

Intersecting Liabilities: A Critical Analysis of Criminal Accomplice Provisions in Employment Law Violations

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Abstract

Violations of the Regency/Municipal Minimum Wage (UMK) in Indonesia not only undermine workers' fundamental rights but also expose structural deficiencies in the enforcement of labor criminal law. Previous studies have predominantly framed minimum wage violations as individual misconduct, thereby neglecting the systemic and collective dimensions of corporate decision-making. This article addresses that gap by critically examining the application of participation doctrines under Articles 55 and 56 of the Indonesian Penal Code (KUHP) and their relevance for attributing liability to actors across organizational hierarchies. Employing a normative juridical method with statutory and conceptual approaches, this study integrates doctrinal analysis, judicial interpretation, and comparative insights from global practices on corporate and collective criminal liability. The findings reveal that wage violations often result from deliberate policies formulated at managerial or corporate levels, thus requiring recognition of functional perpetration and structural participation. Furthermore, this article argues that the doctrine of abuse of circumstances (*misbruik van omstandigheden*) should be considered to exempt coerced or vulnerable actors from liability, thereby preventing the criminalization of structural victims. By advancing a critical interpretation of participation in labor-related crimes, this study contributes both to the theoretical development of collective liability in Indonesian criminal law and to practical reform strategies that strengthen the protection of workers' constitutional rights.

1. Introduction

Indonesia, as a state governed by law as enshrined in Article 1 paragraph (3) of the 1945 Constitution, places the law as a fundamental pillar for regulating all aspects of national life, including the labor sector. In this context, the law functions not only as a means of social engineering but also as a mechanism for justice, legal protection, and legal certainty for both employers and employees. However, in practice, violations of labor norms frequently occur and are often systemic, involving multiple actors within corporate structures. These violations frequently transcend administrative or civil boundaries and enter the realm of criminal law. Therefore, the concept of criminal participation becomes increasingly relevant in addressing labor-related offenses that involve more than one party. The Indonesian Criminal Code (KUHP) explicitly regulates the concept of criminal participation under Articles 55 and 56. Article 55 defines who can be considered perpetrators, whether acting directly, ordering others, or committing an offense together. Article 56 outlines who qualifies as an accomplice or aid to a crime. In the context of labor, collective criminal acts may manifest in various ways, including the exploitation of wages, unsafe working conditions, underpayment below the statutory minimum wage, employment of minors, and human trafficking. These offenses often

involve hierarchically organized roles within a company, such as directives from directors, execution by managers, and enforcement by administrative staff, all of which complicate the attribution of criminal liability. In such cases, legal analysis is required to determine the extent to which each actor may be held responsible under the doctrine of participation¹.

Although Law No. 13 of 2003 concerning Manpower provides criminal sanctions in Articles 183 to 189 for violations of work hours, minimum wages, employment contracts, and protections for women and children, it lacks specific provisions on corporate criminal liability and multi-party offenses. Consequently, enforcement authorities often rely on general provisions in the KUHP. The enactment of Law No. 1 of 2023 on the New Criminal Code marks a significant reform, reinforcing the principle of participation through Article 45, which holds that individuals participating structurally or functionally in a crime may be held criminally liable. This is in line with global trends recognizing doctrines such as command responsibility and corporate criminal liability, especially for crimes committed within organizational hierarchies. Nevertheless, the implementation of participation provisions in labor criminal law remains problematic. Law enforcement authorities often face difficulties in proving the subjective element (*mens rea*) of each participant and distinguishing between main perpetrators, instigators, accomplices, and facilitators². Furthermore, corporate entities being legal fictions are often shielded from effective prosecution due to the absence of a clear and comprehensive framework for collective liability. This is further exacerbated by the limited understanding among law enforcement officials of collective accountability theories, particularly in corporate labor environments.

