

A STUDY ON THE INFORMAL WORKERS' WELFARE IN MICRO SMALL MEDIUM ENTERPRISES' BUSINESS PLACES IN GUNUNGPATI DISTRICT AREA, SEMARANG EXAMINED UNDER THE ACT NO.13 OF 2003 ON MANPOWER

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ABSTRACT

Welfare provision for workers is set in the Constitution and legislations in Indonesia. In Article 27 paragraph (2) of the 1945 Constitution which states "every citizen has the right to employment and decent life for humanity." Similarly, in Act No. 13 of 2003 concerning on Manpower, which explained that "manpower development is to improve the quality of labors and their participation in the development and improvement of the protection of workers and their families in accordance with human dignity." The mandate of the constitution and legislations in Indonesia apparently has not been fully realized especially the wages and welfare for informal workers. This study was conducted on the informal workers in the Gunungpati District, Semarang. By using a juridical-sociological approach that used descriptive data in the form of spoken or written words of the people and their behavior which was observed, the researcher tried to state the problem of this study, they were: What was the definition of informal workers and their relation to the labor legislations? How was the welfare of informal workers in the business places in Gunungpati District which was studied under the provisions of Act No. 13 of 2003 and how much was the standard of Minimum Wage of Semarang? The employment relationship between the informal workers with the business owners in business places in Gunungpati District began with an oral agreement between the two parties regarding the work that would be carried out by the workers, their wages that would be earned and the time of payment. The wages which were received by workers were according to the ability of the business owners. The wages were given daily, weekly or monthly. Based on the results of the study, it could be found that besides to wages, the workers also received some benefits and economic facilities in the form of meals every day, a residence for those whose houses were far from the business places, along with other daily necessities. While health facilities for workers, allowance when the workers return home and the Religious Holiday Allowance was also given although the amount were not so much, it was based on the ability of the business owners. The welfare for the informal workers, when it was examined by Law No.13 of 2003 on labors, was almost totally not in accordance with the provisions. The amount of wages was still below the minimum wage of Semarang City, the working time exceeds the working time provisions without any overtime payment, other welfare such as health care there was less certainty in the case of substitution treatment, the Religious Holiday Allowance was also not in accordance with the provisions, and it was still below the monthly wage. Because of those facts, it is needed to set a special labor regulations which specially concern in regulating the informal workers as well as the need for assistance or easiness of the government in the form of financial needs as well as access to business for small business owners so that they could compete with other larger employers, which later could be followed with the welfare improvement for the workers.

Keywords: Informal workers, employment relationship, Welfare

A. INTRODUCTION

National Objectives of the establishment of Indonesia as stated in the Preamble of the Constitution of the Republic of Indonesia in 1945 are the first, to protect the people of Indonesia and the country of Indonesia; second, promote the general welfare; Third, to educate the nation; and fourth, participating in the establishment of world orderliness. At the second national goal, the state has the duty to promote the general welfare in order to create prosperity for all Indonesian people in various fields of life. One of them is on labor which deserves more attention from the state and the government, considering the field of labor involving millions of citizens as workers to earn a decent living for himself and his family.

Government's policy has not been able to provide extensive employment for its citizens resulting in high levels of unemployment in Indonesia. The increasing of fuel prices and basic commodities lately makes the workers' life burden heavier. The number of layoffs (PHK) resulted in the formal sector workers losing their livelihoods. According to the Central Bureau of Statistics of Indonesia, the number of labor force in Indonesia until August 2014 reached 121.87 million, which increased from August of 2013 amounted to 120.17 million people. However, this increasing also occurred in the open unemployment rate from February to August 2014 amounted to 5.70% rose 5.94%. Throughout the month of February to August 2014, the number of unemployed in Indonesia increased 0.09 million from 7.15 million to 7.24 million people. Most of the retrenched workers will switch to work in the informal sectors of micro small and medium enterprises (entrepreneur, seller, taxi operators, craftsman, farmers, ranchers, fishermen, and so on) in order to maintain the viability of himself and his family. Most of them are forced to work through the informal sectors to be able to provide for their lives and their families. Therefore, naturally they increase the number of the informal workers.

