



Legal Protection of Foreign Workers in Indonesia Post the Issuance of Presidential Regulation Number 20 of 2018 Concerning the Use of Foreign Workers

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Abstract. Companies in Indonesia are increasingly interested in hiring international personnel. Labor inspection is essential to be able to take preemptive actions and adapt any developments that occur in the face of alterations in values and the way of life of industry and trade operators. As a result, changes to the labor inspection system must continue to be made so that rules and regulations may be successfully applied by industry and trade participants. As a result, labor inspection as a system carries out the objective and function of enforcing labor laws and regulations. In this paper, two major issues will be investigated: how legal protection for foreign workers in Indonesia has changed since the issuance of Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers, and how to impose sanctions on employers who violate the provisions of positions that are open to foreign workers. Utilizing a normative juridical case approach method that involves an examination of laws and regulations using a legal concept approach. The purpose of this study is to examine how the legal protection of foreign employees in Indonesia has changed with the issuing of Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers. As well as to examine the punitive procedures that the government can impose on companies that breach the provisions of jobs that are open to foreign employees, both administratively and criminally, based on positive legislation in effect in Indonesia.

Keywords: Legal Protection · Foreign Workers · Presidential Regulation · Labor

1 Introduction

Human growth and the development of Indonesian society as a whole constitute national development. In the framework of achieving national development, personnel is one of the supporting components that plays a critical role in development success. In this scenario, the manpower strategy in the development program is continually striving to provide as many employment possibilities as possible in diverse business fields by improving worker quality and providing comprehensive worker protection in all sectors.

With the existence of free trade and industrial globalization, national development difficulties relating to employment are rising. As a result, the presence of foreign labor is both necessary and unavoidable [1].

Labor inspection is essential to be able to take preemptive actions and adapt any developments that occur in the face of alterations in values and the way of life of industry and trade operators. As a result, changes to the labor inspection system must continue to be made so that rules and regulations may be successfully applied by industry and trade participants. As a result, labor inspection as a system carries out the objective and function of enforcing labor laws and regulations. The implementation of labor laws and regulations is also designed to maintain a balance between the rights and duties of businesses and workers/laborers in order to ensure company continuity and peace of mind while boosting work productivity and labor welfare [2].

A Plan for the Use of Foreign Workers is necessary to get a work permit, according to the Regulation of the Minister of Manpower, Article 1 point 4, Number 10 of 2018, Governing Procedures for the Use of Foreign Workers. The Plan for Employment of Foreign Employees, abbreviated as RPTKA, is a plan for the temporary use of foreign employees in certain jobs developed by the employer and sanctioned by the Minister or another official authority. Another issue is that the presence of foreign personnel makes employment opportunities more competitive. Hard labor is necessary, as are government rules that allow native employees to compete with overseas workers in Indonesia [3].

President Joko Widodo released Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers on March 26, 2018, which he quickly signed. This Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers replaces Presidential Regulation No. 72 of 2014 on the Use of Foreign Workers and the Implementation of Companion Worker Education and Training, which has been cancelled and declared null and void in accordance with Presidential Regulation No. 20 of 2018.

Based on the preceding, the purpose of this research was to examine how legal protection for foreign employees in Indonesia has evolved after the implementation of Presidential Regulation Number 20 of 2018 on the Use of Foreign Workers. Furthermore, based on affirmative legislation in effect in Indonesia, the government can impose administrative and criminal penalties on firms that breach the terms of jobs offered to foreign employees.

2 Method

This research falls under the category of normative legal research, which is legal research that employs the law as a basis for systems and regulations. The system under consideration encompasses the evaluation of ideas, concepts, legal principles, laws, and regulations, as well as the use of purposive sampling. In this study, the Legislative approach is utilized to evaluate all laws and regulations relating to the legal challenges being addressed. The conceptual approach differs from legal science assumptions and theories. Primary legal resources drawn from literature or the law are used, as are secondary legal materials such as legal journal volumes, official papers, and research in the form of reports. A literature study approach is used to collect legal information, which involves describing, evaluating, and drawing conclusions from the literature.