The Supreme Court has provided valuable guidance in interpreting criminal participation in labor violations. For example, in Supreme Court Decision No. 2114 K/Pid.Sus/2019, the Court emphasized that collective normative violations committed within a company structure could be prosecuted criminally based on the principle of participation. This decision reflects the judiciary's acknowledgment of the structural nature of labor crimes and underscores the importance of analyzing organizational roles and causal links in determining liability³. Such rulings demonstrate the need to shift from an individualistic approach to a structural perspective in labor-related criminal enforcement. Several academic studies have addressed the gaps in criminal law enforcement in labor cases. Yunus (2018), in his study "Application of Labor Crimes in the Context of Corporate Responsibility, argues that

¹ Taufiq Alamsyah, "Kritik Hukum Islam Terhadap Sistem Upah Tenaga Kerja Dalam Undang-Undang No. 6 Tahun 2023 Tentang Cipta Kerja Dan Implikasinya Terhadap Perlindungan Hak-Hak Ketenagakerjaan - Digital Library UIN Sunan Gunung Djati Bandung," 2025, <https://digilib.uinsgd.ac.id/103912/>.

² M.H. Rio Saputra, S.H., M.H. Dr. Lufsiana, S.H., and M.H. Dr. Dharma Setiawan Negara, S.H., "Reformasi Hukum Acara Pidana: Menyongsong KUHP Baru," Google Buku, 2025, <https://books.google.co.id/books?hl=id&lr=&id=bnFREQAQAQBAJ&oi=fnd&pg=PA2&dq=Pemberla kuan+Undang-Undang+Nomor+1+Tahun+2023+tentang+Kitab+Undang-Undang+Hukum+Pidana+Baru+menandai+reformasi+yang+signifikan,+yang+memperkuat+asas+partisipasi+melaui+Pasal+45,+>.

³ Kresensia Angelica Hardi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Peranan Lembaga Bantuan Hukum Dalam Penanganan Permasalahan Ketenagakerjaan (Studi Di LBH Bali)," *Jurnal Preferensi Hukum* 3, no. 2 (April 30, 2022): 247-52, <https://doi.org/10.22225/JPH.3.2.4924.247-252>.

there is a significant discrepancy between the existence of criminal provisions in labor law and their enforcement, particularly in cases involving corporate entities. Similarly, Siregar (2021), in her research on "Corporate Criminal Responsibility in Human Trafficking Crimes," highlights the frequent involvement of syndicates comprising company owners, recruiters, and officials, thereby affirming the need for participation doctrines in complex labor violations. Astuti (2020), in her analysis of minimum wage violations, found that many labor violations are the result of systemic decisions made at the top level of corporate hierarchies but are rarely addressed through criminal prosecution.

This research is urgently needed to explore the extent to which labor-related offenses involving multiple parties can be prosecuted under Articles 55 and 56 of the KUHP, how organizational structures influence criminal accountability, and what the ideal legal framework would be for addressing collective responsibility in labor law. It contributes to the theoretical understanding of criminal participation and provides practical insights for policy reform in labor criminal law. Given the vulnerability of workers and the systemic nature of many labor violations, criminal law should function as the ultimate remedy (*ultimum remedium*) to provide effective protection. Without proper application of the participation principle, structural offenders may escape liability while lower-level actors bear the consequences. Therefore, integrating the concept of participation into labor criminal law enforcement is essential not only for ensuring accountability but also for strengthening the integrity and fairness of the legal system in Indonesia

2. Methods

This research is a normative legal study employing both a statutory approach and a conceptual approach. The statutory approach is used to examine the provisions of Law Number 13 of 2003 on Manpower, as amended by Law Number 11 of 2020 on Job Creation, as well as the Indonesian Penal Code (KUHP), particularly Articles 55 and 56. Meanwhile, the conceptual approach is employed to explore the doctrines of participation (*deelnemings*), collective criminal liability, and the concept of abuse of circumstances (*misbruik van omstandigheden*) within the context of criminal law.

