



Legal Protection for Indonesian Labor in Government Policy Regarding the Admission of Foreign Labor in Indonesia

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Abstract

Enactment of Presidential Regulation No. 20 of 2018 reaps the pros and cons in the community. This is not without reason but because of several articles contained in the Presidential Regulation (*Perpres*) are considered making it easier for Foreign Workers to work in Indonesia. The government policy and legal protection of Indonesian workers are being questioned in relation to the policy of accepting the foreign workers. The method used to examine the problems to be discussed in this study is normative juridical research method which is explained in descriptive analytical technique. Policies carried out by the government when viewed from the existing regulations are made to provide guarantees and rights to foreign workers while working in Indonesia. The acceptance of Foreign Workers in Presidential Regulation No. 20 of 2018 provides conditions that must be complied with by employers and the foreign workers cannot be employed if these conditions are not met. This is a form of government effort as a protection for Indonesian Workers.

Keywords: Foreign Workers; Policy; Protection

INTRODUCTION

Global issues are actually not a new problem today, because every development in science, technology will have influences on the order of human life and society. With the progress of the economy, creative human resources are highly needed, work ethic and high nature of innovation. The visible phenomenon of the development today is that success in the industrial and economic fields shows that the impact is still alarming. The gap between the needs of qualified personnel, the right expertise for industrial and economic needs is still low (Hartono, 2000).

The development of globalization has led to a movement of capital flows and investment to various parts of the world, and there has also been population migration or movement of labor between countries. As a developing country, Indonesia has shown a positive attitude towards regulating multilateral trade. This was proven by Indonesia's membership in the GATT since February 24, 1950 and later it became a member of the WTO and ratified the multilateral trade agreement with Law Number 7 of 1994 (Hata, 2006).

In accordance with free and active foreign policy, Indonesia collaborates with all trading partners in both developed and developing countries. The presence of foreign workers in Indonesia is one form or way to influence the investment climate in Indonesia. The need for professional experts and the need for technology that can support a work process make private companies, both foreign and national private, use foreign workers as their workforce. The purpose of using this foreign workforce is to meet the needs of skilled workers and professionals in certain fields who have not been able to be filled by Indonesian workers and accelerate the national development process by accelerating the

transfer of science and technology. To avoid the occurrence of legal problems and excessive use of foreign labor, the government must be careful to maintain a balance between foreign workers and domestic workers.

On March 26, 2018, President Joko Widodo signed Presidential Regulation No. 20 of 2018 concerning the Use of Foreign Workers which are expected to support the national economy and the expansion of employment opportunities through increased investment. This regulation stipulates that every employer who uses Foreign Workers must have a Foreign Work Plan (RPTKA) that is authorized by the minister or authorized official.

The issuance of this Presidential Regulation invited controversy in the community, according to Timboel Siregar as Secretary General of the All Indonesian Workers Organization (OPSI) article in the Presidential Regulation No. 20 of 2018 is contrary to Law No. 13 of 2003 Employment. Timboel Siregar also gave an example in Article 9 of Presidential Regulation No. 20 of 2018 ratifies the Plan for the Use of Foreign Workers (RPTKA), which is a permit to employ foreign workers, meaning that business entities wishing to use foreign workers are not obliged to take care of permits anymore. On the other hand an explanation of Article 43 of Law No. 13 of 2003 states that RPTKA is a requirement to obtain a work permit. Explanation of Article 43 means that RPTKA and TKA Permits are different things and RPTKA is a condition for obtaining permission (Rachman, 2018).

According to the Deputy Chairperson of the House of Representatives Commission IX Saleh Daulay, the President's policy regarding the issuance of Presidential Regulation No. 20 of 2018 tends to facilitate the entry of foreign workers into Indonesia even though many local workers still need jobs and there is no guarantee that the entry of foreign workers can create jobs for the Indonesian workforce (Hakim, 2018).

