

Legal Standing of Foreign Workers in Tourism Sector in Indonesia and Carrying out Mixed Marriage with Indonesian People

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ABSTRACT

Foreign workers working in the tourism sector in Indonesia and carrying out mixed marriages with Indonesians, then the spouses of the foreign workers may become an individual sponsors. With this sponsor, the foreign workers may also work to help his family in the informal sector. This is regulated in Article 61 of Law Number 6 of 2011 concerning Immigration. The status and legal standing of the foreign workers are contrary to Article 42 and Article 43 of Law Number 13 of 2003, supplemented in Article 42 of Law Number 11 of 2020 concerning Job Creation. The disharmonious existence between these laws raises conflict of norms and significantly impacts the implementation of regulations for foreign workers working in the tourism sector in Indonesia.

Keywords: *Foreign Workers, Mixed Marriage.*

1. INTRODUCTION

Foreign workers living and working in Indonesia may carry out mixed marriages. this mixed marriage is carried out with an awareness considering its effect on foreign workers, namely the ease in carrying out activities, work, and/or administrative processes in Indonesia. The acculturation creating the legal relationship has legal implications to the standing of foreigners. The legislation has regulated the legal standing, namely article 61 of law no. 6 of 2011 concerning immigration. This basis has a deep understanding contextually and philosophically in its application due to the dynamics of government's participation as good governance (good government). Mixed marriages with Indonesians complement the different concepts of marriage under law no.1 of 1974 concerning marriage, where the notion of mixed marriage is governed in article 57.

The marriage of foreign workers and Indonesians binds them through law no. 6 of 2011 concerning immigration and law no. 1 of 1974 concerning marriage and law number 13 of 2003, which has been issued law number 11 of 2020 concerning job creation. The regulation in article 42 paragraph (1) is due to the legal standing of the foreign workers having employment status, so there is a conflict of the norm in its implementation *das sein and das sollen*. so that foreign worker who should also get wages, which are a crucial

problem in employment. even if they are not professional in handling wages, they often become potential disputes and encourage strikes and/or demonstrations. With his wife's sponsorship to be able to help his family not getting a salary.[1] in this case, there is nothing that the immigration law should dispute because it is the duty of foreign workers as family members who are entitled to help the family economy.

2. METHOD

The type of writing applied here is normative legal writing, which is done by conducting library research or secondary data. The normative legal writing examines law as a norm or rule existing and developing in society.[2] The approach applied to the problem is a statute approach, a conceptual approach, its application through practice and legal decisions.

3. RESULT AND DISCUSSION

Marriage acculturation creating legal relationships has legal implications for foreign workers. This is regulated in the legislation, namely Article 61 of Law No. 6 of 2011 concerning Immigration. Therefore, the foreign workers with a work-limited stay permit may replace it with a family-limited stay permit, and their spouses may directly become sponsors for the foreign workers. The holder of a Limited Stay Permit as referred to in Article 52 letter e and letter f and the holder of a Permanent Stay

Permit as referred to in Article 54 paragraph (1) letter b and letter d may carry out the work or business to meet the necessities of life and/or family.

The provisions govern how foreigners may stay and have their status regarding their legal standing in Indonesia. The legal standing of foreigners obtained through acculturation, namely by carrying out mixed marriages with Indonesians, further completes the concept of Marriage according to Law No. 1 of 1974 concerning Marriage. Where the notion of Mixed Marriage is governed in article 57. The Marriage of foreign workers and Indonesians binds them through Law No. 6 of 2011 concerning Immigration and Law No. 1 of 1974 concerning Marriage and Law Number 13 of 2003, which has been issued Law Number 11 of 2020 concerning Job Creation. The regulation of Article 42 paragraph (1) reads: "Every employer using foreign workers is required to have written permission from the Minister or designated official." Paragraph (2) reads: "Individual employers are not allowed to employ foreign workers." The provisions of Article 61 of Law Number 6 of 2011 concerning Immigration and Article 42 of Law Number 13 of 2003 create a conflict of norms in its implementation *Das Sein and Das Sollen*. The use of foreign workers under Law Number 13 of 2003 concerning Manpower is regulated in article 42 and the Copyright Law early. An Employer must submit a Plan for Foreign Worker Employment (RPTKA), a plan for using foreign workers for certain positions made by an employer for a certain period approved by the Minister or designated official. [3] And an individual is not allowed to be a sponsor for a worker. Meanwhile, in Immigration Law, Article 61 states that foreigners married to Indonesians may work with Family Limited Stay Permit so that their spouses may become sponsors for the foreign workers. There is a conflict of norms in this regard, in which The Company should sponsor foreign Workers according to the provisions of the Manpower Law and Law of Copyright. Implementing the two laws has created legal uncertainty, but it provides each other's legal protection when viewed from the legal point of view. So, if any legal problems exist due to the legal standing of foreign workers in Indonesia, each law has different roles and legal protection.

This legal action is the beginning of the birth of a legal relationship, namely, the interaction between legal subjects with legal relevance or having legal consequences which run harmoniously, in balance circumstances and relatively where each legal subject gets what his/her right is and carries out the obligations imposed on him. The law appears as a rule in governing the relationship. [4] In the provisions of Article 61 of the Immigration Law, what is undertaken by foreign nationals is legal under the rules of the article, and also by the direct explanation by the Director of Transmigration explaining that foreign citizens marrying Indonesian citizens may work in the informal sector providing that they get paid immediately.

Moreover, of course, the work carried out by the foreigners does not require formal requirements in obtaining a work permit as regulated in the Law of Manpower, where law constitutes the basic norm as described by Hans Kelsen as the concept of law and justice. So that the justice obtained by the foreign worker returns to Plato's theory. One of the theories of justice in question is the theory of justice from Plato, which emphasizes harmony or harmony. Plato defines *justice* as "the supreme virtue of the good state," while a just person is "the self-disciplined man whose passions are controlled by reason." For Plato, justice is not directly related to law. For him, justice and the rule of law are the general substance of a society that creates and maintains its unity. [5] The government formulated a vision for Indonesia to progress in 2045 as a strategic step to make Indonesia one of the top 5 (five) world economic powers in 2045. [5]

4. CONCLUSION

Due to mixed marriages, foreign workers' legal standing in Indonesia provides legal uncertainty when the two laws are enacted together since each law has its legal protection. This is where the conflict of norm lies between the Immigration Law and Copyright Law.

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