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LEGAL POLITICS REGARDING MINIMUM WAGE IN INDONESIA FROM THE PERSPECTIVE OF THE WELFARE STATE

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ABSTRACT

The legal politics regarding minimum wage for laborers/workers in Indonesia is deemed important in bringing welfare to laborers/workers, which represents the objective of the state. To set the minimum wage for 2023, the regulation concerning the minimum wage, which is previously set forth as a government regulation, has been replaced by the Regulation of Manpower Minister, and this change may spark conflicts. Departing from this issue, this research aims to analyze the legal effects of the shift of the policy governing minimum wage from Government Regulation to Ministerial Regulation and the position of the authority of the Governor in setting minimum wage following the promulgation of the Regulation of Manpower Minister. With normative juridical methods and statutory and conceptual approaches to study the concept of the welfare state, this research reveals that, according to the welfare state and statutory theories, the shifting regulation from Government Regulation to Ministerial Regulation contravenes the legislative principle, the *lex inferior derogate lex superior* because, in the hierarchy of the legislation in Indonesia, the Ministerial Regulation is positioned under Government Regulation. The Governor's Decree representing all the governors in Indonesia regarding Provincial Minimum Wage and/or Minimum Wage in Regency/Municipality in 2023 promulgated according to the Regulation of Manpower Minister Number 18 of 2022 remains effective and binding to all employers and laborers/workers as long as it is not reviewed or revoked by the Court. That is, the authority to set the minimum wage held by the Governor seems to set a strategic position to bring welfare to the people in regional areas. However, the pay raise is only restricted to not more than 10%.

KEY WORDS

Legal politics, minimum wage, government regulation, ministerial regulation, welfare state.

The Preamble of the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution) mentions the objective of the state: to bring welfare to the people by still upholding the justice principle. Within the context of social justice, economic growth and the outcomes of development are for all citizens to enjoy, not only restricted to certain groups of people [1]. Furthermore, this objective was further outlined in several laws, one of which is related to the legal politics concerning the minimum wage. Historically, the regulation concerning minimum wage in Indonesia has been around since 1969. The legal politics regarding living standards has been changing and has been through three-time amendments. These living standards involve (a) minimum physical need, effective from 1969-1995; (b) the minimum necessity of life, effective from 1996 – 2005; and (c) the necessity of decent life, effective from 2006 to date [2]. The Constitutional Court also asserts that as long as the minimum wage is set according to the value of the necessity of decent life and by considering the effects of the value/component of productivity and economic growth, this setting complies with the principle of legal certainty and justice for both employees and employers [3].

The discussion about the legal politics of minimum wage has intrigued the labor union, employers, and the government (Tripartite Collaboration). Labor Union has held a seminar or a session to discuss wage payment to estimate and predict minimum wage. The Association of Entrepreneurs (locally abbreviated as Apindo) has conducted studies and simulations of minimum wage calculation in an internal scope. The Minister dealing with manpower affairs at a central level, through the Ministry of Home Affairs conducted a session between the



central and regional governments to build harmony and deliver coaching to regional apparatuses as part of setting the minimum wage [4]. Furthermore, the Manpower Ministry held a session regarding this wage payment [5], and, similarly, the Province of Banten, among other regional governments, held Coordination Meeting involving the Councils dealing with Wage Payment from all areas of Banten Province [6]. Similarly, the Regency of Tangerang also held a seminar: '*Upah Minimum Formula PP 36/2021 Vs. Survey KHL*' [7]. All these activities are part of consolidation and anticipation to filter the notions coming from different parties in the progress of setting the minimum wage.

The results of consolidation, coordination, and anticipation of the Governments at varied levels result in legal politics concerning minimum wage 2023. Earlier, setting minimum wage was based on Government Regulation (PP) Number 36 of 2021 concerning Wage Payment, while the technical guidelines are elucidated in the Statement of Manpower Minister No. B-M/360/HL.01.00/XI/2022, stating that the minimum wage in the following year refers to the minimum wage added with inflation or economic growth that is alternatively chosen (inflation or economic growth, which one has higher value), and this is used as an indicator of value added in the minimum wage in the following year. The provincial minimum wage was to be announced no later than 21 November 2022 and the minimum wage of the Regency/Municipality was no later than 30 November 2022.

