THE IMPLEMENTATION OF LABOR OUTSOURCING AT PT. PERTAMINA (PERSERO) TERMINAL BBM PENGAPON SEMARANG

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THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled “The Implementation of labor outsourcing At PT.Pertamina (Persero) Terminal BBM Pengapon Semrang”, prepared and submitted by Libert H. Habeahan in partial fulfillment of requirements for the degree of Bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for Oral Defense.

Cikarang, January 19, 2015

Dr. Maria Fransisca M, S.E., S.H., M.Kn
Advisor
DECLARATION OF ORIGINALITY

I declare that this thesis, entitled “The Implementation of Labor Outsourcing At PT.Pertamina (Persero) Terminal BBM Pengapon Semarang” is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, January 19, 2015

Libert H. Habeahan
PANEL OF EXAMINERS APPROVAL SHEET

The Panel of Examiners declares that the thesis entitled "THE IMPLEMENTATION OF LABOR OUTSOURCING AT PT.PERTAMINA (PERSERO) TERMINAL BBM PENGAPON SEMARANG" that was submitted by Libert Hamonangan Habeahan majoring in Law from the faculty of International Relations, Communication, and Law was assessed and approved to have passed the Oral Examination on Cikarang, Indonesia, February 13th, 2014.

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ABSTRACT


One of the cooperation between PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang with PT. INKANINDO is providing manpower for NDT Routine Inspection for Terminal Equipment at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, which is done through direct selection (letter No. 6500037487, Appointment Letter Winner of the Direct Selection Reliability Unit Manager of PT Pertamina (Persero) Processing Unit VI No. 0517 / E16120 / 2006-S5) and with the issuance of the Employment Agreement (SPK) between PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang with PT. INKANINDO No. 3900053099.

This study aims to examine the legal aspects of the implementation of outsourcing activity associated with the Labor law at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang. The method used in this research is legal-normative to analyze the normative-legal aspects of the implementation of outsourcing is associated with the Employment Act at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, referring to the Employment Act No. 13 of 2003 and its implementation regulations.

Based on the results of this study, the author conclude that in running outsourcing business, there are a few things have to be fulfilled, but in the reality there is also things that cannot be fulfilled. The things that have already comply with the regulation is that outsourced NDT worket at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang done with written agreement, does not employ children, provision of hours of night work, special rights for women workers, and the provision of overtime and break time.

The obstacles encountered in the implementation of outsourcing is the lack of experts at by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang. Solutions to overcome these obstacles are increasing the persistence and professionals by providing courses and training to acquire skills necessary for the company, and it is financed by the company.

Keyword: Outsourcing, Laborer, Labor Law,
ABSTRAK


Berdasarkan hasil penelaahan penelitian ini menarik beberapa kesimpulan bahwa dalam menjalankan usaha outsourcing penyediaan tenaga kerja ada beberapa hal telah terpenuhi namun ada pula yang belum terpenuhi. Beberapa hal yang telah mematuhi ketentuan antara lain penyerahan pekerjaan penyediaan tenaga kerja pemeriksaan rutin NDT peralatan kilang PT. Pertamina (persero) Terminal BBM Pengapon Semarang dilakukan dengan perjanjian kerja sama secara tertulis, tidak mempekerjakan anak, jam kerja malam, hak-hak khusus pekerja wanita, waktu istirahat dan ketentuan kelebihan jam kerja.

Hambatan-hambatan yang dihadapi dalam pelaksanaan outsourcing yaitu kurangnya tenaga-tenaga ahli yang ditetapkan oleh PT. Pertamina (persero) Terminal BBM Pengapon Semarang. Solusi mengatasi hambatan tersebut telah dilakukan beberapa langkah yaitu peningkatan ketekunan dan profesional dengan pemberian kursus dan pelatihan untuk memperoleh keahlian yang diperlukan bagi Perusahaan dengan dibayai oleh Perusahaan.

Kata Kunci : Outsourcing, UU Ketenagakerjaan, Buruh
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helped in the writing of this thesis. At the end, a bachelor degree is nothing but recognition that a person has completed his/her study in a university and the author expects that this would not be the end of the journey but instead a new beginning as a law graduate. Eventually, the author believes that this thesis is still far from perfection and therefore any critics, suggestions or responses to make this thesis better and beneficial for those who read it will be highly appreciated.

Author
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CHAPTER I

INTRODUCTION

1.1. Background of the Study

The implementation of development in Indonesia is now focusing on the development in the field of economics, and thus law has a very important function in supporting economic progress in Indonesia. The implementation of development emphasizes more on equity terms.

Development is an attempt to create the prosperity and welfare of the people. Therefore, the results of development should be enjoyed by everyone as an increase in physical and spiritual well being in a fair and equitable manner. Instead, the successful development depends on the participation of all people, which means that all levels of society must implement development uniformly.\footnote{FX Djumiadji, Perjanjian Pemborongan, Jakarta : Penerbit Bina Aksara, 1987, page 1}

Development can be implemented and managed well if the national situation is steady. The more stable national stability, the easier the effort needed for development. Equity, growth, and stability are interrelated elements, and thus in the implementation of development must be constantly sought a harmonious balance between those three elements.

Almost every field of life today is governed by the rules of law. Through the norms of human behavior, law browse almost all areas of human life. Legal intervention expanding into areas of public life led to the effectiveness of the legal issues and is becoming increasingly
important to be taken into account. That means that the law should be an institution that works effectively in society.

For a society in a developing country, the law has always been associated with the efforts to improve people's lives to be better, because through the legal norm people expect the fulfillment of order and certainty so that what is desired by the people can be realized.

Likewise, what has been done by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang as a state owned company in implementing development through business activities. There should be legal provisions that can be used as an umbrella so that what is done as a form of business to provide security (orderly and certainty), because as a business, public order and the rule of law must be able to carry out the mission as well as possible.

In order to prepare for the market of globalization, PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang as a business unit requires the formulation of Vision, Mission, and Values for a better future. Formulations are poured into a guide that can be used as a reference in the description of the activity of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, with a formula that is described as follows:

1. Vision of PT. Pertamina (Persero)

   “Being a World Class National Energy Company”

2. Mission of PT. Pertamina (Persero)

   “Running the business of oil, gas, and renewable energy in an integrated manner, based on the strong principles of commercial.”
3. Values of PT. Pertamina (Persero)

Pertamina sets six values that can serve as guidelines for all employees in running the company. Sixth values of Pertamina are as follows:\(^2\):

a) CLEAN

Professionally managed, avoiding conflicts of interest, do not tolerate bribery, upholding the trust and integrity. Guided by the principles of Good Corporate Governance.

b) COMPETITIVE

Able to compete in regional and international scale, encourage growth through investment, build cost-conscious culture and rewarding the performance.

c) CONFIDENCE

Play a role in national economic development, becoming a pioneer in the reformation of state-owned company, and build national pride.

d) CUSTOMER FOCUS

Oriented to the interests of customers and is committed to provide the best service to customers.

e) COMMERCIAL

Creating added value with a commercial orientation, making decisions based on the principles of a healthy business.

\(^2\) [http://www.pertamina.com/company-profile/visi-dan-misi/]
f) CAPABLE

Managed by the leader and professional workers and has the talent and the high technical mastery, committed in building research and development capabilities.

To support the achievement of the vision and mission, PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang prepares adequate infrastructure and facilities in order to run the business more smoothly. It means there are jobs needed, one of which is the provision of Manpower Supply Routine Inspection in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, which includes activities to help Inspector prepare documents for the implementation of assessment tools equipment inspecting Column, Vessel, Heat Exchangers, Fin-Fan, Rotating Equipment, Instrument / electrical, and other routine activities as well as Turn Around for all equipment, collecting assessment data examination for History Card inserted into each piece of equipment, carry out the inspection of Non Destructive Testing (NDT) on a regular basis that the implementation of its work through direct selection procurement contract of employment services (Outsourcing) conducted by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

Implementation of the contract of work and the provision of labor services performed by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang became a real proof that there should be a rule of law that can provide a sense of order and certainty to provide a sense of security in conducting the contract, considering the outsourcing business is closely related to employment practices.

In this regard, the rule of law has provided guidance as the legal basis of Outsourcing as stipulated in the Employment Act No. 13 of 2003 (Article 64, 65 and 66) and the decree of the

PT. Indah Karya Nuansa Indonesia (PT. INKANINDO) is a limited liability company incorporated and headquartered in Bandung, and has a branch office in Jalan Albasiyah Block 5 No. 1 Semarang. The Deed of Incorporation is dated on July 31, 1995, No. 92 made before Pinarti Yohanna, SH, by the Decree of the Minister of Justice of the Republic of Indonesia Number C2-4939.HT.01.01.TH.1996. The Company is engaged and in contracting, implementation/chartering, and consulting services.

PT. INKANINDO is qualified as a provider of goods and/or services in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang by following the evaluation and verification of the validity completeness and compliance with the requirements of the certification document and other certain requirements by the Certification Committee. PT. INKANINDO since 1996 is one of the companies listed in the PT. Pertamina (Persero) as a company that can take part in the procurement of goods and/or services in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang with the issuance of Registration Certificate (SKT) from PT. Pertamina (Persero) as a partner.

One of the cooperation between PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang with PT. INKANINDO is Routine Supply of Manpower and Inspection NDT Equipment of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, which is done with the Direct Selection by letter No. 6500037487 September 19, 2006, letter of appointment from

Global economic developments and technological advances are so rapid and it makes the competition becomes tighter. Highly competitive environment requires PT. Pertamina (Persero) as a business to adapt to market demands that require rapid and flexible response in improving customer service.

Daily practice of outsourcing is more profitable for the company, but not so with the workers/laborers who has been more detrimental to workers/laborers, because the employment relationship is always in the form of temporary/contract, lower wages, minimal social security, lack of job security and the lack of assurance of career development, so that in such circumstances, the implementation of outsourcing will harm the workers/laborers and make defection industrial relations. The implementation of outsourcing is done to reduce the labor cost with the protection and working conditions given are far below than it should be given, thus it is very detrimental to workers/laborers.

From the description above, the author are interested in performing scientific studies through research and then cast in the form of thesis, for it is the author chose the title: legal aspect of outsourcing implementation and its relation with labor laws at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

1.2. Problem Identification
Based on the description above, the author limit the issues to be studied further in this thesis are as follows:

1. How is the implementation of the outsourcing of labors in PT Pertamina (Persero) TBBM Pengapon Semarang according to Law Number 13 of 2003 on Labor law?

2. What are the barriers and solutions in the implementation of the outsourcing of labors in PT Pertamina TBBM Pengapon Semarang in connection with law number 13 of 2003 on labor law?

1.3. Research Objectives

In a study conducted, the author indicates the desired objectives that can be achieved, which are:

1. To know the legal aspects of the implementation of the outsourcing of labors in PT Pertamina (Persero) TBBM Pengapon Semarang according to Law Number 13 of 2003 on Labor law.

2. To know the barriers and solutions in implementing the outsourcing of labors in PT Pertamina (Persero) TBBM Pengapon Semarang according to Law Number 13 of 2003 on labor law.
1.4. Theoretical Framework

The relationship between worker and employer is based on the legal relationship that is listed in the employment agreement. R Subekti define agreement as a promise to each other to implement something. The types of agreements is regulated under Article 1601 of the Civil Code (KUH Perdata) and the validity of the agreement is regulated under Article 1320 of the Civil Code (KUH Perdata).

The employment agreement is arranged in the form of oral and written, and on this point also regulated by law. Especially with regard to outsourcing, the notion of outsourcing can be seen in the provisions of Article 64 of Law No. 13 of 2003. The implementation of outsourcing involves three parties, which is: the provider of outsourced labor, the company who use the outsourced worker, and the laborer/worker itself. The Law No. 13 of 2003 about employment regulates the requirements for companies that provide the workers, so that the interests of the parties involved in the outsourcing agreement will not be injured.

1.5. Significance of Study

1.5.1. Theoretical Significance

The theoretical significance of this research is to be used for deepening the study of law with respect to its function as a means of renewal of society and to contribute ideas for the development of the law in general and the law of outsourcing in particular. The results in the study are also expected to provide a reference for further research done by the same object.