Article 9, Article 10 paragraph (1), Article 19 and Article 26 of Presidential Regulation No. 20 of 2018 are articles which invite a lot of criticism and rejection from a number of workers' organizations. Indra Munaswar as Secretary General of the Federation of Textile Workers' Unions, Sandang Kulit, argues that Presidential Regulation 20 of 2018 is contrary to Law No. 13 of 2003 concerning Manpower, whereas if viewed from the existing regulations based on Article 7 paragraph (1) Law No. 12 of 2011 concerning the Establishment of Legislation (*UU PPP*) The Presidential Regulation is located under the law.

Article 7 paragraph (2) of the PPP Law explains that the legal force of legislation must be in accordance with the hierarchy. The gaps in each type of legislation are based on the principle that lower laws and regulations may not conflict with higher laws and regulations. The regulation of TKA in this case as legislation that is lower in the hierarchy must not conflict with the Manpower Act.

METHOD

The research method used in this paper is normative legal research method, wherein a normative legal research is a library research. Literature studies are needed to collect the necessary legal materials, such as primary legal materials, which include legislation governing labor laws. Secondary legal materials such as books, legal scientific works, and other written materials are used to provide an explanation of some of the terms used in this writing.

Based on the nature of this study using descriptive analytical research method, data analysis is carried out with qualitative approach to primary data and secondary data. Descriptive contents include the content and positive legal structure, namely an activity carried out by the author to determine the content or meaning of the legal rules that are the objects of study.

DISCUSSION

Government Policy Regarding Acceptance of Foreign Workers in Indonesia

The term Foreign Workers (Indonesian term is TKA) has become a common

phenomenon. Judging from its development, the background of the employment of foreign workers in Indonesia has changed according to its era. When the Netherlands opened large plantations in several regions in Indonesia, such as East Sumatra, the reason for the scarcity of human resources as workers/laborers encouraged the Dutch government when it brought in foreign workers from other countries. Now, with the growing development of science and technology, the reason for the need for workers who have expertise in a particular field is the main reason used by foreign workers (Agusmidah, 2010).

Many foreign workers are currently exploited by employers such as Limited Liability Companies or other business entities. Article 1 number 4 of Act Number 13 of 2003 concerning Labor, what is meant by Employer is an individual, entrepreneur, legal entity or other bodies. According to Article 1 number 13 of Law Number 13 of 2003 concerning Manpower referred to as Foreign Workers, foreign citizens are visa holders with the intention of working in the territory of Indonesia (Syarif, 1996).

Currently the use of foreign workers is still large and difficult to avoid because of several factors as follows:

- a) The presence of migrant foreign workers because it is related to investment in the framework of national development and in the mastery and transfer of technology which is a continuous and continuous process.
- b) It does not cover the number of Indonesian workers who are skilled and skilled in replacing foreign workers.
- c) Lack of availability of Indonesian workers who are qualified to do the work available.
- d) Use of machines that are sophisticated that contain high risk, so that if not handled by experts can cause material and non-material losses.
- e) The wider and growing number of businesses that require foreign workers (Syarif, 1996).

Regulations concerning TKA are regulated in Law No. 13 of 2003 in Chapter VIII concerning the use of TKA. Foreign Workers who enter Indonesia can go through two paths, namely (Tim Kajian Amandemen, 2000):

Assignment Pathway, namely: Placement of employees by multinational companies to occupy one position/position in one branch or subsidiary in Indonesia. Based on the time period, assignments can be short-term and long-term, for example short-term assignments (less than one year) are installation of installations/machines/ technology purchased by companies in Indonesia while also training employees who will handle them, while examples long-term assignments (more than one year) are managerial work and company management.

Recruitment Path, namely: The entry of TKA through the recruitment and permanent staffing line, the recruitment is generally carried out by local companies that have a global business that requires foreign workers as an effort to face international competition. Law No. 25 of 2007 concerning Investment, has provided the widest opportunity for Indonesian citizens to prioritize labor in fulfilling work needs, but regarding experts in investment companies the right to use experts of foreign citizens for certain positions and expertise.

