

LEGAL REVIEW OF THE USE OF FOREIGN WORKERS WITH THE EFFECTIVENESS OF PRESIDENTIAL REGULATION NUMBER 20 OF 2018 CONCERNING THE USE OF FOREIGN WORKERS

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ABSTRACT

In fact, the Republic of Indonesia prioritizes the placement of domestic workers rather than foreign workers according to the mandate of the Constitution Article 27 paragraph (2). In fact, the existence of foreign workers is still needed in relation to investment in various sectors that require technology and special skills that cannot yet be met by Indonesian workers. The problem is that foreign workers enter sectors that do not require special skills, even though many unskilled workers are unemployed. The Job Creation Law cuts the licensing process for the use of foreign workers and eliminates several criminal sanctions and/or replaces them with administrative sanctions for violations of foreign worker use norms. Legal sanctions for violations of the use of foreign workers after the Job Creation Law are provisions on criminal sanctions for violations of the use of foreign workers are removed and/or changed by the Job Creation Law to administrative sanctions. Supervision of the use of foreign workers in Indonesia and its obstacles are the number of foreign labor supervisors that are not comparable to the number of foreign workers working in the company, complicated foreign labor licensing procedures that cause many companies to use foreign workers illegally and the absence of evaluation after the use of foreign workers.

1. Introduction

The presence of foreign workers is a necessity because Indonesia still needs foreign experts to develop human resources in various economic sectors. Manpower Law Number 13 of 2003, Chapter VIII, regulates the Use of Foreign Workers, including regulations on foreign workers' employers, job titles, and working hours.

Employment issues in the future will continue to grow increasingly complex, requiring more serious handling. During this period, shifts in values and lifestyles will frequently occur. These shifts often violate applicable laws and regulations. Indonesian regulations prohibit individuals from employing foreign workers.



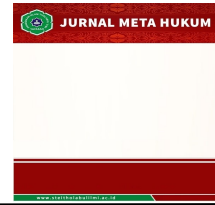
This differs from regulations abroad, which permit individuals to employ foreign workers. Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning Job Creation, and Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers regulate permitted positions and work hours for foreign workers, but do not regulate the types of work permitted for foreign workers. In 2022, the majority of foreign workers in Indonesia, or 54,184, held professional positions: 23,479 managers, 23,421 consultants, 9,686 directors, and 767 commissioners.

To ensure legal order in employing foreign workers in regional development and improve the quality of the local workforce, capital owners as entrepreneurs need to bring in some workers from their home countries or other countries to work as Foreign Workers (TKA). Regulations governing foreign workers, including labor regulations, are needed to prevent the influx of illegal foreign workers, which can harm the regional economy and reduce local employment opportunities. Therefore, the need for oversight in creating programs to increase local labor productivity and regional income is a must. The Indonesian government is not blind to the open climate of a free market economy. As a precautionary measure, the government is responsible for issuing regulations that protect both Indonesian workers and foreign workers.

Article 1, number 4, of the Minister of Manpower Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers states that a Foreign Worker Utilization Plan is a requirement for obtaining a work permit. A Foreign Worker Utilization Plan, hereinafter abbreviated as RPTKA, is a plan for the use of foreign workers in specific positions, prepared by the foreign worker's employer for a specific period of time, and approved by the Minister or a designated official. The presence of foreign workers (TKA) also poses a challenge, as their presence increases job opportunities. Hard work and government policies are needed to provide opportunities for domestic workers to compete with foreign workers in Indonesia.

The issuance of the Presidential Regulation concerning the Use of Foreign Workers has sparked controversy in the community. According to Timboel Siregar, Secretary General of the All-Indonesian Workers Organization (OPSI), many articles in this Presidential Regulation contradict Law Number 13 of 2003 concerning Manpower, including the Manpower Law requiring a Foreign Worker Utilization Plan (RPTKA), while the Presidential Regulation concerning the use of foreign workers does not require an RPTKA for positions such as commissioners and directors, as well as workers needed by the government. Furthermore, the President should first submit the draft Presidential Regulation





to the public before signing it and invite academics, representatives of Indonesian entrepreneurs, and workers to provide input.