However, Government Regulation Number 36 of 2021 was amended by the Regulation of Manpower Minister Number 18 of 2022 concerning the Decision on Minimum Wage 2023 promulgated on 18 November 2022 concerning Minimum Wage. The amendments involve: (1) the minimum wage of the following year represents the minimum wage of the current year added with inflation and further added with the multiplication result of the economic growth and Alpha, which is likely to raise the wage value to a certain percentage compared to the wage calculated based on Government Regulation 36/2021; and (2) the announcement of provincial minimum wage was to be given no later than 28 November 2022 and the minimum wage in the Regency/municipality was no later than 7 December 2022. The Manpower Ministry of the Republic of Indonesia, Fauziah argues that the formula and the amendment of the period given are intended to bring welfare to workers/laborers and to assure legal certainty for investors/entrepreneurs.

However, the shift of policy from Government Regulation to Ministerial Regulation could lead to an issue. This research aims to analyze the legal impacts of policy change regarding minimum wage from Government Regulation to Ministerial Regulation and the position of authority held by the Governor in setting the minimum wage following the promulgation of the Regulation of the Manpower Minister.

THE STUDY ON THE CHANGE IN LEGAL POLITICS AND LEGISLATION TO DECIDE THE POLICY CONCERNING MINIMUM WAGE IN INDONESIA FROM TIME TO TIME

National legal politics can also be understood as a fundamental policy that sets the course, form, or substantive matter of the law to be made. In other words, the issues of legal politics will certainly deal with value, the decision of setting value, development, and imposition of sanctions" [8]. Furthermore, Satjipto Rahardjo opines that legal politics represents an activity of choosing a method to reach social objectives and certain laws in society. This triggers certain issues in terms of (1) what goals are to be achieved via the existing system, 2) what is the best way to achieve the goal concerned? (3) when and how does a legal method need to be changed? and (4) can a standardized and established pattern be formulated to help with the process of picking the objectives and ways to achieve those objectives appropriately? [9]

In line with the thought of Satjipto, Bagir Manan divides legal politics into two scopes, namely the politics of establishing law and the politics of law enforcement. The politics of forming a law is a policy that comes along with the creation, reform, and development of law, including the policy to form legislation, laws, and jurisprudence of the policy regarding other written laws. On the other hand, law enforcement serves as the policy of justice and legal services [10].



The political conception is manifested in the formation of legislation, especially in the states that comply with civil law systems transcending European borders due to the impact of French colonialism in Africa and Indochina, Dutch colonialism in Indonesia, Spain, and other Latin American countries. Although the US refers to Anglo Saxon system, the continental system can still be found in Louisiana as a French legacy. On the contrary, some states like Japan and Thailand follow civil law systems although they had never been colonized. Japan has been heavily affected by German legal systems, while Thailand leans more towards French legal systems [11].

The significant legislative regulations in the legal systems of a state exist due to the following factors [12]:

- The legislation serves as the legal principle that is easily identified, rediscovered, and explored. As a written legal principle, it is positioned, and so is the maker;
- Legislation assures more obvious legal certainty since its principles are easily identified and rediscovered;
- The structures and systems of the legislation are vivid, and this fact allows them to be re-scrutinized and tested in terms of both its formal and substantive matters;
- The formation and development of the legislation can be planned. This factor is deemed essential for countries in the progress of developing new legal systems that fit the need and the growth of the population.

The making of legislation as written laws theoretically always refers to the theory of Hans Kelsen on the structure of norms, revealing the influence brought by this legislation theory as in Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation in conjunction with Law Number 15 of 2019 concerning the Amendment to Law Number 12 of 2011 concerning the Formation of Legislation:

- The 1945 Constitution of the Republic of Indonesia;
- Decree of People's Consultative Assembly;
- Law/Government Regulation in Lieu of Law;
- Government Regulation;
- Presidential Regulation;
- Provincial Regulation;
- Regional Regulation of the Regency/Municipality.

