

Implementation of The Justice Restoration System Towards Labor Crimes in the Framework of Labor Law Enforcement

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Abstract. *This research is motivated by the need for the application of restorative justice in resolving cases of labor crimes in Indonesia. This approach is considered a more effective alternative in achieving justice that prioritizes recovery and dialogue between perpetrators, victims, and the community concerned. Currently, many cases of labor violations such as below-standard wages, unilateral termination of employment, and violations of basic workers' rights have not been resolved properly through the formal justice system. Therefore, restorative justice is expected to provide a more inclusive and humane solution compared to the retributive approach which only focuses on punishment. This study uses a normative legal method with a literature study approach and descriptive qualitative data analysis. The normative legal method involves an analysis of existing legal principles, theories, and rules. Primary legal materials used include laws and regulations such as the Employment Law and regulations related to restorative justice. Secondary legal materials include scientific literature, articles, and journals related to the topic being studied. While tertiary legal materials consist of legal dictionaries and encyclopedias that support the understanding of the legal concepts discussed. Data collection from various literature, books, journals, and legal documents related to restorative justice and employment law. The results of the study indicate that the application of restorative justice in employment cases can provide a more humane and equitable solution, by prioritizing the restoration of losses experienced by victims and the restoration of social relations in the workplace. However, there are a number of obstacles in its implementation, such as the lack of understanding of law enforcers and limited regulations that support this approach. Based on these findings, this study suggests strengthening the capacity of law enforcers and the preparation of clearer regulations to encourage the optimization of the application of restorative justice in resolving employment crimes. This study is expected to contribute to the*

development of a more inclusive and responsive law enforcement concept to the needs of the working community in Indonesia.

Keywords: *Crimes; Enforcement; Justice; Labor; Restorative.*

1. Introduction

Restorative justice is a settlement process carried out outside the criminal justice system (Criminal Justice System) by involving victims, perpetrators, families of victims and perpetrators, the community and parties interested in a crime that occurs to reach an agreement and settlement. Restorative justice is a fair settlement involving perpetrators, victims, their families and other parties involved in a crime, together seeking a solution to the crime and its implications, with an emphasis on recovery and not retaliation.¹

The basic idea of having alternative resolutions in criminal cases is related to the nature of criminal law itself. Van Bemmelen put forward the opinion that criminal law is an *ultimum remedium*, there should be limitations, meaning that if other parts of the law do not sufficiently affirm the norms recognized by law, then criminal law is applied. The threat of criminal punishment must remain an *ultimum remedium* (last resort), this does not mean that the threat of punishment will be eliminated, but must always consider the advantages and disadvantages of the threat of punishment, and must ensure that the medicine given is not worse than the disease.²

Criminal acts consist of several main aspects, namely *actus reus* (physical act) and *mens rea* (evil intent). *Actus reus* is an act that physically violates the law, while *mens rea* is the intention or evil intent that accompanies the act. Abdul Latif explained that "both of these elements must be present for an act to be considered a crime, and there is a causal relationship between the act and its consequences."³

Criminal cases in principle cannot be resolved through the restorative justice process, but in practice criminal cases are often resolved through the mediation process which is an initiative of law enforcement as part of the case resolution. Thus, in reality mediation can actually be carried out in the Criminal Justice System. Countries that have implemented restorative justice are Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and

¹Rahmawati, Maidina, et al. (2020). *Opportunities and Challenges of Implementation Restorative Justice in the Criminal Justice System in Indonesia*, South Jakarta: Institute for Criminal Justice Reform. Page 13

²Andi Hamzah. (2008). *Principles of Criminal Law: Revised Edition*. Jakarta: PT. Rineka Cipta, p.10

³Abdul Latif, and Hasbih Ali. (2011). *Legal Politics*, Jakarta: Sinar Grafika, p. 44.

Wales, Italy, Finland, and the Netherlands. This mediation is called Penal Mediation.⁴

The public's view of criminal employment law is generally limited to the relationship between employers and laborers or workers, and also only limited to civil matters.⁵ In fact, if we look at the definition explained by Imam Soepomo and the special characteristics in labor law, it can be said that labor law is a public law that includes administrative law and also criminal law, where the government can step in and intervene in its implementation. Criminal law enforcement in the field of labor is very dependent on the Labor Supervisor as PPNS considering that settlement through the Industrial Relations Court (PHI) is currently still considered ineffective by the community.

The formation of labor inspectors as PPNS investigators is also considered incapable of carrying out their duties and functions optimally, this can be seen from the minimal examination of labor violations that have reached the criminal process or have gone through the trial process. This also happened at the West Java Provincial Manpower and Transmigration Service where until now there has not been a single report of labor violations that has been successfully brought to court, even though many reports have been reported by workers or represented by The Workers' Union, however, has so far used the labor crime system *restorative justice* so that nothing goes to court for resolution.

2. Research Methods

This research is motivated by the need for the application of restorative justice in resolving cases of labor crimes in Indonesia. This approach is considered a more effective alternative in achieving justice that prioritizes recovery and dialogue between perpetrators, victims, and the community concerned. Research conducted by the author, where this research focuses on discussing legal issues that occur in the world of employment and work agreements made by workers with employers do not provide adequate legal protection for workers. The focus of this research attempts to focus on legal protection for workers who work in PT. Kewalram whether or not it has complied with the requirements in the Employment Law and the factors causing the problem.