Based on the National Workforce Survey or in Indonesian known as Survey Angkatan Kerja Nasional (Sakernas) from the Central Bureau of Statistics of Indonesia, the proportion of informal sector workers, especially in urban areas tend to increase. In 1970, the proportion of informal sector workers to the labor force in the city reached about 25 percent. This number increased to about 36 percent in 1980 and to 42 percent in 1990. In 2000, the number was around 65 percent. According to the data of central bureau of statistics of Indonesia in 2007, the number of informal workers reached 60.6 million people, while the formal labor force was around 25 million people.¹ According to the head of the Central Bureau of Statistics of Indonesia, Suryamin, on February 2013 the percentage of formal workers was 39 percent and 61 percent of informal workers while on February 2014, the percentage of the informal workers was 40 percent and 60 percent of informal workers.² The data indicated that the informal sector was still dominant enough to absorb the labor force, especially in urban areas. In addition, the economic development has not been able to overcome the classical problem of the employment opportunities limit.

Gunungpati District area's economy has been developed since the existence of Semarang State University which now has had over 20,000 students. The number of students provides so many business opportunities of the informal sector in order to meet the needs of residence, food, groceries, stationery, daily necessities, to the mobile phone's credit. As a result, there are many emerging areas of micro small and medium enterprises such as the sellers of various kinds of food, groceries, mobile phone's credit counters, barber shops, photocopy centers, computers and stationery stores, and internet and still many other hundreds business places that can be found in the Sekaran, Gunungpati.

Those informal sectors of course have greater number of workers in order to facilitate and assist the business. For employers who manage their business well of course will get optimum benefit, but how about the condition of the workers? Do they also get a good welfare and wages as guaranteed in the national development that aims to build a complete Indonesian people and the welfare of the whole community? This objective is also in line with Article 27 paragraph (2) of the 1945 Constitution which states every citizen has the right to the employment and a decent life for humanity. In relation to welfare, this article emphasizes that through the work, every citizen of men, women, adults, children, adolescents are have a right to a decent life and welfare for workers and their families.

Based on the above explanation, it is necessary to conduct a research on the Informal Workers' Welfare in the business places of Micro, Small and Medium Enterprises in the Gunungpati district area, Semarang examined Under the Act No.13 of 2003 on Labor, to be able to know how the normative Rights of workers' wages and welfare is, if it is in accordance with labor regulations that is Act No. 13 of 2003 and also in accordance with the provisions of the Minimum Wages of Semarang.

¹<http://72.14.235.104/www.bappenas.go.id/Studi-pekerja>

² *sindo news.com* 5 May 2014

B. STATEMENTS OF THE PROBLEM

The main problem of this study is stated as follows: How is the normative rights of workers, especially their wages and welfare, if it is in accordance with the labor provision, Act No. 13 of 2003 and also in accordance with the provisions of the Minimum Wages of Semarang? From the main problems above, they are broken down into the following research questions:

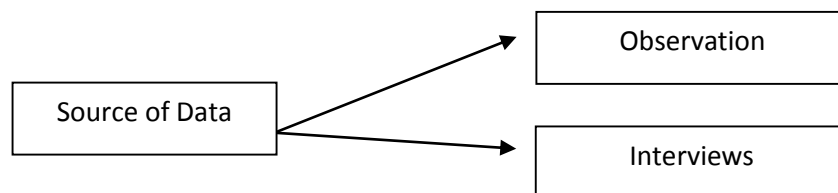
1. What is the definition of informal workers and its relation to the Labor Act?
2. How is the welfare of informal workers in business places in Gunungpati region examined under the provisions of Act No. 13 Th.2003 on Manpower?

C. RESEARCH METHODOLOGY

The approach that was used in this study was a socio-juridical approach, and this study was a qualitative research. This study is aimed to analyze the applicability of the rules of labor laws in the Act no. 13 of 2003 on labors which is then used to analyze the welfare of informal workers in Gunungpati district area. The collection of data through interviews and observations of some workers and business owners in the business places in Gunungpati District and the employee of The Ministry of Manpower and Transmigration of Semarang City.

