

Analysis of the Content of Foreign Labor Regulation on The Protection of Indonesian Labor

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Abstract

Globalization requires the free movement of labour (free personal movement) across the territorial boundaries of the country. The research is aimed at reviewing and analyzing the regulatory content of the use of foreign workers that can provide protection of Indonesian workers. This research method is juridical normative with statute approach, comparative approach, history approach. The results showed that the use of TKA in Indonesia since Indonesia's independence is regulated in Law No. 3 of 1958 on The Placement of Foreign Workers and subsequently the regulation of foreign workers is included in several laws in the field of employment, and finally CHAPTER VI Article 42-49 Law No. 13 of 2003 on Employment. The content of the regulation of the use of foreign workers has not provided protection and legal certainty, the revocation of mandatory Indonesian language requirements for foreign workers a form of discrimination, the requirement for foreign workers entering Indonesia is skilled for the transfer of expertise and technology, support economic development, and encourage the improvement of competence of Indonesian workers.

Keywords: settings payload; foreign workers; protection.

Abstrak

Globalisasi menghendaki bebasnya pergerakan tenaga kerja (pree personal mocement) melewati batas wilayah teritorial negaranya. Penelitian ditujukan mengkaji dan menganalisis muatan peraturan penggunaan tenaga kerja asing yang dapat memberikan perlindungan tenaga kerja Indonesia. Metode penelitian digunakan ini adalah yuridis normative dengan pendekatan undang-undang atau statute approach, comparative approach, history approach. Hasil penelitian menunjukan bahwa Penggunaan TKA di Indonesia sejak Indonesia merdeka diatur dalam UU No. 3 Tahun 1958 tentang Penempatan Tenaga Asing dan selanjutnya Pengaturan tenaga kerja asing dimasukan dalam beberapa UU dibidang ketenagakerjaan, dan terakhir BAB VI Pasal 42-49 UU No. 13 Tahun 2003 tentang Ketenagakerjaan. Muatan pengaturan penggunaan Tenaga kerja asing belum memberikan perlindungan dan kepastian hukum, pencabutan syarat wajib Bahasa Indonesia bagi Tenaga kerja asing sebuah bentuk diskriminasi, syarat bagi tenaga kerja asing yang masuk ke Indonesia adalah yang skilled untuk terjadinya transfer keahlian dan teknologi, mendukung perkembangan ekonomi, dan mendorong meningkatkan kompetensi Tenaga kerja Indonesia.

Kata kunci: muatan pengaturan; tenaga kerja asing; perlindungan.

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Introduction

Work has such an important meaning in human life that everyone needs a job. Work can be interpreted as a source of income for a person to meet the needs of life for himself and his family. It can also be interpreted as a means to actualize oneself so that one feels his life becomes more valuable both for himself, his family and his environment. There-

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fore, the right to work is a human right attached to one's self that must be upheld and respected (Adharinalti, 2012). The meaning and importance of work for everyone is reflected in the Constitution of the Republic of Indonesia year 1945 (Constitution 1945). The government should realize that the onset of migrant workers is due to the inability of the government to provide employment facilities for its citizens. This situation is very contrary to the provisions of Article 27 paragraph (2) of the 1945 Constitution (Krustiyati, 2013).

Article 27 paragraph (2) states that every Indonesian citizen is entitled to a job and a decent livelihood for humanity. In the development of the world today Indonesia is included as a developing country, so it is experiencing a problem about population. Every year the population growth in Indonesia experiences a significant increase, so it greatly affects the addition of labor. But what is happening in Indonesia economic growth is still weak and the prospects are not yet clear, want to be taken in the direction of our development. Although the data show economic growth of 5.8% per year, and actually this is supported mainly by household consumption, which in the long run cannot be expected to grow higher let alone the government budget cannot be much expected because of the large burden of government debt. From these limitations, the pace of the economy in Indonesia is highly dependent on the business world, namely exports and investment. In order to overcome the economic growth and employment of the Indonesian government has tried to attract foreign investors to invest in Indonesia. Whereas to overcome one of the problems in Indonesia, namely employment and unemployment problems, then all that is needed is investment or the movement of the real sector where there is currently no good prospect. With the real sector undeveloped and the investment that occurs is the number of unemployed, this is because between the availability of jobs and the number of existing workers is not balanced (Arpangi, 2016).

Globalization has removed the borders of the country, opening people up to make the move for a variety of reasons (Haryono, 2017). The development of globalization is synonymous with the process of liberalization of the world economy, making the world a free market for trade and buying transactions. Globalization also requires the free movement of labor (free personal movement) that will fill jobs across the territorial boundaries of the country (Agusmidah, 2011). Such circumstances can be referred to as the liberalization of the job market specifically for Foreign Workers today has become a common phenomenon because it has basically also existed since the beginning of industrialization on the face of the earth. The use of Foreign Workers in Indonesia itself continues to develop and change according to its era starting from the Dutch colonial era until now (Diono, 2016) The movement continues to grow as the era of digital industrialization enters the Industrial 4.0 era.

From the past until now there are basically two employment problems, namely the problem of employment opportunities and the problem of labor quality. Indonesia's high population growth rate has resulted in an increasing number of labor force each year, while the available job opportunities have not been able to meet the needs of workers in accordance with the number of job seekers. This results in an imbalance between the large

number of people in need of employment and the available employment opportunities. Moreover, nowadays coupled with the large number of workers who experience termination of employment from the company where they work. The problem of lack of employment opportunities makes many unemployed in Indonesia. While the Indonesian workforce is one of the human resources as a development actor who has a productive work ethic, skills, creativity, discipline and professionalism, and is able to utilize, develop and master science and technology. But in reality, the existing Indonesian Workforce has not been able to fully master the ever-evolving science. And the scarcity of Indonesian Labor with the appropriate quality of formation needs in some sectors of employment that have a high level of difficulty or who need a workforce that has very special skills, it is not easy for employers for Indonesian Workers who meet these qualifications. This is a factor that encourages the use of Foreign Workers in Indonesia (Randang, 2011). Foreign workers can not be avoided its use, in this era of globalization that occurs in Indonesia. Indirectly the use of Foreign Workers in this context will also increase the level of competition for employment and make the problem of unemployment in the country more complex.

