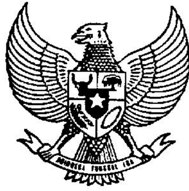

DECISION

Number 27/PUU-IX/2011

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Hearing constitutional cases at the first and final level, has passed a decision in the case of petition for Judicial Review of Law Number 13 Year 2003 concerning Manpower under the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2]

Name	:	**DIDIK SUPRIJADI**
Place and date of birth	:	Surabaya, December 03, 1972
Nationality	:	Indonesia
Occupation	:	Private Person
Address	:	Jalan Pandegiling II Number 7, Neighborhood Ward (RT) 002, Neighborhood Block (RW) 007, Tegalsari Sub-District, Tegalsari District, Surabaya City, East Java Province.

In this case, acting on behalf of Non-Governmental Organization of *Aliansi Petugas Pembaca Meter Listrik Indonesia* (AP2ML), position: General Chairman of the Central Executive Board of *Aliansi Petugas Pembaca Meter Listrik* (AP2ML) Indonesia;

By virtue of Special Power of Attorney dated April 30, 2011, granting the power of attorney to Dwi Hariyanti, S.H., Advocate and Legal Consultant with the Advocate and Legal Consultant office of “Dwi Hariyanti, S.H., & Friends”, having its address at Jalan Karangrejo VIII Number 20 Surabaya, either individually or jointly acting for and on behalf of the authorizer;

Hereinafter referred to as --- **Petitioner**;

[1.3] Having read the petition of the Petitioner;

Having heard the statements of the Petitioner;

Having examined the evidence of the Petitioner;

Having heard the oral statements of the Witnesses of the Petitioner;

Having heard the statements of the Government;

Having read the written statements of the People’s Legislative Assembly;

Having read the conclusion of the Petitioner.

2. FACTS OF THE CASE

[2.1] Whereas the Petitioner filled a petition dated March 21, 2011, which was received at and registered with the Registrar's Office of the Constitutional Court

(hereinafter referred to as the Registrar's Office of the Court) on Monday, April 4, 2011 based on the Deed of Petition File Receipt Number 127/PAN.MK/2011 and registered on Monday, April 4, 2011 under Number 27/PUU-IX/2011, which had been revised and received at the Registrar's Office of the Court on May 11, 2011, which principally describes as follows :

I. AUTHORITY OF THE CONSTITUTIONAL COURT

1. Whereas the provisions of Article 24C paragraph (1) of the 1945 Constitution states, “The Constitutional Court has authority among other things to hear at the first and final levels, whose decision shall be final in conducting judicial review of Laws under the 1945 Constitution” and this is reasserted in Article 10 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, which among others things also states that the Constitutional Court has authority to hear at the first and final levels whose decision shall be final, for conducting judicial review of Laws under the 1945 Constitution.

2. Whereas Article 50 of Law Number 24 Year 2003 concerning Constitutional Court as well as its elucidation thereof state that Laws which can be reviewed are Laws enacted after the first amendment to the 1945 Constitution namely after October 19, 1999.

II. LEGAL STANDING AND INTEREST OF THE PETITIONER

1. Whereas pursuant to Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, the parties that can file a petition for judicial review of a Law shall be those who consider that their constitutional rights and/or authorities have been impaired by the coming into effect of a Law, who may be individual Indonesian citizens, customary law community units insofar as they are still in existence and in line with the development of the communities and the principles of the Unitary State of the Republic of Indonesia as regulated in law, public or private legal entities or state institutions.

2. Whereas according to the elucidation of Article 51 paragraph (1) of Law Number 24 Year 2003, referred to as constitutional rights shall be the rights regulated in the 1945 Constitution.

3. Whereas the Petitioner is the General Chairman of *Aliansi Petugas Pembaca Meter Listrik Indonesia* (AP2ML) of East Java Province which is a non governmental organization having legal entity status, growing and developing independently on its own will and desire among the community, engaging in activities and established based on an awareness to provide protection and enforcement of justice, law and human rights in Indonesia, particularly for laborers/workers as weak parties.

4. Whereas the Law being petitioned for judicial reviewed under the 1945 Constitution is Law Number 13 Year 2003 concerning Manpower, namely Article 59 which provides for Employment Agreement for a Definite Time (contract workers) and Article 64 which provides for the delegation a part of work performance to another company (outsourcing), which have direct and indirect impacts on all outsourcing laborers/workers in Indonesia and which are seriously harmful to their constitutional rights regulated in the 1945 Constitution, namely the right to employment and decent living for humanity, right to work and to receive fair and proper remuneration and treatment in employment relationship and right to welfare and prosperity.

5. Whereas based on the aforementioned legal provisions and arguments, it is clear that the Petitioner has legal standing and a basic interest to file the petition for judicial review of Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower under the 1945 Constitution, because he has a direct interest and will be directly affected by the impacts of the implementation of Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower.

III. LEGAL FACTS

1. To protect all the people of Indonesia and the entire motherland of Indonesia and to improve public welfare based on *Pancasila* in order to achieve social justice for all the people of Indonesia as contained in the Preamble to the 1945 Constitution.

2. The right to employment and decent living for humanity has been stipulated since the establishment of this country as a human right of the citizens that has been particularly included in the 1945 Constitution, the constitutional basis of this country, and the right to work and to receive fair and proper remuneration and treatment in employment relationship has also been stipulated as a human right of the citizens which has been particularly included in the 1945 Constitution, the constitutional basis of this country.

3. The government as the main executor of the constitution is obliged to implement this mandate, by seeking the fulfillment of such human rights for Indonesian citizens to a maximum possible extent and this mandate is also closely related to the general objectives of the nation of Indonesia.

4. Industrialization and economic development are one of the strategies of the Indonesian nation to improve the welfare of its people and intrustrialization itself will produce humans of citizens who try to achieve their welfare from it, namely they who do not have anything but their energy to be sold in order to get wage for

living. They are called laborers/workers in this matter, and the state must, like it or not, be involved in and responsible for labor/manpower matters to ensure that the rights of laborers/workers can be protected in the frame of constitution.

5. Citizens in general and laborers/workers in particular must acquire constitutional rights in the form of decent living that they can obtain through employeement as well as fair and proper remuneration and treatment that must be received in the employement relationship.

6. In labor/manpower relations and employement relationship, laborers/workers are always in the weak position, and therefore, the legal system of labor/manpower that must be developed in this country is a legal system of labor/manpoer that protects (is protective to) laborers/workers.

7. In this matter, the government must be able to play the role of guaranteeing protection for laborers/workers, by being actively involved in labor/manpower issues and through the Labor/Manpower Law. Unfortunately, however, legislation policy that is protective to laborers/workers is, in fact, not reflected in Law Number 13 Year 2003 concerning Manpower, especially in Article 59 and Article 64 which are even inconsistent with Article 27 paragraph (2), Article 28D paragraph (2) and Article 33

paragraph (1) of the 1945 Constitution.

8. Whereas thousands of laborer/worker activists, laborers/workers' unions, labor-related non-governmental organizations and labor alliances in various places in Indonesia have for so many times taken actions rejecting the existence of employment agreement for a definite time (contract workers) as regulated in Article 59 of Law Number 13 Year 2003 and the delegation a part of work to another company (outsourcing) as regulated in Article 64 of Law Number 13 Year 2003.

IV. REASONS FOR FOR JUDICIAL REVIEW PETITION

1. Excessive emphasis on efficiency to merely increase investment to support economic development through this low-wage policy has resulted in a loss of job security for laborers/workers of Indonesia, because most laborers/workers will no longer be permanent laborers/workers, but rather they will become contract laborers/workers that will last a lifetime. This is referred to by some social circles as a form of modern-day slavery.

2. Whereas in fact, the status as contract laborers/workers also means loss of rights, employment benefits, social and work guarantees that are usually enjoyed by those who have the status as permanent laborers/workers, thereby very potentially lowering

the quality of life and welfare of the Indonesian laborers/workers and since the majority of Indonesian people are laborers/workers, finally it will also lower the quality of life and welfare of the Indonesian people in general.

3. In an employment relationship based on Employment Agreement for a Definite Time (*Perjanjian Kerja Waktu Tertentu*/PKWT) as regulated in Article 59 of Law Number 13 Year 2003 and the delegation a part of work to another company *(outsourcing)* as also regulated in Article 64 of Law Number 13 Year 2003, laborers/workers are viewed solely as commodities or merchandises, in a manpower market. Laborers/workers are left alone to face fierce market forces and capital forces, which eventually will lead to an increasingly wide social gap between the rich and the poor and that it does not close the possibility that someday our children and grandchildren will be slaves in our own country and will be enslaved by our own people and this is clearly inconsistent Article 27 paragraph (2) of the 1945 Constitution, "Every citizen shall have the right to work and to life befitting human beings ". And Article 28D paragraph (2) "Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment".