1.5.2. Practical Significance
Practical significance expected from this study are as follows:

a. Contribute information to the education of law on the implementation of law, especially the law of outsourcing agreement.

b. Provide an additional means of information for those who run businesses that associated with outsourcing activities and requires knowledge of the legal norms that govern them, so as to understand all the aspects related to the implementation of the juridical aspects of outsourcing.

c. Provide benefits to the legal profession, especially those who engaged in the field of outsourcing agreement.

1.6. Research Methodology

1. Type Of Research

The type of research being done is normative legal research, by using:

a. Conceptual approach, the research uses law principles, both positive law and unwritten laws which is later to be used as a reference in this research.

b. Statute Approach, the research uses the related prevailing laws to be used as a reference to identify the issue.

In this research the author uses normative legal research to identify the concept and legal principle used to regulate the implementation of Labor Outsourcing At PT.Pertamina Terminal BBM Pengapon Semarang according to Law Number 13 of 2003 on Labor Law.
2. Type Of Data

The types of data that the researcher is using in this research are:

a) Primary sources of laws, which is the related prevailing laws with the topic of the research such as Indonesian Civil Code and Law Number 13 of 2003 on Labor Law.

b) Secondary sources of laws, which is the sources of laws that are in line and linkages to the primary sources of law and may assist in giving description as well as analysis of the primary sources of law, such as book, journal, and result of research.

c) Tertiary sources of laws, which is the source of law that may improve the primary and secondary sources of laws such as legal dictionary, encyclopedia, and others.

1.7. Writing System

The author discusses and outlines the problems that are divided into five chapters. The purpose is to explain and describe the problems with better and clearer explanation. The outline is as follows:

Chapter I   : This chapter discusses the background of the study, problem identification, research objectives, and significance of study, research methodology, and writing system.

Chapter II  : This chapter is about notions about workers including occupational health, safety, wages and other welfare. Furthermore, this chapter also expressed about the relationship setting between workers with the employment service, and provision for corporate who use the labor services, and the function of Labor Union and legal protection for the employee/workers.
Chapter III: This chapter discusses the results of research and discussion that covers the legal aspects of the implementation of outsourcing associated with the Employment Act in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

Chapter IV: This chapter discusses the results of research and discussion about barriers and solutions in implementing outsourcing associated with the Employment Act in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

Chapter V: Conclusions and suggestions.
CHAPTER II

PROVISION ON THE IMPLEMENTATION OF OUTSOURCING
ACCORDING TO LABOR LAW

2.1. Terms of Agreement

2.1.1. Definition of Agreement

Principal reason why there is a legal relationship in the contract between the employer and the worker is because the needs of experts who can assist in the implementation of work, otherwise executing the work/contract of providing services in accordance with the capability and expertise needed. The execution of the tasks performed by the contractor and the employer must provide the statutory provisions in force. Agreement is merely an agreement that is recognized by law. Consent is a fundamental interest in the business world, and is the basis of most transactions and also concern about labor.

Regarding the definition of agreement, R. Subekti, SH suggests:\n
"An agreement is an event in which a promise to one another or in which two persons was each promised to implement something. This agreement publishes an engagement between two people who made it. The agreement is in the form of a series of words that contain promises or ability that is spoken or written"

The definition of 'Agreement' is governed by the Civil Code Article (KUH) 1313:

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3 R. Subekti, *Hukum Perjanjian*, (Jakarta : PT. Intermasa, 2005), page1
Agreement is an act by which one or more persons bind themselves to one or more other.

The agreement is defined as an agreement whereby two or more people mutually bind themselves to implement something in the field of wealth.

The divisions of agreement according to Article 1601 of the Civil Code (KUH) are:

a. Agreement to perform specific services is an agreement in which one party wants the other party to achieve a goal made in the agreement, and thus one of the parties is willing to pay honoraria or wages.

b. Employment agreement is an agreement between a worker and an employer. The agreement is marked by the characteristics of a certain wage or salary agreed and the existence of a superior relationship (dienstverhoeding), in which the employer is entitled to the commands to be obeyed by others (the workers).

c. Working chartering agreement is an agreement between the parties and other parties, in which one party (the one who charter the work) wants something that is promised by the others on payment of a certain sum of money as the price of chartering.

is an agreement between the workers/laborers with employers or employer which includes working conditions, rights and obligations of the parties.

Then in Article 1 paragraph 15 of labor law states that: Laborers is the relationship between employers and laborers working under the agreement, which has elements of work, wages, and commands.

Based on the provisions described above, it can be concluded that the agreements which give rise to the labor relationship has elements of jobs, wages, and commands. Thus, to be called the employment agreement must meet three elements, namely:

1. There is persons under the leadership of others,
2. Accomplishment of the work,
3. Wages.

According to Article 1 paragraph 4 of 2003 of the Law of labor, an employer is an individual, business, corporation or other entity that employ manpower by paying them wages or other forms of remuneration. And the definition of labor is contained in Article 1 paragraph 2 of 2003 of the Law of labor. Labor is every person who is capable of performing in order to produce goods and / excellent services to meet the needs of themselves and society.

In Article 1 paragraph 5 of labor law No. 13 of 2003, stated that the definition of Entrepreneur is:

1. Individual, association, or a legal entity that operates a self-owned enterprise;
2. Individual, association, or a legal entity that independently run company that is not his;
3. Individual, association, or a legal entity in Indonesia representing the company referred to in point a and b that is domiciled outside the territory of Indonesia.
While the definition of the Company according to Article 1 item 6 of the labor law No. 13 of 2003 are:

1. Every establishment of a legal entity or not a legal entity, owned by an individual, a partnership, or a legal entity, whether private or state-owned, which employs workers/laborers by paying them wages or other forms of remuneration

2. Social efforts and other efforts who has management and employ others by paying wages or other forms of remuneration

The definition of job chartering agreements is listed in Article 1601 b KUH (Code of Civil Law), as follows:

"Chartering agreement is an agreement whereby one party (the contractor, bind themselves to hold a job for another, (contracting parties), to receive a specified price".

Articles of the Civil Code (KUH Perdata) relating to the construction contract (Article 1604 to Article 1617) contained in Chapter VII A, set about work agreement, which divides the agreement into three categories:

1. Work agreement (labor)

2. Agreement on organizing certain services

3. The agreement of work chartering
The provisions of Article 1601a and other articles in the Civil Code (KUH Perdata) that governing labor relations, it has been declared invalid since the release of Act No. 13 of 2003 on Labor.

2.1.2. The Elements of Agreements

According to Abdul Kadir Muhammad, there are several elements contained in an agreement, which are:

a. There are parties involved

There should be at least two people. The parties act as the subject of the agreement. Subjects can be consisting of human or legal entity. If the party is a human being, then that person must be an adult and competent to carry out the legal relationship.

b. There is agreement between the parties

Before making an agreement or in making an agreement, the parties must be given a freedom to conduct bargaining between the parties. This is commonly referred as the principle of consensus in an agreement. Consensus should free from coercion, deception, and the judiciary.

c. There are goals to be achieved

An agreement must have one or several specific objectives to be achieved, and with the agreement that the objectives is desired to be achieved, either by one party or by other parties, which in this case they are as subject to the agreement.

d. There are achievements that must be implemented

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4 Djumadi, Hukum Perburuhan Perjanjian Kerja, (Jakarta: PT. RajaGrafindo Persada, 2004), page 15
The parties in an agreement have certain rights and obligations, which are opposite to each other. If the other party is obliged to fulfill an obligation, then for others it is the right, and vice versa.

e. **There is a particular form of agreement**

An agreement may be made orally or in writing. If an agreement is made in writing and made in a deed, the deed can be made in authentic and underhand way. Authentic deed is a deed made by the parties in the presence of a public official who is authorized to it.

f. **There are certain conditions**

There should be specific requirement in the content of an agreement, because in an agreement according to Article 1338 paragraph 1 Civil Code (KUH Perdata) states that a valid agreement is binding as law for those who make it.

2.1.3. **Validity of an Agreement**

The validity of an agreement is specified in Article 1320 of the Civil Code (KUH) Perdata, which states that there are four requirements for the validity of an agreement:

a. Agreement to bind

Both parties who held the agreement must agree and formed an alliance on matters agreed.

b. Prowess in making an agreement

Making an agreement is doing a legal relationship, and those who can perform a legal relationship are those who is categorized as a supporter of the rights and obligations, which is a person or legal entity.

c. A particular thing
A particular thing means is something that is in the agreement shall have been determined and agreed upon. According to the provisions mentioned in Article 1333 of the Civil Code (KUH Perdata) that the goods which is the object of an agreement must be determined in the contents.

d. A kosher cause

According to the law, a kosher cause is not prohibited by law and not contrary to morality and public order. This provision is mentioned in Article 1337 of the Civil Code (KUH Perdata).

If any of the terms of validity of the agreement are not met, then the provisions of these terms, can be divided into two kinds, which are5:

1. Subjective requirement

What is meant by subjective requirement is about a subject that is required in this case, including the requirements in point a and b, which is about the terms agreed between the parties who bind themselves and the terms of the ability to make an agreement.

2. Objective requirement

What is meant by objective requirement is the object of the agreement, which is included in the terms of point c and d, in this case on the terms of a particular case and a kosher cause.

2.1.4. Principle of Agreement

The principles contained in an agreement are:

a. Open System

It means that any person/entity may enter into an agreement with anyone. The provisions of this principle mentioned in Article 1338 paragraph 1 of the Civil Code (KUH Perdata):

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5 Djumadi, Hukum Perburuhan Perjanjian Kerja (Jakarta : PT. RajaGrafindo Persada, 2004), page.21
"All of the agreement made is legally valid as the law for those who make it".

From the article it can be concluded that basically everyone should make an agreement can be made freely and in any form, as long as not contrary to law, and the legal agreement applicable as law for those who make it6.

b. Principle of power in the agreement (asas konsensual)

An agreement is exist since the achievement of an agreement between the parties involved in the agreement. Agreement has been declared valid if the agreement has met three conditions, but the most important is the fulfillment of an agreement from those who makes it. There is an exception in this principle that the provision must meet certain formalities set by the law. This provision mentioned in Article 1458 of the Civil Code (KUH Perdata).

c. Optimal system

If the parties have another desire, they can eliminate the existing provisions in the agreement. However, if it is not explicitly specified in the agreement, then the provisions of the law that declared valid. The provisions of Article 1477 of the Civil Code (KUH Perdata) states that:

"The delivery should take place in a place where goods are sold at the time of the sale, if it is not held on another agreement."

The intent of these provisions is that if in an agreement made by the parties do not specify explicitly, and then the delivery of the goods sold is in a place where goods are sold7.

2.2. The Form and Type of Employment Agreement

Employment agreement (Arbeidsoverenkoms), according to Article 1601 of the Civil Code (KUH Perdata) is:

6 Ibid, page 23
7 Ibid, page 25
"Work agreement is an agreement in which one party (the workers), bind himself under the orders to the other party (the employer) for a certain time doing jobs and receive wage in return."

Act No. 13 of 2003 on Labor, Article 1 paragraph 14 provides an understanding:

"A work agreement is an agreement between the laborers and employers that contains the terms of labor rights and obligations of both parties".

Prof. Subekti, SH provides an understanding about employment agreement which is an agreement between a worker and an employer. The agreement is marked by the characteristics of a certain wage or salary agreed and the existence of a superior relationship (dienstverhoeding), in which the employer is entitled to the commands to be obeyed by others (the workers)\(^8\).

The working relationship is based on a civil relationship, which is based on agreement between the employee/worker and the employer. Thus, the proof that someone is working for others party is the working agreement which contains the rights and obligations of the employers and workers.