3 Result and Discussion

3.1 Legal Protection for Foreign Workers in Indonesia After the Issuance of Presidential Regulation No. 20 of 2018 Concerning the Use of Foreign Workers

As is generally known, the laws regulating the use of foreign employees have changed, and the employment of foreign workers is now controlled by Presidential Regulation No. 20 of 2018 Concerning the Use of Foreign Workers. Furthermore, the technique for the use of foreign employees is controlled by Minister of Manpower Regulation No. 10 of 2018 Governing Procedures for the Use of Foreign Workers and Manpower Law No. 13 of 2003. Foreign worker rules are also included in a number of other relevant regulations. As a foreign worker, there are several restrictions, particularly addressing the jobs or positions that may or may not be filled by these foreign employees, as specified in Minister of Manpower Decree No. 228 of 2019 Concerning Certain Positions That Can Be Held by Foreign Workers What does it mean to say:

- a. Foreign Workers, also known as TKA, are foreign citizens with visas who intend to work in Indonesian territory;
- b. Assistance Workers are Indonesian workers who are appointed and prepared as assistants in the context of technology transfer and skill transfer;
- c. Employer of Foreign Workers, also known as Employer of Foreign Workers, is a legal entity or other entity that employs foreign workers by paying wages or other benefits.
- d. A plan for the employment of foreign employees in certain jobs developed by the Employer of Foreign Workers for a defined amount of time that is legalized by the minister in charge of government affairs in the field of manpower or an appointed official;
- e. Limited Stay Visa, also known as Vitas, is a written statement given by an authorized official at the Representative of the Republic of Indonesia or another location determined by the Government of the Republic of Indonesia that contains approval for Foreigners to travel to Indonesian Territory and serves as the basis for granting a Permit Limited Stay to work;
- f. The Limited Stay Permission, often known as ITAS, is a permit that allows some foreigners to dwell and work in Indonesian territory for a set length of time.
- g. Immigration Checkpoints are checkpoints at seaports, airports, cross-border posts, or other locations that have been connected with the Immigration Management Information System as a point of entry and exit from Indonesian territory.;
- h. Inspector of Labor Employees are Civil Servants who are appointed and assigned to functional positions of the Labor Inspector in accordance with the provisions of laws and regulations;
- i. Minister is the minister in charge of government activities in the labor sector.

Employers of foreign employees are described in Presidential Regulation No. 20 of 2018 and Permenaker No. 10 of 2018 as legal entities or other entities that employ foreign workers by paying wages or other types of payment. Employer bodies can take several

forms, including, but not limited to: a. Government agencies, foreign representatives, international agencies, and international organizations; b. Foreign trade representative offices, offices of foreign corporations, and foreign news agencies operating in Indonesia; c. Foreign private enterprises operating in Indonesia; d. A legal entity incorporated under Indonesian law in the form of a Limited Liability Company (PT), a foundation, or a foreign business entity registered with the Company (PT), a foundation, or a foreign business entity registered with the Comptro Indonesia.

If you look at the employers listed in the regulation, it may be an impresario service business that is still not familiar to your ears. In Permenaker No. 10 of 2018 above, impresario service business is defined as the activity of organizing entertainment in Indonesia, both bringing in and repatriating performers in the arts and sports on a temporary basis.

In order for the plan to bring in foreign workers to run smoothly, there are several conditions that must be owned by employers, including:

- a. Have a Plan for the Use of Foreign Workers (RPTKA) which is legalized by the Minister or an appointed official;
- b. Paying the Compensation Fund for the Use of Foreign Workers (DKP-TKA) for each foreign worker employed in accordance with the provisions of the legislation;
- c. Enrolling foreign workers in insurance programs at insurance companies with Indonesian legal entities who work for less than 6 (six) months;
- d. Include foreign workers in the National Social Security program who work for a minimum of 6 (six) months;
- e. Appointing Assistant Workers in the context of transferring technology and expertise of TKA
- f. Carry out education and training for Companion Workers; and
- g. Facilitate Indonesian language education and training for the foreign workers they employ.

Article 10 of Presidential Regulation No. 20 of 2018, which states unequivocally that foreign workers who are shareholders, members of the board of directors, or members of the board of commissioners at an Employer of Foreign Workers are not required to have an RPTKA, demonstrates President Jokowi's ease and legal protection in the entry of foreign workers. Diplomatic and consular personnel at foreign worker representative offices, as well as foreign workers fulfilling government-specified responsibilities. Additionally, Article 25 of Presidential Regulation No. 20 of 2018 requires every foreign worker employer to ensure that the foreign worker is enrolled in the Employment Social Security for foreign employees who have worked for more than 6 (six) months and/or that the foreign worker has an insurance policy with an insurance firm with an Indonesian legal entity.