The open employment opportunities for foreign workers in Indonesia, is actually a great irony, considering the unemployment rate is still very high. The issuance of Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers, actually hurts the sense of justice in the community, although the reason rolled out is that foreign workers are not rough laborers. The failure of the government to provide jobs for the community, making many citizens who are in productive age complain abroad for a living. The government also responded to the concern by opening the tap to send Indonesian workers, both men and women to several countries such as to Middle Eastern countries, East Asia or the nearest ones to Malaysia and Singapore. At least in sending Indonesian workers abroad there are 2 (two) benefits obtained by the government, namely reducing the number of unemployed in the country which then becomes a burden on the country and the addition of foreign exchange for countries abroad (Hanifah, 2020).

In principle, the use of Foreign Workers in Indonesia are those who are needed in 2 (two) things, namely those Foreign Workers who bring capital (as investors) and/or bring skills in terms of transfer of knowledge or transfer of know how (Sumarprihatining-rum, 2006), and in addition to these two things are not allowed and must prioritize the use of Indonesian labor. However, concerns arise from workers, especially over the quality of workers' resources that have an impact on employment opportunities, it should be realized that the education of Indonesian workers is still far from foreign worker educational skills. Not only that, foreign workers are facilitated to be able to compete in Indonesia with the removal of Indonesian language requirements for Foreign Workers. While the people themselves were left to fight against the global forces that threatened the existence of capitalism-neoliberalism that afflicted.

One of the root causes of The Indonesian Workforce is the inequality between jobs and human resources available. From the problem of employment, we can see that educated unemployed still have a large enough number that the unemployed with the

level of education up to Senior High School will think twice about fighting for jobs in the country. The problem is still coupled with the problem of poverty that plagues Indonesian society. This is a considerable driving factor with the presence of Indonesian Workers abroad. Jobs and high-income levels are the main attraction of these Indonesian workers.

The implementation of the ASEAN Economic Community (MEA) 2015 that has been underway certainly makes Indonesia a target for Foreign Workers. All levels of employment in Indonesia will be invaded by Foreign Workers, including middle and lower employment, without any rules that provide protection against employment opportunities, transfer of science and technology for our own people, The Ministry of Manpower of the Republic of Indonesia noted that throughout 2016 there were 74,183 Foreign Workers in Indonesia (as of November 2016). Foreign Workers from China became the largest, namely 21,271 Foreign Workers followed by Japan as many as 12,490 Foreign Workers and the Republic of Korea as many as 8,424 Foreign Workers. And based on the results of the examination of the use of Foreign Workers conducted by the Ministry of Manpower in the central and regional period January 2016 to December 2016, from 69 companies examined have been found violations of Foreign Workers (central and regional) as many as 1,324 people (Without IMTA = 794 people, and Abuse of Office = 530 people. Data of the Ministry of Manpower in 2016 the existence of illegal Foreign Workers is one of the problems that occur in many countries of the world amid the dynamics of the global economy that is increasingly open today.

The above facts show that Indonesia has become a paradise for Chinese people. The number of those in and out of Indonesia increased sharply. The escalation of Chinese citizens increased by 15 percent or 146,409, to 1,329,847 from the previous 1,083,438 people. Foreign nationals entering using visa-free short stays are increasing. from 3,065,133 in 2015, to 5,170,883 on December 18, 2015 and the majority of Chinese came for business and investment purposes. Few come to travel or study. It is thought to be a result of the visa-free program, which has been in effect since March. As of November 2016, 95,846 Chinese citizens obtained a stay permit (maximum 30 days) (Jazuli, 2018).

Along with the enactment of MEA, Indonesia is also adapting in various fields, one of which is the field of labor with the enactment of MEA Foreign Workers can be easier to enter the Indonesian market, the presence of Foreign Workers is a necessity and is a challenge that must be faced because Indonesia needs Foreign Workers in various sectors, with the presence of Foreign Workers in the economy in our country will create competitive competitiveness. The philosophical use of Foreign Workers, namely the principle of benefits, security aspects, legal aspects, namely the entry of Foreign Workers must obtain a work permit from the Minister of Manpower, in line with the use of Foreign Workers is to meet the needs of professional workers in certain fields that cannot be filled by Indonesian Workers with the acceleration of technology experts and increased investment (Suhandi, 2008). Thus the need for legal tools, especially in the field of employment, namely Foreign Workers need to get attention, because the presence of Foreign Workers working in Indonesia as part of the Indonesian Labor force that must also get protection

based on Indonesian labor regulations, on the other hand the development of skills improvement of Indonesian workers needs to be improved to be able to compete according to needs. This is because the basic philosophy of using Foreign Workers is as a series of efforts to increase investment, transfer of technology and transfer of skills to the Indonesian workforce, as well as the expansion of employment opportunities (Miru, 2008). Therefore, foreign investment in Indonesia is entirely aimed at the welfare of the People of Indonesia. In fact, the next is whether this has been implemented in accordance with the Considerant Law No. 13 of 2003 on Manpower, namely to provide protection to the workforce by guaranteeing the basic rights of workers/workers, equal opportunities and non-discrimination treatment on any basis to realize the welfare of workers/workers and their families while paying attention to the development of business progress.