There are two form of working agreement, which is:

1. Oral Labor agreement

Generally, employment agreement must be in writing form, but there are also agreements that made orally. Law No. 13 of 2003 concerning labor allow oral employment agreement in condition the laborers must make an appointment letter for the workers, which contains:

   a. The worker’s name and address

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\(^8\) R. Subekti, Aneka Perjanjian, (Bandung : Alumni Bandung, 1977), page 63
b. The date he/she starts working

c. The kind of job he/she is doing

d. The amount of wage (Article 63 UUKK)

For jobs that can be completed within a certain time or the employer intend to employ for a certain time (PKWT), employment agreement may not be made orally\(^9\).

2. Written labor agreement

Written employment agreement should state the type of work, the amount of wages, and the rights and obligations of each party. Written employment agreement must clearly state whether the employment agreement includes system contract or permanent/fixed system As the agreement in general, agreements should be based on:

a. Agreement of both parties to be in the employment relationship.

b. The parties’ skills to perform legal act.

c. The existence of the contracted work.

d. The employment agreement is not contrary to public order, morality, and the legislation in force.

Moreover, the employment agreement must not conflict with the Collective Labor Agreement (Perjanjian Kerja Bersama/PKB), which is an agreement made by employers and workers/unions authorized by the government (Labor Agencies)\(^10\). The terms and conditions of employment

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\(^9\) Libertus Jehani, Hak-Hak Pekerja Bila di PHK (Jakarta : Visimedia, 2006), page 3

\(^10\) Ibid, page 4
agreement is set out and defined by the law of contract, which is the agreement of both parties. The principle that applies in the law of contract are the things that have been agreed by both parties in the agreement and it applies as law that binds the parties. The provision is known as The Principle of Freedom to Contract (Asas Kebebasan Berkontrak).11

However, even if the law gives freedom to the parties to determine the content of the agreement of the employment contract, the terms and conditions of the agreement must not be contrary to the law, morals and norms of justice.

There are many types of employment agreement and each of the employment agreement has different consequences if layoff happens. In the Labor law, it is determined there are several types of employment agreement, as follows:

1. Employment agreement specified time/ Contract System (PKWT)

Contract system (PKWT) is an agreement in which the duration/period has been defined and the worker is referred as a contract employee. When the period is over then layoff occurs, and the employee is not entitled to receive compensation.

2. Employment agreement for an unspecified time/ Permanent System (PKWTT)

Permanent system is quite common. Differ to Contract System, Permanent System does not defined duration/period. Permanent system will not end because of the death of the employer, inheritance, grants, etc.

3. Employment Agreement with the Contractor Company

A company may subcontract part of the work to another company incorporated under the law by making a written employment contract/agreement.

2.3. Definition of Outsourcing

Outsourcing is the delegation of the daily operation and management of a business process to outside parties (company providing outsourcing services). Through delegation, a particular activity is no longer done by the management of the company, but rather delegated to company who provides the outsourcing services.\(^\text{12}\)

Outsourcing is one of the results of the Business Process Reengineering (BPR). BPR is fundamental changes made by a company in its management processes, and the goal is not just to make improvements. BPR is done to give a response to the global economic development and the development of technology that that causes tight global competition\(^\text{13}\).

The Act does not explicitly mention the term 'outsourcing'. But, the notion of outsourcing can be seen in the provisions of Article 64 of Law No. 13 of 2003, stating that outsourcing is an agreement made between the employer and workers, which the company may subcontract part of the work to other companies through written agreements\(^\text{14}\).

According to Article 1601 b of the Civil Code (KUH Perdata), outsourcing is equated with the written agreement of contract, so that the notion of outsourcing is an agreement where the contractor binds himself to make a certain work with other party with a certain fee\(^\text{15}\).

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\(^\text{12}\) Ibid, page 2
\(^\text{13}\) Sonhaji, Aspek Hukum Hubungan Kerja Melalui Mekanisme Outsourcing Berdasarkan UU No. 13 Tahun 2003 Tentang Ketenagakerjaan, (Fakultas Hukum Universitas Diponegoro, Majalah Masalah-Masalah Hukum Vol. 36 No. 2 April-Juni 2007), page 112
\(^\text{14}\) H.Zulkarnain Ibrahim, Praktek Outsourcing Dan Perlindungan Hak-Hak Pekerja, (Internet : Simbur Cahaya No. 27 Tahun X Januari 2005), page 80
\(^\text{15}\) I Wayan Nedeng, Lokakarya Dua Hari : Outsourcing Dan PKWT, (Jakarta : PT. Lembangtek, 2003), page 2
From the explanation above, an operational definition of outsourcing is a form of employment agreement between the user company (employer) with the service providers, where the user company asked service providers to provide the necessary manpower to work in the user company, and the user company pays a sum of money. The service providers pay the wage or salary for the manpower.

The pattern of labor agreement in the form of outsourcing is that there some work and then handed over to another company that has been incorporated. The company does not relate directly to the workers but only to the company who provides the outsourcing service.

But others argue that outsourcing is the employment of one party to the other in two forms, which is:

1. Hand the work
2. Employment in the form of labor services. Outsourcing agreements can be equated with the chartering work agreement.\[^{16}\]

In the field of employment, outsourcing can be interpreted as the use of labor to produce or perform a job by a company, through its providers / employment. This means that there are two companies involved: the company that specialized in selecting, training, and hiring workers who produce a product / service for the benefit of certain other companies. Thus the second company does not have a direct employment relationship with the workers who worked for him; relationship only through labor provider company. Outsourcing is an alternative to doing the work themselves.

**2.4. Outsourcing Arrangements**

2.4.1. The Fundamental of Outsourcing Implementation

\[^{16}\] Ibid, page 82
The implementation of outsourcing involves three parties, which is: the provider of outsourced labor, company who use the manpower outsourcing, and the labor itself. Hence, it is needed for a rule so that no party is being injured, especially the labor/manpower itself\textsuperscript{17}.

Because the outsourcing business is closely related to employment practices, so the Law No.13 of 2003 on labor is one of the outsourcing regulations in Indonesia, which is found in Article 64, Article 65, and Article 66.

The basic principle of the implementation of outsourcing is the occurrence of a cooperation agreement between the company who use the outsourcing service and the company who provides the outsourcing service, in the form of contract of employment agreements. The company who use the outsourcing service will pay a certain amount of money according to the agreement. In accordance with the provisions set forth in Article 64, as follows:

"The company may subcontract part of the work to another company through a written agreement."

Thus outsourcing can be accomplished when it there is an agreement between the user of labor services and the company who provides the employment/outsourcing service.

The definition of chartering agreements according to Article 1601 b Code of Civil Law (Kitab Undang-Undang Hukum Perdata) is an agreement whereby one party (the contractor) bind themselves to organize a job for another party (the party who gives the contracting job) by receiving a specified price.

\textsuperscript{17} Ibid, page 2
The chartering agreement must be in a written form, in accordance with Article 65 paragraph (1) as follows:

"The transfer the job to other companies must be implemented through a written chartering agreement".

2.4.2. The Requirements to Hand Over a Job to Other Party

Basically, the main goal of a company to outsource workers is to improve the capability and competitive advantage of the company to survive and thrive. Survival means to maintain its market share, while developing means to increase market share, with the strategic goal is that by outsourcing, the company wants to increase its ability to compete, or would like to improve or at least maintain a competitive advantage. Competition among companies generally involves three things: the price of the product, the quality of products, and services. Therefore, the work must be handed over to a more professional party in order to achieve those things.

However, not all jobs can be transferred by means of outsourcing, only jobs that meet certain requirements that can be transferred to other companies. The company in this case may subcontract part of its work to other companies through:

a. Work contract, or
b. Providing workers

Article 65 paragraph (1) of Law No. 13 of 2003 on labor states:

"The transfer the job to other companies must be implemented through a written chartering agreement".
The work that can be outsourced to other party as referred to in paragraph (1) shall meet the requirements set forth in Article 65 paragraph (2), which are:

1) The work is done separately from the main activity

2) The work is done by either direct or indirect command from the company who gives the job/work

3) The work is a supporting activity

4) The work does not hamper the production process

According to Article 66 of Law No. 13 of 2003, outsourcing is allowed only to supporting activities and activities that are not directly related to the production process. Article 66 of Law No. 13 of 2003 states that:

What supporting activities or activities that are not directly related to the production process means is the activities outside the core business (core business) of a company. The examples of such activities are cleaning service, providing food for the workers (catering), security personnel, supporting activities in the mining and oil industry, and providing transportation for workers.

The conditions of work that can be outsourced to other companies are also regulated in Article 6 of the Ministerial Decree No. KEP 220 / MEN / X / 2004 concerning Requirements of Handing Over Work to Other Company, which is as follows:

1. The work that can be outsourced to contractors must meet the following requirements:
a. The work is done separately from the main activity  
b. The work is done by either direct or indirect command from the company who  
gives the job/work  
c. The work is a supporting activity  
d. The work does not hamper the production process  

2. The company who gives the job (employer) should provide the activities workflow  
process.  

3. The company who gives the job (employer) determines the types of main work and  
supporting work and report to the local employment agency.  

2.5. Requirements for a Company Who Provides Outsourcing Service  
(Service Provider)  

The Law No. 13 of 2003 about labor regulates the requirements for companies that  
provide the workforce/workers, so that the interests of the parties involved in the outsourcing  
agreement will not be injured, especially for the workers who usually in a weak position.  

Those requirements in Article 65 of Law No. 13 of 2003 stated:  

1. The company who provides outsourcing service must be a legal entity (Article 65  
paragraph 3).  

2. Company who provides outsourcing service should be able to provide the protection in  
the form of wages and welfare, meet work requirements that at least equal to the  
company who use the service or legislation regulation (Article 65 paragraph 4). In  
other words, the who provide outsourcing service must have a minimum of Corporate
Regulation (Peraturan Perusahaan) that is approved by the Department of Labor (Depnaker).

Article 66 of Law No. 13 of 2003 states that:

1. There is a working relationship between the worker/laborer with the company who provides the outsourcing service;

2. Employment agreement that applies in the employment relationship is working agreement for a specified time (PKWT), has to meet the requirements contained in Article 59 of Law No. 13 of 2003 and/or a written agreement that made and signed by both parties.

3. Protection in the form of wages and benefits, working conditions, and any disputes are the responsibility of the company who provides the outsourcing service.

4. The agreement between the company who use the service (employer) and the company who provide the outsourcing service must be in the written form and shall contain clauses referred in this Act.

5. The company who provides outsourcing service must be a legal entity business and have permission from the government agency responsible for labor affairs.

If the provisions mentioned above are not met, then the legal status of the working relationship between the worker/laborer and company who provide outsourcing service turned into a working relationship between the worker/laborer and employer.

The requirement for the company who executes the work is also contained in Article 3 and Article 5 of Ministerial Decree No. KEP-220 / MEN / 2004. Article 3 paragraph (2) through (5) is as follows:
(2) The transfer of the job/work must be submitted to the legally incorporated company.

(3) The provisions in paragraph (1) shall not apply to:
   a. Contractor company that engaged in procurement field;
   b. Contractor company that engaged maintenance and repair services field as well as consulting services, which employs workers/laborers less than ten persons.

(4) If the contractor will submit again some of the work, then the handover can be given to the contractor company that is not legally incorporated.

(5) If the contractor company that is not a legal entity referred in paragraph (3) does not fulfill its obligation then the company that is legally incorporated in paragraph (1) shall be responsible to meet these obligations.

Article 5 states that:

1) If in an area there is contractor company with legal entity or the contractor company is legally incorporated but does not meet the prescribed qualifications of the company who will use the service, then the job/work can be handed over to the contractor company that is not legally incorporated.

2) The contractor company that is not legally incorporated referred in paragraph (1) shall be responsible to fulfill the rights of the workers.

3) The responsibility referred in paragraph (2) shall be set forth in the contract of employment agreement between the employer with the contractor company.
According to the Ministerial Decree No. KEP-101 / MEN / VI / 2004 Article 2 states that in order to become a company that provides outsourcing service, the company shall have operating licenses from the employment agencies in the district/city in accordance with the company's domicile. To obtain operating licenses, a company that provides outsourcing service must submit the application by attaching:

a) A copy of approval as a legal entity in the form of limited liability companies (Perseroan Terbatas) or cooperatives;

b) A copy of the articles of association in which mention the activity of providing worker/laborer;

c) A copy of business license

d) A copy of valid report of employment

Department of Labor (Dinas Tenaga Kerja) should have issued the requested operating licenses that have complied the requirements above within a period of 30 days. The operating license is valid throughout Indonesia for five (5) years and can be extended for the same period of time.