3. Result and Discussion

3.1. The Concept of restorative justice in Enforcement of Employment Law

The National Workers Union (SPN) as one of the registered trade unions in West Java in 2020 reported a violation of labor crimes in West Java Province against 8

⁴ Mansyur Ridwan, 2010, *Penal Mediation for Domestic Violence Cases*, Jakarta: Gema Yustisia Indonesia Foundation, p.166.

⁵ Suyanto, H., & Nugroho, AA (2017). Legal Protection of Outsourcing Workers' Rights Based on the Principle of Justice. *Jurnal Juridical*, 3(2), 61-74.

(eight) of its members who worked at PT. Kewalram, where the eight members had been paid wages below the West Java Provincial minimum wage for 3 consecutive years. Following up on the report, the West Java Provincial Manpower Inspector immediately conducted an initial inspection, after conducting the inspection and the Manpower Inspector found a violation, the Manpower Inspector issued Inspection Note 1 (note 1), after note 1 was issued and the company had not made payments and/or made an agreement with the workers or their union regarding the unpaid wage shortfall, the Manpower Inspector issued Inspection Note 2 (note 2).⁶

After Inspection Note 2 was issued by the Labor Inspector and the company had not yet paid the shortfall in wages, this is where the problem began to arise where after Inspection Note 2 there was no further follow-up from the Labor Inspector, which of course made the workers and their unions disappointed because the rights they demanded had not been fulfilled. The labor union has repeatedly held actions/demonstrations against the clarity of their reports but until now there has been no resolution.⁷

In a similar case that occurred in The PPB KASBI PT. Natatex Labor Union held a protest action by going on strike and giving a speech demanding PT. Natatex on Jalan Raya Rancaekek KM 26.5, Sumedang Regency. Because their demands had not been heard, they were forced to build a tent in front of the factory starting on Friday (2/2), and even until Sunday (4/2) they remained on standby under the tent. Action Coordinator, Ifan Maulidin said, PT. Natatex Prima Corps is a company engaged in the textile sector that has not increased its workers' wages for 5 years according to the rules or Decree of the Governor of West Java. "Until today, workers are still paid using the 2019 UMK. In addition to wage violations, for 4 years the company has not paid Jamsostek and BPJS Kesehatan contributions for its workers,".

In addition, in 2020 to 2023, wages were only paid at 25% and THR was only paid at IDR 500,000.00 each year from 2020 to 2023. Instead of correcting its mistakes, the company actually added to the suffering of its workers by only paying wages of 12% from July 2023 to January 2024. According to him, the action was facilitated by the Cimanggung Police Chief and the Sumedang Regency Manpower Office. The company received representatives from PPB KASBI PT. Natatex and the management of FPPB KASBI Bandung Raya.

Representatives demanded the company about how to pay the 5-month wage shortfall. The results of the audience with the company did not find an agreement, the company asked for time until Monday. The demonstration was

⁶Regulation of the Minister of Manpower No. 1 of 2020 concerning Procedures for Supervision of Manpower

⁷Ibid

continued by setting up a tent in front of the company. The action was also attended by workers from other companies to provide solidarity support. Meanwhile, the leadership of the Bandung Raya FPPB urged the Government to be more serious in resolving labor dispute cases. "The government's presence should not be just a formality. Because this problem has been going on for quite a long time, so that it does not have a worse impact on the workers.

In addition, the latest layoffs in the West Java textile sector occurred at PT Alenatex, located in Bandung Regency. As many as 700 workers were affected by this layoff. To what extent did the mass layoffs affect other factories in West Java, given that there have been no additional reports of other factory closures in the region. The West Java Manpower Office reported that from January to June 2024, there were 225 reported layoffs, with a total of 631 workers affected. Previously, in the period from August to December 2023, there were 127 reports of layoffs, involving 455 workers.⁸

Restorative justice is a concept that has developed rapidly and has a major influence on legal reform in various countries. One of the main factors is because this concept has long been part of the tradition of conflict resolution in society, although with different names and terms. The implementation of restorative justice is seen in the form of various conferences and discussion circles, which are two key approaches in modern restorative justice practices. If traced further, these practices actually originate from the informal conflict resolution traditions of the Māori people in New Zealand and indigenous peoples in North America.⁹

Restorative justice is an approach to the justice system that focuses on reparation for the harm suffered by victims, perpetrators, and the community as a result of a crime, rather than simply punishing the perpetrator. The concept emphasizes dialogue and mediation between all parties involved, with the aim of achieving understanding, accountability, and reconciliation. In restorative justice, victims are given the opportunity to express the impact of the crime they experienced, while perpetrators are expected to acknowledge their mistakes and work to repair the harm that has occurred. This approach often involves communities and families in the dispute resolution process, with the aim of repairing relationships and preventing re-offending.

⁸<https://mediaindonesia.com/jabar/berita/679381/di-jawa-barat-700-karyawan-pt-alenatex-terkena-phk-massal>, (2024) accessed on October 11. at 19.47 WIB.