From the theoretical perspective above, legal politics has led to the speculation of assumptions and hypotheses. First, the announcement of the new formula and the delayed schedule of deciding on minimum wage via zoom meeting with the Home Affairs Minister and Manpower Minister, attended by Governors and the Regents/Mayors or representatives on 18 November 2022, along with the issuance of the Regulation of Manpower Minister Number 18 of 2022 are the implication of the implementation of G20 Presidency that just completed. In the presidency, several global elements including governments to government (G to G) or non-government to non-government, or the combination of the two urge some specific interests to take place, one of which is related to the investment and wage payment based on signed investment commitment (about US\$ 8 billion or equal to Rp. 125 trillion during G20 Summit Conference in Bali, and US\$ 10 billion or equal to Rp. 156.8 trillion investment commitment is left unsigned), as released by Investment Minister Bahlil Lahadalia [13].

It is obvious that investors always want a safe, comfortable, and supportive atmosphere in investment, and this is measured by the indicators ensuring that there is no upheaval such as protests staged by laborers in response to the decision set for minimum wage. Therefore, it is expected that the new formula concerning the decision on minimum wage can serve as a persuasive strategy for the government to laborers. However, it cannot fully guarantee that no unrest will emerge.

This is no longer a new strategy when it is tracked down along the history of labor-related issues ever arising in Indonesia, especially during the time of the Dutch East Indies that has been connected to global trade. From the last 19th century to the early 20th century, excellent exported products such as Deli tobacco, rubber, pepper, sugar, and many more had been boycotted by the governments (G to G) and consumer community in European and



US markets following the announcement of the oppression against laborers in Indies voiced by figures as labor representatives and national figures including Tan Malaka who gave the testimony regarding the oppression against laborers in Deli, Semaoen, Hatta, Soekarno plantations, and many more. This announcement and propaganda sparked changes in the legal politics of the Indies affecting laborers [14].

Governor-General Van Limburg Stirum announced a series of restructuring measures on November 1918 aiming to subdue protests staged by laborers by fulfilling their expectations demanding a review of the conditions of workers in Indonesia and the industrial relations and they also demanded to be given proper legal protection embracing all vulnerable laborers [15].

One of the pledges outlined in “Janji November” is to establish a commission (similar to the function of the current council dealing with wage payment) to investigate the possibility of the decision on minimum wage in Java in 1919, considering that the amount of wage paid to laborers was far under inflation rate. The role of the regional government was deemed important to persuade sugar industries in the post-war to help fulfill the demand voiced by laborers expecting a wage raise. The main contributing factor of strikes during the post-war time in big cities and sugar industrial areas was a wage raise. The connectedness between the militancy of laborers and decreasing amount of real wage was repetitively voiced by the leader of the laborers in Indonesia throughout some European newspapers [16].

There was contradictive dualism of the report in this commission between the majority group (entrepreneurs and governments) and the minority group (laborers).

1. The perspective of the majority group:

The minimum wage should be within the amount lower than the “standard” wage with the consideration of “practical economy”. They were certain that colonial industries would not be capable of fulfilling this “standard” proportion. Moreover, the sudden wage raise would just urge laborers to be consumptive with their raised minimum wage. This attitude shaped the perspective that undermines the capacity of laborers, especially the poor ones. Once it was reported that the real wage of Indonesians had been plummeting since 1905 and this falling trend was worsened by the inflation in post-war. Although it was admitted that family income served as an indicator of welfare for the people of Indonesia, this perspective of family minimum wage was opposed since it was believed to raise the wage three or four times higher. This would lead to another bigger problem for the colonial industries. As a result, the daily minimum wage amount was recommended in a way that it was different between men, women, and children, and the amount was different from year to year and across regions.

2. The perspective of the minority group:

This group seems to have taken a more radical approach, seeing the majority's position as immoral. Despite the rumor believing that the wage for laborers in Indonesia was considered inadequate, the improvement of the amount of wage received was only demanded partially. The report from the minority group stated that the government had the responsibility to assure the application of a decent minimum wage to meet the basic needs of families in Indonesia. The minority group was quite certain that the evidence provided in the presence of the Commission indicated that malnutrition happened among laborers in Java. If the amount of this wage doubled, it is obvious that one family would get only half of the needs according to the minimum standard of basic needs.

