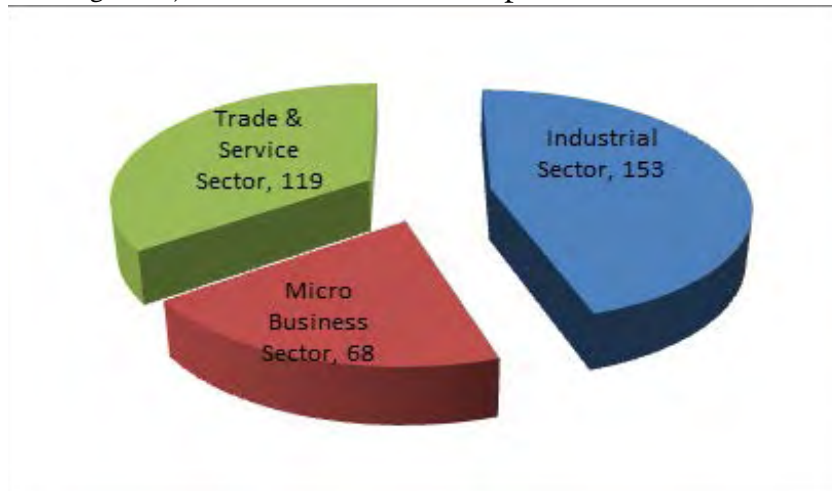
<sup>45</sup> Interview with Mr. Dedi Haryadi SH, MH, Head of Industrial Relation Division on Cooperatives, Micro Enterprises, and Labor Service in Kediri, July 5, 2018.

<sup>46</sup> Based on interview with micro business employers/ entrepreneurs in Bandar and Tinalan sub-region, August 2018.

income data, the does not have the ability, so the authorities still provide leniency and only give warning and direction.

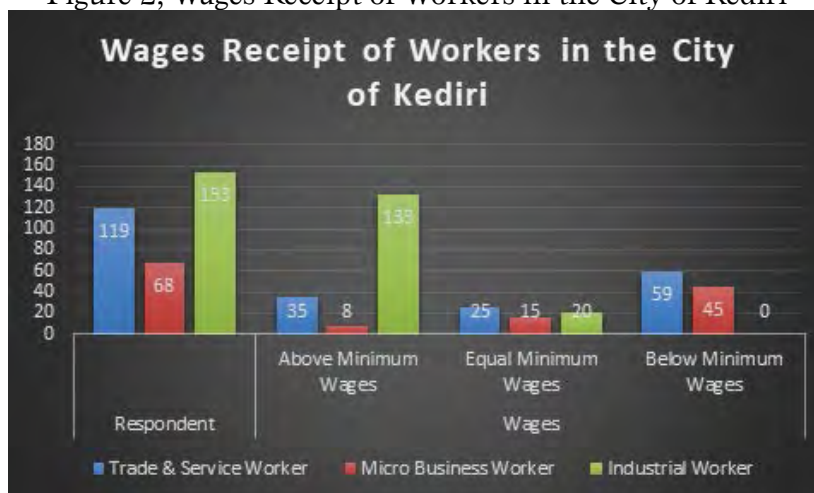
Besides being based on interviews with the Office of Cooperatives, Micro Enterprises and Labor in the City of Kediri and micro business employers/ entrepreneurs, primary data is also obtained based on questionnaires distributed to respondents. Respondents in this study consisted of workers in the industrial sector, workers in the micro business sector and workers in the trade sector and services with the following composition:

Figure 1, Chart of Number of Respondents in Research



Primary data source, processed For questions related to the amount of wages received by respondents whether in accordance with Kediri minimum wages, as a whole, the results are as follows:

Figure 2, Wages Receipt of Workers in the City of Kediri



Primary data source, processed

The results of this questionnaire indicate that there are still workers in Kediri City whose wages are paid below the minimum wages, especially workers in the micro business sector. Based on the results of the primary data obtained from both interviews and questionnaires on the workers above, it can be concluded that the rules in Article 185 paragraph (1) in juncto with Article 90 paragraph (1) which regulates the effective acts of wages only in large industrial sectors and workers in the trade sector and services. Whereas in micro businesses, this rule has not been effective. With the indication that

there are still entrepreneurs who provide wages below the minimum wage. The existence of a criminal threat apparently has not been able to make this article work effectively, this is due to the law enforcement factor. The provisions in this article are pure criminal acts (not complaints). Therefore, this crime does not need a complaint. Handling must be carried out by the authorities (Police Investigators and or Labor Inspection Officers) without having to wait for complaints from victims (labor). It also means that everyone has the right to report this crime, even though he is not a victim.

## CONCLUSION

Based on the results of the study, in the Kediri, law enforcement on Article 185 (1) in juncto Article 90 (1) which regulates criminal acts of wages is carried out by the Labor Inspector of the East Java Provincial Labor Office. Based on the results of labor inspection, in the City of Kediri all large and medium industrial entrepreneurs have provided wages in accordance with the provisions of the legislation. Employment advocates conducted in the City of Kediri have only been implemented for the medium and large industrial sectors, while for the micro business sectors, there is no data on labor inspection.

Crimes relating to remuneration are regulated in Article 90 paragraph (1) of the Labor Act. This article stipulates that employers are prohibited to pay wages lower than the minimum wage. While the criminal provisions regulated in Article 185 paragraph (1) which states that this act violates Article 90 paragraph (1) are subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and or a fine of at least Rp 100.000.000,00 (one hundred million rupiahs) and at most Rp 400.000.000,00 (four hundred million rupiahs). Based on the results of preliminary research, the rules regarding criminal acts of wages are effective only in the medium and large industrial sectors. While in small and medium industries, this rule has not been effective, with the indication that there are still entrepreneurs who provide wages below the minimum wages.

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