The legal materials used in this study consist of primary legal materials in the form of statutory regulations and court decisions, particularly Supreme Court Decision Number 1454 K/Pid.Sus/2018, and secondary legal materials such as legal literature, academic journals, and other relevant scholarly documents. Data were collected through library research, and all legal materials were analyzed using a descriptive-analytical method to obtain a systematic and logical legal argument regarding the limits of criminal liability in cases of wage payment violations below the Regency/Municipal Minimum Wage (UMK)

3. Results and Discussion

3.1. Workers who consent to receiving wages below the Regency/Municipal Minimum Wage (UMK) may be subject to criminal liability under Articles 55 and 56 of the Indonesian Penal Code (KUHP).

The payment of wages below the Regency/Municipal Minimum Wage (UMK) must be understood not only as a violation of statutory provisions but as an infringement of

constitutional rights guaranteed under Article 27(2) of the 1945 Constitution. This transforms wage violations from mere administrative non-compliance into offenses of a criminal character. Article 90(1) of the Manpower Law explicitly prohibits the payment of wages below the minimum wage, and Article 185 reinforces this by providing custodial and pecuniary sanctions. The statutory design reflects an intention to safeguard workers' dignity, yet enforcement practices remain selective and fragmented⁴.

Under Articles 55 and 56 of the Indonesian Penal Code (KUHP), liability extends beyond direct perpetrators to those who instigate, order, or assist in the commission of crimes. In the context of UMK violations, corporate executives who design wage policies, managers who enforce them, and staff who facilitate payments may all be subject to criminal liability. This mirrors the doctrine of *deelneming*, which broadens the scope of criminal accountability in multi-actor offenses⁵. The challenge, however, lies in proving the subjective element of intent (*dolus*) across corporate hierarchies. As R. Soesilo and later Indonesian jurisprudence have affirmed, instigators or facilitators are equated with principal offenders when their contributions are indispensable to the commission of a crime. The Supreme Court Decision No. 1454 K/Pid.Sus/2018 illustrates this principle by attributing liability to corporate officials for systemic wage policies that deliberately circumvent minimum wage obligations⁶.

From a theoretical standpoint, the concept of the functional perpetrator (*funktionelle Täterschaft*) articulated by Claus Roxin is highly relevant. This doctrine emphasizes that criminal liability attaches to those who control the will of others within structured organizations, even if they do not directly commit the act. Applying this lens, corporate directors exercising structural authority over wage policies can be construed as functional perpetrators. Similarly, the notion of *command responsibility*, widely recognized in international criminal law under the Rome Statute, provides a comparative basis for attributing liability to superiors who fail to prevent or punish subordinates' unlawful acts. The integration of these comparative doctrines underscores the need for Indonesia to move from an individualistic to a structural approach in labor-related crimes.

Moreover, comparative perspectives highlight Indonesia's enforcement gaps. In the Netherlands, the origin jurisdiction of *deelneming*, corporate liability is firmly entrenched through recognition of collective and functional culpability. In the United Kingdom, the *identification doctrine* attaches corporate liability by attributing the acts and intent of senior management to the corporation itself. In the United States, the principle of *respondeat superior* allows corporations to be held liable for acts committed by employees within the scope of employment. These comparative approaches reveal that Indonesia's reliance solely on Articles

⁴ Mohammad Setyo Puji Raharjo et al., "KEBIJAKAN PEMERINTAH DALAM PERLINDUNGAN HUKUM UPAH MINIMUM DI INDONESIA," Media Bina Ilmiah, 2025, <https://binapatria.id/index.php/MBI/article/view/1306>.

⁵ ATQO DARMAWAN AJI, "Bentuk Tindak Pidana Dan Penjatuhan Sanksi Pidana Bagi Penyedia Jasa Kontruksi Pasca Adanya Undang - Undang Nomor 2 Tahun 2017," December 17, 2021, <https://dspace.uui.ac.id/handle/123456789/37418>.