2.6. Employment Protection and Labor Conditions for Workers

Realizing the importance of worker/employee for the company, in the outsourcing field, companies are required to ensure and guarantee the protection of the workers' rights. The protection begins with an obligation that the company should be legally incorporated. When we talk about employment protection and working conditions, then this is a very complex issue because it relates to occupational health, safety, wages, welfare, and social security. Law No. 13 2003 has been set up those things in the articles.
According Supomo, labor protection is divided into three types, which are\textsuperscript{18}:

1. Economical protection, which is the worker protection in the form of an adequate income, including when workers are unable to work out his will.

2. Social protection, which is the worker protection in the form of health insurance work, and freedom of association and protection of the right to join in organization.

3. Technical protection, which is the worker protection in the form of security and safety.

Several articles is used as guidelines for the protection of the outsourced worker at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang. Based on the labor protection Act No. 13 of 2003 on Labor governing special protection for women worker, children, and people with disabilities, is as follows:

a. Employers are prohibited from employing children (Article 68), which is any person under the age of 18 (eighteen) years old (Article 1 number 26).

b. Such provisions may apply to children aged between 13 years old to 15 years old for light work as long as it does not interfere the physical and mental development and social (Article 69 paragraph (1)).

c. Employers who employ children for light work must meet the following requirements:
   1) Written permission from the parent/guardian
   2) Employment agreement between parents and employer
   3) Maximum of three hours working time

\textsuperscript{18} Abdul khakim, Pengantar Hukum Ketenagakerjaan Indonesia, (Jakarta : Citra Aditya Bakti)
4) The work is done in the daytime and does not disrupt the school time.

5) Safe and healthy

6) There is a clear working relationship

7) The wage is appropriate with the regulations.

d. If the children are employed together with adult workers/laborers, then the children's workplace must be separated from the workplace of adult workers/laborers (Article 72).

1) Children are considered work if they are in the workplace, unless it can be proven otherwise (Article 73).

2) It is prohibited to employ children in a bad job, contained in Article 74 paragraph (1). The definition of the worst forms such as in Article 74 paragraph (2), which are:

   a. All the work in the form of enslavement.

   b. All jobs that use, provide, or engage children in the production and trade of alcoholic beverages, narcotics, psychotropic and other addictive substances.

   c. All jobs that use provide or offer a child for prostitution, production of pornography, pornographic performances, and gambling.

3) All job/work that endangers the health, safety or morals of the children.

   Regarding employment protection for female workers is as follows:

1) The job/work for women worker that has to be done in the evenings is regulated under Article 76, as follows:

   a. Women worker aged less than 18 years old are prohibited to be employed between 11.00 PM until 07.00 AM.
b. Employers are prohibited to employ pregnant women because according to medical information, it will be harmful to the health and safety of its pregnancy and herself, if the women worker work between 11.00 PM until 07.00 AM.

c. Employer who employ women workers between 11.00 PM until 07.00 AM is obliged to:
   - Provide nutritious food and beverage
   - Maintain the decency and safety while at work

d. Employer who employs women workers between 11:00 PM to 05:00 AM is obliged to provide a shuttle.

2) Does not employ a workforce exceeding the provisions of Article 77 paragraph (2) which is 7 (seven) hours a day and 40 (forty) hours a week for six (6) working days in a week or eight (8) hours per day and 40 (forty) hours week for 5 (five) working days of the week.

3) If the job takes longer time, then there must be an agreement from the worker and can only be done at most three (3) hours in a day and 14 (fourteen) hours in a week, and therefore employer must pay overtime wages. This is the provision in Article 78 paragraph (1) and paragraph (2).

4) The worker is entitled to have break time that has been set out in Article 79 paragraph (2), which includes break time for:
   a. Break time between the hours of work, at least half an hour after working for 4 (four) hours and the rest periods does not include in working hours.
   b. One-day rest for six working days in a week or two days for 5 (five) working days of the week.
c. Annual leave is given for at least 12 (twelve) working days after the labor work for 12 (twelve) months continuously.

d. Long break of at least 2 (two) months if the labor had been working for 6 (six) consecutive years in the same company with the provisions that the worker is no longer be eligible for annual break in 2 (two) years ahead.

5) For women workers, there are some special rights in accordance with the nature of femininity, which are:

a. Women workers is allowed to take leave in the first and second day of menstruation (Article 81 paragraph (1))

b. Women workers are entitled to have a break for 1.5 months before the time of delivery and 1.5 months after giving birth, according to calculations of obstetrician (Article 82 paragraph (1))

- Women workers whose children are still breastfeeding should be given proper opportunities to breastfeed her child if it should be done during the work time (Article 83).

- Workers women who take maternity leave are entitled for full pay (Article 84).

c. Women worker who experienced miscarry is entitled to have a break of 1.5 months in accordance with the obstetrician's advice (Article 82 (2)).

Employment protection for workers/laborers are absolutes in the work contract, this is in accordance with the Ministerial Decree No. KEP-101 / MEN / IV / 2004 on the Licensing Company Who Provides Workers / Laborers. In every job that earned from other companies, then both parties must make a written agreement that includes at least:

a. The type of job/work that has to be performed by workers/laborers
b. Ratification in doing the work referred to point a, the working relationship is between service providers with the workers/laborers employed.

Safety is one of the rights for workers/laborers as stated in the Article 86 paragraph (1) point a of Law No. 13 of 2003. Thus, the employer must implement a systematic and integrated management system.

The effort to keep the work safety and health is aimed to protect the workers/laborers and to create optimal productivity. Preventing accidents and diseases, controlling the hazards in the workplace, health promotion, treatment and rehabilitation, does this. Because of the importance of workers' safety, it is regulated in Act No. 13 of 2003 Article 86 paragraph (1), which is:

Every worker / laborer has the right to be protected:

a. Health and Safety;

b. Morals and decency; and

c. Treatment in accordance with human dignity and religious values.

Provision about safety is stipulated in Law No. 1 of 1970. What is meant by safety is safety in every workplace, whether on land, in the land, on the water surface, in the water and in the air, which is within the jurisdiction of the Republic of Indonesia. (Article 2 paragraph (1)).

The provision above is applicable in the particular workplace, as set out in Article 2 paragraph (2)) as follows:

The provisions of paragraph (1) is applicable in the workplace where:

a. Created, tested, used machines, appliances, instruments, tools, equipment or installations that are dangerous or can cause accidents, fires or explosions;
b. Prepared, processed, used, traded, transported or stored materials or goods, which can be explosive, flammable, biting, poisonous, causing infection, high temperature;

c. Doing construction, repair, maintenance, cleaning or demolition of houses, buildings, including buildings irrigation, canal or tunnel underground and so on, or which do the preparatory work;

d. Doing businesses: agriculture, plantation, forest clearing, forest workmanship, processing wood or other forest products, livestock, fisheries and health field;

e. Do the mining and processing of gold, silver, metal or other metal ores, rocks, gas, oil or other minerals, either on the surface or in the earth, and the bottom of waters;

f. Doing the transport of goods, animals or humans, either on land, through tunnels, on the surface of the water in the water and in the air;

g. Doing loading and unloading of cargo in ships, boats, piers, docks, stations or warehouse;

h. Doing diving, making objects and other jobs in the water;

i. Work is performed under air pressure or temperature is high or low;

j. Work is done with the consequence/hazards of buried in the ground, fall, hit by any objects, fall or sink, float or bounced;

k. Work is done in tanks, wells or holes;

l. There are spread of temperature, dampness, dust, dirt, fire, smoke, steam, gas, wind, weather, light or radiation noise or vibration;

m. Doing a disposal or destruction of garbage or waste;
n. Doing transmitting, broadcasting, or reception of radio, radar, television, or telephone;

o. Doing education, training, experimentation, investigation or research and observation with the use of technical equipment;

p. Raised, changed, collected, stored, distributed electricity, gas, oil or water;

q. Screened films, performed skits or other organized leisure wear equipment, electricity or mechanical installation.

The obligation of the company as a result of the onset of labor relations is to pay wages. In general, wage is a payment received during the worker does the job. Nurimansyah Hasibuan said: "Wages are all forms of income, which is received by the workers/employees (labor) in the form of money or goods for a certain period in an economic activity."

For the outsourced workers to be able to live decently, then legal protection is set about the protection of wages in accordance with Article 27 paragraph (2) of the Constitution of 1945, which is: "Every citizen has the right to a decent living work for humanity." This article further elaborated in Act No. 13 of 2003 on Labor, which is in Article 88 paragraph (1) that stated "Every worker/laborer is entitled to earn a decent livelihood to meet humanity." What is meant by income that meet a decent living is the amount of revenue or income of workers/laborers of his work that is able to meet the needs of workers/laborers and their families, that includes food and beverages, clothing, housing, education, health, recreation and retirement.

Wage is further described in Law No. 13 of 2003 on Labor, which is:

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19 Zainal Asikin, Agusfian wahab, Dasar-Dasar Hukum Perburuhan, (Jakarta : RajaGrafindo, 1993) page 86
1. Setting a wage policy in Article 88 paragraph (2) and (3), which include: minimum wage, overtime pay, wages in absent from work, wages in absent from work due to other activities outside the work, wages for doing his right to take a break from work, form and the manner of payment of wages, fines and deductions from wages, things that can be calculated with wages, wage scale structure and income tax calculation.

2. The minimum wage is based on the province or district/city and by sector of the province or district/city (Article 89 paragraph (1)). Employers are prohibited from paying wages lower than the minimum wage (Article 90 paragraph (1)).

3. Wages are not paid if the employee does not do the job (Article 93 paragraph (1)). This provision is a principle which basically applies to all workers / employees, unless the worker / laborer cannot do the job but not because of his fault.

4. Some exceptions of Article 93 paragraph (1) is contained in Article 93 paragraph (2), which is:

   - The provisions referred in paragraph (1) does not apply, and employers are required to pay wages if:

     a. The worker/laborer is sick, including female workers/laborers who are sick in the first and second day of her menstrual period and therefore cannot do the job. A medical certificate can evidence this.
b. The workers/laborers are absent from work due to get married, circumcised, baptized his/her child, his wife gave birth or miscarriage, husband or wife or children or in-laws or parents or family members in the house died.

c. The workers/laborers cannot do the job because they are doing an obligation to the country.

d. The workers/laborers cannot do the work because he/she is doing religious practices ordered by their religion.

e. The workers/laborers are willing to do the work that has been promised but employers do not hire them, either because of their own mistakes and obstacles that should be avoided by the employer.

f. The workers/laborers are doing their break time.

g. The workers/laborers are doing the task of worker unions / labor unions with the consent of the employer.

h. The workers/laborers are studying with the consent of the employer.

5. The worker who is sick and cannot perform their duties still have the right to wages, as provided in Article 93 paragraph (3), as follows:

   a. For the first 4 (four) months, wage is paid 100% (one hundred percent) from total wage;

   b. For the second 4 (four) months, wage is paid 75% (seventy-five percent) from total wage;

   c. For the third 4 (four) months, wage is paid 50% (fifty percent) from total wage;
d. For the forth 4 (four) months, wage is paid 25% (twenty five percent) from total wage prior to the termination of employment by the employer.

6. Wage component consists of a basic salary and fixed benefits with the basic wage rate at least 75% (seventy five percent) of the principal amount and fixed allowances. Provided for in Article 94, What is meant by fixed allowances are payments to workers/laborers which is done regularly and not associated with the presence of workers/laborers or any achievement of specific performance.