Despite these two different views, the legal politics of the colonial era was dominated by giant plantations in Java and Sumatra and the growing oil industries. They expected to keep hiring cheap laborers without limits and with the fewest restricting regulations possible. They only cared about protecting their profitable industries, not thinking of contributing to economic growth. Once a Chairperson of the Sugar Industry Syndicate in 1928 argued that the primary task of industries was gaining profit, not getting involved in the interests of the Javanese people. Sugar Syndicate strongly opposed the idea of minimum wage, considering that it was not congruent with the real situations in Indonesia. Another argument implied that if wage raise was given to the native people, they would work fewer hours.



Entrepreneurs also believed that investors would change course to other industries when the minimum wage was raised. Most high colonial government officials also stood against the recommendations proposed simply because they believed that Indonesians were not comparable to Europeans. Minimum wage, as they believe, could not be implemented, supervised, and maintained. Responding to this harsh expectation of the plantation and sugar moguls, business associations, and officials, the Governor General ignored the recommendations given. Indonesian labor union lambasted the colonial government because it only granted the interest of European Capitalists who were more profit-oriented over low wages. From this perspective, the minimum wage was only possible among several colonial industries. In general, the main problem did not lie in the plausibility of the implementation of the minimum wage, but it was due to the policy that was believed to be not in favor of the interest of plantation industries and other giant European businesses.

The Indonesian labor union realized that the history of the campaign over the cases of minimum wage in western countries took time. In addition, they were also aware that their employers would not stand for this policy. In several cases, the policy concerning minimum wage could be reached when the labor union and political parties that catalyzed the aspiration of laborers could apply coercion in electoral politics. Legally setting a minimum wage was the primary expectation of the labor union from the 1920s to 1930s. When the Indonesian people gained the majority of seats in the city council in the 1930s, several councils promulgated the policy regarding the minimum wage for the companies within their territory. The Head of the National Faction in Volksraad (the Parliament in the Dutch Era), Husni Thamrin, repetitively suppressed the government over this issue. In 1938, the Government Van Limburg Stirum responded to coercion in an unexpected way, where he distributed circular letters to private businesses requiring them to pay more attention to the wage received by laborers without setting the minimum wage to protect laborers.

The constellation and fragmentation between the majority and minority in the commission as above is now more represented as wage payment at all levels in the form of binary opposition labor union vs Apindo in every session regarding the decision on minimum wage. On one hand, Apindo refused the minimum wage raise following the regulation set by the government as it is considered beneficial. The labor union, on the other hand, expected the highest wage raise possible. This binary opposition was under the domination of the interests of businesses with labor intensity (businesses that take up huge numbers of employees) including industries producing footwear, garments, textiles, and public transport spare parts.

Secondly, the formulation and the delayed schedule of the announcement of minimum wage in the Regulation of Manpower Ministry contravenes the principle of *Lex Inferior derogate lex superiori*, meaning that lower regulations must not contravene the laws above them. The position of Government Regulation within the hierarchical structure of legislation in Indonesia is above the Regulation of the Manpower Minister. Moreover, it also deconstructed the doctrine of the hierarchy of legal norms, implying that the legal norms within legislation can only be scrapped and/or amended with the law of equal level or higher law. Thus, the formulation and the schedule of the announcement as governed in Government Regulation Number 36 of 2021 can only be amended and replaced with another Government Regulation or Law or Government Regulation in Lieu of Law. With this doctrine and principle, the Regulation of Manpower Minister is deemed null and void and the minimum wage 2023 as the product of the Manpower Minister can be canceled by the court.

The likelihood of canceling the minimum wage 2023 is well understood by the government, believing that this cancellation should be executed by an aggrieved person or legal entity at State Administrative Court or by reviewing the Regulation of Manpower Minister and the Governor's Decree concerning Minimum wage. All this process may take up to one year of settlement, while the Regulation of Manpower Minister only regulates minimum wage 2023 and the Governor's Decree only lasts from 1 January to 31 December 2023. That is, When Supreme Court or State Administrative Court cancels the Regulation of Manpower Minister and Governor's Decree and imposes *incracht* (permanent legal force) with the assumption that the *incracht* position should take place as early as 2024. As a



consequence, there should be no legal implications since the Government Regulation and Governor's Decree are no longer effective or expires. The Decision of the Supreme court will state that 'the Regulation of Manpower Minister contravenes Government Regulation, and, thus, it has to be revoked'. Similarly, the Decision of the State Administrative Court will state 'Governor's Decree concerning minimum wage is invalid and must be revoked' or if the Supreme Court expedites the Decision in 2023, this decision will be considered 'peculiar', and the Decision of the Constitutional Court regarding the judicial review of the substance of Law Number 11 of 2020 concerning Job Creation is deemed 'conditionally unconstitutional'.