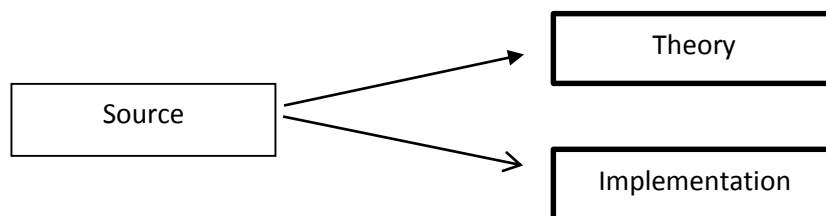
In this study, triangulation technique that was used by the researcher was the examination through other sources, which was achieved by:

- a. Comparing the observed data with the results of interviews



Triangulation technique was used to compare the results of observations of working activities in the informal sectors businesses with the results of interviews with the informal workers and the business owners.

- b. Comparing theories / legislations that were applied to the implementation in practice



Triangulation technique was used to compare between theory / legislation concerning on labor force which were applied to the implementation of the labor world in practice, especially in the informal sectors.

D. RESULTS AND DISCUSSION

1. Definition of informal workers and its relation to Labor Act

In this life, human has various needs, both for himself and his family. To be able to meet all the needs of humans, they are required to work both work on a job that they manage or work on others. The work that they manage is to work on their own business capital and responsibility. While working on other people's intention is to work with a dependent on another person, who gave the order and sent him, because he has to be submissive and obedient to them who gave the job.³

Informal workers are those who work in the informal sectors. According to the department of manpower and transmigration, the informal sector is defined as the entire commercial enterprises and non-commercial which is not registered or economic activities which do not have a formal organizational structure, and are generally characterized

³Asikin, Zainal, 1993. *Dasar-dasar hukum perburuhan*, Jakarta: Rajawali Press, page 1

by: owned by the family, the activities is in a small-scale, labor-intensive, using technology that has been adapted, and there is a reliance on local resources.

The informal sector can also be interpreted as a small-scale business unit that produce goods and services, and are generally included in the group which have not received services from the government, or get help from the government that can make the business thrive.

Meanwhile, according to the Central Bureau of Statistics, informal activity is attempted or working alone at his own risk, trying at your own risk, assisted by temporary workers, and doing unpaid work as they are helping someone earn income or profit, but do not receive salary / wages in cash or goods.⁴

In general, informal workers can be divided into three categories. First category is the workers who run their own small capitals such as street sellers, hawkers, sellers in the traditional market and the pitchman. Most of informal workers belong to this group. Although they work independently, this kind of informal workers is economically very dependent on others, such as other entrepreneurs who supply the merchandise for the continuity of their business. Second category is informal workers who work on other people, usually the work daily. This group includes wage laborers who work in small businesses or in a family with an oral agreement with daily or monthly wages. Housemaid (domestic workers) and construction workers belong to this group. Third category is the owner of a very small business. Those who include to this group are small farmers by employing one or several agricultural laborers. It also includes a small counter owner who employs a worker.⁵

According to Article 1 paragraph 2 of Act No. 13 of 2003 concerning on manpower, it is stated that People available for a job or person available for a job (*tenagakerja*) is every individual or person who is able to work in order to produce goods and/ or services either to fulfill his or her own needs or to fulfill the needs of the society.

Elucidation of the article mentions the definition of labor according to this act include "workers who work outside or inside the employment relationship with the means of production or its own power, both physical and mind. The characteristic of the employment relationship above is that the workers work under the command of others with a payment. Based on the understanding of the manpower definition, it also includes workers in the informal sectors.

The definition is in line with the understanding of labor according to the concept of manpower in general that labor refers to those who are covering a population that has been or is currently working, looking for work and are doing other work.⁶

According to article 1 paragraph 3 of Act No. 13 of 2003 on manpower, Labor is any person who works for a wage or other forms of remuneration. Based on the definition of worker, the term workers could include formal and informal workers, because informal workers are also working on other people to receive wages or other forms of remuneration. Other forms of remuneration in terms of workers means compensation that is granted from the employers to workers in the form of money, food, provision of facilities of the company in the form of the treatment facility, the accidents facility, religious holiday allowance, bonuses, etc.