2. Research Method

This research is descriptive in nature because it only describes the object of study, investigated by describing applicable laws and regulations in relation to legal theories and the practice of implementing laws related to the above issues. The type of research used is normative juridical law. Normative juridical legal research refers to legal norms, specifically through the study of library or secondary sources.

This type of research is normative legal research, an approach taken by collecting secondary data in the form of laws and materials relevant to the problem.

The approach used in this research is a conceptual approach based on the views and doctrines developed within legal science. An understanding of these laws and doctrines serves as a basis for the researcher in developing legal arguments to resolve the issue at hand, namely the Use of Foreign Workers Following the Enactment of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers.

This study also uses a legislative approach due to its normative nature, which involves collecting secondary data in the form of legislation and other relevant materials.

The data collection technique employed library research, which involved reviewing various literature, including scholarly books, laws and regulations, and other documentation such as magazines, journals, the internet, and other theoretical sources related to legal protection for workers upon termination of employment.

Data analysis in this study was conducted qualitatively, systematically organizing the collected data and then analyzing it qualitatively to achieve clarity on the issues being discussed. Qualitative data analysis is a research method that produces descriptive data, namely, what respondents state in writing or verbally, as well as their actual behavior, which is thoroughly researched and studied.

3. Results And Discussion

Results

National development is the holistic development of the Indonesian people and their communities. Within the framework of implementing this national



development, the workforce is a supporting element that plays a crucial role in its success. In this regard, employment policies within development programs consistently strive to create as many job opportunities as possible in various business sectors, improving the quality and protection of workers across all sectors. National development challenges related to employment have increased with the advent of free trade and industrial globalization. The presence of foreign workers is both a necessity and an unavoidable challenge.

Therefore, labor inspection, as a system, carries the mission and function of ensuring the enforcement of labor laws and regulations. The implementation of labor laws and regulations is also intended to maintain a balance between the rights and obligations of employers and workers, ensuring business continuity and workplace peace, in order to increase work productivity and worker welfare.

The issuance of the Presidential Regulation concerning the Use of Foreign Workers has sparked controversy in the community. According to Timboel Siregar, Secretary General of the All-Indonesian Workers' Organization (OPSI), many articles in this Presidential Regulation contradict Law Number 13 of 2003 concerning Manpower. Among other things, the Manpower Law mandates a Foreign Worker Utilization Plan (RPTKA), while the Presidential Regulation on the Use of Foreign Workers does not require an RPTKA for positions such as commissioners and directors, as well as for workers needed by the government. Furthermore, the President should first submit the draft Presidential Regulation to the public before signing it and invite academics, representatives of Indonesian employers, and workers to provide input.

Article 43 paragraph (1) of Law Number 13 of 2003 explains that the RPTKA and the Permit to Use Foreign Workers (IMTA) are two different things, with the RPTKA being a requirement for obtaining a permit. Meanwhile, the permit is outlined in Article 42 paragraph (1) of Law Number 13 of 2003 as follows: Every employer employing foreign workers must have written permission from the minister or an official appointed to authorize it.

The RPTKA approval can be carried out by the Director General for foreign worker employers employing 50 (fifty) or more foreign workers, and by the Director for foreign worker employers employing fewer than 50 (fifty). The RPTKA Approval Decree contains the reasons for employing foreign workers, the position and/or status of the foreign worker, the location of the foreign worker, the wages/salary of the foreign worker, the number of foreign workers, the duration of employment, the number of Indonesian workers appointed as accompanying Indonesian workers, and the number of Indonesian workers employed.



As the development process shifts, employment regulations have also adapted, ultimately resulting in the issuance of Presidential Regulation Number 20 of 2018, accompanied by Minister of Manpower Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers (Permenaker Number 10 of 2018), which supports the national economy and development, as well as increasing investment. These regulations are intended to advance the national economy and expand and add employment opportunities through investment enhancement/strategies.