Research Problems

There are two problems discussed in this article. *First*, what is the content of the Regulation on the Use of Foreign Workers in Indonesia? *Second*, has the Regulatory Charge for the use of Foreign Workers provided protection to Indonesian Workers?

Research Method

In legal research there are several approaches, with such approaches, researchers will get information from various aspects of legal issues that are being researched to find answers to the approaches used in legal research is the approach of law or statute approach, case approach, historical approach or historical approach, comparative approach comparative approach, and conceptual approach or conceptual approach (Marzuki, 2005). This study uses an approach that is a legal approach or statute approach. In the method of approach of legislation, what must be understood is the hierarchy, and the principles in the legislation based on the provisions of Article 1 number 2 of Law No. 12 of 2011 concerning the Establishment of Legislation, legislation is a written regulation established by state institutions or authorized and generally binding officials.

Discussion

1. Development of Foreign Labor Use Arrangements in Indonesia

The presence of global trade has broken down the barriers of technological and information transformation to various countries. This global trade, which was applied to free trade initiated by the WTO (World Trade Organization, 1995). In the era of free trade, the workforce that mastered the science of formal and non-formal education will be used.

Reflecting on the rapid growth of the world market affects the movement of labor between countries. The move out of the territory of the country where they come from is driven by migrant workers driven solely by economic motives to get the best working conditions and a decent livelihood. In terms of macroeconomics, migrant workers are

positioned as agents of change that directly contribute to the economic and social development of the country in which they work and also increase the foreign exchange of the country in which they come from (Dodik, 2015). On the one hand, Indonesia's labor migration can make a considerable contribution to the country's economic development, but on the other hand, not a few problems are faced. Indonesia's growing labor problem is caused by the number of Indonesian workers who want to work abroad continues to increase from year to year, especially since the economic crisis that hit Indonesia (Susetyorini, 2010). For many Indonesians, various internal and external factors have narrowed employment opportunities in the country so that pitting profits by working abroad is not an alternative choice or employment opportunity, but rather tends to be due to compulsion. Considering the economic conditions, working abroad to earn enough income becomes the most sensible option, the only one that exists and that is through the informal sector (Johannes, 2007).

Today, the world's workforce leaves its country for job missions in other countries that offer higher wages. Workers who have a high selling value will certainly have a considerable opportunity in achieving higher wages. Globalization not only causes a rapid turnaround of investment and information; it also concerns labor issues. The rapid flow of labor migration is basically the result of three different conditions in each developed country, a new industrialized country and a poor and developing country. The success of economic development in developed countries has pushed wage levels and working environment conditions to an even better level. In new industrialized countries, the acceleration of economic development causes the demand for skilled labor to be imported from developed countries, while for more muscular jobs come from poor and developing countries.

In poor and developing countries, it is difficult to find jobs and low wages that drive labor migration. The occurrence of such conditions, not only happening now but has been since long ago even though the flow of migration from and to Indonesia has not been so fast today but the use of foreign workers has been around for a long time. Foreign Workers are non-Indonesian citizens who are able to do work, both inside and outside the working relationship, in order to produce services or goods to meet the needs of the community (Khakim, 2009).

Employment development as an integral part of national development based on Pancasila and the Constitution of the Republic of Indonesia year 1945, implemented in the framework of the development of a whole Indonesian people and the development of Indonesian society entirely to improve the dignity, dignity, and self-esteem of the workforce and realize a prosperous, fair, prosperous, and equitable society, both material and spiritual. Employment development must be regulated in such a way that the basic rights and protections for workers and workers and at the same time can realize conditions conducive to the development of the business world. Employment development has many dimensions and interrelationships. The association is not only with the interests of the workforce during, before and after the employment period but also the interests of

employers, the government, and the community. Therefore, a comprehensive and comprehensive arrangement is required, including human resource development, productivity improvement and competitiveness of the Indonesian workforce, efforts to expand employment opportunities, labor placement services, and industrial relations development. In the field of international employment, awards for human rights in the workplace are known through 8 (eight) basic conventions of the International Labour Organization (ILO). This basic convention consists of 4 (four) groups, namely: Freedom of Association (ILO Convention Nos. 87 and No. 98); Discrimination (ILO Convention Nos. 100 and Number 111); Forced Labor (ILO Convention Nos. 29 and Number 105); and Child Protection (ILO Convention Nos. 138 and Number 182).

The commitment of the Indonesian nation to respect human rights in the workplace, among others, is realized by ratifying the eight basic conventions. In line with the ratification of the convention on basic rights, the drafted labor law must also reflect obedience and appreciation to the seven basic principles. Some things that must be contained in the employment regulations contained in Law No. 13 of 2013 include: Foundations, principles, and goals of employment development; Labor planning and employment information; Providing equal opportunities and treatment for workers and workers; Job training directed at improving and developing workforce skills and skills to improve work productivity and enterprise productivity. Labor placement services in order to optimally empower the workforce and the placement of labor on jobs in accordance with the dignity and dignity of humanity as a form of responsibility of the government and society in an effort to expand employment opportunities; and proper use of foreign workers in accordance with the necessary competencies.

Especially regarding the use of foreign workers as contained in the labor regulations in Indonesia, of course, must be distinguished by the labor arrangements of Indonesian citizens. The purpose of the regulation on Foreign Workers is reviewed from the aspect of employment law is basically to guarantee and provide decent employment opportunities for Indonesian citizens at various fields and levels. Therefore, in hiring Foreign Workers in Indonesia is carried out through strict mechanisms and procedures starting with selection and licensing procedures to supervision. The enactment of Law 13 of 2003 has repealed Law No. 3 of 1958 concerning the Placement of Foreign Workers in Indonesia. Chapter VIII Article 42 to 49 law 13 year 2003 becomes the basic reference in terms of placement of Foreign Workers in Indonesia today plus various other implementing regulations under the Law.