Based on the definition of the informal workers above, the respondents that the researcher took include in the definition of the second category, i.e. workers who are employed in small businesses, either warong, grocery store, photo copy center, mobile phone credit counter, and so on. The definition also justified by Masruhan, the employee of the industrial relations department of Manpower and transmigration department of Semarang, "Informal workers which is meant can be defined as workers who work in the informal sectors or in the informal company that is not listed on the relevant institutions, for examples: small sellers who employ several workers. It could also be interpreted that informal workers are workers outside the employment relationship, do not meet the elements of orders, employment, wages, and profits for example: motorcycle, a housekeeper. "

While the definitions of the entrepreneur are:

An entrepreneur shall be defined as:

- a. An individual [proprietor], a partnership or a legal body that runs an enterprise that he or she or it owns;
- b. An individual, a partnership or a legal body that independently runs an enterprise that does not
- c. An individual, a partnership or a legal body that is situated in Indonesia but represents an enterprise as referred to under point a and point b that has its seat/ base outside the territory of Indonesia. (Article 1, Section 5 of Act No. 13 of 2003 on Manpower).

⁴http://www.menkokesra.go.id/pdf/deputi6/pekerja_perempuan_informal_nov2007.pdf.

⁵http://www.bappenas.go.id/index./Studi-Pekerja_Acc.pdf

⁶Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Jakarta: PT Raja Grafindo Persada, 2007), page 17

Based on the above definition of entrepreneur, it could be seen that business owners in business places in SekaranGunungpati can also be interpreted as entrepreneurs because they are individuals who run their own company or someone else's.

An enterprise shall refer to

- a. Every form of business [undertaking], which is either a legal body or not, which is owned by an individual, a partnership or a legal body that is either privately owned or state owned, which employs workers/ laborers by paying them wages or other forms of remuneration;
- b. Social undertakings and other undertakings with officials in charge and which employ people by paying them wages or other forms of remuneration. (Article 1, Section 6 of Act No. 13 of 2003 on Manpower).

Based on the definitions of enterprise above, business places in Gunungpati area also included in the definitions of company because they are forms of business enterprise that employ workers by paying them a wage.

Therefore, based on the various definitions of manpower, workers, entrepreneur and company showed that the labor law set and cover protections for all workers both in the formal or informal sectors.

2. Informal workers' welfare in business places in Gunungpati Area examined under the Act No.13 of 2003 concerning on manpower

Humans have various kinds of needs in life, both for himself and for his family. In order to meet all the needs, humans are required to work both for a job that they manage as well as working on other people, both work in the formal sectors and informal sectors. A job that they manage themselves means the workers on their own business capital and responsibility. While working on other people's intention is to work with a dependent on another person who gave the order and sent him, because he has to be submissive and obedient to the others who gave the job. For the work that the worker performed, he is given a wage. Wages play a very important role and characterize a relationship called employment relationship. It can even be said that a wage is a major goal for workers performing some works on a person or other legal entity.

Based on the results of interviews with business owners and their informal workers in the business places in the Gunungpati (includes photocopy center businesses, computer and printer rental business, groceries, warungs, ice juice / drinks sellers, mobile phone credit counters) their employment relationship began with an oral agreement between the two parties of the job that would be carried out by the workers and their wages that would be obtained later. All the agreements that they made were done orally, unwritten agreement, the reasons were because those were already implemented as usual and based on mutual trust on both sides.

The employment relationship is basically the relationship between workers / laborers and the entrepreneurs after employment agreements. Employment agreement is the beginning of an employment relationship which is made of a statement of ability of the workers / laborers with the employers. The employment relationship is met if there is the existence of the elements: the existence of the job; the wages; the command; and particular time.

According to article 52 paragraph 1 of Law no. 13 of 2003, a work agreement shall be made based on

- a. The agreement of both sides;

The agreement of both sides called the deal for the binding themselves. The sides entered into agreements have to agree, accord on the matters agreement. The workers receive the job that is offered and the employer receives the workers to be employed.

- b. The capability or competence to take legally-sanctioned actions

The workers and employers have to be competent in making the agreement. A person is considered as competent to make arrangements if he/she has at least 18 (eighteen) years and is not a monomaniac.

- c. The availability/ existence of the job which both sides have agreed about

In the agreement there must be the job and it has to be done themselves by the workers who make the employment agreement.

- d. The notion that the job which both sides have agreed about does not run against public order, morality and what is prescribed in the valid legislation. The job of an agreement is the object of bargaining between workers and employers. The object must be a lawful agreement that does not conflict with the law, public order and morality.