Recognizing the importance of worker for the company, the company is obliged to ensure the welfare of outsourced worker. Law No. 13 of 2003 has set the provision, as follows:

1. Every worker/laborer and his family have the right to receive social security (Article 99 paragraph (1)).

2. To improve the welfare of the workers/laborers and their families, employers must provide welfare facilities which include family planning services (Keluarga Berencana/KB), daycare, housing for workers/laborers, praying facilities, sports facilities, canteen facilities, health facilities and recreational facilities. The existence of those facilities is implemented according to the needs of workers/laborers and also according to the ability of the company (Article 100 paragraph (1) and paragraph (2)).
3. To improve the welfare of workers/laborers, so a cooperative for workers/laborers is formed. The cooperative is a productive effort in the company that performs economic activities that generate income outside of wages. (Article 101 paragraph (1)).

Workers Social Security Program (Jamsostek) is a form of protection of economic and social protection. The program provides protection in the form of monetary compensation for reduced income and protection in the form of services and care/treatment at the time when a worker faces certain risks.

Social Security program is a continuation of Labor Social Insurance program (ASTEK), which was established by the Government Regulation No. 33 of 1977. Juridically, the implementation of the Social Security program is intended as implementing Article 10 and Article 15 of Law No. 14 Year 1969 on Basic Provisions of Labor, that now has been repealed and replaced by Act No. 13 of 2003 on Labour, which is set in Article 99 the implementation of this while still follow the provisions of Law No. 3 of 1992 on Social Security Workers (Jamsostek). Here are the rules of procedure that is PP 14 of 1993, PP No. 64 of 2005 on the fourth amendment to the Regulation No. 14 of 1993 on the Implementation of Social Security (Jamsostek). Social Security programs include life insurance, accident insurance, and pension and health care benefits. The implementation of the Social Security program is mandatory for employers who have a workforce of at least ten (10) persons.

2.7. The Work Relationship Setting between Worker and The Company That Provides Outsourcing Service
In Article 1 paragraph 15 of Law No. 13 of 2003 on Labor, stated that the employment relationship is the relationship between the employer and the worker/laborer based on the agreement that have three elements: jobs, wages, and commands. Employment relationship is due to the employment agreement between the employer and the worker/laborer. From the definition above, it is clear that the employment relationship as a form of legal relationship is born or created after the employment agreement between workers and employers.

For the employment relationship to be safe and not detrimental to either party, especially the labor/worker, Article 65 paragraph (6) and (7) of Law No. 13 of 2003 on Labor regulates labor relations in the pattern of outsourcing should be a written employment agreement between labor and the company who provides outsourcing service, which is based on the employment agreement for an unspecified time (PKWT) or a certain time employment agreement (PKWTT) that meets the requirements of Article 59 of Law No. 13 of 2003, which is:

1. A work agreement for a certain period (PKWT) can only be made for a specific job which, according to the type and the nature of the job, the job will be completed within a certain time, which are:

   a. Temporary jobs or jobs that can be done in one execution

   b. The completion of the work is expected not too long and not more than three (3) years

   c. Seasonal work

   d. The work related to new products, new activities, or additional products that are still in the experimental or exploratory
2. Employment agreement for a certain period (PKWT) cannot be made to fixed/permanent work.

3. Employment agreement for a certain period (PKWT) can be extended or renewed.

4. Employment agreement within a specified time period (PKWT) can be held for a maximum of two (2) years and may only be extended for 1 (one) time for a maximum period of 1 (one) year.

5. Employer who intends to extend the employment agreement within a specified time, he has to notify the intention in written form no later than 7 (seven) days before the specified time expired.

6. Renewal of certain time employment agreement can only be held after the period exceeding 30 (thirty) days from the expiry period of employment. This employment agreement renewal should only be done 1 (one) time and no later than 2 (two) years.

7. Certain time employment agreement (PKWT) which does not comply the provisions of paragraph (1), paragraph (2), paragraph (4), paragraph (5) and paragraph (6), then by law into the status change to employment agreements for an unspecified time (PKWTT).

8. Other things that have not been regulated in this article will be further regulated in ministerial decree.
If the provisions referred in Article 65 paragraph (2) and (3) are not met, then by law the employment status of the workers and the company who provides the our turned into a working relationship with the employer/the company who use the service.

2.8. Condition for the Company who Uses the Outsourcing Service

Act No. 13 of 2003 on Labor limits the work that can be outsourced to other companies through contracting or outsourcing. Obligations for the party who use the outsourcing service is regulated under Article 66 paragraph (1). The party who use outsourcing service may not use manpower to carry out basic activities or activities that are directly related to the production process, except for auxiliary service activities or activities that are not directly related to the production process.

Article 66 of Law No. 13 of 2003, stated that:

What is meant by supporting activities or activities that are not directly related to the production process is activities that are outside the core business of a company. The activities such as: cleaning service, catering, security personnel, and transportation provider for the workers/laborers.

The concept and understanding of core business and support activities or changes in non-core businesses and growing dynamically. Alexander and Young (1996) says that there are four of understanding related to the core or core business activities, namely:

a. Activities that are traditionally carried out in the company.

b. Activities that are critical to business performance.

c. Activities that create a competitive advantage for now and in the future.

d. Activities that will encourage the development, innovation, or rejuvenation.
2.9. Requirements for Company who Provides Worker for Supporting Activities (Service Provider)

Article 66 paragraph (2) also regulates that the company who provides worker for supporting activities has to meet several requirements, which are:

a. There is a relationship between the worker/laborer with the company who provide worker/laborer

b. The employment agreement that applies between the worker/laborer and the company who provides worker/laborer is an employment agreement for certain period of time (PKWT) or employment agreement for uncertain period of time (PKWTT) in a written form and signed by both parties.

c. Protection of wages, welfare, working conditions and any disputes are the responsibility of the company who provide worker/laborer

d. The agreement between the company who provide worker/laborer and the company who use the service must be in written form.

The background of this requirement is so that the company who provide worker (outsourcing company) cannot ignore their responsibility and obligations towards the worker / laborer or other third parties. The provisions concerning the requirement of a company as a legal
entity is provided in Article 3 and Article 4 of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep. 220 / MEN / X / 2004 on the Requirements of Work Submission to Other Company.

Article 3 states that if the employer will hand over some of its work to the contractor company, then such handover should be given to the company with legal status. Moreover, Article 66 paragraph (3) states that: "Company who providers workers/laborers must be a legal entity and has the permission from the government agency responsible for labor affairs"

2.10. Laborer/Worker Union

Workers/laborers as citizens have equality in law, to have the right to get a job and a decent living, the right to express opinion, the right to gather in an organization, and the right to establish and join workers/laborers union.

The right to be a member in workers/laborers union is a fundamental right of workers/laborers who had been guaranteed in Article 28 of Constitution (Undang-Undang Dasar) 1945 and ratified by the Government of the Republic of Indonesia in ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98 of organization and to bargain collectively. Both of the conventions are the legal basis for workers / laborers to gather in organization by establishing workers/laborers union.

The weakness of workers/laborers in terms of economy, position, and their influence toward employers makes the worker/laborer could not fight for their rights individually or purpose without organizing themselves in a union in order to achieve its objectives. The worker/laborer union is set out in Act No. 21 of 2000 concerning workers union.
Article 1 paragraph 17 of Law No. 23 of 2003 and Article 1 paragraph 1 of Law No. 21 of 2000 on Workers/Laborers Union explained that the workers/laborers union is an organization formed of, by, and for the workers/laborers, both in the company and outside the company, which is free, open, independent, democratic, and responsible to fight, defend, and protect the rights and interests of the workers/laborers and to improve the welfare of workers/laborers and their families.\(^\text{20}\)

Laborer union, federations of laborers union, and confederations of workers union must accept Pancasila as National Principle and 1945 Constitution (UUD) as the State Constitution of the Republic of Indonesia. Therefore, the principle of the establishment of a worker/laborer union must not contrary to Pancasila and the 1945 Constitution (UUD).

The purpose of laborer union, federation of workers/laborers union, and confederation of workers/laborers union is to provide protection, defending the rights and interests, as well as improving the welfare of workers/laborers and their families, with two (2) goals: to the outside and inside.

To the outside means to improve the welfare of workers/laborers and their families, and to inside means to provide protection and defending the rights and interests of workers/laborers from employers.

In Article 4 paragraph (2) of Law No. 21 of 2000, the function of laborers union, federation of workers/laborers union, and confederation of workers/laborers union are:

a. As the party in making collective bargaining agreements and resolving industrial dispute;

\(^{20}\) Zaeni Asyahdie, Hukum Kerja, (Jakarta : RajaGrafindo Persada, 2007), page 22-23
b. As a representative of workers/laborers in cooperation agencies in the field of labor according to its level;

c. As a medium to create harmonious, dynamic, and justice industrial relations in accordance with the legislation regulation;

d. As a medium of channeling aspirations in defending the rights and interests of its members;

e. As the planner, implementer, and the person in charge of the strike of laborers in accordance with the legislation;

f. As a representative of workers/laborers in defending their ownership of shares in the company.
CHAPTER III

LEGAL ASPECTS OF OUTSOURCING AT PT. PERTAMINA (PERSERO) FUEL TERMINAL PENGAPON SEMARANG ASSOCIATED WITH LABOR LAW

3.1. The Implementation of Providing Workforce at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang

To support the creation of the Vision and Mission of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, the preparation of adequate facilities should run smoothly. Thus, PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang needs outsourcing.

Therefore, some supporting activities that are not directly related to the production process handed to a third party. The activities are providing worker to do NDT routine inspection for terminal equipment, cleaning service, security personnel, logistics, cleaning and maintaining building, human resources, etc.

Especially for providing worker for NDT routine inspection for terminal equipment, PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang cooperate with the third parties selected and appointed by the Direct Election Committee and Procurement Committee formed by the General Manager based on Warrant Letter from Processing Unit General Manager No. Prin-051 / E16000 / 2005-S0 March 21, 2005, with the task of holding direct elections, including technical and price negotiations and report the results of the implementation of the direct selection. By implementing this, the management wish that the supporting activities can be handled professionally and the result will be good.
3.2. **The Implementation of Providing Workforce by PT. INKANINDO**

3.2.1. **The Fundamental of Job Submission**

The provision of worker to do NDT routine inspection of terminal equipment in PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang is done through direct selection, in accordance with letter No. 6500037487 September 19, 2006, the appointment of Direct Selection Winner from Reliability Unit Manager of PT Pertamina (Persero) Processing Unit VI No. 0517 / E16120 / 2006-S5 September 28, 2006 with the issuance of the Employment Agreement (SPK) between PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang with PT. INKANINDO, dated 29 September 2006, No. 3900053099.\(^{21}\)

A total of 46 people are employed in outsourced staff PT.Pertamina Pengapon Semarang. Of the 46 workers 98% are men. The range of the wages is Rp.1,947,550,00 to Rp.2,783,000,00 depend on performance and long work of these workers.

3.2.2. **The Type of Submitted Work**

According to Article 65 paragraph (2), the work can be outsourced to other companies must meet the following requirements:

a. Done separately from the main business

This means that the activity is not jointly done with the principal/core business. This provision is intended to enhance the business focus and avoid chaos in the work environment. In order to create new jobs, job submission is a strategy to avoid overlapping

\(^{21}\) Surat Perjanjian Kerja (SPK), Nomor 3900053099 tanggal 9 September 2006, page 1
licensing/legal entity companies associated with tax issues, as well as to avoid any abuse of the outsourced workers/laborers.

b. Done by direct or indirect orders from employer

This means that outsourcing activities can be done at vendor's place or at the principal’s place, according to the nature of the outsourced work. If the work/job is about making a particular product, the process is usually done at the vendor's place and the principal through the vendor can give work orders. If the work/job is about doing a particular service, then the process is usually done in the principal company's place and commands can be given directly by the principal. This provision is to provide certainty for the principal company in providing orders to the outsourced workers/laborer in accordance with the type of work and the contracts.

c. Does not hamper the production process

The submitted job does not directly influence the production process, so that if the vendor gets problem in fulfilling his achievements, it will not hamper production process and does not affect the principal’s business development and guarantee the survival of other workers.