The Constitution of the Republic of Indonesia of 1945 is the Constitution of the Republic of Indonesia. In general, the content of the 1945 Constitution or Constitution in various worlds according to the Amendment Review Team of the Faculty of Law of Brawijaya contains about the guarantee and protection of human rights, the composition of fundamental state regulations, division and restriction of power and regulate the procedure of amendment of the 1945 Constitution.

Human rights are the core material contained in the 1945 Constitution, while the understanding of Human Rights in Article 1 number 1 of Law No. 39 of 1999 on Human Rights asserts, Human Rights is a set of rights inherent in the nature and existence of every human being as a creature of God Almighty and is His grace that must be respected, upheld and protected by the State, Law, Government and everyone for the honor and protection of human dignity. In the opinion of Jimly Asshiddiqie, Human Rights is inherent in every human being, because it is a human right or the human rights, it is different from the understanding of the citizen's rights, but because human rights have been firmly listed in the 1945 Constitution, so it has also officially become the constitutional right of every citizen or Constitutional Right. Human rights relating to the protection of labor are stipulated in the 1945 Constitution Article 27 paragraph (2) which asserts, each citizen is entitled to a job and a decent livelihood for humanity and Article 28 D paragraph (2) affirms that, everyone has the right to work and get fair and decent rewards and treatment in employment relations, such arrangements as the basis for the use of Ading Labor in Indonesia against domestic job market conditions, investment needs, international agreements and free market liberalization with regard to national interests to provide protection against Indonesian labor opportunities

Foreign Workers are non-Indonesian citizens who are able to do work, both inside and outside the working relationship, in order to produce services or goods to meet the needs of the community. The general provisions of Law No. 13 of 2003 concerning Employment Article 1 paragraph (13) state that the foreign workers are foreign nationals who hold visas with the intention of working in the territory of Indonesia. Hiring Foreign Workers is an irony, while in the country there are still many unemployed people. However, for some reason, hiring foreign workers is inevitable. According to Budiono, there are several purposes of placement of Foreign Workers in Indonesia (Budiono, 1995), namely:

- a. Meet the needs of skilled and professional workers in certain fields that cannot be filled by the Indonesian workforce
- b. Accelerate the national development process by accelerating the process of technology transfer or transfer of science, especially in the field of industry.
- c. Provide expanded employment opportunities for Indonesian workers
- d. Increase foreign investment as a support for development capital in Indonesia.

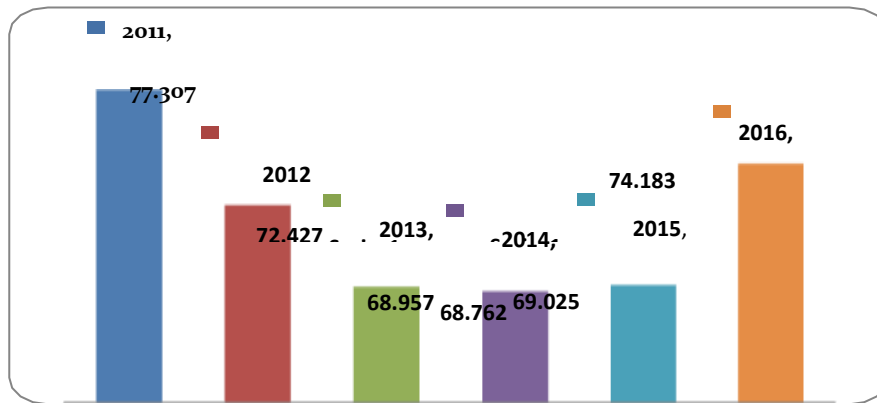
The Ministry of Manpower of the Republic of Indonesia noted that during 2016 there were 74,183 Foreign Workers in Indonesia (as of November 2016) consisting of the largest Foreign Workers from China, namely 21,271 Foreign Workers followed by Japan as many as 12,490 Foreign Workers and the Republic of Korea as many as 8,424 foreign workers. The following graph shows the number of foreign workers during 2011-2016. Factors that cause the rise of foreign worker, especially from China, include:

- a. Factors of investment openness in Indonesia. As we know today Indonesia is actively building, and there is a government program in order to accelerate development so as

to bring investors in a package with its workforce (ranging from top managers to workers).

- b. Visa-free policy factors. With the opening of the entrance of foreigners without visas (169 countries), many of the Chinese citizens came to Indonesia, and had an impact on the increase in immigration violations.
- c. Implementation of the ASEAN Economic Community (MEA). This led to the opening of border less and the increasing arrival of Foreign Workers (Balitbang Hukum dan HAM, 2017).

Graph of Foreign Workers Data in Indonesia



Ministry of Manpower Resources
Source: Legal and Human Rights Commission, 2017

The development of Foreign Workers regulation in Indonesia has been regulated in various regulations as follows:

- a. Law No. 3 of 1958 concerning The Placement of Foreign Workers.

Since 1958, Indonesia has had laws governing the placement of foreign workers in the country. Based on the juridical provisions of Article 28 Paragraph (1) and 89 uuds 1950 then to guarantee a decent nation of employment opportunities in Indonesia for Indonesian citizens, there needs to be a regulation to supervise the use of foreign workers in Indonesia. The reason for the issuance of the Law, because at that time various areas of work occupied by foreign workers, this is in addition to continuing the field of work that has been implemented in the colonial period, also because the Indonesian workforce has not allowed to occupy certain areas of work, both in technical fields and business fields in a company, when it is realized that the condition should not continue, because it is not good for the development of Indonesian labor.