⁶ Pengganti Atas et al., "Analisis Asas Vicarious Liability Dalam Pertanggungjawaban Analisis Asas Vicarious Liability Dalam Pertanggungjawaban Pengganti Atas Perbuatan Melawan Hukum Pegawai Bank," *Jurnal USM Law Review* 6, no. 2 (2023): 526, <https://doi.org/10.46576/lj.v2i1.1449>.

55 and 56 of the KUHP is inadequate to address structural labor violations within modern corporate entities.

A further dimension concerns workers who acquiesce to sub-minimum wages. At first glance, their consent appears to weaken the criminal dimension. However, invoking the principle of abuse of circumstances (*misbruik van omstandigheden*), such “consent” often arises from economic dependency⁷, coercion, or structural inequality, which negates genuine free will. Article 48 of the Penal Code, which provides an excuse for coercion, supports this interpretation. In comparative terms, the Rome Statute’s Article 31 also recognizes duress as a ground for excluding liability. The theoretical basis here is the principle of culpability (*geen straf zonder schuld*), which affirms that punishment requires blameworthiness. Thus, workers’ apparent participation cannot be equated with voluntary collaboration; rather, they are structural victims deserving protection. This distinction between active offenders and coerced participants is crucial. Failure to account for abuse of circumstances risks criminalizing victims while shielding decision-makers. Progressive legal theory, as advanced by Satjipto Rahardjo, emphasizes that substantive justice must prevail over rigid formalism. Applying this approach, law enforcement must recognize that participation under duress does not fulfill the element of culpability⁸. Restorative justice perspectives further reinforce the need to avoid punishing structural victims and instead focus on systemic remedies.

The foregoing analysis demonstrates that Indonesian criminal law requires reinterpretation and reform in its application to labor violations. While statutory provisions provide a foundation, they must be operationalized through doctrines that capture corporate structures, managerial decision-making, and power asymmetries. Without such critical reconstruction, the law risks punishing minor actors while allowing systemic offenders to evade accountability⁹. The integration of comparative doctrines and progressive interpretations offers a pathway toward more equitable enforcement, ensuring that criminal law fulfills its role as an *ultimum remedium* for the protection of workers’ rights. The approach to criminal liability in minimum wage violations must also take into account the doctrine of the *functional perpetrator* those who do not carry out the criminal act directly but who control its occurrence through structural authority. This doctrine emphasizes that individuals with the power to decide or halt a policy leading to a criminal offense may still be held liable even if they did not physically commit the act. Barda Nawawi Arief argues that this approach is essential for overcoming barriers to prosecuting corporate crimes that operate through hierarchical or collective systems. In Supreme Court Decision No. 1454 K/Pid.Sus/2018, the court explicitly stated that corporate officials may be held criminally responsible for internal policies that result in employees receiving wages below the statutory minimum. This ruling

⁷ Iwan Rasiwan, “Rekonstruksi Hukum Berbasis Nilai Keadilan,” *AMU Press*, 2024, 1–206, <https://ejournal.amertamedia.co.id/index.php/press/article/view/409>.

⁸ Kiki Saraswati, “Teori Turut Serta Melakukan (Medeplegen) Pejabat Pemerintah Dalam Tindak Pidana Korupsi Bantuan Sosial,” *Ranah Research : Journal of Multidisciplinary Research and Development* 6, no. 6 (September 17, 2024): 2469–85, <https://doi.org/10.38035/RRJ.V6I6.1057>.

⁹ Hot Jungjungan Simamora BPSDM Provinsi Kalimantan Barat and jalan Gusti Johan, “Penerapan Hukum Perlindungan Pekerja Migran Indonesia Sebagai Implementasi Good Governance Pengawasan Ketenagakerjaan,” *Jurnal Widyaiswara Indonesia* 2, no. 3 (September 25, 2021): 137–48, <https://doi.org/10.56259/JWI.V2I3.95>.

sets an important precedent: criminal penalties can be imposed on policymakers, not just field-level executors¹⁰.