4. In an employment relationship based on an Employment

Agreement for a Definite Time (PKWT) as regulated in Article 59 of Law Number 13 Year 2003 and the delegation a part of work to another company as also regulated in Article 64 of Law Number 13 Year 2003 (outsourcing) laborers/workers are placed solely as production factors, who can be so easily employed when required and dismissed when no longer needed. Thus, the wage component as one of the costs could remain reduced to a minimum. This is what will happen with the legalization of the "contracting of works" *(outsourcing)* system, which will make laborers/workers merely as dairy cows of the capital owners and this is contrary to Article 33 paragraph (1) of the 1945 Constitution which states "*The economy shall be organized as a common endeavor based upon the principles of the family system".* Its elucidation confirms again that this means that our economy is based on economic democracy, where production is worked by all, for all with prosperity of the people being prioritized. Here modern slavery and degradation of human values occur, when laborers/workers as commodities or merchandises will be formally and officially initiated by a Law. Prosperity of the people mandated by the constitution will become empty words or only an ornament of wise words.

5. The legal construction of the outsourcing system is the existence of a worker services company recruiting candidates of workers to

be placed in the users' companies. So here it begins with a legal relationship or an agreement between a workers' service provider company and the worker user company. The workers' service provider company binds itself to place workers in the user company and the user company binds itself to use such workers. Based on the manpower placement agreement, the workers' service provider company will get some money from the user. For example for 100 people it will get Rp.10,000,000, and then the workers' service provider company will take a percentage, and the rest will be paid to workers who work at the user company. So this kind of legal construction is slavery, because such workers are sold to users by the amount of money. This is modern slavery.

6. On the other hand, outsourcing also uses an Employment Agreement for a Definite Time. Obviously, an Employment Agreement for a Definite Time does not guarantee the existence of *job security,* the absence of continuous employment because a worker under an Employment Agreement for a Definite Time surely knows that at some time the employment relationship will be terminated and he/she will not work there anymore, and consequently the worker will look for another job again. Therefore, continuity of work becomes a problem for outsourced workers under an Employment Agreement for a Specified Time. Unguaranteed job security is clearly inconsistent with Article 27

paragraph (2) of the 1945 Constitution on the right to get proper employment.

7. Outsourcing in Article 64 indicates that the existence of two kinds of outsourcing, outsourcing of work performed by contractors and outsourcing of workers performed by workers' service company. The first outsourcing is concerned with the work, with its legal construction being the existence of a main contractor sub-contracting the work to a sub-contractor. The Sub-contractor performs the work sub-contracted by the main contractor that requires workers. That is where a sub-contractor recruits workers to perform works sub-contracted by the main contractor. So there is an employment relationship between the sub-contractor and its workers.

8. Whereas if associated with the constitution, it will obviously impose an employment relationship between the workers' service provider company and its workers, which actually does not meet the elements of the employment relationship, namely the existence of command, works and wages, which indicates that the worker is only deemed as mere goods rather than legal subjects.

9. Whereas slavery through outsourcing is absolute because thereby workers' service provider companies are basically selling humans to the users. With some money profits are obtained by selling

human beings.

10 . Whereas Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower are not in accordance with Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, because the humans who should be protected are human beings as whole persons. Working should be to provide a proper life but when workers only serve as a part of production and especially with contracts that are made, then they will serve only as one part of production, so that protection as human beings will become weak.

11. Whereas based on the aforementioned facts as the reasons, it is clear that this petition has been presented convincingly and properly, because it has come from the real concern of most workers/employees, so that it is proper for the Court to perform its right to conduct judicial review of Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower under Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution.

12. Whereas because Article 65 and Article 66 of Law Number 13 Year 2003 concerning Manpower are related to Article 64 of Law Number 13 Year 2003 concerning Manpower, then Article 65 and Article 66 Law of Number 13 Year 2003 concerning Manpower are

automatically also inconsistent with Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution.

V. SUBSTANTIVE MATERIAL OF JUDICIAL REVIEW

1. Law Number 13 Year 2003 concerning Manpower, Article 59

Paragraph (1): "An employment agreement for a definite time can only be made for certain jobs, which, because of their type and nature, will finish in a definite time, namely:

a. Works to be performed and completed at once or works which are temporary in nature,
b. Works estimated to be completed in a time which is not too long and for no longer than 3 (three) years.
c. Seasonal works or
d. Works related to new products, new activities or additional products which are still in the probation or try-out period.

Paragraph (2): "An employment agreement for a definite time cannot be made for jobs that are permanent in nature".

Paragraph (3): "An employment agreement for a definite time

can be extended or renewed”.

Paragraph (4): “An employment agreement for a definite time may be made for a period of no longer than 2 (two) years and can only be extended one time which is not longer than 1 (one) year”.

Paragraph (5): “A Company which intends to extend an employment agreement for a definite time shall notify the relevant workers/ laborers of the intention in writing within a period of no later than 7 (seven) days prior to the expiration of the employment agreement”.

Paragraph (6): “Renewal of a employment agreement for a definite time can only be made after exceeding a grace period of 30 (thirty) days following the expiration of the former employment agreement for a specified period; the renewal of an employment agreement for a definite time can only be made once for a period of no longer than 2 (two) years”.

Paragraph (7): “Any employment agreement for a definite time that does not fulfill the requirements as intended in paragraph (1), paragraph (2), paragraph (4), paragraph (5) and paragraph (6) shall, by law,

become an employment agreement for an indefinite time".

Paragraph (8): "Other matters which have not been regulated in this article shall be further regulated with a Ministerial Decree".

2. Article 64 of Law Number 13 Year 2003 concerning Manpower reads,

   "A company may subcontract any part of its work to another company through a written agreement for contract of work or for the provision of worker/labor service".

3. Article 65 of Law Number 13 Year 2003 concerning Manpower,

   Paragraph (1): "The subcontract of part of work to another company shall be performed through a written agreement for contract of work".

   Paragraph (2): "Works that may be subcontracted as intended in paragraph (1) must meet the following requirements:

   a. The works can be performed separately from the main activity;
   b. The works are to be performed under a direct or indirect order from the employer;
   c. The works are entirely supporting activities of the company and

d. The works do not directly inhibit the production process”.

Paragraph (3): “The other company as intended in paragraph (1) must be in the form of a legal entity”.

Paragraph (4): “The work protection and terms of work for workers/laborers at the other company as intended in paragraph (2) shall at least the same as the work protection and terms of work at the employing company or in accordance with the prevailing laws and regulations”.

Paragraph (5): “Any change and/or addition to the terms regulated in paragraph (2) shall be regulated further with a Ministerial Decree”.

Paragraph (6): “The employment relationship in performing the work as intended in paragraph (1) shall be regulated with a written employment agreement between the other company and the worker/laborer it employs”.

Paragraph (7): “The employment relationship as intended in paragraph (6) may be based on an employment agreement for an indefinite time or on an employment agreement for a definite time if it meets the requirements intended in Article 59”.

Paragraph (8): "If the provisions in paragraph (2) and paragraph (3) are not fulfilled, then by law, the status of the employment relationship between the workers/laborers and the sub-contractor shall be changed into an employment relationship between the workers/laborers and the employer".

Paragraph (9): "In the event that the employment relationship is transferred to the employer as intended in paragraph (8), the employment relationship between the workers/laborers and the employer shall be In accordance with the employment relationship as intended in paragraph (7)".

4. Article 66 of Law Number 13 Year 2003 concerning Manpower,

Paragraph (1): "Workers/laborers from the company providing labor service must not be utilized by the employer to carry out their company's main activities or activities directly related to the production process except for supporting service activities or activities indirectly related to the production process".

Paragraph (2): "Providers of worker/laborer service not directly related to the production process must fulfill the following requirements:

a. There is an employment relationship between the workers/laborers and the provider of worker/laborer provider;
b. The applicable employment agreement in the employment relationship as intended in sub-paragraph a above shall be an employment agreement for a definite time which fulfills the requirements in Article 59 and/or an employment agreement for an indefinite time made in writing and signed by the parties;
c. The worker/labor service provider shall be responsible for wage and welfare protection, working conditions and disputes that may arise; and
d. The agreements between the company using the worker/labor service and the other company providing the worker/laborer service shall be made in writing and shall include the articles as intended in this law".

Paragraph (3) Provider of worker/laborers' service shall take the form of an incorporated legal entity with a permit from the government agency in charge of manpower affairs".

Paragraph (4) If the provisions as intended in paragraph (1), paragraph (2) sub-paragraph a, sub-paragraph b, and sub-paragraph d, and paragraph (3) are not fulfilled, then by law the status of employment relationship between the workers/laborers and the company providing workers/laborers' service shall change into an employment relationship between the workers/ laborers and the employing company.

5. Article 27 paragraph (2) of the 1945 Constitution reads,
   "Every citizen shall have the right to work and to a life befitting human beings".
6. Article 28D paragraph (2) of the 1945 Constitution reads,
   "Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment".
7. Article 33 paragraph (1) of the 1945 Constitution reads,
   "The economy shall be organized as a common endeavor based upon the principles of the family system".