- b. Law No. 1 of 1967 as amended by Law No. 1970 on Foreign Investment and the enactment of Law No. 6 of 1968.

At this time there has been a change in the rules in the field of employment, especially the arrangement of placement of foreign workers, if at the beginning of independence allowed foreign workers to work in Indonesia with certain restrictions, then after the enactment of Law No. 1 of 1967 as amended by Law No. 1970 on Foreign Investment and

the enactment of Law No. 6 of 1968 as amended by Law No. 1970 on Foreign Investment , then the two laws above greatly affect the development of employment law. Therefore, in 1969, Law No. 14 of 1969 on Basic Provisions concerning Labor was made.

c. Law No. 14/1969 on Basic Provisions concerning Labor

The difference with the previous labor law, especially in the arrangement of placement of foreign workers, namely, in law No. 14 of 1969 concerning The Provisions on Labor, the arrangement of placement of foreign workers in Indonesia is set into one in the Labor Law, the reason for the still possible employment in Indonesia related to technology transfer problems, labor transfer, employment assistance and job training, this is intended in the framework of the utilization of Indonesian labor , in order to be able to respond to applications and the use of ever-evolving technology. Thus, in relation to employment law in the period after independence until 2005, several changes have been made. This is done because of consideration of the needs and dynamics of society with the birth of Law No. 14 of 1969 concerning Basic Provisions concerning Labor; then Law No. 25 of 1997 on Employment and Law No. 11 of 1998 concerning Amendments to The Enactment of Law No. 25 of 1997 concerning Employment; and finally Law No. 28 on the Establishment of Government Regulation Replacement Law No. 3 of 2000 concerning Amendments to Law No. 11 of 1998 concerning Amendments to The Enactment of Law No. 25 of 1997 concerning Employment into Law. The last is Law No. 13 of 2003 on Employment. With the change in employment law there has been a very basic change in labor regulation, specifically related to the regulation of foreign workers where the development is not separately regulated in one law, as contained in Law No. 3 of 1958 concerning the Placement of Foreign Workers, but in various changes in employment law is still maintained the substance of the law relating to licensing and supervision institutions and the substance of laws related to the use and placement of foreign workers.

d. Law No. 13/2003 on Employment.

Regulation on foreign workers is stipulated in Law No.13 of 2003 on Employment. To implement the law, presidential regulation, regulation of the Minister of Manpower, and decree of the Minister of Manpower are made (Nurhidayati, 2019).

Prior to the birth of Law No. 13 of 2003 on Employment of the use of foreign workers in Indonesia is stipulated in Law No. 3 of 1958 on Placement of Foreign Workers. The Foreign Worker Placement Law has been repealed by Employment Law No. 13 of 2003 in Article 192 number 9, furthermore the regulation on the use of foreign workers is no longer regulated in a separate legislation, but is already part of the compilation in the new Labor Law. Employment Law (among others) is the regulation of the Use of Foreign Workers contained in Chapter VIII, Article 42 to Article 49.

To meet the needs of the national job market, especially in filling the vacancies of expertise and competence in certain fields that cannot be covered by the Indonesian workforce, foreign workers can be employed in Indonesia as long as in the employment relationship for a certain position and a certain time. Hiring foreign workers can be done

by any party in accordance with the provisions except the employer of an individual person.

Government Regulation as a follow-up to Law No. 13 of 2003 has not been established, then related to Foreign Workers the government still enforces Ministerial Decree Number: KEP-173/MEN/2000 concerning The Period of Permit to Employ Foreign Nationals Of Immigrants which stipulates that every employer who employs foreign workers must have written permission from the minister or appointed official except against foreign representatives who use foreign workers as diplomatic and consular employees. Provisions on certain positions and specific times for foreign workers are stipulated by the decree of the Minister, namely the Decree of the Minister Number: KEP-173/MEN/2000 concerning the Period of Permit to Employ Foreign Nationals of Migrants. In addition to having a permit to hire foreign workers, previously employers must have a plan for the use of foreign workers authorized by the Minister or appointed officials except for government agencies, international agencies and representatives of foreign countries. Provisions on the procedure for ratification of the plan for the use of foreign workers are stipulated by the Decree of the Minister, namely the Ministry of Manpower Number: 28/MEN/2003 concerning the Plan for the Use of Foreign Workers (RPTKA). In this Plan for the Use of Foreign Workers RPTKA at least contains:

- a. Reasons for the use of foreign workers;
- b. The position and/or position of foreign workers in the organizational structure of the company concerned;
- c. Period of use of foreign workers;
- d. Appointment of Indonesian nationals as escorts of foreign workers employed for technology transfer and transfer of expertise from foreign workers.

Foreign labor employers are obliged to appoint Indonesian workers as foreign workers employed for technology transfer and transfer of knowledge (transfer of learning) from Foreign Workers. In addition, Foreign Labor Employers are obliged to carry out education and job training for Indonesian workers in accordance with the qualifications of positions occupied by Foreign Workers. However, the provisions of the appointment of accompanying personnel and the implementation of education and training are excluded for Foreign Workers who occupy the position of directors and or commissioners determination for Indonesian workers prospective companion foreign workers in order to transfer technology or transfer of knowledge (ToK) implementation is carried out through selection organized by the Local District/City Employment Office), or together with the technical institution concerned.

Transfer of Knowledge (ToK) seen from the aspect of its usefulness, the implementation of ToK turns out to provide benefits for the company. But in practice it is not as smooth as imagined. This is because, Indonesian workers who accompany foreign workers sometimes have not mastered a foreign language so there is an error in interpretation and severe miscommunication is possible. This situation must be realized by employers and escorts and find solutions for example, first hold a short course for the language to be used

with foreign workers and filter the candidates capable, professional and applicable escorts (Hastuti, 2005).