TKA is obliged and obedient to Law No. 13 of 2003 which regulates provisions concerning foreign workers working in the territory of Indonesia, these provisions are: Employers who employ foreign workers must have written permission from the minister or appointed official; TKA with certain positions; There is a certain period of time; Planned TKA Users; Competency standards; Prohibition of occupying certain positions; Obligation of compensation funds; and the obligation to repatriate foreign workers.

The purpose of the employment of foreign workers is to meet the needs of skilled and professional workers in certain fields who have not been able to be filled by Indonesian workers and accelerate the national development process by accelerating the transfer of science and technology and increasing foreign investment to support development in Indonesia even though in reality companies in Indonesia, both private and foreign national companies, must use the Indonesian experts themselves (Abdussalam, 2008).

The Presidential Regulation No. 20 of 2018 concerning the Employment of Foreign Workers is a substitute for Presidential Regulation No. 72 of 2014. This latest regulation simplifies and speeds up several administrative processes for Foreign Workers who wish to enter Indonesia. In Presidential Regulation No. 20 of 2018, Article 25 explains that every TKA employer must guarantee that TKA is registered in the Employment Social Security for foreign workers who work more than 6 (six) months or an insurance policy in an insurance company incorporated in Indonesia.

Article 5 Permenaker No. 10 of 2018 concerning Procedures for the Use of Foreign Workers explains that Foreign Workers employed by the Employer must fulfill the following requirements:

- a) Having education that is in accordance with the qualifications of the position that will be occupied by TKA
- b) Having a competency certificate or have work experience of at least 5 (five) years that is in accordance with the position qualifications that will be occupied by TKA
- c) Transferring expertise to Companion Workers
- d) Having a Tax Registration Number for TKA who has worked more than 6 (six) months
- e) Having a Limited Stay Permit (Itas) for the work issued by the authorized agency.

Every employer who employs foreign workers, except the employer of an individual, is prohibited from employing foreign workers and must have written permission from the Minister of Manpower or appointed officials (Article 42 paragraph 2 of Act No. 13 of 2003). Foreign workers can be employed in Indonesia only in employment relations for certain positions and certain times that will be decided by the Minister of Manpower's decision, and can only work in employment relations, for example as legal counsel or lawyer, accountant and so on (Rusli, 2011). The legal basis regulations for the use of foreign workers in Indonesia are:

- a) Law No. 13 of 2003 concerning Manpower, specifically CHAPTER VIII concerning the use of TKA.
- b) Law No. 20 of 1997 concerning Non-Employee State Revenues (PNBP).
- c) Government Regulation No. 92 of 2000 concerning Tariffs for Types of Non-Tax State Revenues that apply to the Ministry of Manpower and Transmigration.
- d) Presidential Decree No. 75 1995 concerning the Use of Migrant Workers of Foreigners.
- e) Kepmenakertrans No. 223/Men/2003 concerning Positions of Educational Institutions Excluded from Obligations from Obligation to Pay Compensation.
- f) Kepmenakertrans No. 228/Men/2003 concerning Procedures for Ratifying Plans for the Use of Foreign Workers (RPTKA).
- g) Kepmenakertrans No. 20/Men/III/2004 concerning Procedures for Obtaining Permits to Employ Foreign Workers.
- h) Kepmenakertrans No. 21/Men/IV/2004 concerning the Use of Foreign Workers as Singing Guides.
- i) Permenakertrans No. 07/MEN/III/2006 juncto No. 15/MEN/2006 concerning Simplification of Procedures for Issuance of Permits to Employ Foreign Workers.
- j) Permenakertrans No. 02/Men/XXI/2004 concerning the Implementation of Workers' Social Security Programs for Foreign Workers.