VI. PETITUM

Based on the entire description and legal reasons as well as supported by evidence presented to the Constitutional Court, the Constitutional Court is requested to pass the decision:

1. Accepting and granting the Petitioner's petition in its entirety;
2. Declaring Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower inconsistent with Article 27 paragraph (2), Article 28D paragraph (2), Article 33 paragraph (1) of the 1945 Constitution;
3. Declaring that Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 concerning Manpower do not have any binding legal effect;
4. Ordering the inclusion of this Decision in the Official Gazette of the Republic of Indonesia.

[2.2] Whereas to his arguments, the Petitioner has presented written evidence marked as Exhibit P-1 up to Exhibit P-7, as follows:

1. Exhibit P-1 : Copy of the Deed of Establishment of the organization of *Aliansi Petugas Pembaca Meter Listrik Indonesia* (AP2ML) of East Java province, by Notary Bachtiar Hasan, SH, Number 3 dated June 11, 2010;
2. Exhibit P-2 : Copy of Receipt of Salary of Employees of PT Multi Artha Sejahtera Abadi, Meter Reading Unit, dated May 26, 2010;
3. Exhibit P-3 : Copy of Minutes Number 27/BA/SM/XI/2007, concerning the Basis for determining meter reading fines, dated November 19, 2007;
4. Exhibit P-4 : Copy of Professional Contract Number ---

/3.01.1/KPJ/KSU/I/2010, dated January 6, 2010 and Employment Agreement of the Employees;

5. Exhibit P-5 : Copy of Employment Period and Employment Termination of the Employees;

6. Exhibit P-6 : Copy of Auction or Tender for Electricity Meter Recording

7. Exhibit P-7 : Copy of Law Number 13 Year 2003 concerning Manpower;

8. Exhibit P-8 : Copy of several letters of the Petitioner's experience.

In addition, the Petitioner in the hearing on July 6, 2011, has presented 2 (two) Witnesses named **Moh. Fadlil Alwi** and **Moh. Yunus Budi Santoso**, who have explained as follows:

1. Moh. Fadlil Alwi

- Whereas the witness' work as a meter reader is performed continuously, within a definite time and on a continuous basis;
- Whereas the witness is an ex-employee of PLN managing meter readers who has never been an outsourced employee*;*
- Whereas the meter reader employees used to use a contract system with certain limitations from the cooperative which was later delegated to another contractor.

2. Moh. Yunus Budi Santoso

- Whereas the witness is an outsourced employee*;*

- Whereas in 2000 the witness worked as a meter reader under the cooperative of PLN;
- Whereas from 2004 up to 2007, the witness worked as a contract worker of meter reader and had already moved three times to other companies by way of being recruited without *SK* with a fixed salary who, because of a conflict, was dismissed without clear reasons and without any explanation from the management;
- Whereas from 2007 up to 2009, the witness had moved to work to another company with a decreased salary;
- Whereas the regional minimum wage at Bangkalan, Madura, is Rp.850,000, -/month;
- Whereas the witness received a total salary of Rp1,300,000.00, - while the salary of the other members from Rp625,000,- up to Rp975,000,- depending on work volume;
- Whereas in 2004-2007 the witness worked at PT. Data Energi Infomedia, in 2007-2009 he worked at PT. Bukit Alam Barisani and at last he worked at PT. Berkah Abadi with a decreased salary for the reason that the company had its own management;
- Whereas if he worked for more than three years he would become a permanent employee.

[2.3] Whereas at the hearing on July 6, 2011, the opening statement of the Government was heard, which explains as follows:

In connection with the legal standing of the Petitioner, the Government has fully left it to the Chairperson of the Panel of Constitutional Court Justices to consider and to judge whether or not the Petitioner has legal standing with respect to the coming into effect of Article 59, Article 64, Article 65 and Article 66 of such Manpower Law, as provided for by Article 51 Paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court and based on the previous decisions of the Constitutional Court, in this matter Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007.

Whereas the laws and regulations on manpower, as contained in Law Number 13 Year 2003 regulate and have many dimensions as well as linkages, not only with the interests of the workers before, during, and after working, but which also have linkages with the interests of employers, government, and society. The employment relationship based on an Employment Agreement for a Definite Time (PKWT) and the delegation of a part of work to another company, commonly known as outsourcing, as provided for in Article 59 as well as Article 64 of the Manpower Law, are intended to provide opportunities for all the citizens of Indonesia to get proper employment, as mandated by Article 27 paragraph (2) of the 1945 Constitution, and also to provide a fair and proper treatment for all citizens in employment relationships in order to receive remuneration which is proportional to the work they perform.

Therefore, with the implementation of an Employment Agreement for a Definite Time (PKWT) and the delegation a part of work to another company

or outsourcing are intended for outsourced workers who will use all of their capability in working. With outsourcing, they will get skills that they have not possessed before. And if they already have this capability, then the workers will increase their ability to work through outsourcing. The work will be more beneficial if the workers are able to capture the knowledge they obtain from the recipient company.

Furthermore, they will develop such skills to increase competitiveness in getting employment opportunities. Before getting a permanent job, the existence of outsourcing will help workers who have not worked yet to be distributed to companies that need workers from such outsourcing company. In addition, the Laws and Regulations on Manpower have already regulated the type and nature of the works that will be completed within a certain time and all the rules in applying a job for a certain time as well as the delegation of a part work to another company. According to the Government, the Petitioner's assumption that Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 concerning Manpower has resulted in the impairment of the constitutional rights and/or constitutional authority of the Petitioner is not true.

Based on the foregoing explanation, the Government requests to the adjudicating Panel of Constitutional Court Justices to pass the following decisions:

1. Rejecting the petitioner’s petition for judicial review in its entirety or at least declaring that the petition of the petitioner for judicial review cannot be accepted.
2. Accepting the statement of the Government in its entirety.
3. Declaring that the provisions of Article 59, Article 64, Article 65, and Article 66 of Law Number 13 Year 2003 concerning Manpower are not inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia.

[2.4] Whereas on July 22, 2011 the Registrar's Office received a written statement of the Government which is principally as follows:

I. Substance of the Petition

1. Whereas based on the copy of the petition from the Constitutional Court Number 547.27/PAN.MK/V/2011, the Petitioners filed a petition for constitutionality review of the provisions of Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 concerning Manpower under Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution;
2. Whereas according to the Petitioner, the provisions of Article 59 and Article 64 of the Manpower Law, which principally provides for the delegation a part of work to another company (outsourcing),

whereby the laborers/workers are viewed solely as commodities or merchandises in the manpower market, besides that laborers/workers are placed solely as production factors, being so easily employed when required and dismissed when no longer needed, where in turn the wage component can be reduced to a minimum;

3. Whereas outsourcing is a form of forced work between workers' service provider company and its workers, which actually does not meet the elements of the employment relationship namely the existence of command, work and wage, and therefore, this indicates that the workers are deemed only as goods rather than legal subjects;

4. Therefore, the Petitioner considers Article 59 and Article 64 of Manpower Law, which are automatically also related to the provisions of Article 65 and Article 66, inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2) and Article 3 paragraph (1) of the 1945 Constitution.

II. Concerning Legal Standing of the Petitioner

According to the provision of Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court, the Petitioners shall be those who deem that their constitutional rights and/or authorities have been impaired by the coming into effect of a Law namely:

a. individual Indonesian citizens;

b. customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;

c. public or private legal entities; or

d. state institutions.

The provision above is emphasized in its elucidation, namely that "constitutional rights" shall refer to the rights regulated in the 1945 Constitution, so that the following matters must first be explained and proven:

a. His qualification in the petition *a quo* as referred to in Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court;

b. His constitutional rights and/or authorities in the intended qualification which are deemed to have been impaired by the coming into effect of the law petitioned for review;

c. The impairment of the constitutional rights and/or authorities of the Petitioner due to the coming into effect of the Law petitioned for review.

Furthermore, the Constitutional Court has provided the definition and cumulative limitations concerning the impairment of constitutional rights and/or authorities arising due to the coming into effect of a law according to Article 51 paragraph (1) of Law Number 24 Year 2003 concerning the Constitutional Court (*vide* decision Number 006/PUU-III/2005 and subsequent decisions), which

must meet 5 (five) requirements namely:

a. existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;

b. the Petitioners believe that such constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;

c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioners and the law petitioned for review;

e. it is likely that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority argued by the Petitioners will not or will no longer occur.

With respect to the aforementioned matters, it seems necessary to question whether the interest of the Petitioner is right as the party who considers that his constitutional rights and/or authorities have been impaired by the coming into effect of the provisions of Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 on Manpower, and also whether there is any constitutional impairment of the Petitioner which is specific and actual or at least potential in nature which according to logical reasoning can be assured of occurring, and whether there is a causal relationship (*causal verband*) between

the impairment and the coming into effect of the Law petitioned for review.