The Indonesian government in 2015 seems to be tightening the requirements that must be met in order to be able to hire foreign workers. Integrated One-Door Service Investment Coordinating Board, procedurally of course easy because the application for licensing only needs to be done online at the Investment Coordinating Board, so it is no longer necessary to visit other ministries/agencies for the management of licensing supporting documents. But it turns out that specifically in terms of licensing the use of foreign workers, in substance the government actually tightens the requirements that must be met to apply for permission for the use of Foreign Workers, making it increasingly difficult to meet its requirements. So although procedurally get the ease because facilitated integrated service one door in the Investment Coordinating Board, but in substance the requirements are increasingly complicated (Adha, 2017). Earlier in 2015, the Minister of Manpower has also issued a variety of regulations that limit the positions that can be occupied by Foreign Workers in various industry sectors, including through:

- a. Decree of the Minister of Manpower No. 13 of 2015 challenges The Position That Can Be Occupied by Foreign Workers in the Category of Rental Services, Employment, Travel Agents and Other Business Support, Domestic Labor Selection and Placement Service Group
- b. Decree of the Minister of Manpower No. 14 of 2015 concerning Positions That Can Be Occupied by Foreign Workers in the Category of Processing Industry, Sub Group Furniture Industry
- c. Decree of the Minister of Manpower No. 12 Year 2015 on Positions That Can Be Occupied by Foreign Workers in the Category of Agriculture, Forestry and Fisheries, Livestock Group
- d. Decree of the Minister of Manpower No. 15 of 2015 concerning Positions That Can Be Occupied by Foreign Workers in the Category of Processing Industry, Sub Group of Footwear Industry
- e. Decree of the Minister of Manpower No. 16 of 2015 concerning Positions That Can Be Occupied by Foreign Workers in the Category of Provision of Accommodation and Provision of Drinking Food Of The Main Group of Accommodation Provision And Provision of Food and Beverages
- f. Decree of the Minister of Manpower No. 17 of 2015 concerning Positions That Can Be Occupied by Foreign Workers in the Category of Processing Industry, Sub Group of Cigarette and Cigar Industry Generally

In the above regulations, there are restrictions for a Foreign Worker to be able to work in a certain position. For example, determined by the Decree of the Minister of Manpower No. 12 of 2015, only the positions listed in the Attachment to this Decree of the Minister of Manpower can be occupied by Foreign Workers in the categories of agriculture, forestry and fisheries, livestock groups. Whereas if the positions to be occupied by Foreign Workers are not contained in the attachment of the Decree of the Minister of Manpower,

then the minister can give permission by first requesting recommendations from the ministry in charge of livestock. So Foreign Workers who want to work outside the list of positions that can be occupied by Foreign Workers in accordance with the regulation of the ministry must meet the new requirements, namely getting recommendations from the relevant ministries.

In addition, in the list of positions that can be occupied by Foreign Workers there are also other restrictions in the form of timeframes. For example, determined by the Decree of the Minister of Employment No. 12 of 2015, foreign workers in agriculture can only occupy the position of Mechanical Engineering Expert for 2 Years without the possibility to obtain an extension of the permit. It is also understandable that the reason for the implementation of the requirement for the sake of increasing is that in a certain period of time there is a transfer of expertise and knowledge from foreign workers to Indonesian workers. Please note, one of the requirements for foreign workers to be able to work in Indonesia (having IMTA) is the statement of foreign workers to be willing to transfer their expertise to The Companion Indonesian Labor (See regulation of the Minister of Manpower and Transmigration No. 12 of 2013). The overall arrangements, which appear to complete the list of positions previously held in 2012, have been banned from being occupied by a foreign worker based on the decree of the minister of manpower and transmigration No. 40 of 2012 concerning Certain Positions Prohibited by Foreign Workers. Basically foreign workers are allowed to occupy a high position in the company in Indonesia. However, not all high positions in a company can be occupied by foreign workers. Therefore, the government issued a decree of the Minister of Manpower and Transmigration No. 40 of 2012. The Minister's decision aims to remind and regulate positions that should not be occupied by foreign workers in a company.

2. Protection of Indonesian Workers in Foreign Labor Regulatory Content

Legal protection is to provide protection to the human rights of harmed others and such protection is given to the community so that they can enjoy all the rights granted by the law or in other words legal protection is a variety of legal efforts that must be given by law enforcement officials to provide a sense of security, both mindfully and physically from interference and various threats from any party (Rahardo, 1983). Legal protection is the protection of dignity and dignity, as well as recognition of human rights owned by legal subjects based on the provisions of the law of arbitrariness or as a collection of rules or regulations that will be able to protect one thing from other things. With regard to consumers, the law provides protection of the rights of customers from something that results in the unfulfillment of those rights (Hadjon, 1987). Legal protection is a thing that protects the subjects of the law through the prevailing laws and regulations and imposed its implementation with a sanction. Legal protection according to Philipus Hadjon can be distinguished into two, namely:

a. Preventive Legal Protection

Protection provided by the government with the aim of preventing before the occurrence of violations. This is contained in the legislation with the intention to prevent a violation and provide signs or restrictions in performing sutu obligations.

b. Repressive Legal Protection

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if there has been a dispute or an offence has been committed.