The activity of provisioning workers to do NDT routine inspection of terminal equipment at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang are helping inspector preparing documents for terminal equipment examination (Column, Vessel, Heat Exchanger, Fin-Fan,
Rotating Equipment, Instrument/Electrical, etc) and collecting assessment data and input it into the history card\textsuperscript{22}.

Therefore, the provision of worker to do NDT routine inspection of terminal equipment is completely separate from the main activity and can be regarded as supporting activities. To make the work runs smoothly and appropriate with the agreement, PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang appointed Head of Reliability Control for authorities in providing instruction, notification, and is responsible for supervising the execution of the work according to the agreement.

\textbf{3.2.3. The Company Who Provides Workers Must Be Legally Incorporated}

A legal subject has rights, obligations, authority, and ability to do or not do anything. According to Djoko Triyanto, "in drafting the contract, the first thing that should be noted is each party's authority and ability to do laws/legal action. The authority to take legal actions is attached in \textit{nemo plus} principle, which means that a person is prohibited to bind something that is not his/her right".\textsuperscript{23}

Especially about the authority and the ability for a company to run outsourcing business (vendor), it is regulated in Article 65 paragraph (3) and Article 66 paragraph (3) of Law No. 13 Year 2003 on labor. That provision stipulates that only legally incorporated company can do the business. This requirement is to avoid outsourcing company to ignore their responsibilities and obligations towards the worker or other third parties.\textsuperscript{24}

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\textsuperscript{22} Lingkup Kerja Dan Syarat-Syarat Kerja Pekerjaan Pemeriksaan Rutin NDT Peralatan Di Kilang.PT. Pertamina Terminal BBM Pengapon Semarang, page 1


\textsuperscript{24} Ibid, page87.
For the company who provide workers/laborers, besides having the legality of operations, they must also obtain permission from the government agency responsible in employment field. The purpose is to monitoring the fulfillment of requirements and for administration.

Companies/entities that have legal status is a Limited Liability Company (Perusahaan Terbatas/PT), foundations, and cooperatives. As for Individual Company (Perusahaan Perseorangan), Firm, and CV, institutionally they are not a legal entity. Therefore, they do not have the authority and capability to act as legal subject in outsourcing business.

Because individual companies (perusahaan perseorangan), CV, firm does not have the authority and ability, and right to engage in any outsourcing business, thus the outsourcing contract with a company that does not involve a legal entity is invalid because it violates the objective terms of an agreement. Since the agreement is invalid, then all legal consequences arising from the agreement, including the fulfillment of the rights for outsourced workers/laborers become the responsibility of the company that submitted the job (principal). It is stated in Article 65 paragraph (8).

The provision about ‘legally incorporated company’ is important because of its status as a legal subject and authorized to perform legal acts. If an entity qualifies the requirements to become legal entity, then it has rights, and therefore can run these rights. As a subject of law, the legal entity can also be sued or sue on a particular event in a court.
Legal entity is a translation from Duetch, which is rechtspersoon, or in English is called as legal person. Legal entity is an association of people who hold the same job, and on this basis is an entity that has fulfilled the conditions prescribed by the law, which is\textsuperscript{25}:

a. Assets of wealth are separated from its members'.

b. Rights and obligations of the legal entity is separated from the rights and obligations of the members.

A legal entity consists of an assembly of people or organizations, which have the ability to take legal actions, have their own property, have officials/committee, and have the right and obligation as human beings. Thus a legal entity has the following elements:

a. an association of persons or organizations;

b. has the ability to perform legal acts;

c. has their own property;

d. has officials/committee;

e. can be sued or sue in a court.

With its status as a legal entity, then a company is also the subject of law that has the right and obligation to take legal action. Besides human as a bearer of rights, there are bodies (human), which by law are given the status of "persoon" who have rights and obligations as human beings called Legal Entity.\textsuperscript{26}

\textsuperscript{25} Ibid, page 238
\textsuperscript{26} Soeroso, Pengantar Ilmu Hukum, Penerbit: Sinar Grafika, Cetakan Kedelapan 2006, page 227
The reason of this provision is because there are still an amount of companies in Indonesia that is financially low and have low awareness of the law, so it is risky when dealing with issues in the field of employment.

This requirements call for the full responsibility of employers to guarantee the fulfillment of the basic rights of workers/laborers, which stated in the Las that it must be at least equal with the employee who work in the company that give the outsourced work.

One factor that leads to the rise of illegal vendors is because of the contradiction between the Ministerial Decree No. 220 / Men / X / 2004 About Terms of Work Submission to Other Company with Article 65 paragraph (3) of Law No. 13 of 2003 on Employment.

According to Article 65 paragraph (5) of Law No. 13 of 2003 on Labor, the Minister can only change and/or add the requirements as referred in paragraph (2) only. In fact, in Kepmenakertrans No. Kep-220 / MEN / X / 2004, in addition to adding the requirement as defined in paragraph (2) of Law No. 13 of 2003 on Labor, the Minister also provide exceptions to the provisions of Article 65 paragraph (3), which is exceptions of legal requirement for companies that receives the job/work (vendor).

PT. Indah Karya Nuansa Indonesia (INKANINDO) is a Limited Liability Company (Perusahaan Terbatas/PT) that established under the agreement to conduct business with an initial capital divided into shares, and has meet the requirements and implementation regulations. The company is domiciled and headquartered in Bandung and has a branch office at Jalan Albasiyah Block 5 Number 1 Semarang. The deed is made on July 31, 1995, No. 92 by Pinarti Yohanna, SH, the Notary Candidat, in lieu of Liana Nugraha, SH, who is a notary in Bandung,
with the Decree of the Minister of Justice of the Republic of Indonesia Number C2 4939-HT.01.01.TH.1996.

### 3.2.4. Protection and Working Condition

Outsourced workers/laborers have interests that are transformed into the right of workers/laborers, which by law need to be protected by the employer. Abdul Khakim once said that the essence of "the right of workers/laborers are the obligations of the employer", and vice versa "rights of the employer is the obligations of the workers/laborers". This means that both parties are authorized/entitled to request achievement called "prestatie subject" and obliged to make an achievement called "plicht subject".

Protection of the fundamental rights of workers/laborers that is the interests of workers/laborers that could be forced for its fulfillment. The rights are granted to workers/laborers known as a supporter of the rights of legal entities (legal entities, rechtspersoon), because these rights are the needs of workers/laborers since they determine to work.

The working relationship between employers and workers/laborers is called as tweezijdige rechtsbetrekkingen that van Apeldorn said as the event that by law can cause or eliminate rights, which is the legal relationship with their rights and obligations of employers and workers/laborers. Both are authorized/entitled to request something from the other side, and the opposite party is also obliged to give something to the party.\(^\text{27}\)

The implementation of the obligations of the employer to the outsourced workers/laborers is regulated in Article 65 paragraph (4), which states:

\(^{27}\) Ibid. page 251.
Employment protection and working conditions for workers/laborers as referred in paragraph (2) must at least equal to employment protection and working conditions in the company or the employer in accordance with the legislation.

The hierarchy of the workers/laborers' needs is the same with the hierarchy of needs as stated by Abraham Maslow, where workers/ laborers are also entitled to fulfill\(^28\):

- **Physiological needs**: the needs such as hunger, thirst, housing, etc.

- **Safety needs**: the needs for safety and protection from harm, threats, and deprivation or dismissal from employment

- **Social needs**: the needs for love and fulfillment in relationships with other people, satisfaction and a feeling of belonging and accepted in a group, a sense of kinship, friendship and affection.

- **Esteem needs**: the needs for status or position, self-respect, reputation and achievements.

- **Self-actualization needs**: the needs for self-fulfillment, to harness the potential of self, self-development, creativity, self-expression and do what is most suitable, and finish the job himself.

- **Safety needs**: the needs for safety and protection from harm, threats, and deprivation or dismissal from employment.

The needs of workers/laborers must be protected and fulfilled by the employer. According to Djoko Triyanto, employment protection has a quite extensive aspect, which is the

protection of the physical aspect, which includes the protection of the safety of occupational accidents and health, and treatment appropriate with human dignity, morality, and religion\textsuperscript{29}, which is generally regulated in Act No. 13 of 2003:

\begin{itemize}
  \item[a.] The right to have equal opportunity and treatment without discrimination (Article 5, Article 6);
  \item[b.] The right to obtain improvement and competence development and training (Article 11, Article 12);
  \item[c.] The rights to get equal opportunities to choose, obtain, or moving to another work (Article 31);
  \item[d.] The right to get certainty in the employment relations (Article 50 to Article 66)
  \item[e.] The right to have break/rest time, leave, do overtime and get overtime Wages (Article 77 to Article 85);
  \item[f.] The rights that is relating to wages, social security and welfare (Article 88 to Article 101);
  \item[g.] The right to get protection of Occupational Health and Safety, morals and decency, and treatment in accordance with human dignity and the rights to obtain collateral deaths due to accidents (Article 86 to Article 87);
  \item[h.] The rights to organize and join in association (Article 104);
  \item[i.] The rights to strike (Article 137 to Article 145);
  \item[j.] The rights to get severance pay after being dismissed (Article 156).
\end{itemize}

Those rights are the basic rights of workers/laborers, which are not fully obtained by outsourced workers/labor. The employers are more focused on business principles regardless of the outsourced worker/labor as a factor of production. It causes the level of motivation of outsourced workers/labor is very low, whereas the External Motivation Theory stated that a need needs to be fulfilled if someone (employer) wants to develop the motivation to work.

As a part of an enterprise organization, employers should be able to provide a comfortable atmosphere for workers/laborers in his company. Mary Parker Follett said that "workers and management have the same interests as members of the same organization despite the apparent differences between managers and subordinates (giving orders and executing commands) that cover this natural relationship".  

The existence of negative impression toward the legalization of outsourcing leads to the unfair treatment of employers toward workers/laborers which causing an uncomfortable atmosphere. In fact, employers always want maximum work but does not give maximum effort to build harmonious relationships with their workers/laborers them. According to Oliver Sheldon, management is required to treat their workers fairly and feasible. Therefore, there must be a relationship in managing a company, which means, a company can work efficiently only if the organization’s goals and the needs of individuals who work in the organization is maintained in balance.

The balance between the objectives of the company and the fulfillment of the basic rights of workers/laborers can be accomplished when employers provide employment protection and working conditions for workers/laborers by applying Labor Norms and Occupational Health and Safety. 

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31 Ibid. page 47.
Safety Norms in the company. That protection is intended to make the workers/laborers feel safe in doing their daily work, so that production and productivity can be increased.\(^\text{32}\)

Labor Norms includes: the mandatory to report the employment, working time, rest periods, overtime wages, requirements of wages, employment relationship, the placement within the country, foreign employment requirements, the placement of Indonesian workers abroad, social security programs, work accident compensation, the protection of child labor norms, the requirements of the protection of women's labor norms, and the requirements for employing children in bad work.

Occupational Health and Safety Norms (Norma Keselamatan dan Kesehatan Kerja/K3) consists of: K3 for steam engines and pressure vessel, K3 for transport aircraft, K3 for air power and production, K3 for electrical installations, channeling lightning, K3 for fire-fighting, K3 for building construction, K3 for workers' health, K3 for workers' meals at the workplace, K3 for hazardous chemicals control, K3 for company's sanitation and hygiene, institutional K3, K3 for personal protection tools (Alat Pelindung Diri/APD).