The Petitioner's assumption is that the aforementioned provisions petitioned for review have resulted in concern, anxiety to the Petitioner in order to obtain decent work and life which in turn may lead to social imbalance for the Petitioner, with an impact on economic growth based on the principles of the family system. According to the Government, it is not appropriate and based merely on the excessive assumptions, since in fact, the employment relationship has been based on a mutual agreement carried out voluntarily by a civil agreement. In the event that in such civil agreement, there is any legal event in the form of denial or event of default, then the solution is to be sought through available judicial institutions.

According to the Government, the provisions petitioned for review are a series of rules that underlie the mechanism of transfer of a part of work to another company (known by the term of outsourcing), so that the granting of the petition for review of such provisions will result in constitutionality impairments to all workers/laborers, including to the Petitioner himself.

With respect to such matters, the Government has requested to the Petitioner through the Chairperson of the Panel of Constitutional Court Justices to legally explain and prove first whether constitutional rights and/or authorities of the Petitioner as a party are impaired. The Government is of the opinion that there no constitutional rights and/or authorities of the Petitioner are impaired by the coming into effect of the Law petitioned for review, because the Petitioner in this

petition does not meet the legal standing requirements as stated in Article 51 of Law Number 24 Year 2003 concerning the Constitutional Court as well as based on the previous decisions of the Constitutional Court.

Therefore, according to the Government, it is already proper and appropriate if the Chairperson/Panel of Constitutional Court Justices wisely declares that the Petitioner's petition cannot be accepted (*niet ontvankelijk verklaard*).

However, in the event that the Chairperson/Panel of Constitutional Court Justices is of a different opinion, the Government presents the following explanation of the petition *a quo*, as follows:

III. Government's Explanation of the Petition for Judicial Review of the Provisions of Article 59, Article 64, Article 65, and Article 66 Law Number 13 Year 2003 concerning Manpower

In relation to the petition for judicial review of the provisions of Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 on Manpower which state:

Article 59 paragraph (1)

"An employment agreement for a definite time can only be made for certain jobs, which, because of their type and nature, will finish in a definite time, namely:

a. Works to be performed and completed at once or works which are temporary in nature,

b. Works estimated to be completed in a not too long time which are not too long and for no longer than 3 (three) years.

c. Seasonal works or

d. Works related to new products, new activities or additional products which are still in the probation or try-out period”.

Article 59 paragraph (2)

“An employment agreement for a definite time cannot be made for jobs that are permanent in nature”.

Paragraph (3)

“An employment agreement for a definite time can be extended or renewed”.

Paragraph (4)

“An employment agreement for a definite time may be made for a period of no longer than 2 (two) years and can only be extended one time which is not longer than 1 (one) year”

Paragraph (5)

“A Company which intends to extend an employment agreement for a definite time shall notify the relevant workers/ laborers of the intention in writing within a period of no later than 7 (seven) days prior to the expiration of the employment agreement”.

Paragraph (6)

“Renewal of a employment agreement for a definite time can only be made after

exceeding a grace period of 30 (thirty) days following the expiration of the former employment agreement for a specified period; the renewal of an employment agreement for a definite time can only be made once for a period of no longer than 2 (two) years".

Paragraph (7)

"Any employment agreement for a definite time that does not fulfill the requirements as intended in paragraph (1), paragraph (2), paragraph (4), paragraph (5) and paragraph (6) shall, by law, become an employment agreement for an indefinite time".

Paragraph (8)

"Other matters which have not been regulated in this article shall be further regulated with a Ministerial Decree".

Article 64:

"A company may subcontract any part of its work to another company through a written agreement for contract of work or for the provision of worker/labor service".

Article 65:

(1) The subcontract of part of work to another company shall be performed through a written agreement for contract of work.

(2) Works that may be subcontracted as intended in paragraph (1) must meet the following requirements:

a. The works can be performed separately from the main activity;

b. The works are to be performed under a direct or indirect order from the employer;

c. The works are entirely supporting activities of the company; and

d. The works do not directly inhibit the production process.

(3) The other company as intended in paragraph (1) must be in the form of a legal entity.

(4) The work protection and terms of work for workers/ laborers at the other company as intended in paragraph (2) shall at least the same as the work protection and terms of work at the employing company or in accordance with the prevailing laws and regulations.

(5) Any change and/or addition to the terms regulated in paragraph (2) shall be regulated further with a Ministerial Decree.

(6) The employment relationship in performing the work as intended in paragraph (1) shall be regulated with a written employment agreement between the other company and the worker/laborer it employs.

(7) The employment relationship as intended in paragraph (6) may be based on an employment agreement for an indefinite time or on an employment agreement for a definite time if it meets the requirements intended in Article 59.

(8) If the provisions in paragraph (2) and paragraph (3) are not fulfilled, then by law, the status of the employment relationship between the workers/laborers and the sub-contractor shall be changed into an employment relationship between the workers/laborers and the employer.

(9) In the event that the employment relationship is transferred to the employer as intended in paragraph (8), the employment relationship between the workers/laborers and the employer shall be In accordance with the employment relationship as intended in paragraph (7).

Article 66:

(1) Workers/laborers from the company providing labor service must not be utilized by the employer to carry out their company's main activities or activities directly related to the production process except for supporting service activities or activities indirectly related to the production process.

(2) Providers of worker/laborer service not directly related to the production process must fulfill the following requirements:

a. There is an employment relationship between the workers/laborers and the provider of worker/laborer provider;

b. The applicable employment agreement in the employment relationship as intended in sub-paragraph a above shall be an employment agreement for a definite time which fulfills the requirements in Article 59 and/or an employment agreement for an indefinite time made in writing and signed by the parties;

c. The worker/labor service provider shall be responsible for wage and welfare protection, working conditions and disputes that may arise; and

d. The agreements between the company using the worker/labor service and the other company providing the worker/laborer service shall be made in writing and shall include the articles as intended in this law

(3) Provider of worker/laborers' service shall take the form of an

incorporated legal entity with a permit from the government agency in charge of manpower affairs.

(4) If the provisions as intended in paragraph (1), paragraph (2) sub-paragraph a, sub-paragraph b, and sub-paragraph d, and paragraph (3) are not fulfilled, then by law the status of employment relationship between the workers/laborers and the company providing workers/laborers' service shall change into an employment relationship between the workers/ laborers and the employing company.

The provisions of the articles above are deemed inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution which state:

Article 27 paragraph (2) of the 1945 Constitution:

"Every citizen shall have the right to work and to a life befitting human beings ".

Article 28D paragraph (2) of the 1945 Constitution:

"Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment".

Article 33 paragraph (1) of the 1945 Constitution:

"The economy shall be organized as a common endeavor based upon the principles of the family system".

With respect to the substantive material of the norms petitioned for review by the Petitioner, the Government can explain the following matters:

1. With respect the provisions of Article 59 the Government can explain the

followings:

a. Whereas the laws and regulations on manpower as set forth in Law Number 13 Year 2003 regulate and have many dimensions as well as linkages not only with the interests of the workers before, during and after working, but also with the interests of employers, government and society;

b. Whereas the provisions petitioned for review are also closely related to the employment relationship, namely the relationship between employers and workers/laborers based on an employment agreement that has elements of wage, and order, and work, and therefore, the agreement between the workers/laborers and the entrepreneurs will include forth the employment terms as well as the rights and obligations of the parties. The terms of the employment agreement between the parties created by the workers/laborers are subject to the provisions of Article 1320 of the Civil Code with all the consequences, as confirmed in Article 52 of Law Number 13 Year 2003 concerning Manpower;

c. Whereas the regulation of the Employment Agreement for a Definite Time (PKWT) has been clearly and expressly set forth in the provisions of such articles petitioned for review, with strict conditions, namely:

-. Works to be performed and completed at once or works which are temporary in nature;

-. Works estimated to be completed in a time which is not too long and for no longer than 3 (three) years;

-. Seasonal works; or

-. Works related to new products, new activities or additional products

which are still in the probation or try-out period.

Based on the foregoing description, according to the Government, if the Employment Agreement for a Definite Time (PKWT) between the workers/laborers and entrepreneurs is implemented in accordance with the aforementioned provisions, it is certain that the concern of the Petitioner will not happen. In other words, according to the Government, the Petitioner's experience with the company where the Petitioner works is solely related to the practice of the employment relationship and it is not a constitutionality issue of the norms of Article 59 of the Law *a quo*.

The government can convey that the some existing jobs have continuous characteristic and nature so that the employment relationship is fixed (PKWTT) and some others are temporary (PKWT), and therefore, both are not interchangeable and cannot be equalized one with others, so that according to the Government, had the Petitioner's assumption been considered true, *quod non*, and his petition was granted by the Constitutional Court, then according to the Government it:

1. would obscure the system of employment relationship which had been known and which had lasted according to the characteristics and nature of work (permanent jobs and temporary jobs).
2. could disrupt business and investment climate, especially micro, small and medium enterprises, because in general, this type of business is seasonal and short-term in nature.

Based on the foregoing description, according to the Government, the provisions of Article 59 of the Manpower Law have been in line with the constitutional mandate, especially in relation to the rights of everyone to get a proper work and an income, and therefore, the provision *a quo* is not inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, and it does not impair the constitutional rights and/or authority of the Petitioner.