According to Zainal Asikin (2004) the protection of Indonesian Labor law into three kinds are: economic protection, social protection, and technical protection. The function of legal protection is to fulfill the human rights of workers fairly for the government and employers to avoid unlawful and arbitrary attitudes. Protection of Foreign Workers in Indonesia. Until now the use of foreign workers has not been much different before the Existence of Employment Law No. 13 of 2003. This situation will continue if the Government does not start to intervene in the placement of foreign workers. This includes tightening supervision of the use of foreign workers and limiting and closing certain positions for foreign workers by opening and providing such positions for Indonesian workers. The process of "Indonesianization" of positions occupied by foreign workers is always carried out by requiring the presence of Indonesian assistance workers for foreign workers working in Indonesia and requiring education and training for Indonesian workers, which is entirely intended in the framework of "transfer of knowledge" and "transfer of learning" from foreign workers to Indonesian workers.

Several laws and regulations have been established that govern the basic aspects and forms of regulations that govern the purpose of selective use of foreign workers while prioritizing the protection of Indonesian workers are:

- a. Law No. 13/2003 on Employment,
- b. Presidential Regulation of the Republic of Indonesia Number 72 of 2014 concerning the Use of Foreign Workers and the Implementation of Education and Training of Accompanying Workers,
- c. Regulation of the Minister of Manpower No. 16/2015 concerning Procedures for The Use of Foreign Workers and:
- d. Regulation of the Minister of Manpower No. 35 of 2015 concerning Amendments to Regulation of the Minister of Manpower No. 16 of 2015 concerning Procedures for the Use of Foreign Workers. Law No. 13 of 2003 does not regulate foreign workers in detail, so some of these arrangements are still delegated by implementing rules.

Paying attention to the above regulations shows the regulation of foreign workers to be very flexible which impacts easy to change the rules. One of them is the rules contained in the Regulation of the Minister of Manpower in 2015, in this regulation has been changed 2 times, namely the Regulation of the Minister of Manpower No. 16 of 2015 has been amended by the Regulation of the Minister of Manpower No. 35 of 2015. One of them is the elimination of the obligation for employers to absorb at least 10 Indonesian workers when hiring foreign workers and no longer the provision of foreign nationals to be able to

speak Indonesian. It means Indonesian is not a necessity. Thus it will have a negative impact and a positive impact such as the number of foreign workers who flock to Indonesia do not learn to speak Indonesian, not inhibited entry to foreign capital, while the negative impact is inhibiting the transfer of technology from foreign workers to Indonesian labor companion (Puspitasari, 2018). Other requirements that are widely violated in practice such as positions or forms of work that can be done by foreign workers. Then also have to pay attention to the requirements that must be met by foreign workers in Indonesia, among others have a certificate of competence or certificate of work experience in accordance with the position occupied by foreign workers at least 5 (five) years, make a statement letter obliged to transfer his expertise to the Indonesian labor companion as evidenced by the report of the implementation of education and training. Permission to use foreign workers is the next step after the employer obtains a plan for the use of foreign workers. If reviewed from the formation of legislation must have a basis of validity both formal and material, the basis of validity that is formally related to the procedure of the formation of legislation, while the basis of validity that is materially related to the material or substance (content) in a statutory regulation.

According to Bagir Manan related to the requirements of the formation of legislation in the juridical enforceability of the rule of law that is, first, the necessity of the authority of the lawmakers. This provision states that every rule of law must be made by officials or entities that have the authority in making legislation; second, the necessity of conformity of the type or form of legislation with the material that has been regulated, especially if it is ruled by legislation that has a level, higher, and/or equivalent. Discrepancies in this form are a reason to invalidate the legislation; third, the necessity in terms of following the prescribed ordinances. If the ordinance is obeyed or followed, then the legislation is null and void or can be said to have no binding legal force; fourth, the necessity of lower regulations should not be contrary to higher-level regulations, because a rule cannot contain rules that are contrary to the constitution or the 1945 Constitution (Anggono, 2014). Based on the description above in the fourth number in the terms of the formation of legislation, in the fourth number states that in the legislation there is a necessity where the norm or lower regulation should not be contrary to the higher norm, especially until it is contrary to the basic norm that is in the 1945 Constitution.

Every foreign worker must have an Indonesian labor companion person over language and technology transfer. However, the policy of the Minister of Manpower Regulation has been revised by the Regulation of the Minister of Manpower No. 35 of 2015 concerning Amendments to Regulation of the Minister of Manpower No. 16 of 2015 concerning Procedures for the Use of Foreign Workers so that in the face of free trade, it is necessary to regulate employment that refers to regulations on the use of foreign workers. So it can be concluded that The Regulation of the Minister of Manpower No. 35 of 2015 concerning Regulation of the Minister of Manpower No. 35 of 2015 concerning Procedures for the Use of Foreign Workers no legal requirement sees some Articles that tighten and exempt the use of foreign workers in Article 3, Article 36 paragraph (1) &

Article 40 paragraph (2) Regulation of the Minister of Manpower No. 16 of 2015 stipulated that the DKP-TKA paid must be converted to Rupiah. Regulation of the Minister of Manpower 35 of 2015 abolished this provision. This abolition is contrary to Law No. 7 of 2011 on Currency. The abolition of this Article means abolishing the rules on the ratio of the number of foreign workers to local workers. The abolition of the above is feared to eliminate the opportunity of the transfer of knowledge and transfer of technology from foreign workers to local workers. Although article 65 of the minister of manpower regulation 16 of 2015 stated that employer companies can assign foreign workers to transfer technology and expertise in educational and training institutions, but this may not be implemented if it is not clearly required in the legislation. Moreover, currently the Decree of the Directorate General governing the assistance of foreign workers by local workers for the transfer of technology and expertise has not been published as mentioned in Article 66A of the Regulation of the Minister of Manpower 35 of 2015. On the other hand, the elimination of this ratio provides convenience for companies doing business in Indonesia to hire foreign workers more cheaply because there is no need to hire more Indonesian workers and no obligation to conduct training on Indonesian workers.