The protection and working conditions that is given to the NDT worker/laborer by PT. INKANINDO is:

a. Children and Women Worker

PT. INKANINDO in doing NDT inspection for terminal equipment at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang is supported by seven the workers. The minimum age of workers is 21 (twenty-one years) and the age should not exceed 55 (fifty-five) years. The workers consist of six male workers, and one female worker. Thus, there is

\(^{32}\)Djoko Triyanto, Op.Cit. page 102
no child labor and women under age. This complies with Article 76-75 of Child Labor and Article 76 of the night hour work for women workers. The female worker is working as NDT administrative staff that works in regular working time.

b. Working Hour

The working hours is five working days, from Monday to Friday at 7:00 AM to 05:00 PM with a break:

Monday to Thursday: 12.00 PM - 01.00 PM

Friday break: 11:30 AM - 01.00 PM

Total working hours in a week is 45 (forty-five) hours. This schedule is not in appropriate with the operating hours, which supposed to be 40 (forty) hours in a week. But in reality, the total working hours in a week exceed forty hours. One hour of overtime per day are considered as overtime without receiving overtime meal allowance because it considered less than 4 hours on weekdays. This violates Article 77 paragraph (2) which has been set that the real total working hours during the week should not be more than 40 (forty) hours in 1 (one) week for 5 (five) working days.

c. Overtime

The overtime only occurs when users need to employ NDT worker outside the operating hours only. For the overtime, NDT worker is given overtime wages, overtime meal allowance, and overtime transport allowance. Overtime wages will be paid based on the actual execution of the work with the following details:

- Overtime wages for maximum of 1,680 hours within 1 (one) year.
• Overtime meal allowance for maximum of 252 times in 1 (one) year.

• Overtime transport allowance for maximum 252 times in 1 (one) year.

Overtime wages, overtime meal allowance, and overtime transport allowance as mentioned above will also be reduced by Value Added Tax (Pajak Pertambahan Nilai/PPN) of 10%. Overtime meal allowance will be given to the worker if:

• The minimum overtime hours is 4 hours per day on weekdays.

• On day off, the minimum overtime hours is 5 hour per day and past lunchtime.

• Especially for shift workers, they do not receive overtime meal allowance and overtime transport allowance when working during day off.

As stated above, overtime meal allowance is given when workers perform at least 4 hours of real work on weekdays. However this is not appropriate with the provision of overtime in Law No. 13 Year 2003 on labor in Article 78 paragraph (1) letter b, which stated that overtime can only be done at most three hours in one day and fourteen hours in one 1 week.

The violation also applies in shift worker point. The regulation mentions that specifically for shift workers, they do not receive overtime meal allowance and transport allowance if the overtime work is done during day off. This is not appropriate with the provisions of overtime in Law No. 13 Year 2003 on Employment of Article 78 paragraph (2), which states that employers who employ workers/laborers to work overtime as referred to in paragraph (1) shall pay overtime wage.

d. Break Time

In doing their duties, break time is given to the NDT workers as follows:

- Break time between the working hours is one hour on Monday to Friday and one hour on day off or overtime.
- Weekly rest is two days on Saturday and Sunday, except for overtime work.
- Annual leave is granted as long as twelve working days, or the company has to provide monetary compensation if the worker does not take the annual leave.
- Long break is not given to NDT workers/laborers, because their employment contract is only 1 (one) year.

Annual leave and long break should be given to the contracted workers/laborers. It is because practically the workers/laborers still continue to work in the user company even though the contract period of one year ends. The one that changes is only the manpower provider, but the workers/laborers still working in the user company, PT. Pertamina. Thus, if they have worked for twelve consecutive months or six consecutive years, then they are entitled to have annual leave as long as twelve days or a long break of at least two months, in accordance with Article 79 paragraph (2) point c and d.

e. Work Safety

What is meant by work safety is:
• The safety required for employees of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang is also required for NDT (outsourcing) workers who are doing the same job. Such tools are personal protective equipment, hats, and safety shoes.

• Any damage or loss of any safety equipment, prevention tools, and fire brigade lent by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang will be charged to the service providers.

• All of work equipment and safety equipment must be in new condition and submitted in the first execution of the work. After the completion of the contract, all of the materials used belong to PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

f. Wage

    Triangular employment relationship in the practice of outsourcing caused the fulfillment of workers' wages less than the maximum, because a part of the wages are has been cut to the profit of service providers (vendors). Such practice is what is said by Marx as a simple trick to pay workers less than what they should receive.

    Although there is no fraud in paying the wages of workers / laborers in the practice of outsourcing, the cutting of wages and other income causes a lack of fulfillment of the workers/laborers' rights. In addition, because there is a gap between workers/laborers with the employers, it leads distinction of employment protection and working conditions of outsourced workers and regular workers.
Wages are the benefits received by the workers/laborers for the work they do (service or producing goods) in a company. Thus, workers / laborers and employers have a direct interest of the wage system in the company.

Outsourced workers and their families depend on the wages they receive to be able to meet the needs of food, clothing, housing and other needs. Therefore, they always expect higher wages to improve their living standards. But on the other hand, employers often see wages as a part of the costs/expenses of the company, so that the employers often disregard the policy to increase wages for workers/laborers. Employers are reluctant to raise the wages of workers as a reason that the production costs are too high.\(^{33}\)

The behavior of service providers (vendors) providing low wages to outsourced workers/laborers has become a central point of the weakness in legalizing the outsourcing system. Wage is the symbol of the welfare of workers/laborers and also as the standard in measuring the fulfillment of the rights of workers/laborers by the employers. Wages also determine the working relationship, because in all regions in Indonesia, wages become the issues and central demand why the outsourced workers do striking and demonstrations demanding employers and the government to raise their wages or raising the minimum wage standard.

High wage characterized employment protection for outsourced workers/laborers. Conversely, low wages is a characteristic of injustice, exploitation, and violations of labor laws. In the theory of surplus-value of Karl Marx, value-added, which benefits accrue from the value of wages paid to the workers, has been stolen from them and put into the pockets of

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the capitalists or investors, because the difference between the wages paid to a worker produce commodities, and between the selling price of the commodity that is value added (advantage that is not enjoyed by the workers) is only controlled by the owners of capital (vendor).

In the outsourcing business, the advantage of vendor business is based on value-surplus or profit from the selling price of the workers/laborers to the principal (employer). That is, the wages that should be received by the workers/laborers from the principal have been cut for the benefit of the vendor, so that the workers/laborers lower amount than they are supposed to receive. In such circumstances, the vendor is worth mentioning as capitalist vendors who have exploited outsourced workers/labor in achieving his desire to gain more profits and more value-surplus for expansion, which then encourages vendors to what Marx called the general law of capitalist accumulation.

Capitalists are trying to exploit the workers as much as possible to force the labor costs to zero, so in an attempt to obtain the maximum benefit, both principal and vendors often treat outsourced workers/laborers with unjust treatment (such as work orders and fulfillment of the rights of workers / laborers). To overcome this problem, it is needed to assess again the meaning of industrial relations that occur between workers and employers, because actually the workers/laborers are business partners to the employer and should be treated with fairly to achieve a common goal. The purpose of workers/laborers is to achieve a better standard of welfare, while the employer's goal is to achieve a high productivity and profits.

The principal of wages is regulated in Article 27 paragraph (2) of the Constitution of 1945, which is:
"That every citizen has the right for employment and decent living for humanity".

Decent living means that the income earned from the work is able to meet their basic needs and their families' needs fairly, which includes food and beverages, clothing, housing, education, health, recreation and retirement.

Furthermore, in Article 88 of Law No. 13 Year 2003 on labor, states that:

(1) Every worker is entitled to earn a decent income to meet their needs.

(2) To create income that meet a decent income for humanity as referred to in paragraph (1), the government set a wage policy that protects workers/laborers.

(3) Wage policy that protects workers/laborers as referred to in paragraph (2) is as follows:

- Minimum wage;
- Overtime allowance;
- Wages when the worker is absent from work;
- Wages when the worker is absent from work due to other activities outside the work;
- Wages for exercising the workers' right to take a rest;
- The form and manner of wages payment;
- Fines and deductions of wages;
- Things that can be calculated with wages;
- Proportional structure and wage scale;
- Wages for severance payments; and
- Wages for income tax calculation
The government sets the minimum wage referred in paragraph (3) letter a based on the needs of decent living based and with regard to productivity and economic growth.

According to Article 2 of Government Regulation No. 8 of 1981 on the Protection of Wages, states that:

The right to receive wages occurs during the existence of the employment relationship and end at the time the employment relationship off.

Wage system is based on the type of work or production process systems, and is closely related to employment status. The form of wages for workers/laborers is as follows:

a. Workers’ wages has to be paid on a monthly basis;

b. Wages of casual workers (lepas harian) has to be paid every week or every two weeks depending on the payment agreement and based on the presence of the worker / laborer;

c. Piece rate (upah borongan) has to be paid every week or based on the achievements of the workers either individually or in-group.

The wage component is usually provided by the employer to the worker can be seen from the status of employment relationship and the wage system. Based on the Minister’s Circular Letter on Labor No. SE-07 / Men / 1990 about the Grouping Components of Non Wages and Income, wages are grouped as follows:

a. The component of wages

Consists of, first, Basic Wage (Upah Pokok), which is the basic honorarium paid to the employees in accordance with the level or type of work as stipulated by the agreement.
Second, Fixed Allowance (Tunjangan Tetap), which is a regular payment associated with regular/fixed work/job, paid to the workers and their families and paid in the same time with the payment of basic wages, such as wife alimony, child support, housing benefits, death benefits, allowances areas, etc. Third, Non-Fixed Allowance (Tunjangan Tidak Tetap), which is a payment that is directly or indirectly related to the workers, who are not given fixed job/work, paid to the workers and their families and paid according to a certain time, and is not the same time as the payment of basic wages. The examples of this allowance are transport allowance based on attendance, meal allowance (if based on attendance and this can be in the form of money or meals).

b. Non-wage income

Non-wage income consists of, first, 'facilities' in the form of real pleasure provided by the company to improve the welfare of the workers, such as transport facilities (shuttle), free meals, places to pray, daycare, cooperatives, canteens, etc. Second, 'bonus payment' (not part of wages) which is received by workers from the company's profits or because the workers have done more work than normal production targets or because of the productivity is increased productivity. Third, 'religious holiday allowance' (Tunjangan Hari Raya).

The standard wage for workers/laborers is called minimum wage (Upah Minimum), which is the lowest monthly wage consists of basic salary including fixed allowances. Article 90 paragraph (1) of Law No. 13 of 2003 confirms that workers are prohibited from paying wages lower than the minimum wage, the wage which is based on the consideration of minimum subsistence needs, consumer price index, ability, development and survival of the company,
wages that generally applicable in certain areas, labor market conditions, the level of economic development, and income per capita.

Labor inspectors have to supervise the implementation of the wage payment in the practice of outsourcing, because although vendors take advantage of the difference in wages paid to workers/laborers, but the amount of wage should not be less than UMK. Principal and vendors should already take into account when preparing the vendor's commission when arranging the contract without cutting down the rights of workers/laborers. Outsourcing contract should also explicitly and clearly determine the amount of wages given to the laborers that is paid by the vendor and the vendor's willingness to pay a penalty if they do not fulfill the contract clause either only a part or the whole part, including the problem about wages for workers.

The firmness and clarity to fulfill the obligation to pay the rights of workers/laborers is not only the interests of outsourced workers/laborers, but also the interest of the principal's responsibility. This is because if the right of the worker/laborer is not fulfilled properly, then the contract becomes invalid and responsibilities to pay the wages for workers/ laborers switch to the principal (employer).

Realizing that the outsourcing cooperation agreement was not signed by the worker to the employer, but by the company where employees work and the service provider (vendor), then the workers do not know the negotiations on wages.

Advantages and risks obtained by PT. INKANINDO to provide laborer for NDT routine inspection for terminal equipment at PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang is amounted to 14.95% per year and the overhead of 4.9% (four point nine percent) per year.
Advantages and Risks as well as overhead costs taken by PT. INKANINDO is very burdensome for workers/laborers, even though the agreement is already included in the Letter of Employment Agreement (Surat Perjanjian Kerja) which has been agreed upon between the PT. INKANINDO and PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

g. Jamsostek (Social Security)

The understanding of 'Social Security' as its stipulated in Article 1 point 1 of Law No. 3 of 1992 on Workers' Social Security is a protection for workers in the form of compensation in the form of money as a result of events experienced by workers such as accidents, illness, pregnancy, maternity, old age, and death. Associated with this notion, according to Djoko Triyanto, sources of social security can be realized in the form of:\textsuperscript{34}:

- Directly remuneration, in the form of wages, and

- Indirect remuneration, such as:

  - Indirect compensation, such as overtime allowance, premium, night shift allowance;

  - Supplementary wages, such as annual bonuses, production services;

  - Employee benefits, such as guarantees given by the company (for example, life insurance, life insurance);

  - Fringe benefits, such as cheap canteen, recreation, fitness facilities.