2. With respect to the provisions of Article 64, Article 65, and Article 66 of the Law *a quo*, the Government can explain the followings:

Whereas the materials of judicial review of the provisions of Article 64, Article 65 and Article 66 of the Manpower Law have been examined, heard, and decided upon by the Constitutional Court by the decision rejecting the Petitioners' Petition (*vide* Decision Number 012/PUU-I/2003 on petition for judicial review filed by Saepul Tavip, and friends).

According to the provision of Article 60 of Law Number 24 Year 2003 concerning the Constitutional Court, whereas the substance of articles, as well as paragraphs of a Law that have been petitioned for review may not be petitioned again (*ne bis in idem*), although as specified in the provisions of Article 42 of Constitutional Court Regulation Number 6 Year 2005 concerning Guidelines on the Proceedings of Judicial Review states that the substance of the norms that have been petitioned for judicial review may be petitioned again

for review, provided that the petition uses articles of the 1945 Constitution which are from those in the previous petition.

According to the Government, it appears as if the petition filed by the present Petitioner (Didik Suprijadi) used a touchstone which was different from the previous petition, while in essence, it has the same intent and purpose, or in other words, the Petitioner currently argues as if they were different and had different origins (*vide* Considerations and Opinion of the Constitutional Court in Decision Number 012/PUU-I/2003).

IV. Conclusion

Based on the foregoing explanation, the Government requests the Panel of Constitutional Court Justices to examine, hear, and decide upon the petition for judicial review of Law Number 13 Year 2003 concerning Manpower under the 1945 Constitution, to pass the following decisions:

1. Declaring that the Petitioner does not have legal standing;
2. Rejecting the Petitioner's petition for review or at least declaring that the Petitioner's petition cannot be accepted (*niet ontvankelijke verklaard*);
3. Accepting the statement of the Government in its entirety;
4. Declaring that the provisions of Article 59 of Law Number 13 Year 2003 concerning Manpower are not inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution.
5. Declaring that Article 64, Article 65 and Article 66 of the Manpower Law

cannot be petitioned again (*ne bis in idem*)

[2.5] Whereas on November 1, 2011 the Registrar's Office received the written statement of the People's Legislative Assembly which in its substance has following points:

1. Legal Standing of the Petitioners

In accordance with the provisions of Article 51 paragraph (1) of Law Number 24 Year 003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), states that the Petitioners shall be those who consider that their constitutional rights/or authorities are impaired by the coming into effect of the Law, namely:

a. individual Indonesian citizens;
b. customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;
c. public or private legal entities; or
d. state institutions.

Such provision is emphasized in its elucidation, whereas the constitutional rights shall be the rights regulated in the 1945 Constitution.

Elucidation of Article 51 Paragraph (1) states, that only the rights explicitly regulated in the 1945 Constitution which are included as "constitutional rights".

Therefore, according to the Constitutional Court Law, for a person or a party to be accepted as Petitioner with legal standing in a petition for judicial review of a Law under the 1945 Constitution, he/she must first explain and prove:

a. the existence of his constitutional rights and/or authorities as intended in "Article 51 paragraph (1) of the Constitutional Court Law" which are considered to have been impaired by the coming into effect of the Law petitioned for review;

b. whether or not there is any impairment of the constitutional rights and/or authorities of the Petitioner due to the coming into effect of the law petitioned for review.

Whereas with respect to the requirements of constitutional impairment, the Constitutional Court has provided the definition and requirements concerning constitutional impairment due to the coming into effect of a law based on Article 51 paragraph (1) of the Constitutional Court Law, which must meet 5 (five) requirements (*vide* Case Decision Number 006/PUU-III/2005 and Case Decision Number 011/PUUV/2007), namely as follows:

a. existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;

b. the Petitioners believe that such constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;

c. the impairment of such constitutional rights and/or authority must be

specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioners and the law petitioned for review;

e. it is likely that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority argued by the Petitioners will not or will no longer occur.

In the event that such five conditions are not met by the Petitioner filing the petition for judicial review of a Law under the 1945 Constitution, then the Petitioner shall not have legal standing qualifications as the Petitioner;

The People's Legislative Assembly is of the opinion that although they are legal subjects of individual Indonesian citizens, the Petitioner has the qualification as regulated in Article 51 paragraph (1) of the Constitutional Court Law, according to People's Legislative Assembly, there is no constitutional impairment of the Petitioners or any impairment which is likely to occur due to the coming into effect of Article 59 and Article 64 of the Manpower Law. The petitioner does not specifically describe the actual constitutional impairment due to the coming into effect of the articles *a quo* of the Manpower Law.

Thus, the People's Legislative Assembly views that the provisions of Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower do not hinder and impair the Petitioners' constitutional rights as guaranteed by

Article 27 paragraph (2), Article 28D paragraph (2), Article 33 paragraph (1) of the 1945 Constitution. Therefore, according to the People's Legislative Assembly, the Petitioner in the petition *a quo* does not have legal standing as required by Article 51 paragraph (1) of the Constitutional Court Law and Constitutional Court Decisions in Case Number 006/PUU-III/2005 and Case Number 011/PUU-V/2007.

But if the Constitutional Court has other opinion, here it is delivered the following statement of the People's Legislative Assembly concerning the material of judicial review of Law Number 13 Year 2003 concerning Manpower under the 1945 Constitution.

2. Judicial Review of the Manpower Law.

With respect to the things conveyed by the Petitioners, the People's Legislative Assembly has given the following statement:

1. The provisions of Article 27 paragraph (2) and Article 28D Paragraph (2) of the 1945 constitution from the constitutional point of view grant the rights for each citizen to work and to earn a living befitting human beings as well as fair and proper treatment in employment relationship. The realization of the mandate of the articles *a quo* requires the development in the field of manpower as an integral part of national development;
2. Manpower development has many dimensions and linkages and the linkages among various stakeholders namely the government, entrepreneurs and workers/laborers. For that purpose, a thorough and

comprehensive regulation concerning manpower which regulates, among other things, the protection of workers/laborers, including the protection of fundamental rights of workers/laborers. Such issues shall be regulated in the Manpower Law.

3. The Manpower Law regulates principal activities, namely those directly related to the production process and supporting service activities not directly related to the production process. For activities related directly to the production process, outsourced laborers/workers should not be used by the company. As for supporting service activities that are not directly related to production processes, companies may hire outsourced laborers/workers through service providers. Thus, the employment relationship is between the outsourced laborers/workers and the service provider company, so that the protection, wages and welfare of outsourced laborers/workers become the responsibility of the service providers company;

4. The Manpower Law also regulates certain types of works that can only be performed by workers under an employment agreement for a definite time. Indeed, Article 59 of the Manpower Law has given very strict limitations on certain works that can only be performed by workers under an employment agreement for a definite time system namely:

    a. Works to be performed and completed at once or works which are temporary in nature,

    b. Works estimated to be completed in a time which is not too long

and for no longer than 3 (three) years.

c. Seasonal works or

d. Works related to new products, new activities or additional products which are still in the probation or try-out period"

5. To provide protection to workers, Article 59 of the Manpower Law is expressly prohibits the employment of workers under an employment agreement for a definite time system for the types of works which are permanent and which are part of the principal activities of the company. In addition, there are also limitations on the time namely that the employment agreement for a definite time shall not be longer than 3 (three) years. If both provisions are violated, then by law the employment agreement for a definite time shall become an employment agreement for an indefinite time. And if there is any violation of such provisions as experienced by the Petitioner, then such issues are the matters of application of the norms rather than the issues of constitutionality of the norms;

6. The employment relationship between the laborers/workers and the employing company performing a particular job, as regulated in Article 59 of the Law *a quo*, obtains the same employment protection and conditions as the protection of employment and conditions in the employing company or in accordance with applicable laws and regulations. Similarly, the employment relationship between the outsourced laborers/workers and the service provider company

performing the work as regulated in Article 64 of the Law *a quo* shall obtain the same employment protection and conditions as the employment protection and conditions in the employing company or in accordance with applicable laws and regulations. Therefore, regardless of the definite time which may be required of the employment agreement, protection of laborers' rights shall be in accordance with the rule of law in the Manpower Law, so there is not sufficient reasons for Modern Slavery to occur in the production process, as argued by the Petitioners;

7. Considering that the substance of Article 59 and Article 64 has been petitioned for review in the Case under Registration Number 12/PUU-I/2003, pursuant to Article 60 of Law Number 24 Year 2003 concerning Constitutional Court, the substance of the paragraphs, articles and/or sections in the Law which has been reviewed cannot be petitioned for another review (*ne bis in idem*);

8. Based on the foregoing descriptions, it can be explained that if viewed from the terms of their duration, employment agreements can be divided into 2 types, namely employment agreements made for a definite time and employment agreements not limited by a certain time period. Workers under an employment agreement for a definite time are usually called contract workers. Pursuant to Article 59 paragraph (1) sub-paragraph a, sub-paragraph b, sub-paragraph c, and sub-paragraph d, and paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), paragraph (7) and paragraph (8) of the Law *a quo*, an

employment agreement for a definite time shall be made only for works that have the nature, type and activities will be completed within a definite time;

9. Whereas the Petitioner's work as an electricity meter reader, according to the People's Legislative Assembly, can be categorized as a work for a definite time, namely the work that is completed at once and performed once in every month.