⁹Daniel W. van Ness. (2005). An Overview of Restorative Justice Around the World, paper presented at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, April 18-25. p. 2

The legal status of employment is related to aspects of civil law, aspects of state administrative law, and aspects of criminal law. This is very dependent on the fields involved. Example:¹⁰

- a. If it is related to an employment agreement including the rights and obligations that have been mutually agreed upon and only involve the parties, then this concerns the civil law aspect.
- b. If it is related to employment licensing, minimum wage determination, ratification of company regulations, registration of collective work agreements, registration of workers' unions/labor unions, and so on, then this concerns aspects of state administrative law.
- c. If it is related to violations of the Employment Law, then this concerns the criminal law aspect.

From a legal perspective, employment law in Indonesia is regulated in various laws and regulations, the most important of which is Law Number 13 of 2003 concerning Employment which currently refers to Law Number 6 of 2023 concerning the Job Creation Law. This law is the basis for all aspects of employment, starting from the rights and obligations of workers, protection of the right to wages, social security, protection of occupational safety and health, to regulations related to employment relations and termination of employment (PHK).

The legal position of employment is also protective, where the state has an obligation to ensure that workers, who are often in a weaker bargaining position than employers, receive adequate legal protection. This includes the right to a decent wage, protection against discrimination in the workplace, and the right to occupational safety and health. On the other hand, employment law also regulates workers' obligations, such as carrying out their work properly and complying with applicable regulations in the workplace.

In his professorial inauguration speech, OC Kaligis, quoted in Muhammad Rif'an, emphasized three important principles of restorative justice that can underlie the renewal and development of the criminal justice system in Indonesia. The following is an explanation of the three principles:¹¹

First, Crime as a Violation of Relationships. This principle asserts that crime is not just a violation of the law, but also a violation of the relationships between the victim, the perpetrator, and society. In this view, crime impacts not only the

¹⁰Arifuddin Muda Harahap. (2020). *Introduction to Employment Law*, Batu: Literasi Nusantara. p. 17

¹¹Muhammad Rif'an Baihaky and Muridah Isnawati. (2024). Restorative Justice: Meaning, Problems, and Proper Implementation, *Unes Journal of Swara Justisia*, Vol. 8:2. p. 280.

individuals directly involved but also the broader social relationships. Therefore, it is important to pay attention to the social and emotional impacts of crime.

Second, Restoration Process Involves All Parties. The second principle states that restoration must involve all parties affected, namely victims, perpetrators, and community members. This shows the importance of dialogue and participation in the justice process, where all parties can contribute to the resolution of problems and the restoration of damaged relationships. This process aims to achieve healing and better understanding between all parties involved.

Third, Consensus Approach to Justice. The final principle emphasizes the importance of reaching consensus in the justice process. In this context, justice is achieved through an approach that emphasizes agreement and cooperation between all parties, rather than simply through punitive punishment. This approach aims to create solutions that are fair and satisfactory to all parties, and strengthen existing social relationships.

These three principles can provide a strong foundation for the reform of the criminal justice system in Indonesia, by prioritizing the values of humanity, restorative justice, and the restoration of social relations. In essence, the philosophy of restorative justice aims to realize justice based on the principle of deliberation, with the hope of achieving peace and justice for all parties involved. The concept of fair justice in restorative justice certainly prioritizes truth, is neutral, impartial, and avoids arbitrary actions. This kind of justice is a moral and ethical benchmark in the restorative justice paradigm, known as the principle of just peace.¹²

3.2. Comparison of Worker Wage Systems in Malaysia, Singapore, England and Wales

1. Employment Law and Wage Regulation in Malaysia

The national minimum wage policy in Malaysia is based on the following considerations. First, an even distribution of labor across the country ensures that there is no concentration of labor in certain industrial, service, or trade centers. Second, this policy reduces competition among companies in recruiting labor, as uniform wage rates prevent worker mobility caused by wage differences across regions or types of jobs. Third, this policy also prevents industrial relocation from one region to another, as labor is evenly available at relatively uniform wage rates. Finally, this policy provides certainty of the

¹²Arief Muladi and Barda Nawawi. (1998). *Criminal Theories and Policies*, Bandung: Alumni. p. 78

implementation of a consistent wage scheme nationwide, which encourages businesses to operate more effectively and efficiently.¹³

The Minimum Wages Act in Malaysia is regulated through the Minimum Wages Order, which is periodically updated by the National Wages Consultative Council. This policy aims to set the minimum wage standards that employers must pay to workers. In Malaysia, there are differences in the determination of minimum wages between Peninsular Malaysia and the Sabah and Sarawak regions, which take into account the differences in the cost of living in each region. Until 2022, the minimum wage is set at RM1,500 per month.¹⁴

The rules regarding overtime pay are regulated through the Employment Act 1955 for Peninsular Malaysia and the Labour Ordinance for Sabah and Sarawak. Workers who work more than 8 hours per day or more than 48 hours per week are entitled to overtime pay. In general, overtime pay is 1.5 times the regular wage for work on weekdays, while work done on holidays is entitled to overtime pay of twice the normal wage.

The Employment Act 1955, Part II, sets out strict minimum standards for employment contracts in Malaysia. Every employment contract must contain details covering wages, hours of work, benefits and other relevant provisions, thereby protecting workers from uncertainty and exploitation. The minimum wage in Malaysia is regulated through the Minimum Wages Order which sets national minimum wage standards. The minimum wage is reviewed periodically, taking into account economic conditions and the living needs of workers throughout the country.¹⁵

The Industrial Relations Act 1967 regulates the collective bargaining process in Malaysia with a more formal approach. This process involves stages of mediation, arbitration, and court intervention if necessary, to ensure fair and efficient resolution of labor disputes. Meanwhile, the Trade Unions Act 1959 regulates the formation and operation of trade unions with some restrictions. Trade unions are required to be registered and recognized by the government, and are subject to strict regulations regarding their activities and finances to ensure transparency and legality in carrying out their duties.