Essentially, employment law aims to realize social justice for all people, and this is based on two aspects: 1) law is ideally realized through (heteronomous) and autonomous legislation. In this legal realm, it must represent legal products that are in accordance with *das sollen*, in accordance with justice and truth, with certainty, and beneficial to all parties. These laws and regulations will align with the meaning of justice as stipulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia; and 2) the implementation of normative law contributes to oversight through structural instruments (law enforcement) and takes action against parties who fail to comply with legal provisions.

The enactment of Law No. 11 of 2020 concerning Job Creation, followed by the issuance of its organic regulation, Government Regulation (PP) No. Law No. 34 of 2021 concerning the Use of Foreign Workers has streamlined the permitting process for the entry of foreign workers by eliminating the permit to use foreign workers (IMTA), requiring only the approval of the minister or designated official for the foreign worker utilization plan (RPTKA). This streamlining of the IMTA permitting process has intensified the issue of the use of foreign workers in Indonesia and has become one of the reasons for public opposition, particularly from labor stakeholders and labor unions, to the substance of the Job Creation Law. The government's failure to protect and address the plight of Indonesian workers in their own country is considered a threat.

There are two perspectives on the presence of foreign workers in Indonesia: some argue they represent a threat, while others argue they represent an opportunity. Both perspectives depend on their presence as a state asset or liability. Foreign workers, as highly skilled and professional workers, can be viewed as an opportunity, as their skills can be transferred to develop and improve the capabilities of local workers. Conversely, if foreign workers are viewed as a liability, they can pose a threat if their presence does not contribute to economic growth, employment opportunities, and wages for local workers. Foreign workers become competitors for local workers, especially if their entry is illegal.

The basic strategy and principles for employing foreign workers are the need for capital and investment, coupled with the need for skilled and expert workers in specific fields. Foreign workers working in Indonesia must benefit the protection of Indonesian workers, and business expansion can have a positive impact on job creation and expanded employment opportunities, as well as technology transfer and skills transfer to Indonesian workers.

Ministry of Manpower supervisory officers at the central, provincial, and district/city levels, in accordance with their respective scopes of duties (Article 46 of Minister of Manpower and Transmigration Regulation No. 8 of 2021), are authorized to oversee the implementation of norms regarding the use of foreign workers in the field, supervise the implementation of training or education for assistant workers, and provide Indonesian language education for foreign workers. The labor inspection system can be implemented in two ways: a preventive and educational approach and a repressive and justitia approach. This approach aims to prevent and educate those who still have legal awareness. If preventive and educational measures are ineffective, repressive and justitia can be implemented to encourage the public to comply with the law, even if forced.

In the event that a violation of labor norms is found by a foreign worker by a labor supervisor, the Director General of Occupational Health and Safety will make a recommendation to the Director General of Immigration to take immigration action against the foreign worker in question in accordance with positive law, namely foreigners who carry out actions that are dangerous or are reasonably suspected of being dangerous to public security and order or actions that violate statutory regulations.

4. Discussion

After the Job Creation Law, the provisions regarding the Work Permit (IMTA) were repealed, and the criminal sanctions for violations stipulated in Article 185 paragraph (1) were also removed, eliminating any criminal offenses. The main requirement established after the Job Creation Law was that the RPTKA be ratified, and the legal sanction for violations of RPTKA (not having one) be administrative.

There has been a shift from criminal law to administrative law. The legal rationale behind the creation of the Job Creation Law, particularly its employment cluster, differs significantly from that of the previous Manpower Law, regarding controlling the use of foreign workers in Indonesia. Even if the creation of the Job Creation Law was to cut bureaucratic red tape for permits for



the use of foreign workers, the existence and function of the ratified RPTKA are essentially the same as those of the IMTA. Therefore, the sanction for not having an IMTA should be the same as for not having an RPTKA: criminal sanctions.