Based on the foregoing description, the People's Legislative Assembly argues that the provisions of Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower are not inconsistent with the provisions of Article 27 paragraph (2), Article 28D paragraph (2), Article 33 paragraph (1) of the 1945 Constitution.

The statement presented by the People's Legislative Assembly has been delivered to be considered by the Constitutional Court to examine, decide and hear upon the case *a quo*, and it may pass the following decisions:

1. Declaring that Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower are not inconsistent with Article 27 paragraph (2), Article 28D paragraph (2), Article 33 paragraph (1) of the 1945 Constitution.
2. Declaring that Article 59 and Article 64 of Law Number 13 Year 2003 concerning Manpower still have binding legal effect

[2.6] Whereas the Petitioner has submitted its written conclusions which

was received at the Registrar's Office on July 20, 2011 which is principally consistent with his arguments;

[2.7] Whereas to shorten the description in this decision, all the things that happened in the hearing are referred to in the minutes of the hearing, and shall constitute an integral and inseparable part of this Decision;

3. LEGAL CONSIDERATIONS

[3.1] Whereas the purposes and objectives of the Petitioner's petition are to conduct judicial review of Article 59, Article 64, Article 65 and Article 66 of Law Number 13 Year 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279, hereinafter referred to as Law 13/2003), under Article 27 paragraph (2), Article 28D paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Whereas prior to considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court) will first consider the authority of the Court to hear the petition *a quo* and the legal standing of the Petitioner;

Authority of the Court

[3.3] Whereas pursuant to Article 24C Paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) sub-paragraph a of the Constitutional Court Law as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226, hereinafter referred to as Constitutional Court Law), and Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Authority (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to State Gazette Number 5076), one of the constitutional authorities of the Court is to hear at the first and final levels whose decision shall be final to conduct judicial review of Laws under the Constitution;

[3.4] Whereas the Petitioner's petition is intended to conduct judicial review of Law *in casu* Article 59, Article 64, Article 65 and Article 66 of Law 13/2003 under the 1945 Constitution, which becomes one of the authorities of the Court, so that Court has authority to hear the petition *a quo*;

Legal Standing of the Petitioner

[3.5] Whereas pursuant to the provision of Article 51 paragraph (1) of the Constitutional Court along with its elucidation, the parties that may file a petition for judicial review of Law under the Constitution Law 1945 shall be those that consider that their constitutional rights and/or authorities have been impaired by the coming into effect of the Law, namely:

a. individual Indonesian citizens (including groups of people having a common interest);
b. customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;
c. public or private legal entities; or
d. state institutions;

Therefore, the Petitioner in the judicial review of a Law under the 1945 Constitution must first explain and prove:

a. his legal standing as petitioner as intended in Article 51 paragraph (1) of the Constitutional Court Law;
b. whether or not there is any impairment of the constitutional rights and/or authorities granted by the 1945 Constitution due to the coming into effect of the law petitioned for review;

[3.6] Whereas following its Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 11/PUU-V/2007 dated September 20, 2007, along with its subsequent decisions, the Court is of the opinion that constitutional rights and/or constitutional authority as referred to in Article 51 paragraph (1) of the Constitutional Court must meet five conditions, namely:

a. existence of constitutional rights and/or authority of the Petitioners granted by the 1945 Constitution;
b. the Petitioners believe that such constitutional rights and/or authority

have been impaired by the coming into effect of the law petitioned for review;

c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

d. there is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authority of the Petitioners and the law petitioned for review;

e. it is likely that with the granting of the Petitioners' petition, the impairment of such constitutional rights and/or authority argued by the Petitioners will not or will no longer occur;

[3.7] Whereas based on the description in paragraphs **[3.5]** and **[3.6]** above, then the Court will consider the legal standing of the Petitioner in the petition *a quo* as follows:

[3.8] Whereas the Petitioner is *Aliansi Petugas Pembaca Meter Listrik Indonesia* (AP2ML) of East Java Province, an Non Governmental Organization which engaging in and established on the basis of concern to provide protection and enforcement of justice, law and human rights in Indonesia, especially for laborers/workers. In this case, it is represented by the Chairman of AP2ML, so that the Petitioner is qualified as a private legal entity according to the deed submitted by the Petitioner and his friends before the Notary's Office Bactiar Hasan, SH (Exhibits P-1, namely Copy of the Deed of

Establishment of the Organization of *Aliansi Petugas Pembaca Meter Listrik Indonesia* (AP2ML) of East Java Province Number 3 along with its attachments);

According to the Petitioner, the application of Article 59 of Law 13/2003 concerning Employment Agreement for a Definite Time (PKWT) and Article 64, Article 65 and Article 66 of Law 13/2003 concerning the delegation of a part of works to another company (contracting/outsourcing) have caused the contract/outsourced workers:

1. to lose the guarantee of continuity of employment for laborers/workers (continuity of work);
2. to lose the rights and job security enjoyed by permanent workers;
3. to lose the rights that they should have received in accordance with the term of service of the employee due to unclear calculation of the term of service.

Based on the arguments of the petition, according to the Court, the Petitioner is a private legal entity whose constitutional rights are impaired by the existence of the articles of the Law *a quo* being petitioned, namely Article 59, Article 64, Article 65 and Article 66 of Law 13/2003, namely the rights to work and to earn a living befitting human beings in Article 27 paragraph (2) of the 1945 Constitution, the right to work and to receive fair and proper remuneration and treatment in the employment relationship as set out in Article 28D paragraph (2) of the 1945 Constitution, and the right to welfare

and prosperity in Article 33, paragraph (1) of the 1945 Constitution. Thus there is a causal relationship between the constitutional impairment of the Petitioner with the norms being reviewed, so that the Petitioner has legal standing to file the petition *a quo.*

[3.9] Whereas since the Court has authority to hear the petition *a quo*, and the Petitioner has legal standing, then the Court will consider the substance of the petition;

Substance of the Petition

[3.10] Whereas the Petitioner argues that the contract laborers/workers employed under the provisions of Article 59, Article 64, Article 65 and Article 66 of Law 13/2003, have in fact lost the rights, employment benefits, employment and social guarantees so as to decrease the quality of life and welfare of laborers/workers of Indonesia. That is due to Employment Agreement for a Definite Time (PKWT) as stipulated in Article 59 of Law 13/2003 and delegation a part of work to another company as provided for in Article 64, Article 65 and Article 66 of Law 13/2003, whereby laborers/workers are placed solely as factors of production, being so easily employed when needed and dismissed when no longer needed. For employer company, the wage component as one of the costs may remain kept to a minimum, while on the other hand, the workers/laborers lose job security, including health coverage, years of service associated with wages and pensions and old-age insurance. Laborers/workers only serve as dairy-cows the capital owner. According to the Petitioner it causes

the loss of rights, employment benefits, social and work guarantees usually enjoyed by those who have the status of permanent laborers/workers, thereby very potential to reduce the quality of life and welfare of laborers/workers of Indonesia, so they are inconsistent with the 1945 Constitution;

Whereas to prove his Arguments, the Petitioner has presented written evidence marked as P-1 up to P-8 and at the hearing on July 6, 2011 the Petitioner has presented witnesses named Moh. Fadlil Alwi and Moh. Yunus Budi Santoso, as fully set out in the Facts of the Case part, which principally explains that the meter reader job is performed continuously, performed at certain times and on a continuous bases which previously used a contract system (outsourcing), and after moving jobs in another company, his working experience was not calculated so that his salary decreased;

[3.11] Whereas in the connection with the petition *a quo*, the Government and the People's Legislative Assembly have submitted written statements which in essence state that the employment relationship between entrepreneurs and workers which contained in Article 59 of Law 13/2003 shall remain subject to the employment agreement which is an agreement pursuant to the provisions of Article 1320 of the Civil Code that should be respected by the parties. In addition, the terms of PKWT are already strict, being concerned only with:

- Works to be performed and completed once or which are temporary in nature;
- Works estimated to be completed in a time which is not too long and for

no longer than 3 (three) years;

- Seasonal works; or
- Works related to new products, new activities or additional products which are still in the probation or try-out period.

According to the Government, Employment Agreement for a Definite Time (PKWT) between the workers/laborers and entrepreneurs, if its implementation is in accordance with the aforementioned provisions, is solely related to the practice of employment relationship and it is not an issue of constitutionality of the norms of Article 59 of the Law *a quo*. Therefore, there is no problem with the constitutionality of the Article 59 of the Law *a quo* which is questioned by the Petitioner;

As for judicial review of Article 64, Article 65 and Article 66 of the Law *a quo,* the Constitutional Court has passed the rejecting the Petitioner's petition (*vide* Decision Number 012/PUU-I/2003 dated October 28, 2004 on the petition filed by Saepul Tavip and friends), so that according to the Government, it is not necessary for the Court to consider it again.