In addition, the Industrial Relations Act 1967 also provides a structured legal system to handle employment disputes through mediation and arbitration, with

¹³Lamijan, (2015). *Reconstruction of Cigarette Company Worker Wage Arrangements Based on Justice Values in the Perspective of Law Number 13 of 2003 concerning Employment*, Dissertation, Doctoral Program in Law, Sebelas Maret University, Surakarta. pp. 84–85.

¹⁴Ministry of Human Resources Malaysia, (2022) Minimum Wages Order, Official Government Gazette, p. 12.

¹⁵Inge Nur Az'zahra Maheswari Dharmalinga Wiritanaya. (2024). Comparison of Labor Laws in Singapore, Malaysia, and Thailand, *Journal of Indonesian Legal Media*, Vol.2:2. p. 550.

the courts as the final solution to ensure fair and timely resolution. Although Malaysia does not have a specific law that explicitly regulates discrimination in the workplace, anti-discrimination policies are still implemented through various guidelines and initiatives aimed at promoting fairness and inclusivity in the workplace.

Part XIV of the Employment Act provides for strict procedures for unfair dismissal, whereby workers who feel they have been unfairly dismissed may appeal through a prescribed mechanism to ensure a thorough review and fair decision. Overall, the protection of workers' rights in Malaysia is regulated through various laws that specifically guarantee decent working conditions, health and safety protection, and the right to organize and bargain collectively.¹⁶

2. Employment Law and Wage Regulations in Singapore

Singapore has experienced rapid economic development, and currently implements a very high salary policy, even among the highest in the world. As a country that excels in the trade and services sector in Southeast Asia and globally, Singapore has a unique approach to its employment system. The Singaporean government does not implement a minimum wage policy directly. Instead, the determination of salary levels is left entirely to market mechanisms, in line with Singapore's rapid economic development and role as an international tourism destination, including for tourists from Indonesia.

In order to support efforts to increase workers' wages, the government also provides various assistance to companies. This policy is based on the consideration that companies that pay wages that are too low tend to face operational difficulties and potential losses. In the absence of minimum wage regulations, employers can determine the optimal salary level for their workers, thereby increasing productivity and maintaining company profitability.

The wage policy for local workers in Singapore also affects the wage conditions for foreign workers. Although foreign workers in Singapore are not directly regulated by the wage policy, they still feel the positive impact of this policy. One of the impacts is the opportunity for foreign workers to get a wage increase as a consequence of the general increase in wages in Singapore.

In its development, Singapore adopted an open wage model, which is considered more effective than the minimum wage system. Through this model, the Singapore government is able to encourage the improvement of workers' welfare more optimally, while minimizing the negative impacts of low wage payment practices.

¹⁶Ibid, p. 551

There are several laws in Singapore that regulate employment and labor which include the following:¹⁷

1. Employment Law
2. General Law
3. Joint Savings Act for Child Development
4. Law on Foreign Workers
5. Work Accident Compensation Act
6. Occupational Safety and Health Act

In general, Singapore does not set a minimum wage through legislation. However, the country has a Progressive Wage Model, supported by Singapore's only trade union, which mandates a minimum wage in certain sectors. For example, cleaners are required to receive a minimum monthly base salary of S\$1,320. Meanwhile, security guards are required to receive a minimum monthly base salary of S\$1,650.

In Singapore, workers covered by Part IV of the Employment Act have the right to rest periods, overtime and holidays. The provisions regarding their working hours are also regulated in the act.

Part IV of the Manpower Act covers local and foreign workers working in various capacities, including full-time, part-time, contractors, and temporary staff. However, the Act does not provide protection for several professional groups, such as managers, executives, seafarers, domestic workers, and employees of legal institutions or civil servants.

For the above-mentioned groups of workers, provisions relating to employment rights are regulated in their respective employment contracts, rather than through provisions in Part IV of the Employment Act. In Singapore, the employment contract is the basis for defining the relationship between an employer and an employee, including employment rights and obligations. Every employee has working hours stipulated in their employment contract.

In this country, employees are not allowed to work more than 12 hours a day, except in certain situations such as important tasks related to public interest or national defense. If an employer requires employees to work more than 12 hours per day up to a maximum of 14 hours, they must apply for special permission to the relevant authorities for an overtime exemption. Whether employees work

¹⁷Shay Ogunsanya, (2024). "Employment Laws in Singapore: How to Hire and Stay Compliant", [https://remote.com/blog/employment-laws-singapore-compliance\(10/14/\)](https://remote.com/blog/employment-laws-singapore-compliance(10/14/)).

five or six days a week, the maximum number of working hours usually averages 44 hours per week.

The overtime rate provisions in Singapore are set at a minimum of 1.5 times the basic hourly wage rate. Employers are required to pay overtime wages to employees within 14 days of the end of the pay period. Overtime pay rights for workers and non-workers may differ according to the provisions. Employees can work overtime up to a maximum of 72 hours in one month. However, if additional overtime is required, employers can apply for an exception to the Ministry of Manpower (MOM). Working hours on rest days or during public holidays are not counted towards the maximum limit of 72 hours of overtime, unless the work is done outside the employee's normal daily working hours.