3.2 Types of Sanctions for Employers Who Violate the Provisions of Positions that are Allowed for Foreign Workers

In Article 5 paragraph (1) of Presidential Regulation No. 20 of 2018 concerning the use of foreign workers, it is stipulated that foreign workers are prohibited from occupying positions in charge of personnel and/or certain positions determined by the Minister,

which in this case is the position of personnel or Human Resources (HR/HRD), this prohibition is not without reason, employing foreign workers as HR/HRD is the right decision because every company needs to explore the possibility of employing foreign workers as HR/HRD. Companies are not allowed to create their own rules in their interests, because complying with the Manpower Act means protecting the rights of workers. Personnel or HR is one of the strategic positions that determines the direction of the company's movement, moreover HR has the authority to create innovations to increase human assets. This HR activity will also help to Indonesia's general human development. As a result, pursuant to Article 46 paragraph (1) of Manpower Law No. 13 of 2003. Attachment to the Minister of Manpower and Transmigration's Decree No. 40 of 2012 Concerning Certain Positions Prohibited from Being Occupied by Foreign Workers As much as feasible, HR uses Indonesian workers in order to improve Indonesian people's talents and knowledge. Other occupations that are not permitted to be filled by foreign workers include:

- a. Personnel Director;
- b. Industrial Relation Manager;
- c. Human Resource Manager;
- d. Personnel development supervisor;
- e. Personnel Recruitment Supervisor;
- f. Personnel Placement Supervisor;
- g. Employee Career Development Supervisor;
- h. Personnel Declare Administrator;
- i. Chief Executive Officer;
- j. Personnel and Careers Specialist;
- k. Personnel Specialist;
- l. Career Advisor;
- m. Job interviewer;
- n. Job Advisor and Counseling;
- o. Employee Mediator;
- p. Job Training Administrator;
- q. Job Interviewer;
- r. Job Analyst;
- s. Occupational Safety Specialist [4].

Apart from the occupations that are not permitted to be taken by foreign employees, it should be noted in Article 42, paragraph (4) of the Manpower Act that foreign workers can only be engaged in Indonesia in a working relationship for a certain role and for a specific period of time.

According to Article 185 paragraph (1) of the Manpower Act, if it is proven that the employer of the foreign worker employs the foreign worker as a worker who does not comply with the provisions of the legislation and thus does not have a permit to employ the foreign worker, the employer of the foreign worker may face a minimum of one year in prison and a maximum of four years in prison, as well as a fine of at least Rp. 100 million and a maximum of Rp. 400 million [5].

In addition to criminal sanctions, there are also administrative sanctions that can be imposed on companies providing foreign workers, in accordance with the provisions of the Minister of Manpower Regulation No. 10 of 2018 concerning Procedures for the Use of Foreign Workers, that there are 4 types of administrative sanctions applied, namely:

- a. Service delays; what to do if the employer of the foreign worker does not include the foreign worker in the insurance program, national social security, does not report the use of the foreign worker and the education of training for accompanying workers;
- b. Temporary suspension of the foreign worker permit process; given if the foreign worker does not have an RPTKA that has been ratified by the minister/appointed official, does not appoint accompanying workers, does not carry out education and training for accompanying workers, does not facilitate education and training for accompanying workers;
- c. Notification Revocation; given if you employ foreign workers in positions that are prohibited from being filled by foreign workers, do not pay DKP-TKA;
- d. Other sanctions are in accordance with the laws and regulations where sanctions are given depending on how serious the violation is. The more fatal the violation, the more severe the sanctions received by both the employer and the foreign worker. For example, if without a permit according to the law, the foreign worker can be deported or returned to their country of origin.

4 Conclusion

Article 10 of Presidential Regulation No. 20 of 2018, which states unequivocally that foreign workers who are shareholders, directors, or commissioners of an Employer of Foreign Workers are not required to have an RPTKA, demonstrates President Jokowi's ease and legal protection in the entry of foreign workers. Diplomatic and consular workers at foreign worker representative offices, as well as foreign employees carrying out government-mandated responsibilities as directed by the minister. Article 25 of Presidential Regulation No. 20 of 2018 additionally requires every foreign worker's employer to verify that the foreign worker has been registered in the Employment Social Security system for more than 6 (six) months and/or has an insurance policy with an Indonesian legal entity.

If it is established that the foreign worker's employer employs the foreign worker as a worker who does not comply with the rules of the legislation and thus does not have a permission to employ the foreign worker, the employer may face a minimum of one year in jail and a maximum of four years, as well as a fine of at least Rp. 100 million and a maximum of Rp. 400 million, under Article 185, paragraph (1) of the Manpower Act. The Minister of Manpower Regulation No. 10 of 2018, Permennaker No. 10 of 2018, Governing Procedures for the Use of Foreign Workers, provides four types of sanctions, namely service delays, temporary suspension of the foreign worker licensing procedure, and revocation.

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