Opinion of the Court

[3.12] Whereas after the Court has carefully examined the petition, statement of the Government, statement of the People's Legislative Assembly, evidence submitted by the Petitioner, as contained in the Facts of the Case part, constitutional issues which must be considered by the Court in this petition are:

(1) whether the employment relationship between the workers/laborers and the company performing contracting of works based on PKWT which has obtained the works from another company is inconsistent with the 1945 Constitution, (2) whether the employment relationship between the workers/laborers and the company that provides workers/laborers based on PKWT is inconsistent with the 1945 Constitution;

[3.13] Whereas the Petitioner argues that the norms governing the Employment Agreement for a Definite Time (PKWT) in Article 59 of Law 13/2003 does not guarantee the continuity of employment for workers/laborers, and does not guarantee the others rights of workers/laborers. According to the Court, PKWT as provided for in Article 59 of Law 13/2003 is the type of employment agreement designed for works intended only for a definite time and which do not last forever, so that the employment relationship between laborers and employers will end when the period expires or when the job has been completed. That is why Article 59 of Law 13/2003 confirms that PKWT shall only be applied to four types of work, namely: (i) Works to be performed and completed at once or works which are temporary in nature, (ii) Works estimated to be completed in a time which is not too long and for no longer than 3 (three) years, (iii) Seasonal works or, (iv) Works related to new products, new activities or additional products which are still in the probation or try-out period which are not fixed;

In practice, there are several types of works included in the criteria mentioned

above the reason of a company's efficiency and that the expertise for a particular job better is left to be done by another company/party, including construction work, rubber workers, cane cutters (seasonal), consultants, or contractors. For these types of works, the workers/laborers face the risk of termination of employment when the work is completed, and that they must find another new job. On the other hand, business owners will work more efficiently and will not become the company's financial burden if the types of works are not performed by the company alone and handed over to other parties who have the expertise and experience in these fields, so that companies only focus on the main types of works (core business). For entrepreneurs or companies that get the jobs which meet these criteria of other companies, also face the same issues in relation to the workers/laborers they employ for the types of works which are temporary and for a certain time. In connection with these types of works, it is natural for employers to make PKWT with the workers/laborers, because it is not possible for employers to continue employing workers/laborers to keep paying their salaries when the job has been completed. In such conditions, the workers/laborers would have to understand the kind of work to be performed and to sign PKWT which is binding to the parties. The agreement is thus subject to the provision of Article 1320 of the Civil Code, which obliges the parties signing the agreement to comply with the agreement in this regard PKWT. To protect the interests of the workers/laborers who are weak because of the great number of job-seekers in Indonesia, the Government's role becomes very important to monitor the abuse of the provisions of Article 59 of

the Law *a quo*, for example, making PKWT with workers/laborers while the types and nature of the work do not meet the requirements specified by Law. In fact, if any violation of Article 59 of the Law *a quo* is a matter of implementation and not an issue of constitutionality of norms against which a civil lawsuit may be filed with another court. Thus according to the Court, Article 59 of Law 13/2003 is not inconsistent with the 1945 Constitution;

[3.14] Whereas pursuant to the provisions of Article 64, Article 65 and Article 66 of Law 13/2003, a company can transfer a portion of its work to other companies through a contracting agreement or through the provision of employment services workers/laborers, made in writing on certain terms. In practice, the types of works called "outsourced jobs", and companies performing outsourcing works are called "outsourcing companies" and the workers/laborers who carry out such work are called "outsourced workers". Based on the Law 13/2003 *a quo,* there are two types of outsourcing works namely outsourcing of a part of works through contracting agreements and outsourcing for the provision of workers/laborers' service as indicated in the abovementioned problems. Article 65 of the Law *a quo* sets the terms on the delegation of a part of works to outsourcing companies and Article 66 of the Law *a quo* regulates outsourcing for the provision workers/laborers. The works delegated by way of outsourcing according to Article 65 of the Law *a quo* must meet the following requirements: (i) they shall be separate from the main activities, (ii) they shall be performed with the command directly or indirectly from the employer, (iii) they are the company's supporting activities as a whole,

and (iv) they do not inhibit the production process directly. A company may only delegate the works to other companies with legal entity status and must be made in writing. To protect the rights and interests of the workers/laborers, Article 65 paragraph (4) the Law *a quo* affirms that the employment protection and conditions for workers/laborers in outsourcing companies shall be at least similar to labor protection and working conditions in companies giving the employment or in accordance with applicable laws and regulations. Labor relations in the execution of the works set forth in a written employment agreement between the outsourcing company and the workers/laborers it employs, whether under PKWT if it meets the requirements of Article 59 of the Law *a quo* or based on an indefinite time employment agreement. If the terms of delegation of some of the work are not met, then the status of relationship between the employer of the workers/laborer and the contracting recipient company shall then, by law, become the employment relationship between the workers/laborers and the employing company;

The delegation of work through workers/laborers service provider (outsourcing workers) must meet the following requirements:

(i) The workers/laborers from the workers/laborers' service provider company (outsourcing company) should not be used by the employer to carry out the main activities or activities that are directly related to the production process, except for supporting service activities or activities not directly related to the production process.

(ii) Workers/laborers' service provider for supporting service activities or

activities not directly related to the production processes must meet the following requirements:

a. the existence of employment relationship between the workers/laborers and workers/laborers' service provider;

b. employment agreement which applies in the employment relationship as intended to in point a is an employment agreement for a definite time that meets the requirements referred to in Article 59 of Law 13/2003 and/or an employment agreement for indefinite time made in writing and signed by both parties;

c. protection of wages and welfare, working conditions, as well as disputes arising shall be the responsibility of workers/laborers' service providers; and

d. agreement between the workers/laborers' service user company and another company acting as workers/laborers' service provider company shall be made in writing and shall include the articles as intended in this Law.

(iii) The workers/laborers' service provider is a legal form of business possessing a permit from the government agency in charge of manpower affairs.

(iv) In the event that the provisions as intended in number i and number ii of point a, point b and point d as well as number (iii) are not fulfilled, by law, the status of employment relationship between

workers/laborers and workers/laborers' service providers shall be changed into an employment relationship between the workers/laborers and employing companies.

[3.15] Whereas based on the norms contained in Article 65 and Article 66 of the Law *a quo*, the Court will consider further whether any of such provisions threatens the rights of every person and the rights of workers guaranteed by the constitution, in this case the outsourced workers' rights which are violated, so as to be inconsistent with the 1945 Constitution, the rights granted by the 1945 Constitution to everyone to work and remuneration as well as appropriate treatment in the employment relationship [*vide* Article 28D Paragraph (2) of the 1945 Constitution] and the right of every citizen to work and a decent living befitting human beings [*vide* Article 27 paragraph (2) of the 1945 Constitution];

[3.16] Whereas the articles on outsourcing have been petitioned to the Constitutional Court and have been decided upon by Decision Number 12/PUU-I/2003 dated October 28, 2004. In the decision, the Court gave the following considerations, "Whereas based on the aforementioned provisions, in the event that the intended laborers are evidently employed to carry out principal activities, there is no employment relationship with the workers/laborers' service provider which is not a legal form of business entity, then by law the status of employment relationship between the workers/laborers and the service providers shall be changed into an employment relationship between the workers/laborer employed by the

employer. Therefore, considering the need to balance the protection of entrepreneurs, laborers/workers and the community in a harmonious manner, the Petitioners' arguments do not have sufficient grounds. The employment relationship between the labors and the service provider performing works at other companies, as regulated in Article 64 up to Article 66 of the Law *a quo*, shall obtain employment protection and conditions which are the same as employment protection and working conditions in the employing company or in accordance with applicable laws and regulations. Therefore, regardless of the specified period which may become the term of such working condition in available employment opportunities, then the protection of laborers' rights in accordance with the rule of law in the Manpower Law, is not proven so that it causes the outsourcing system to become modern slavery in the production process "*;*

[3.17] Whereas the outsourced workers/laborers, in connection with outsourcing companies, both outsourcing companies that perform most of the works under an agreement of work contracting and outsourcing companies that provide workers/laborers' service, will be in an uncertain position in respect of continuity of their employment if the employment relationship between the workers/laborers and the company is performed under PKWT. If the employment relationship between the employing company and the outsourcing company or the company providing outsourced workers/laborers' service is terminated because the outsourcing contract comes to an end, then the employment period of all the outsourced workers/laborers shall also terminate.