Thirdly, from the perspective of legal positivism, a legal product will remain effective if it is made by an authorized body as long as it is not reviewed or revoked by the State Administrative Court concerned in the case of the Governor's Decree concerning Minimum Wage and The Supreme court in the case of the Regulation of the Manpower Minister. *Mutatis mutandis*, the Governor's Decree regarding Provincial Minimum Wage and or Minimum Wage at Regency level 2023 issued according to the Regulation of the Manpower Minister Number 18 of 2022 remains valid and binding to employers and employees/laborers.

MINIMUM WAGE FROM THE PERSPECTIVE OF THE WELFARE STATE

The concept of the welfare state is derived from the idea of a state referring to democratic government systems responsible for the welfare of its people [17]. A welfare state serves as an antithesis of the concept of the state of formal law (classic) based on the notion to conduct strict supervision over the administration of the state authority, especially the executive body that was proven to have abused power in the absolute monarchy era [18]. The government plays an important role in protecting and promoting the economic and social welfare of the citizens as a whole based on the principles of equal opportunities in minimum provision to bring a better life [19].

Within the context of Indonesia, the Preamble of the 1945 Constitution mentions one of the objectives of the state—improving public welfare—where the state allows for social and economic rights to all citizens. In other words, Indonesia is not a minimal state or necessary evil, not even an enabling state that frequently modifies markets while upholding individualism. The state plays as a development agent, not only encouraging the equality of opportunity but also actively enforcing social justice or encouraging the equality of outcomes over personal interest [20].

The changing formula and time in minimum wage payment are governed in the Regulation of Manpower Minister Number 18 of 2022, which serves as the response of the state to bring justice to workers/laborers by settling the minimum wage that is essential in industrial relations. The essential roles of this minimum wage are: first, the minimum wage is a legal instrument to avert exploitation *de l'homme par l'homme* (slavery by persons or legal entities). It has been a jargon throughout the history of the movement of Indonesian Independence. Furthermore, this jargon is crystalized and manifested within the concept of law in Indonesia specifically in the second principle of Pancasila: "*Kemanusiaan yang adil and beradab*" (Just and Civilized Humanity).

Soekarno combined this second principle and the elucidation asserting that social life, government, and employment were supposed to be based on high morality and ethics. High morality involves subordination and compliance with aspects that cause safety for human beings [21]. This implies that Indonesia principally upholds human rights and spreads brotherhood and sisterhood around the world according to justice values and morality [22]. Thus, within a global context, there should be no more states taking advantage of other states. Within an individual context, there should be no persons or companies/employers forcing others to work too hard as laborers.

This argument is not hyperbolic, rhetorical, or fictitious, but it has historical references where there was a transformation of coercion imposed on laborers coming from the Dutch government during the *culturstelsel* (forced cultivation) era making a huge contribution as the state finance of the Dutch colonial government to private companies and individuals with the legitimization of law through *Agrarische Wet* in 1870 [23].



Moreover, the second principle of Pancasila carries the meaning of the life pattern of the people in Indonesia with high values of respect for people, sacredness in life, and high respect for virtue. This second principle also carries the meaning implying that (i) the formation of the state of Indonesia is based on the humanity principle, meaning that a state represents the organization of human beings, by human beings, and to human beings of Indonesia; (ii) every person in Indonesia deserves proper and humane treatment, just and civilized treatment; (iii) just and civilized life is closely linked to the value of the first principle "Belief in the One and Only God that upholds the civilization of the state that clings on to divine aspects and justice; (iv) the vision of high civilization of Indonesia grows within the culture of the state that has been well-established and dynamic but flexible in its adaptation to the current development amidst the growing human civilization in the world [24].