In addition to its basis in positive criminal law, this approach is also supported by constitutional principles. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia declares that every citizen has the right to employment and to a livelihood worthy of human dignity. Therefore, a violation of the UMK directly infringes upon workers' constitutional rights and reflects structural injustice¹¹. The Constitutional Court, in Decision No. 100/PUU-X/2012, emphasized that the minimum wage is a form of protection for workers' rights and cannot be negotiated through internal company policy. Even with the enactment of Law Number 11 of 2020 on Job Creation, which amended several wage regulation aspects, the criminal provision in Article 185 of the Manpower Law remains unchanged. This reaffirms that violations of the minimum wage remain subject to criminal sanctions and that Articles 55 and 56 of the Penal Code continue to serve as a legal basis for prosecuting both direct and indirect offenders. Accordingly, criminalization of UMK violations reflects the State's role in protecting workers' rights and strengthens the rule of law in a just and humanistic manner.

3.2. Can Abuse of Circumstances (*Misbruik van Omstandigheden*) Exclude Criminal Liability for Participation?

The concept of abuse of circumstances (*misbruik van omstandigheden*) in criminal law is closely related to the elements of free will and culpability. Although this doctrine is more commonly known in civil law, it becomes significant in criminal law when a person participates in a crime due to specific pressures, such as dependency, threats, or psychological conditions that impair their free will. Articles 55 and 56 of the Penal Code emphasize that participation in a criminal act requires intentional and conscious involvement. However, if participation occurs under coercive conditions that eliminate *mens rea*, the perpetrator cannot be held criminally liable. In this regard, Article 48 of the Penal Code, which governs coercion, becomes relevant, since an offender acting under psychological duress may be considered to lack complete free will¹².

Coercion in criminal law is distinguished into physical coercion (*vis absoluta*) and psychological coercion (*vis compulsiva*), both of which may serve as grounds for justification or excuse. When a person is under serious mental pressure for instance, due to power imbalances or threats to life their free will is deemed impaired¹³. Therefore, their involvement

¹⁰ Dwi Hariyanti and Sadjijono, "PENERAPAN SANKSI PIDANA ATAS PELANGGARAN PENGUPAHAN KETENAGAKERJAAN," *DEKRIT (Jurnal Magister Ilmu Hukum)* 11, no. 1 (November 15, 2022): 62–82, <https://ejournal.fh.ubhara.ac.id/index.php/dekrit/article/view/109>.

¹¹ Gavinella Aulia, Yasmirah Mandasari Saragih, and T. Riza Zarzani, "Pekerja Anak Dalam Perspektif Hukum Pidana Dan Hukum Syariah: Sebuah Kajian Komparatif," *JIIIP - Jurnal Ilmiah Ilmu Pendidikan* 7, no. 2 (February 3, 2024): 1598–1607, <https://doi.org/10.54371/JIIP.V7I2.3958>.

¹² Karenina Cantiga, Ismansyah Ismansyah, and Khairani Khairani, "Penyidikan Terhadap Pengusaha Atas Dugaan Tindak Pidana Ketenagakerjaan Di Provinsi Sumatera Barat," *UNES Law Review* 6, no. 1 (September 21, 2023): 1834–44, <https://doi.org/10.31933/UNESREV.V6I1.794>.

¹³ Perubahan Ketentuan, Sugeng Santoso, and Pn A Pendahuluan, "Perubahan Ketentuan Pidana Ketenagakerjaan Dalam Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan

in a criminal act may be excluded from punishment. However, exemption from punishment is not automatic; it requires rigorous proof that such pressure was real and that the actor had no alternative. Courts must carefully assess whether the person truly could not resist the criminal act. For instance, in human trafficking cases or when migrant laborers are coerced into smuggling narcotics under threats, their involvement may be understood as the result of an abuse of circumstances by the principal offender.