In accordance with the objectives of the Job Creation Law, the presence of foreign workers is accompanied by capital investment in Indonesia, particularly labor-intensive projects. The aim is to open and expand employment opportunities for Indonesian workers and accelerate the transfer of skills and technology.

According to the principle of sponsorship, only companies are permitted to employ foreign workers; individuals are prohibited. Article 45 (1) of the Manpower Law stipulates the obligation of employers to appoint Indonesian workers as counterparts for the foreign workers for skills and technology transfer, and to provide training and education for Indonesian workers in accordance with the foreign workers' qualifications. The Job Creation Law also adds a clause requiring the foreign workers to return to their country of origin upon termination of their employment agreement.

The legal penalty for violating this article is imprisonment for a minimum of one month and a maximum of 12 months and/or a fine of a minimum of IDR 10,000,000 and a maximum of IDR 100,000,000. This provision aligns with the objective of employing foreign workers to improve the capabilities of Indonesian workers through technology and skills transfer, but oversight is also crucial.

Article 44 (1) of the Manpower Law before the Job Creation Law stipulated that companies employing foreign workers are obligated to comply with applicable job-related norms and competency standards. Legal sanctions for violating this obligation, based on Article 187 (1) and (2) of the Manpower Law, include imprisonment for a minimum of 1 month and a maximum of 12 months and/or a fine of a minimum of IDR 10,000,000.00 and a maximum of IDR 100,000,000.00, which is classified as a criminal offense. Paragraph (2) of the same article emphasizes the qualifications or competency standards that foreign workers must possess, including expertise, skills, knowledge in specific fields, and an understanding of Indonesian culture.

Soejanto defines supervision as any effort or activity to determine and assess actual activities related to implementation and assess whether the reality is in accordance with what is expected. The term "controlling" in English is translated as "supervision" and "controlling," so the term "controlling" has a broader meaning than "supervision." Experts have equated the meaning of "controlling" with supervision, meaning that supervision includes control. Some disagree with the equating meaning of "controlling" with supervision, as controlling has a broader meaning. Supervision is often defined as simply observing or ensuring



that activities are carried out according to plan and reporting on their results, while controlling, in addition to supervision, also involves controlling activities, namely, mobilizing, correcting, and directing them in the right direction.

The essence of supervision is to prevent, as early as possible, deviations, waste, misappropriation, obstacles, errors, and failures in achieving organizational goals and carrying out tasks. Supervision is the process of observing the implementation of all organizational activities to ensure that all work is carried out according to predetermined plans.

5. Conclusion

Legal regulations for permits to employ foreign workers in Indonesia are permitted by law, but with limitations that cover the basic provisions before entering an employment relationship, during the employment relationship, and after the termination of the employment relationship. The subjects of employment law consist of employers, workers, and the government. Therefore, Law Number 13 of 2013 concerning Employment is expected to create a balance between the interests of workers, employers, and the overall national economy.

Legal sanctions for violations of the employment of foreign workers following the Job Creation Law include the elimination of criminal sanctions for violations of the employment of foreign workers and/or their amendment to administrative sanctions. The Job Creation Law revokes the criminal sanctions and fines for employers who do not have an IMTA (Work Permit) by eliminating Article 42 paragraph (1) which regulated the requirements for an IMTA, which was previously a criminal offense under Article 185 paragraph (1). Post-Job Creation Law requires employers to simply have an RPTKA (Work Permit) Approval, so violators are subject to administrative sanctions in the form of fines, even though the IMTA functions similarly to an RPTKA. Other administrative sanctions for violations of RPTKA requirements include suspension of the application for temporary RPTKA approval and/or revocation of the RPTKA approval.

Obstacles to monitoring the use of foreign workers in Indonesia include the disproportionate number of foreign labor supervisors compared to the number of foreign workers employed by companies, complicated foreign labor permit procedures that lead to many companies using foreign workers illegally, and the lack of post-employment evaluations.

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