As a result, workers/laborers must face the risk of no longer getting an employment extension contract from the employing company. In addition to the uncertainty regarding the continuation of the work, the workers/laborers will have uncertain employment period that has been performed because it is not explicitly taken into account due to frequent changes of outsourcing service companies, so that it has an impact on lost opportunities for outsourced workers to earn income and benefits according to years of service and dedication. As already considered in Decision No. 12/PUU-I/2003 dated October 28, 2004, although the rights and interests of workers/laborers are protected in the Law *a quo* [vide Article 65 paragraph (4) of Law 13/2004], which states that "employment protection and working conditions for workers/laborers in other companies as referred to in paragraph (2) shall be at least similar to employment protection and working conditions in the employing company or in accordance with applicable laws and regulations", based on the argument of the Petitioner and the facts, there is no guarantee that the employment protection and working conditions are implemented. Thus, the uncertainty of the fate of the workers/laborers in connection with the outsourcing of jobs, because the Law *a quo* does not provide certainty for outsourced workers/laborers to work and obtain remuneration as well as appropriate treatment in employment and the lack of guarantee for workers to get right to work and to a living befitting human beings, so that the main essence of the labor law to protect the workers/laborers is neglected*;*

[3.18] Whereas according to the Court, delegation of a part of work

performance to other companies through work contracting agreement in writing or through a workers/laborers' service company (outsourcing company) is a reasonable business policy of a company within the framework of business efficiency. Delegation of employment or the provision of such workers' service must meet the requirements as specified in Article 65 and Article 66 of Law 13/2003. Nevertheless, the Court needs to examine the constitutionality of the aspects of workers' rights protected by the constitution in the employment relationship between the outsourcing company and the workers/laborers. Attention to the terms and principles of outsourcing either through an agreement or through a company contracting the provision of employment services of workers/laborers could result in loss of legal certainty which guarantees a fair deal for workers and the loss of everyone's right to work and to receive fair and decent remuneration and treatment in employment. This happens because with the end of the employment or the expiration of the chartering contract for the provision of workers/laborers, the working relationship between the outsourcing company and the workers/laborers will end, so that the workers/laborers would lose their jobs as well as other rights that they should have obtained. According to the Court, the workers/laborers performing works in outsourcing companies should not lose their rights protected by the constitution. To that end, the Court must ensure that the employment relationship between workers/laborers and the outsourcing company performing the outsourcing work shall be carried out while still ensuring the protection of the rights of workers/laborers, and the outsourcing

models shall not be misused by the company only in the interests and for the profits of the company without paying attention to, or even by sacrificing, the rights of workers/laborers. Such guarantee and protection cannot be properly implemented only through a binding agreement between the company and the laborers/workers under PKWT, because the workers/laborers have a weak bargaining position due to the great number of job-seekers or oversupply of laborers;

Based on these considerations, in order to avoid exploitation of workers/labor by companies only for the sake of business profits without regard to the guarantee and protection of the rights of workers/laborers to get jobs and decent wages, and to minimize the loss of constitutional rights of outsourced workers, the Court needs to determine the protection and assurance of the rights for workers/laborers. In this case, there are two models that can be implemented to protect the rights of workers/laborers. The first is requiring agreements between laborers/workers and companies performing outsourcing works to be made not in the form of PKWT, but rather in the form of "indefinite time employment agreement". The second is the application of the principle of Transfer of Undertaking Protection of Employment (TUPE) for workers/laborers working for companies performing outsourcing works. Through the first model, the employment relationship between the workers/laborers and companies performing outsourcing works is constitutional insofar as it is performed under an "indefinite time employment agreement" in writing. The second model is applied in the event that the employment relationship between the

workers/laborers and companies performing outsourcing works shall be based on PKWT whereby the workers must still receive the protection of their rights as workers/laborers by applying the principle of Transfer of Undertaking Protection of Employment (TUPE) for workers working for companies performing outsourcing works. In practice, the principle has been applied in the manpower law, namely in the case of a company taken over by another company. To protect the rights of workers whose company has been taken over by another company, the rights of workers/laborers of the company acquired shall remain protected. The transfer of protection of workers/laborers shall be applied to protect the workers/laborers from arbitrary outsourcing by the employer/entrepreneur. By applying the principle of transfer of protection, when the employing company no longer provides employment contract or no longer provides workers/laborers' service to the former outsourcing company and gives the works to a new outsourcing company, so long as jobs are ordered to be done still exist and continue, the new service provider company shall have to continue the existing employment contract without changing the existing terms in the contract, without the consent of the interested parties, except for changes to improve benefits for workers/laborers because of their accumulation of experiences and employment period. The rule provides not only the assurance of continuity of employment of outsourced workers, but it also provides protection from other aspects of welfare, because the rule is that the outsourced workers shall not be treated as new employees. Employment period for which outsourced workers have worked shall continue to be

considered existing and accounted for, so that outsourced workers can enjoy the rights as workers properly and proportionately. If the outsourced workers are dismissed for the reason of change in workers' provider company, workers shall be given legal standing to file a lawsuit on the matter to the court as their right to industrial relations dispute. Through the principle of transfer of such protection, the loss or neglect of the constitutional rights of outsourced workers can be avoided.

To avoid the difference in rights between workers of the employing company and outsourced workers performing exactly the same job with the workers of the employing company, the employing company must arrange that such outsourced workers receive fair benefits and welfare without being discriminated from the workers of the employer as provided for in Article 64 paragraph (4) *juncto* Article 66 paragraph (2) sub-paragraph c of Law 13/2003;

[3.19] Whereas based on the foregoing considerations, according to the Court, Article 59, Article 64, Article 65 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5) paragraph (6), paragraph (8), paragraph (9) as well as Article 66 paragraph (1), paragraph (2) sub-paragraph a, sub-paragraph c, and sub-paragraph d, paragraph (3), as well as paragraph (4) of Law 13/2003 are not inconsistent with the 1945 Constitution. Article 65 paragraph (7) and Article 66 paragraph (2) sub-paragraph b of Law 13/2003 are conditionally

inconsistent with the 1945 Constitution (*conditionally unconstitutional*). Therefore, the Petitioner's petition has legal grounds in part;

4. CONCLUSION

Based on the foregoing considerations of facts and laws as described above, the Court has come to the following conclusions:

[4.1] the Court has authority to hear the petition *a quo*;

[4.2] the Petitioner has legal standing to file the petition *a quo*;

[4.3] The substance of the Petitioner's petition has legal grounds in part;

Based on the 1945 Constitution of the State of the Republic of Indonesia and Law Number 24 Year 2003 concerning the Constitutional Court as having amended by Law Number 8 Year 2011 concerning the Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2011 Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226) as well as Law Number 48 Year 2009 concerning Judicial Authority (State Gazette of the Republic of Indonesia Year 2009 Number 157, Supplement to State Gazette Number 5076).

5. DECISIONS

Passing the decision,

Declaring:

- Granting the petition of the Petitioners in part;
- That the phrase "…an employment agreement for a definite time" in Article 65 paragraph (7) and the phrase "…employment agreement for a definite time" in Article 66 paragraph (2) sub-paragraph b of Law Number 13 Year 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) are inconsistent with the 1945 Constitution of the State of the Republic of Indonesia insofar in such employment contract does not require the transfer of rights protection for laborers/workers whose working objects still exist, although there is any change of the company performing some of contracting works from another company or workers/laborers' service provider company;
- That the phrase "…an employment agreement for a definite time" in Article 65 paragraph (7) and the phrase "…employment agreement for a definite time" in Article 66 paragraph (2) sub-paragraph b of Law Number 13 Year 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) do not have any binding legal effect insofar in such employment contract does not require the transfer of rights protection for laborers/workers whose working objects still exist, although there is any change of the company performing some of contracting works from another company or workers/laborers' service provider company;

- Rejecting the other and the remaining parts of the petition of the Petitioner;
- Ordering the inclusion of this Decision in the Official Gazette of the Republic of Indonesia properly;

In witness whereof, this decision was made in the Consultative Meeting of Justices attended by nine Constitutional Court Justices namely, us, Moh. Mahfud MD., as Chairperson and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Muhammad Alim, Ahmad Fadlil Sumadi, Anwar Usman, Harjono, Maria Farida Indrati, and M. Akil Mochtar, respectively as Members, on **Thursday dated the fifth of January year two thousand and twelve**, and was pronounced in the Plenary Session of the Constitutional Court open for the public on this day, **Tuesday dated the seventeenth of January year two thousand and twelve**, by nine Constitutional Court Justices, namely, us, Moh. Mahfud MD., as Chairperson and concurrent Member, Achmad Sodiki, Hamdan Zoelva, Muhammad Alim, Ahmad Fadlil Sumadi, Anwar Usman, Harjono, Maria Farida Indrati, and M. Akil Mochtar, respectively as Members, assisted by Eddy Purwanto as Substitute Registrar, in the presence of the Petitioner/his Attorney, the Government or its representative, and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

Signed.

Moh. Mahfud MD.

JUSTICES,

Signed.	**Signed.**
Achmad Sodiki	**Hamdan Zoelva**
Signed.	**Signed.**
Muhammad Alim	**Ahmad Fadlil Sumadi**
Signed.	**Signed.**
Anwar Usman	**Harjono**
Signed.	**Signed.**
Maria Farida Indrati	**M. Akil Mochtar**

SUBSTITUTE REGISTRAR,

Signed.

Eddy Purwanto