Second, the minimum wage as the safety net or lower band of the wage received by laborers is governed in Article 1 paragraph (1) of Regulation of Manpower Minister Number 18 of 2022. Furthermore, in Decision Number 72/PUU-XIII/2015 on 29 September 2015, the Constitutional Court of the Republic of Indonesia asserts that the minimum wage is intended to set the basic protection for workers/laborers and serve as a safety net to ensure that the wage is not plummeting to the lowest level. The minimum wage as the safety net represents the manifestation of the fourth principle of Pancasila, Social Justice for the Whole of the People of Indonesia. This principle represents the need to shape the social conditions, where all social classes and individuals of Indonesia have access to equal and just rights to life and all humans are assured to have access to a decent life [25].

Third, the minimum wage as an instrument to bring welfare to workers/laborers is essential in the structure of a welfare state. Not only do they serve as the subjects to ensure that the state economy keeps running with taxation and economic circulation, but they also deserve to be given welfare [19].

In reality, the minimum wage has multiple effect finance to provide welfare for workers/laborers. This minimum wage should set purchasing power standards among laborers in meeting their needs. Moreover, the minimum wage is the main component of shaping welfare and functions as the basic payment of social security for workers and national health insurance whose particular amounts are deducted from the minimum wage [26]. The payment of income tax and the payment of the membership levy of the labor union commonly known as a check-off system (COS) can be taken from the money collected in an organization of labor union by quoting the minimum wage from employers. This money is to be paid to labor union organizations. This money is also distributed to bank accounts of every organization concerned and also for the payment of the saving account for housing (Tapera) [27].

THE STRATEGIC POSITION OF THE GOVERNOR IN SETTING MINIMUM WAGE

The law of the regional government implies that a governor is the representative of the central government at a regional level. This positions the governor in a potential setting, allowing for the authority to set and limit the authority of the governor as governed in Government Regulation and the Regulation of Manpower Minister. This strategic position and authority restriction spark a quandary due to the binary opposition between employers (not expecting minimum wage) *vis a vis* workers/laborers (expecting minimum wage raise) and Apindo *vis a vis* labor union in Wage Council, like in the minimum wage payment in 2023 in the Province of Banten.

The governor official of Banten Al Muktabar once faced a dilemma in dealing with the minimum wage policy. On one hand, the governor planned to raise the minimum wage by 13% following the aspiration of workers/laborers (according to the Regulation of Manpower Minister Number 18 of 2023, the minimum wage raise in 2023 within 6 intervals is at 8%). On the other hand, businesses refused the minimum wage raise accompanied by a threat of a global economic recession predicted to happen by 2023. Thus, Almuktabar tried to find the equilibrium to ensure that the minimum wage did not lean towards one side. This measure was made clear in the session/intensive dialogue with the head of Apindo and the



chairperson of the labor union within a Tripartite Collaboration of the Province of Banten held on Sunday, 20 November 2022. In this dialogue, the Governor mentioned the minimum wage raise by considering the continuity of the condition of the existing companies. Back in 2022, the Province of Banten received a 5.6 trillion investment or 105%, exceeding the target (5.3 trillion). Although this investment used up (capital intensity) manpower, this can be an indicator of the growing trust of investors in Banten, and this trust needs to be maintained by creating supportive industrial relations. Unfortunately, the measures and political will taken by the Governor of the Province of Banten to raise the minimum wage according to the aspiration of a labor union are restricted by Government Regulation and the Regulation of Manpower Minister governing the limiting formula regarding the minimum wage 2023.

CONCLUSION

Following welfare state and statutory theories, the shift of the policy from Government Regulation Number 36 of 2021 concerning Wage Payment to the Regulation of Manpower Minister of the Republic of Indonesia Number 18 of 2022 concerning Decision on Minimum Wage 2023 contravenes the legislative principle, *lex inferior derogate lex superior* because the position of the Manpower Minister is under Government Regulation as governed in Article 7 of Law Number 12 of 2011 concerning Legislative Drafting in conjunction with Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Legislative Drafting. However, from the perspective of legal positivism, the Decree of the Governor of Indonesia regarding Provincial Minimum Wage and minimum wage at regency level 2023 issued according to the Regulation of Manpower Minister remains effective and binding to all employers and workers/laborers as long as it is not reviewed or revoked by the court. Therefore, the Governor as the representative of the central government in regional areas holds a strategic and authoritative position in deciding the amount of the minimum wage, but, on the other hand, the restriction of authority implemented by the Central Government with a 6% increase also applies.

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