Observing the substance of the provisions of the legislation as described above, then it can be understood that the regulation on the use of foreign workers in Indonesia in the process of the use of foreign workers in Indonesia should look at the regulations governing the use of foreign workers stipulated in Law No. 13 of 2003 on Employment in CHAPTER VI Article 42-49 concerning the use of foreign workers and further regulated in the Regulation of the Minister of Manpower (Peraturan Menteri Tenaga Kerja (Permenaker)) No. 35 of 2015 concerning Amendments to The Regulation of the Minister of Manpower No. 16 of 2015 on Procedures The use of foreign workers, especially in Article 36 paragraph (1). However, the regulation on the use of foreign workers in Regulation of the Minister of Manpower No. 35 of 2015 concerning Regulation of the Minister of Manpower No. 35 of 2015 concerning Procedures for the Use of Foreign Workers is not legal

Similarly, the Amendment to the Terms of Use of TKA in Permennaker No. 16 of 2015 concerning Procedures for the Use of TKA if reviewed based on the principles of employment law contained in the Labor Law are as follows:

a. Principles of Labor Protection in Accordance with The Dignity and Dignity of Humanity

Some forms of labor protection in accordance with the honor and dignity of human beings are stated in several articles only in the Regulation of the Minister of Manpower No. 16 of 2015 concerning Procedures for the Use of foreign workers below, among which are: Wage policy is stipulated in the plan of the use of foreign workers article 11 paragraph 1. The policy has an insurance and social security policy in article 36 paragraph 1 points d and e.

b. Principle of Non-Discrimination

The understanding of the principle of non-discrimination itself in the explanation of article 5 of the Labor Law is explained that every worker has the same rights and

opportunities to obtain a decent job and livelihood without distinguishing gender, ethnicity, race, religion, and political flow in accordance with the interests and abilities of the workforce concerned, including equal treatment of people with disabilities. However, in the Regulation of the Minister of Manpower No. 16 of 2015 concerning Procedures for the Use of Foreign Workers there are several articles that are not in accordance with the principle of non-discrimination on the requirements of foreign workers, one of which is about the requirements of foreign workers, where in the requirements of foreign workers there is a revocation of the mandatory requirement of Indonesian language for Foreign Workers in article 36 paragraph 1 of the Regulation of the Minister of Manpower No. 16 of 2015 on The Procedure of Use of Foreign Workers according to the author is a form of discrimination against Indonesian workers themselves because in fact the foreign workers are more facilitated to be able to work in the territory of Indonesia , while Indonesian workers were left struggling to get jobs in their own country. Because employers will prefer Foreign Workers compared to native Indonesian workers because the education of Indonesian workers is still far from the educational skills of foreign workers

c. Principle of Coherence

The supervision process conducted by the regional employment office is always coordinated with the center. Supervisors in the area get training and coaching by the Ministry of Manpower. The cohesiveness of surveillance can be seen through the surveillance reporting flow. The Regent or mayor will report the results of supervision to the Governor, and then the Governor will report to the Minister of Manpower and Transmigration. Policy Article 36 paragraph (1) Regulation of the Minister of Manpower No. 16 of 2015 concerning Procedures for the Use of foreign workers on the removal of Indonesian language requirements for foreign workers. this is becoming a pros and cons among the community. According to the author, it clearly deviates from Law No. 24 of 2009 on the Use of Indonesian Language, in Article 25 paragraph (2) and article 33 paragraph (1) that Bahasa Indonesia as the identity of the Indonesian nation, and The Indonesian language must be used in the working environment of government and private, although the reason for the revocation of the Indonesian language for TKA is to increase investment and boost the economy in Indonesia.

In general, the first priority use of labor is Indonesian citizen labor for domestic investment purposes compared to foreign workers which is stated in Article 10 paragraph (1) of Law No. 25 of 2007 on Investment, explaining that: "Investment companies in meeting the needs of workers must prioritize the labor of Indonesian citizens." So, even if Indonesia is open in terms of the use of foreign workers, the government should still try to protect local workers by applying regulations containing strict conditions and qualifications for foreign workers as stipulated in The Minister of Manpower Regulation No. 16 of 2015 concerning the Use of Foreign Workers that has been amended by the Regulation of the Minister of Manpower of the Republic of Indonesia Number 35 of 2015 Article 36 Paragraph (1) above. This is certainly so that foreign workers who enter Indone-

sia are skilled foreign workers (have expertise), so that it is possible to transfer skills and technology, support economic development, and encourage the improvement of the competence of foreign workers

Conclusion

Regulation on the use of foreign workers in Indonesia since Indonesia's independence is first regulated in the form of a separate law, namely Law No. 3 Year 1958 on The Placement of Foreign Workers and subsequently the Regulation entered into the Law of Employment, namely CHAPTER VI Article 42-49 Law No. 13 of 2003 on Employment, Regulation of the Minister of Manpower No. 35 of 2015 concerning Amendments to Regulation of the Minister of Manpower No. 16 of 2015 on Procedures for the Use of foreign workers. Based on the principle of employment regulation of the use of foreign workers has not been in accordance with the Principle of Non-Discrimination. The revocation of mandatory Indonesian language requirements for foreign workers is a form of discrimination against Indonesian workers themselves because in fact foreign workers are made easier to work in the territory of Indonesia, while Indonesian workers are allowed to struggle to get a job in their own country.

Suggestion

Although Indonesia is open in terms of the use of foreign workers, the government should still try to protect and provide protection and legal certainty of Indonesian workers by applying regulations containing strict conditions and qualifications for foreign workers so that foreign workers entering Indonesia are skilled foreign workers (have expertise), so that it is possible for the transfer of expertise and technology, support economic development, and encourage the improvement of the competence of the Indonesian workforce.

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