The principle of *culpability* (asas culpabilitas) asserts that no person shall be punished unless they can be personally blamed for their actions. If coercive circumstances deprive the actor of the ability to discern right from wrong, then the element of fault is not fulfilled. This principle is also reflected in Article 31 of the Rome Statute, which recognizes duress as a ground for excluding criminal liability in international criminal law. In national practice, abuse of circumstances has not yet been formally recognized as a justification, but in several court decisions such as cases involving children or women in conditions of social subordination judges have considered socio-psychological factors as grounds for exemption. This suggests that, substantively, the Indonesian legal system allows for a contextual rather than purely formalistic evaluation of participation¹⁴.

It is essential to interpret Article 48 of the Penal Code progressively in order to respond to contemporary forms of crime, particularly those involving vulnerable groups. In many cases, individuals who appear to participate are, in fact, structural victims of an unequal social system. Criminal law must be capable of distinguishing between active offenders with full intent and passive actors drawn into crime due to dependence or fear. This approach aligns with the progressive legal theory of Satjipto Rahardjo, which emphasizes the importance of substantive justice and the protection of human dignity. When someone is coerced into committing a crime due to pressure or domination by the main offender, it is inappropriate to impose the same level of criminal responsibility¹⁵. Therefore, the concept of abuse of circumstances should be further emphasized in both legislative reform and judicial practice.

Ultimately, it must be underlined that exemption from criminal liability due to abuse of circumstances does not imply that the act is legally permissible. The crime still occurs, but the actor is deemed unworthy of punishment due to loss of free will or compulsion. This approach is consistent with the principle of *restorative justice*, which prioritizes healing over punishment. In practice, law enforcement authorities must be more sensitive to signs of abuse of circumstances, particularly during investigation and prosecution. Otherwise, the legal system risks criminalizing victims who ought to be protected by the state¹⁶. Therefore, abuse of

Pemerintah Pengganti Undang- Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang- Undang," *JATISWARA* 39, no. 2 (July 30, 2024): 160-73, <https://doi.org/10.29303/JTSW.V39I2.725>.

¹⁴ Dwight Nusawakan, Muhammad Khaidir, and Kahfi Natsir, "Peran Kejaksaan Republik Indonesia Dalam Penegakan Hukum Terhadap Tindak Pidana Perdagangan Orang Dan Tindak Pidana Dalam Bidang Ketenagakerjaan," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 4, no. 1 (February 10, 2025): 84-96, <https://doi.org/10.55606/JHPIS.V4I1.4830>.

¹⁵ Oktantiani Dyah Pramudya, "EFEKTIVITAS PENEGAKAN HUKUM PIDANA KETENAGAKERJAAN," *Jurnal Idea Hukum* 8, no. 1 (August 7, 2022), <https://doi.org/10.20884/1.JIH.2022.8.1.192>.

¹⁶ "KEBIJAKAN HUKUM PIDANA DI BIDANG KETENAGAKERJAAN KARENA MELAKUKAN KESALAHAN BERAT | Lex LATA," accessed August 21, 2025, <https://journal.fh.unsri.ac.id/index.php/LexS/article/view/160-176/0>.

circumstances should be recognized as a valid excuse in the context of participation, provided that it can be proven that the actor lost their free will and cannot be held criminally responsible for their actions.

The doctrine of *misbruik van omstandigheden* though more traditionally embedded in civil law emerges as an increasingly significant concept within criminal law, particularly when examining the culpability of actors whose participation in a crime is shaped by coercion, socio-economic dependency, or structural subordination. At its core, this doctrine challenges the conventional assumption that all forms of participation under Articles 55 and 56 of the Indonesian Penal Code (KUHP) are the product of free will and intentional choice. The recognition that external pressures may erode autonomy and thereby negate culpability reflects a broader evolution of criminal law theory toward contextual and humanistic approaches¹⁷.