3. Employment Law in England and Wales

In England and Wales there are three main sources of employment law, namely Common Law, Statutes, and European Law. Some regulations related to employment law in England and Wales are as follows:¹⁸

- a. Health and Safety at Work Act 1974 (Health and Safety at Work Act 1974)
- b. Trade Union and Labour Relations (Consolidation) Act 1992
- c. Employment Tribunal Act 1996
- d. Employment Rights Act 1996;
- e. Public Interest Disclosure Act 1998;
- f. Data Protection Act 1998 (Data Protection Act 1998);
- g. National Minimum Wage Act 1998 (National Minimum Wage Act 1998);
- h. Human Rights Act 1998 (Human Rights Act 1998);
- i. Employment Relations Act 1999;
- j. Employment Act 2002;
- k. Employment Relations Act 2004;
- l. The Equality Act 2010.

Meanwhile, there are three main types of employment status in England and Wales:¹⁹

¹⁸An Overview of Employment Law in England & Wales. (2017). Coman Coyle Solicitors. p. 2

¹⁹Ibid, pp. 3-4

a. Employees

Employees have a formal employment contract with their employer and are entitled to full legal protection. After two years of employment, they are entitled to protection from unfair dismissal.

b. Agency Workers

These are workers who work through an employment agency, often on a temporary basis. They have certain rights such as minimum wage and annual leave, but their rights are more limited than those of permanent employees.

c. Employed/Independent Contractors:

run their own businesses and are not subject to the same employment protections as employees. However, in some cases, they may qualify as “workers” if an employment relationship is found.

Employees in England and Wales have a number of statutory rights, including:

a. National Minimum Wage. Currently, the minimum wage is set based on the age of the worker. Employees aged 25 and over, for example, are entitled to £7.50 per hour (as of April 2017). This wage has been increasing every year.

b. Paid Annual Leave. Employees are entitled to a minimum of 5.6 weeks of paid annual leave, including public holidays.

c. Maternity and Paternity Leave: Female employees are entitled to 26 weeks of regular maternity leave, with the option to extend to 52 weeks. For the first 6 weeks, they receive 90% of their normal salary, with the remainder paid at a fixed rate set by the government. Fathers are entitled to take paternity leave after the birth of their child, as long as they qualify.

d. Sick Pay: Employees are entitled to receive up to 28 weeks of sick pay when they are unable to work due to illness.

e. Detailed Pay Statement: Employers must provide detailed pay slips showing gross salary, deductions applicable (e.g. tax and national insurance), and net salary paid.

Employers are required to provide a safe workplace. They must take reasonable steps to protect employees from physical and psychological harm, including stress in the workplace. Employers are also responsible for providing safe equipment and competent co-workers, and ensuring safe access to the workplace.

Termination of employment must be carried out on just grounds, in accordance with the correct procedures, and after giving the employee a warning if necessary. There are five main reasons that are considered valid for termination of employment:

- a. Misconduct is a serious violation of company rules.
- b. Poor Performance/Ill Health. If an employee is unable to meet the required standards or has long-term health problems.
- c. Redundancy. When an employee's job is no longer needed, usually due to changes in the company structure.
- d. Legal necessity (Illegality). When it becomes illegal to employ someone in their position, for example if a driver loses his driving license.
- e. Other substantive reasons. For example, an employee's refusal to accept a reasonable change in the terms and conditions of his or her employment.

If an employee is unfairly dismissed, they can bring a claim to the Employment Tribunal for compensation. The current compensation limit for unfair dismissal is £78,962 (as of April 2017).

Employers are expected to follow fair disciplinary procedures, including notifying employees of the allegations against them, providing an opportunity to respond, and providing the right to be accompanied by a union representative or co-worker during the disciplinary hearing. If an employer does not follow fair procedures, the court can increase the amount of compensation by up to 25%.

The Equality Act 2010 prohibits discrimination in the workplace on the basis of certain protected characteristics, including race, sex, disability, sexual orientation, religion or belief, and age. Discrimination can be direct or indirect. Employees who experience discrimination can take a claim to court and receive compensation.

Employment disputes can be resolved through several channels, including:²⁰

- a. Employment Tribunal for claims involving employment, such as unfair dismissal and discrimination.
- b. Common Law Court (High Court or County Court): Used for larger or more complex claims.
- c. The ACAS Arbitration Scheme is a quicker and cheaper method of dispute resolution that employees and employers can choose, particularly in cases of unfair dismissal.

²⁰Ibid, pp. 4-5.

Employment law in England and Wales offers comprehensive protection for employees. Employee rights include minimum wage, annual leave, health and safety, and protection from unfair dismissal and discrimination. Employees and employers must understand their rights and obligations to create a fair and lawful working environment.

3.3. Analysis of the Implementation of restorative justice Against Criminal Acts of Employment Law

1. Case of Violation of Employment Law by PT Kewalram

In several cases of labor crimes as described in chapter three, it is indicated that workers are often harmed by the company or capital owner. Law enforcement against labor crimes, such as the case of alleged payment of wages below the Provincial Minimum Wage (UMP) by PT. Kewalram in West Java, should be carried out through several systematic steps and in accordance with statutory provisions.