\textsuperscript{34} Djoko Triyanto, Op.Cit., page 179
Social security according to the legislation is a basic protection to meet the minimum requirements for workers and their families, by providing certainty about their income, as a partial or whole substitute of lost income, which may caused by social risk such as the risk of job loss, a decrease in wages, work accidents, sickness, disability, the elderly, death, etc.\textsuperscript{35}

As stated in Article 2 paragraph (3) of Government Regulation No. 14 of 1993 on the Implementation of the Social Security Program, it states that employers who employ a workforce of 10 (ten) or more people, or pay wages at least Rp.1.000.000, - (a million Rupiah) a month, are required to involve their employees in the social security program, such as: Accident Insurance (Jaminan Kecelakaan Kerja), Death Benefit (Jaminan Kematian), and Old Age Security (Jaminan Hari Tua), and Security Services such as the Health Insurance (Jaminan Pemeliharaan Kesehatan) for all workers/laborers and their families.

Notice of the provisions of Article 2 paragraph (3), so that the obligation to register the workers/laborers in social security programs also applies to entrepreneurs who are engaged in outsourcing work.

The workers are registered in the social security program through PT Jamsostek (Persero) in accordance with the Decree of the Minister of Manpower No. Kep-150 / Men / 1999 dated August 16, 1999 with a total monthly contribution by 10.8\% x stipend per month. The contribution that should be charged to the service provider shifts to the workers/laborers. The service provider holds Jamsostek membership card and the copy of Jamsostek fees program that should be given to every worker until the contract between the service provider and the worker ends.

\textsuperscript{35} Djoko Triyanto, Op.Cit., page 177
h. Working Relationship Between NDT Worker and Service Provider

The working relationship is basically the relationship between the worker and the employer after the employment agreement, which is an agreement in which one party (the worker) is joined to the other party (the employer) to work for a wage; and employers expressed his readiness to employ the worker and to pay wages.

The relationship between NDT worker with PT. INKANINDO is done through a written agreements, in the form of a Letter of Agreement to Work For Specific Time Number: 12 / GDSS / INK / X / 2006 dated October 1, 2006, which states that:

The employers receive the worker with the contract status, to be employed in the Pertamina UP-VI Pengapon Semarang. The position or type of work is NDT routine inspection of terminal equipment PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

If the agreement done by PT. INKANINDO and PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang extended by the Addendum Letter of the Employment Agreement then the employment agreement between the Company and the Workers extended again until the end of time of the Addendum Letter of Employment Agreement. In addition to the end of the term of the agreement, termination of the agreements can also occur because the workers resign, do criminal activity, or death.

3.3. The Implementation of Workers Provision by Pertamina Labor Unions

Pertamina Pengapon Organization of Worker/Laborer Union (Serikat Pekerja Pertamina Pengapon Bersatu/SP-PPB) is an organization of the workers PT. Pertamina (Persero) Fuel
Terminal Pengapon Semarang, in order to provide protection and welfare of workers. In addition, SP-PPB should also be able to work together with all the rules that exist at PT. Pertamina, so that its presence can be felt, both by workers and companies.

The vision and mission of SP-PPB is as follows:

1. Vision

To realize a better life quality of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang workers through harmonization between the rights and obligations professionally and being responsible.

2. Mission

- Create a conducive working atmosphere.
- Supporting the realization of the vision and mission of the company.
- Actively participate in mentoring program and workers' professional development
- Bridging the interests of workers in the company.
- Foster a sense of solidarity among workers.
- Promotes transparency and non-discriminatory treatment in the company.

With the vision and mission, SP-PPB seeks to improve the well-being and the interests of the workers in the work environment. Because in reality the legal system has not given a definite protection to the workers, so that the fate of the workers will be easily manipulated by the company. Also, the solidarity of the workers is still very low, making it easier for companies to reduce the interests of workers. As a workers union organization, the organization is expected to assist and represent its members or workers in general in facing labor/employment problems.
CHAPTER IV

THE BARRIERS AND SOLUTIONS IN THE IMPLEMENTATION OF THE OUTSOURCING OF LABORS IN PT PERTAMINA IN CONNECTION WITH LAW NUMBER 13 OF 2003 ON LABOR LAW

4.1. The Barriers Of Implementation Of The Outsourcing Of Labors In PT. Pertamina

PT. INKANINDO as a limited liability company established since 1995 has had many ups and downs in its effort to improve the welfare of its employees. Currently PT. INKANINDO is going through a difficult time. This is because PT. INKANINDO depends only on the operational projects of PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang as an outsourcing provider and as a consulting service.

In conducting business in the field of energy and petrochemicals, PT. Pertamina (Persero) does more efficiency toward all supporting activities. This influences PT. INKANINDO as a partner of PT. Pertamina (Persero). However, due to lack of employment regulations and implementation regulations, this makes the implementation to provide workers still face lot of obstacles.

The obstacles that PT. INKANINDO faces are:
1. If a conflict of interests occurs between the company who provides outsourcing services and the workers, there are no legal provisions that encourage the implementation of a harmonious collective bargaining between workers/employers and the company based on the principles of good faith behavior.

2. There is a different interest of the parties because there are three parties that are directly related to the agreement, which are: the company who gives the job, the company who receives the work, and the workers, which led to the dispute because of the violation of the agreement of the parties.

3. The unstable economic and political conditions have an impact in the long term. This will result difficulties to meet the terms of the agreement, because the prices of labor contracts that have been made are no longer comparable with the economic conditions.

4. The company who use outsourcing service and the outsourced workers do not have a direct working relationship, so that all issues concerning workers remain the responsibility of the outsourcing company.

5. Jamsostek Still used as protection of workers from risks socioeconomic.

4.2. Solutions to Overcome Barriers Of Implementation Of The Outsourcing Of Labors In PT. Pertamina

These are some solutions to overcome the barriers:

1. If there is a conflict of interests between the company who provides outsourcing services and its workers/employers, as this has not regulated in labor legislation, then the settlement must be done by both parties, i.e., between employers and workers. Workers
and employers held a meeting to discuss the disputes that arise and resolve problems quickly and return the issue to the rule of law.

2. To overcome the slow progress in licensing, PT. INKANINDO sticks to the regulations of implementing outsourcing that is Act No. 13 of 2003 on Labour and the Ministry of Manpower and Transmigration of the Republic of Indonesia Number: KEP - 101 / MEN / VI / 2004 on the Licensing Services Provider Company employees / workers, which in Article 2 states that: for a company to be able to become a outsourcing providers, the company shall have the operating license from Depnakertrans (Departemen Tenaga Kerja dan Transmigrasi). The company should also fulfill the obligations that must be met, which are: recording a certain time in Contract System (PKWT) and registering the agreement to Depnakertrans Semarang.

3. Problem solving is done through the efforts of consensus. In this case, the aggrieved party, PT. INKANINDO, due to the actions of others who do not fulfill the agreement (workers), asked the workers/laborers to fulfill the agreement amicably. Submission of desire is done between the two parties in extrajudicial settlement, which is called *bipartite*.

4. To overcome these difficulties, the company tried to find the source of funds and other sources by participating in the auction held by PT. Pertamina (Persero) or any other company, in order to meet the agreement and all the daily operations.

5. Must replace JAMSOSTEK with BPJS accordance with the rules that have been updated in accordance with Law No. 24 of 2011 on BPJS, PT. Social Security turns into BPJS Employment since January 1, 2014.
CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

5.1. Conclusions

Based on researcher analysis and depth discussions in the previous chapters, in this chapter the author draw conclusions that are at the core of the whole discussion, as follows:

1. In providing labor/manpower for PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang, PT. INKANINDO has not met the provisions agreed. There are a few things that have been met, but there also some things which are not fulfilled, which is:

   a. Things that have been fulfilled by PT. INKANINDO:

      1) The agreement that PT. INKANINDO will provide labor to do routine NDT inspection for PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang is done in a written agreement, so that this complies with the provisions of Article 64 and Article 65 paragraph (1).

      2) Work protection has been fulfilled because the workforces are adult female and adult male workers minimum age of 19 (nineteen) years old. This meets the requirement of Article 68 to Article 75 on child labor, Article 76 about night work for women workers, and Article 81 to Article 83 about special rights of women workers. Moreover, the break time for labor and overtime provisions do not comply with the provisions of Article 78 paragraph (1) and paragraph (2).
3) The working relationship that occurs between PT. INKANINDO as the provider of manpower outsourcing, PT. Pertamina (Persero) Fuel Terminal user Pengapon Semarang as the employer of outsourcing labor, and the employee/worker itself has complied with the provisions of Article 59 of the Contract System (PKWT) and Article 65 paragraph (6) and (7).

b. Violations committed, which is:

1) The amount of working hours in a week is 45 (forty-five) hours, whereas Article 77 paragraph (2) states that the maximum working hours per week is 40 (forty) hours.

2) Overtime meal allowance is not granted because less than 4 hours on weekdays. This violates Article 77 paragraph (2) which has been set that the real total working hours during the week should not be more than 40 (forty) hours. And Overtime provisions in Act No. 13 of 2003 on labor Article 78 paragraph (1) letter b, which can only be done at most three hours in one day and 14 (fourteen) hours in one week.

3) So is the provision which states that especially for shift workers, they did not receive overtime meal allowance and transport allowance if the overtime work during official holidays. This is not in accordance with the provisions of overtime in Law No. 13 Year 2003 on labor of Article 78 paragraph (2), which states that employers who employ workers/laborers to work overtime as referred to in paragraph (1) shall pay overtime wages.
4) The company as stipulated in the agreement gives social protection for workers. But in the reality, the social protection cannot provide maximum protection and welfare. Social security (Jamsostek) membership for companies only considered a necessary requirement in the billing process to PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang without seeing the benefits of the workers of participation in Social Security membership.

Thus the legal protection for workers is still very weak.

The obstacles encountered in the implementation of this outsourcing are:

a. The lack of experts in the field of NDT that is defined and needed by PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

b. That the current PT. INKANINDO revenues decreased compared to previous years, because of the types of businesses that no longer handed to third parties as one of the efficiency of the company Pertamina.

c. The need of high investment in terms of equipment, human skill, and technology.

d. The service of providing manpower (outsourcing) is less promising for short-term profit because the market is small.

2. PT. INKANINDO has taken several steps as the solutions to overcome those obstacles:

a. The worker who performs perseverance and high professionalism is chosen by the company to take courses and training to acquire skills necessary for the company, and it is financed by the company.
b. The shareholder committee of PT. INKANINDO trying to find other businesses by expanding to other regions by following contracting tenders work or other work in accordance with the company's specification, and does not depend only on the jobs that exist in the PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang.

c. Trying to meet the equipment and materials needed for all types of jobs available, with regard to financial ability possessed and still maintaining good service quality.

5.2. Recommendations

In this section, the authors put forward some suggestions with regard to the implementation of worker provision for PT. Pertamina (Persero) Fuel Terminal Pengapon Semarang by PT. INKANINDO.

1. There must be supervision for company that provides outsourcing services in order to protect outsourced workers better.

2. PT. INKANINDO should meet the requirements in order to improve the working system in accordance with the provisions of the Act No. 13 of 2003 on employment, which are:

   a) There should be clear working schedules and overtime for the workers to meet the provisions of 40 (forty) hours a week. The overtime work also has to be paid in accordance with the applicable provisions.

   b) The wages and benefits should be given according to the minimum wage in Semarang and also according to Letter Agreement (Surat Perjanjian Kerja/SPK) that has been agreed by the General Manager of UP-VI without any deduction for the company who provides the outsourcing service.
c) The company must register the workers follow the latest insurance BPJS.

5.3. **To other researchers, The researcher hopes that:**

a) To conduct another research as the author had conducted to identify whether the wage received by the labors are below the minimum wage or not.

b) To conduct a deeper research concerning the labor issues in order to figure out the solution that can resolve the welfare issues of labors in Indonesia.
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