Based on the above explanation, it can be seen that although informal agreements between workers and owners of the business places in Gunungpati were done orally, but satisfying the elements of the employment relationship and the legal terms of the employment agreement. Employment agreement is orally accommodated in article 51 of Law of labor. In terms of the wage scale, it could be known that each informal worker earn in the range between IDR 500,000,- up to IDR 900,000,- per month, the payment was made daily, weekly and monthly.

Each worker or laborer has a right to earn a decent living for humanity, namely the amount of revenue or income of the workers or labors of their jobs so that it meets the living necessities of the workers and their families that includes food, drinks, clothing, food, education, health, recreation and annuity.⁷

Government Regulation No. 8 of 1981 on the Protection of Wages mentioned that wages are compensation from the employer to the worker for a job or service which has been or will be declared or assessed in the form of money that is set based on the agreement or legislation in force and are paid on the basis of an agreement between employers and the workers, including benefits, both for the workers themselves and their families.⁸ Meanwhile, according to Act No. 13 of 2003 on Manpower, wage is the right of the worker/ laborer that is received and expressed in the form of money as remuneration from the entrepreneur or the employer to workers/ laborer, which amount is determined and paid according to a [formal and written] work agreement, a deal, or laws and regulations, including allowances for the worker/ laborer and their family for a job and or service that has been performed or will be performed.

Some of the principles of remuneration that are set out in the legislation of manpower detailed as follows:

- a.) The right to receive wages commences at the time an employment relation exists and ends at the time the employment is terminated. (Article 2 of Government Regulation No. 8 of 1981 on the Protection of Wages)
- b.) In determining the wage an employer may not make discrimination between the men and women workers for work of equal value. (Article 3 of Government Regulation No. 8 of 1981 on the Protection of Wages)
- c.) No wages will be paid if workers/ labors do not perform work. (Article 93 paragraph (1) of the Act No. 13 of 2003 on Manpower).
- d.) Entrepreneurs are prohibited from paying wages lower than the minimum wage. (Article 90 paragraph (1) of Law No. 13 of 2003 on Manpower)
- e.) If a wage is composed of basic wage and fixed allowance, the amount of the basic wage must not be less than 75% (seventy five percent) of the total amount [of the basic wage and fixed allowance.] (Article 94 of Act No. 13 of 2003 on Manpower).
- f.) Violations which are committed by the worker/ laborer, either by design or because of neglect, may result in the imposition of a fine, (Article 95 paragraph (1) of Law No. 13 of 2003 on Manpower).
- g.) Entrepreneurs who pay their workers/ laborers' wages late either by design or because of neglect shall be ordered to pay a fine whose amount shall correspond to a certain percentage from the worker/ laborer's wages. (Article 95 paragraph (2) of Act No. 13 of 2003 on Manpower).
- h.) In case the enterprise is declared bankrupt or liquidated based on valid statutory legislation, the payment of the enterprise's workers/ laborers' wages shall take priority over the payment of other debts. (Article 95 paragraph (4) of Act No. 13 of 2003 on Manpower).
- i.) Any claim/ demand for the payment of the worker/ laborer's wages and all other claims/ demands for payments that arise from an employment relation shall expire after the passage of a period of 2 (two) years since such claims first come into being. (Article 96 of Act No. 13 of 2003 on Manpower).⁹

The enterprises in paying the wages of workers should be based on the minimum wage set out in the regulation of labor minister No: 01 / Men / 1999 on the minimum wage, which is enhanced by the decision of the Minister of Manpower and Transmigration No. KEP-226 / MEN / 2000, and then followed by regulation of the Minister of Manpower and Transmigration No. PER-17 / MEN / VIII / 2005 on the components, implementation phases and meeting the need for a decent life. The minimum wage is the lowest wage that will be used as a standard by the enterprises to determine the actual wages of workers who work in the company. According to the Central Java Governor Decree No. 560 / 60/2013 on Minimum Wages in 35 districts of the city in Central Java province in 2014, stated that the minimum wage for Semarang is IDR 1.423,500,-

In addition to wages, workers receive benefits and economic facilities in the form of meal each day, a residence for those whose house are far from the business places, along with other daily necessities. While health facilities for workers, allowance when workers return home and Religious Holiday Allowance is also given, although there were only sufficient according to the ability of business owners.