Payment of wages below the minimum wage violates the provisions of the Job Creation Law which amends several provisions in the Manpower Law, including those related to wages. Despite changes in the wage system, the obligation to pay wages in accordance with the minimum wage still applies and companies may not pay wages below the standard. Employers who are late in paying wages due to their intention or negligence are subject to a fine according to a certain percentage of the worker's/laborer's wages.²¹

Employers have an obligation to pay wages to workers in accordance with the agreement that has been made, with the condition that the wages must not be lower than the wage standards stipulated in the applicable laws and regulations. It should be noted that the provisions regarding minimum wages also apply to workers who have worked for less than one year in the company.²²

John Rawls formulated two principles of distributive justice, one of which is "the greatest equal principle."²³ This principle emphasizes that every individual must have equal rights to the broadest basic freedoms, as long as these freedoms also apply equally to everyone. This principle is considered the main foundation (basic rights) that every individual must have. In other words, justice can only be achieved if there is a guarantee of equal freedom for everyone, or what is known as the principle of equal rights. The principle of "the greatest equal principle" is the principle of equal rights that guarantees the equality of individual rights, but

²¹Job Creation Law, Article 81, paragraph (55).

²²The Job Creation Perppu adds new Article 88E paragraph (1) of the Employment Law, Article 81 number (28)

²³ Muhammad Taufik. (2013). "John Rawls' Philosophy on the Theory of Justice", *Journal of Islamic Studies*, Vol.19:1. p. 51.

still considers the burden of obligations that each person has. This principle is the core of the principle of freedom of contract.

Second, social and economic differences must be regulated in such a way by considering two principles, namely the difference principle and the principle of fair equality of opportunity. These two principles aim to provide the greatest possible benefits for disadvantaged groups, and to ensure that every position and office must be accessible to all individuals with equal conditions and opportunities (Objective Difference Principle). The difference principle and the principle of fair equality of opportunity are known as the objective difference principle, which means that both principles play a role in ensuring a balance between the rights and obligations of each party. Thus, differences in exchange can be accepted fairly as long as they meet the requirements of good faith and justice. The first and second principles are interrelated and inseparable, in accordance with the principle of proportionality.

John Rawls proposed the concept of the original position as a way to formulate a social contract in building a particular society or government system. The core of his idea is that the principles of justice that govern the basic structure of a society are the result of an original agreement. These principles are considered by free and rational individuals to fulfill their own interests and will be accepted in the original position, namely when they determine the basic assumptions. These principles then serve as guidelines in subsequent agreements, determining the form of social cooperation that can be carried out and the types of government that can be formed. This approach is known by John Rawls as "Justice as Fairness".²⁴

Labor crimes such as alleged payment of wages below the Provincial Minimum Wage (UMP) by PT. Kewalram in West Java can be approached using John Rawls' social contract theory, especially the concepts of "Justice as Fairness" and "original position". The concept of "original position" is that workers and capital owners are in a position where they do not know their role or social status. In this condition, both will tend to choose a fair wage system to ensure that they will get a decent wage without knowing whether they will later become workers or capital owners.

Meanwhile, the concept of "justice as fairness" for Rawls, is that wage policies such as UMP should be made by considering justice for all parties involved, especially for those who are in a less advantageous position, namely workers. The payment of wages below the UMP by PT. Kewalram violates this principle because it does not provide a fair minimum guarantee to workers, who are a vulnerable group in employment relations.

²⁴Frank N Mc Gill (ed). (1990). *Masterpieces of World Philosophy*, New York: harper CP. p. 679.

2. Lack of Wage Increase and Minimal Protection of Employee Rights at PT. Natatex

In a similar case of labor dispute, workers who are members of the PPB KASBI PT Natatex Labor Union held a two-day strike in front of PT Natatex in Sumedang Regency, because their demands had not been responded to by the company. The action was triggered by complaints about the absence of a wage increase for the past five years, where workers still receive wages according to the 2019 UMK, as well as delays in payment of Jamsostek and BPJS Kesehatan contributions. In addition, in the 2020-2023 period, the company only paid 25% of the total wages, and the holiday allowance (THR) given was only IDR 500,000 each year.

The implementation of labor crimes in the case of PT Natatex in Sumedang Regency reflects a number of violations of basic labor rights as regulated in labor provisions. This case began with allegations that the company did not increase wages in accordance with the provisions of the Regency Minimum Wage (UMK) for the past five years, even though the Decree of the Governor of West Java has regulated the increase. As a result, workers still receive wages based on the 2019 UMK standard, even though economic conditions and living costs continue to increase.

In addition, another violation that occurred was the failure to pay Jamsostek and BPJS Kesehatan contributions by the company for four years, which is the company's obligation to protect the welfare and health of workers. The delay in payment of these contributions indicates a disregard for workers' rights to receive social security. This also shows the company's non-compliance with Law No. 24 of 2011 concerning BPJS and Law No. 13 of 2003 concerning Manpower, which requires employers to register and pay social security contributions for workers.

This case also shows violations in the payment of wages below standard. In the period 2020-2023, the company only paid 25% of the wages that workers should have received, while from July 2023 to January 2024, wage payments dropped drastically to only 12%. This condition clearly contradicts the principles of wage protection, which should ensure that workers receive their rights properly and on time in accordance with applicable provisions. This can be considered a form of violation of Articles 88 and 90 of Law No. 13 of 2003, which regulates the obligation of employers to provide wages not less than the standards set by the government.