The foundational principle of criminal liability is encapsulated in the maxim *geen straf zonder schuld* no punishment without blame. In German criminal theory, Claus Roxin's *Schuldprinzip* (principle of culpability) highlights that liability presupposes the actor's ability to make a free and responsible choice. Where coercion whether physical (*vis absoluta*) or psychological (*vis compulsiva*) removes or significantly diminishes that capacity, the attribution of culpability becomes unsustainable. Similarly, in common law jurisdictions, scholars such as Andrew Ashworth argue that *duress* serves as a partial or complete defense because it nullifies the voluntariness essential to *mens rea*. George Fletcher further supports this view in his comparative analysis of excuses, emphasizing that liability without free will undermines the moral legitimacy of punishment. These theoretical underpinnings are highly relevant for Indonesian law, where the Penal Code (Article 48 KUHP) recognizes coercion as an excuse. However, unlike explicit civil law recognition of *misbruik van omstandigheden* in the Netherlands, Indonesia lacks a systematic doctrinal articulation of how such abuse applies in criminal contexts. This gap opens the possibility for progressive legal interpretation and doctrinal innovation.

In Dutch civil law, *misbruik van omstandigheden* is traditionally used to annul contracts entered into under unfair exploitation of vulnerability. In criminal law, the closest analogy lies in *psychische overmacht* (psychological duress), which Dutch courts acknowledge as an excuse where the actor's resistance is overborne by extraordinary psychological pressure. German courts apply similar reasoning under the rubric of *Nötigung* (coercion) combined with the *Schuldprinzip*, ensuring that liability requires genuine culpability¹⁸. At the international level, Article 31 of the Rome Statute explicitly provides for duress as a ground for excluding criminal responsibility, requiring that (i) the threat be imminent, (ii) the actor's response be necessary and reasonable, and (iii) the actor not intend to cause greater harm than avoided. This strict evidentiary threshold prevents opportunistic invocation of duress while ensuring protection

¹⁷ "KEBIJAKAN HUKUM PIDANA DI BIDANG KETENAGAKERJAAN KARENA MELAKUKAN KESALAHAN BERAT | Lex LATA."

¹⁸ Raju Diagunsyah and Saut Parulian Panjaitan, "KEBIJAKAN HUKUM PIDANA DI BIDANG KETENAGAKERJAAN KARENA MELAKUKAN KESALAHAN BERAT," *Lex LATA* 5, no. 2 (June 24, 2023), <https://doi.org/10.28946/LEXL.V5I2.1970>.

for genuine victims¹⁹. Such criteria could serve as valuable guidance for Indonesian courts seeking to develop a coherent jurisprudence on *misbruik van omstandigheden*.

In Indonesian practice, courts have occasionally considered socio-psychological factors particularly in cases involving women, minors, and trafficking victims as mitigating circumstances. Yet these decisions remain isolated, lacking a consistent doctrinal framework. With the enactment of the new KUHP (Law No. 1 of 2023), particularly Articles 45 and 48, a more progressive interpretation becomes possible. Article 45 emphasizes collective participation liability, while Article 48 acknowledges coercion as an excuse. Read together, these provisions could provide a normative basis for exempting coerced participants from liability while still holding systemic offenders accountable²⁰. However, without careful doctrinal development, the risk arises that corporate actors might misuse the doctrine to shield themselves. Executives could claim that structural or economic pressures compelled their conduct, thereby escaping liability while vulnerable workers bear the brunt of prosecution. To prevent this distortion, courts must apply a strict evidentiary standard, similar to the Rome Statute, ensuring that claims of coercion are substantiated with credible proof of imminent and irresistible pressure. From the lens of progressive legal theory, Satjipto Rahardjo argues that law must prioritize substantive justice and human dignity over rigid formalism. Applied here, this perspective reinforces that coerced actors such as low-level employees instructed to implement unlawful wage policies should be viewed as structural victims rather than offenders²¹. Restorative justice further strengthens this argument by emphasizing rehabilitation and protection over punishment in cases²² where culpability is absent or severely diminished. Nevertheless, a nuanced balance must be maintained. While recognizing *misbruik van omstandigheden* protects structural victims, an overly broad application could undermine accountability by creating loopholes for those in positions of power. Therefore, judicial practice must distinguish carefully between genuine victims of coercion and opportunistic claims by actors with substantial autonomy.