While overtime and overtime wages stipulated in the Decree of the Minister of Manpower and Transmigration No. KEP-102 / MEN / VI / 2004 dated June 25th, 2004. Overtime work is work time exceeds 7 (seven) hours a day and

⁷Djumaldji, Fx. 2005. *Perjanjian Kerja*. Jakarta : Bumi Aksara, page 29

⁸Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Jakarta: PT Raja Grafindo Persada,2007), page 115

⁹Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, Bandung:PT Citra Aditya Bakti, 2007) page 126-127

40 hours a week for 6 (six) working days a week or eight (8) hours a day and 40 hours a week for five (5) working days of the week or time of work on a weekly rest day or during official holidays set by the government.¹⁰

Overtime provisions stipulated in the Decree of the Minister of Manpower and Transmigration above applies to all enterprises except for the enterprises in certain business sectors or certain workers. Overtime work can only be done at most three (3) hours in one (1) day and 14 hours in 1 (one) week. This provision does not apply to overtime work on a weekly rest day or on an official holiday.¹¹

Working time of informal workers turned out to be more than the normal working time provisions of the 7 (seven) hours a day and 40 hours a week for six (6) days a week or eight (8) hours a day and 40 hours a week for five (5) working days within a week, because they are also working on a weekly rest day or during official holidays set by the government.

Under the provisions of labor laws above, the wage that is received by informal workers is still below the minimum wage (40 percent - 70 percent of the minimum wage of the City), but the workers can only accept it because the wages are considered common for a job they do, and they live happily, not require the business owner considering the number of unemployed.

E. CONCLUSION & SUGGESTION

1. CONCLUSION

Based on the results of the research and analysis on the implementation and welfare for informal workers in business places in Gunungpati, Semarang, it could be concluded as follows:

- a. Based on the various definitions of labor, workers, entrepreneurs and companies in Act No. 13 of 2003 on Manpower which sets and includes protections for all workers both in the formal or informal sectors.
- b. The employment relationship between informal workers with business owners in places of business in Gunungpati began with an oral employment agreement. Wages are supplied daily, weekly or monthly. In addition to wages, workers receive benefits and economic facilities in the form of meal each day, a residence for those whose house are far from the business places, along with other daily necessities. While health facilities for workers, allowance when workers return home and Religious Holiday Allowance is also given, although there were only sufficient according to the ability of the business owners.
- c. The implementation of wages and welfare for informal workers when examined by Act No.13 of 2003 concerning Manpower, many of which are not in accordance with the provisions that should be run by workers and employers. The amount of wages is still below the minimum wage Semarang city, also the working time exceeds the working time provisions without any overtime payment, other welfare such as there is less certainty in health care in the case of substitution treatment, and Religious Holiday Allowance is also not in accordance with provisions, still under one salary. All the things above due to the financial constraints of the business owners and workers can also understand the wage and welfare that they receive.

2. SUGGESTION

- a. Manpower and Transmigration officers should provide education on the normative rights and obligations to the level of informal workers.
- b. There is a need for a provision of informal workers in particular, due to the financial constraints of small business owners cannot be equated with other formal/ large company, for the continuation of the informal sector.
- c. There are some needs for assistance or easiness of the government in the form of financial needs as well as access to business for small business owners so they can compete with the big businessmen which later can be followed by improvement in the welfare of its workers.

¹⁰Ibid, page 132

¹¹Djumialdji, Fx. 2005. *Perjanjian Kerja*. Jakarta : Bumi Aksara, page 32

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Legislative provisions:

- 1945 Constitution of the Republic of Indonesia
- Act of the Republic of Indonesia No. 3 of 1992 on manpower social security
- Act of the Republic of Indonesia No. 13 of 20013 on Manpower
- Act of the Republic of Indonesia No. 40 of 2014 on the national social security system
- Act of the Republic of Indonesia No. 24 of 2011 on Social Security Organizing Agency
- Government Regulation No. 8 of 1981 on the Protection of Wages
- The regulation of manpower minister No: 01 / Men / 1999 on the minimum wage.
- The decision of the Minister of Manpower and Transmigration No. KEP-226 / MEN / 2000 on the provincial minimum wage
- Central Java Governor Decree No. 560 / 60/ of 2013 on the Minimum Wages in 35 districts/citiesin Central Java province in 2014