Overall, the implementation of labor crimes in this case shows a disregard for labor standards regulated in laws and regulations. Labor law, or often called labor law, is a branch of law that regulates the relationship between workers and employers, both in individual and collective contexts. Fundamentally, the

position of workers in the legal context, based on the provisions contained in the 1945 Constitution, has an equal position with employers.²⁵

Aspects covered in labor law include regulations on employment contracts, reciprocal rights and obligations between workers and employers, wage determination, and workplace safety and health guarantees. In addition, this law also regulates issues related to non-discrimination, collective labor agreements, worker participation in decision-making, the right to strike, income protection, and the provision of welfare guarantees for workers and their families.²⁶

Labor protection refers to efforts to safeguard the basic rights of workers. According to Abdul Khakim, the purpose of this protection is to ensure that the labor relations system runs harmoniously, without any pressure from the stronger party against the weaker party. Labor protection is one of the targets in labor development, and its implementation must be taken seriously because it can support national development. Therefore, protection of the workforce is an important thing.

Article 86 paragraph (2) of the Employment Law emphasizes the importance of occupational safety and health efforts aimed at ensuring the safety and improving the health of workers. This is done through steps to prevent accidents and diseases caused by work, control risks in the workplace, health promotion, and provision of treatment and rehabilitation.²⁷

Furthermore, Article 12 of the Work Safety Law regulates the rights and obligations of workers which include:

1. Provide accurate information if requested by supervisory employees or work safety experts.
2. Use required personal protective equipment.
3. Fulfill and comply with all applicable occupational safety and health provisions.
4. Submit a request to the management to implement all established occupational health and safety provisions.
5. Submit objections regarding work where the occupational safety and health requirements and the required personal protective equipment are in doubt, unless there are special provisions from the supervisory employee who can still be accounted for.

²⁵1945 Constitution, Article 27.

²⁶Agusmidah, (et.al). (2012). *Chapters on Indonesian Labor Law*, Jakarta: Pustaka Larasan. p. 1.

²⁷Law Number 13 of 2003 concerning Manpower Article 86 paragraph (2)

Every worker has the right to receive protection related to occupational safety and health, which includes efforts to prevent accidents and diseases caused by work, control risks in the work environment, health promotion, and provision of treatment and rehabilitation.²⁸

3. Mass Layoffs at PT Alenatex

The latest layoffs in the textile sector in West Java occurred at PT Alenatex located in Bandung Regency, with the number of employees affected reaching 700 people. According to Firman Desa, Head of Industrial Relations at the West Java Manpower and Transmigration Office, the next mass layoff report received by the provincial government after the layoffs at PT Bata came from PT Alenatex. Until now, there have been no reports of other factory closures in the West Java region.

In the case of PT Alenatex, there are several implementations of labor law. First, according to applicable regulations, companies are required to consult with workers before making a decision to terminate employment. It is important to evaluate whether PT Alenatex has complied with this procedure and whether workers have been given the opportunity to participate in the dialogue.

Second, Compensation and Workers' Rights: Based on the Employment Law, workers who are laid off are entitled to severance pay and other rights in accordance with applicable provisions. An analysis of the compensation received by PT Alenatex workers needs to be conducted to assess the company's compliance with the law.

Third, Social and Economic Impacts: These mass layoffs not only impact the individuals who lose their jobs, but also the local economy and social stability. Therefore, there needs to be a study on the short-term and long-term impacts of these layoffs on the surrounding community.

In principle, if there is a notice of termination of employment from the company and the worker or laborer does not agree to the action, then the law requires that the settlement be carried out through bipartite negotiations. These negotiations include a negotiation process between the employer and the worker/laborer, including representatives of the labor union if any, to reach an agreement peacefully.²⁹

However, if bipartite negotiations do not result in an agreement between the two parties, the dispute resolution stage must be continued to a more formal mechanism in accordance with the applicable procedures in the settlement of

²⁸Endah Pujiastuti. (2008). *Introduction to Employment Law*, Semarang: Semarang University Press. p. 37.

²⁹Job Creation Law, Article 151 paragraph (3).

Industrial Relations Disputes (PHI). This mechanism includes mediation, conciliation, to arbitration or even submission to the Industrial Relations Court.³⁰ This process aims to ensure that the decision to terminate employment meets the principles of justice and takes into account the rights of workers and employers.

From an economic perspective, termination of employment (PHK) can cause the cessation of income sources for workers and their families. In this situation, the families of workers or laborers affected by layoffs can experience temporary poverty. The next challenge faced by workers/laborers affected by layoffs, along with their families, is the uncertainty of how long the unemployment period will last. If this condition occurs for a long enough period of time, there is concern that the poverty condition can develop into chronic poverty.³¹

In the context of layoffs at PT Alenatex, this means that the company must ensure that negotiation efforts with workers are carried out before unilateral layoffs are implemented. If no agreement is reached during the negotiations, then the settlement must be continued through a more official channel, in accordance with the mechanisms stipulated in the laws and regulations. This process is important to maintain a balance between workers' rights to receive protection and the company's obligations in managing employment relationships, especially in situations that have the potential to harm both parties.