The current sub-heading, “*Can Abuse of Circumstances (Misbruik van Omstandigheden) Exclude Criminal Liability for Participation?*”, is effective in framing the central normative question. It is direct, critical, and reflective of comparative legal discourse. However, if refinement were desired for greater precision, an alternative could be: “*Abuse of Circumstances as an Excuse in Participation Liability: Between Structural Victims and Opportunistic Defenses.*” This alternative highlights the dual challenge protecting the vulnerable while preventing misuse.

¹⁹ Fadhilatul Mubarakah, “Perlindungan Tenaga Kerja Formal Karyawan Hotel Aryaduta Medan Yang Di PHK Secara Sepihak Pada Masa Covid 19 (Analisis Hukum Pidana Islam Terhadap UU No.13 Tahun 2003),” 2021.

²⁰ Indonesiadi Perkebunan et al., “PEMENUHAN HAK-HAK ASASI ANAK TENAGA KERJA INDONESIA PERKEBUNAN SAWIT DI WILAYAH TAWAU, SABAH, MALAYSIA,” *Jurnal Pembangunan Manusia* 3, no. 1 (February 28, 2022): 18, <https://doi.org/10.7454/jpm.v3i1.1029>.

²¹ Muhammad Azzam Alfarizi, Ridha Nikmatus Syahada dan Lisa Arianti Kusuma Dewi, and Info Artikel, “Tinjauan Yuridis Terhadap Peran Kerja Sama Imigrasi Dalam Perlindungan Hukum Pekerja Migran Indonesia,” *Jurnal Syntax Transformation* 2, no. 04 (April 23, 2021): 508–23, <https://doi.org/10.46799/JST.V2I4.250>.

²² Diagunsyah and Panjaitan, “KEBIJAKAN HUKUM PIDANA DI BIDANG KETENAGAKERJAAN KARENA MELAKUKAN KESALAHAN BERAT.”

Nonetheless, the existing title is already clear and academically appealing; thus, it may be retained unless the broader scope is intended.

In sum, *misbruik van omstandigheden* serves as a critical lens through which participation liability can be humanized. By drawing on comparative insights, reinforcing the principle of culpability, and applying progressive interpretation, Indonesian criminal law can avoid criminalizing structural victims while maintaining accountability for systemic offenders. This doctrine should not be seen as a loophole, but as a mechanism for aligning criminal law with constitutional justice and human dignity.

4. Conclusions

Based on the foregoing discussion, it can be concluded that the payment of wages below the District/City Minimum Wage (UMK) is not merely an administrative violation, but may be classified as a criminal offense if it meets the elements of intent and active involvement of the parties. The provisions under Article 90 and Article 185 of the Manpower Law provide a strong legal foundation for criminal prosecution against employers who knowingly pay wages below the statutory minimum. In cases involving multiple actors, whether as principal offenders or accomplices, the provisions on participation under Articles 55 and 56 of the Indonesian Penal Code (KUHP) may be applied to encompass the entire network of perpetrators.

The relevance of the doctrine of *deelneming* (criminal participation) enables law enforcement authorities to hold accountable corporate management, policy initiators, and external parties who aid or advise actions leading to labor law violations. Furthermore, it is essential to assess the subjective element of the perpetrators, particularly regarding the element of fault or *mens rea*. In situations involving coercion or abuse of circumstances (*misbruik van omstandigheden*), Article 48 of the Penal Code may be considered as a ground for excuse, provided that the element of free will is demonstrably nullified due to psychological pressure, economic dependency, or other inescapable conditions. This reflects that criminal liability is not absolute and must be assessed based on the concrete circumstances surrounding each individual actor.

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