Legal protection can be interpreted as any action or effort to protect workers' rights from abuse of power or arbitrariness by employers or by authorized parties based on the principle of the supremacy of law. The goal is to create orderly and safe conditions so that workers can enjoy their rights and gain recognition of their dignity as human beings.³²

According to Satjipto Rahardjo, legal protection includes efforts to protect human rights (HAM) for individuals who are harmed, providing safety guarantees to workers so that they can enjoy their rights in accordance with the provisions of the law and the constitution. Harjono, realizing the shortcomings in legal protection, developed the concept of legal protection from a legal scientific perspective. He stated that legal protection must include protection provided by law, which functions to protect certain interests, and transform those interests into legitimate and legally recognized rights.³³

³⁰Ibid, Article 151 paragraph (4).

³¹Zaenal Asikin (at.all), *Basics of Labor Law*, Jakarta: Rajawali Press p.196

³²Setiono. (2004). *Rule of Law (Supremacy of Law)*. Surakarta: Master of Law, Postgraduate Program, Sebelas Maret University. p. 3.

³³Harjono. (2004). *The Constitution as the Nation's Home*, Jakarta: Konstitusi Press. p. 373

restorative justice is expressly regulated in the new Criminal Code or Law Number 1 of 2023 concerning the Criminal Code, Article 54 explains that in sentencing it is mandatory to consider:

- a. form of guilt of the perpetrator of the crime;
- b. motive and purpose of committing a crime;
- c. The mental attitude of the perpetrator of a crime;
- d. Criminal acts are committed with or without planning
- e. how to commit a crime;
- f. the perpetrator's attitude and actions after committing a crime;
- g. life history, social circumstances and economic circumstances of the perpetrator of the crime;
- h. the impact of criminal penalties on the future of criminals
- i. the impact of criminal acts on victims or
- j. the victim's family; forgiveness from the victim and/or the victim's family; and/or
- k. legal values and justice that live in society.

The application of restorative justice in criminal cases of employment by referring to Article 54 of the new Criminal Code which regulates various aspects that need to be considered in sentencing. This approach allows for more humane law enforcement and focuses on peaceful conflict resolution between the parties involved, namely workers and employers.

1. Consideration of Forms of Error and Motives (Article 54 paragraph 1 letters a and b)

In cases of labor violations, such as late payment of wages or insecure working conditions, the application of restorative justice needs to see whether the error that occurred was caused by intent or negligence. The motive of the perpetrator (for example, the employer) is important to consider, whether there is an intention to exploit or financial constraints that hinder the employer's obligations. This is important to assess the appropriateness of the use of a restorative approach compared to formal criminal penalties.

2. Inner Attitude and Regret (Article 54 paragraph 1 letters c and f)

The restorative justice approach also takes into account the perpetrator's mental attitude and actions after the violation occurred. For example, if the perpetrator shows a cooperative attitude and regret, and is willing to hold dialogue and

mediation with the injured worker, then this becomes a strong basis for resolving the case through restorative mediation rather than through conventional criminal proceedings.

3. The Impact of Criminal Acts on Victims (Article 54 paragraph 1 letters i and j)

restorative justice focuses on recovery efforts for victims, which in employment cases can be workers whose rights have been violated. If the victim or the victim's family can forgive the perpetrator and is willing to resolve the problem through dialogue, then this becomes an important foundation for implementing restorative justice. This process allows for the restoration of relations between employers and workers, and prevents escalation of conflict.

4. The Value of Justice that Lives in Society (Article 54 paragraph 1 letter k)

In the application of restorative justice, the values of justice that develop in society must also be considered. For example, if society tends to prioritize resolution through family and deliberation, then this approach can be more acceptable and effective. In cases of labor violations, for example, mediation carried out by considering local social norms can create a solution that is more equitable for both parties.

5. Consideration of the Mildness of the Act and Personal Circumstances (Article 54 paragraph 2)

This article stipulates that if the violation is considered minor, or there are personal conditions of the perpetrator that can mitigate such as economic difficulties, then this can be used as a basis for not imposing formal criminal penalties. In the context of employment, this can be applied if the employer is facing financial difficulties that result in violations of workers' rights, and the perpetrator is willing to correct the error through a mediation process.

The restorative justice approach in labor crimes offers a solution that prioritizes the restoration of relationships and losses experienced by victims, rather than simply imposing sanctions on the perpetrators. This process can avoid conflict escalation through dialogue and mediation that emphasizes recovery, regret, and improvement from the perpetrators. By considering the aspects regulated in Article 54, the application of restorative justice can create justice that is more proportional and in accordance with the needs of the parties involved.

4. Conclusion

This study shows that the implementation of *restorative justice* in handling employment crimes can provide alternative solutions that are more inclusive than the conventional justice system. *restorative justice* allows for mediation between victims, perpetrators, and the community, focusing on healing and

reconciliation rather than simply punishing. This approach has also been shown to help ease social tensions in the workplace by creating mutual agreements that benefit all parties. Implementation of *restorative justice* in employment cases in Indonesia still face various obstacles. Some of these are the lack of understanding and skills of law enforcers in implementing this concept, as well as limited regulatory support that explicitly regulates the use *restorative justice* in labor disputes. In addition, not all labor violations can be resolved with this approach, especially when it comes to serious violations that harm workers' basic rights.

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