Legal Protection of Indonesian Workers Regarding the Policy on Acceptance of Foreign Workers in Indonesia

The free trade framework in Indonesia, one of the basic provisions enforced, is "opening up market access" to trade in goods and services from other countries. Service trade in Indonesia is also characterized by free and open competition, as contained in the commitment to open market access from all other member countries of the World Trade Organization (WTO) (Randang, 2011). Article 14 point (a) of Law of the Republic of

Indonesia No. 25 of 2007 concerning Investment explains that the presence of foreign workers in Indonesia is one form or way to influence the investment climate in Indonesia, as a driver of investors to invest in the framework of development and economic growth in Indonesia.

From the beginning until now labor issues were basically concerning two things, namely employment problems and labor quality problems. The high rate of population growth in Indonesia has resulted in an increasing number of workforce each year, while available employment opportunities have not been able to meet the work needs in accordance with the number of job seekers. This has resulted in an imbalance between the large number of people who need work and available employment opportunities, especially now with the large number of workers who have experienced termination of employment from the company where they work. The problem of lack of employment opportunities has caused a lot of unemployment in Indonesia (Pustaka Net, 2008).

On the other hand, in terms of the quality of its workforce, Indonesian workers can be said to have no competitive advantage compared to developed countries in the world. The competitive advantage referred to here is excellence in terms of mastering technology. Even though in the midst of the rapid progress of the world today, labor is required to master technology. The existence of a problem like this makes the Indonesian people sometimes still unable to meet their own needs for workers who master technology, even though in terms of quantity, Indonesia has many workers (Pustaka Net, 2008).

The use of Foreign Workers (TKA) is one way to meet labor market needs that cannot be filled by Indonesian workers in certain fields of expertise and fields. The use of TKA is carried out by the employer in a work relationship for a certain position and a certain period of time carried out by taking into account the conditions of the domestic labor market. Presidential Regulation No. 20 of 2018 in Article 4 states that:

- a) Every Employer of TKA must prioritize the use of Indonesian labor in all types of positions available.
- b) In the event that the position referred to in paragraph (1) cannot yet be occupied by Indonesian workers, the position may be occupied by TKA.

Article 5 of Presidential Regulation No. 20 of 2018 explains that foreign workers are prohibited from occupying positions that take care of certain personnel and / or positions, certain positions as referred to in paragraph (1) are determined by the Minister. This regulation also affirms in Article 6 that Employers of Foreign Workers in certain sectors can employ foreign workers who are being employed by other TKA employers in the same position, no later than the expiration of the TKA work period as TKA work contracts with the First TKA Employer.

Law No. 13 of 2003 concerning Labor provides protection for Indonesian workers. Article 4 letter c explains that one of the objectives of labor development is to provide protection to workers in realizing prosperity. Article 5 stipulates that every workforce has equal opportunity without discrimination to obtain employment. This article legally provides protection that every workforce has the right and equal opportunity to obtain decent work and livelihood without distinguishing between gender, ethnicity, race, religion and political flow according to the interests and abilities of the workforce concerned, including equal treatment against persons with disabilities. Article 6 requires employers to provide workers' rights and obligations without distinguishing gender, ethnicity, race, religion, color, and political flow (Khakim, 2009).

Workers also have the right to obtain quality improvements in accordance with their talents, interests and field of work through job training as stated in Article 11 and Article 12 paragraph (3) of Law No. 13 of 2003. The right to choose work placement is regulated in Article 31 which explains that every workforce has the same rights and opportunities to choose, obtain, or change jobs and obtain a decent income at home or abroad.

The protection rights of work of each worker / laborer in Article 86 of Law No. 13 of 2003 has the right to obtain protection consisting of occupational safety and health, morality, and treatment that are in accordance with human dignity and values and religious

values. According to Article 88 paragraph (1) every worker / laborer has the right to obtain income that fulfills a decent living for humanity. This government policy regarding wages that protect workers include: minimum wages, overtime wages, unpaid wages due to absenteeism, wages not at work due to other activities outside of work, wages for exercising the right to work breaks, forms and methods of payment wages, fines and deductions from wages, things that can be calculated with proportional wages, structures and wages, wages for severance payments, and wages for calculating income tax.

CONCLUSION

Government policies related to the acceptance of Foreign Workers are regulated in Presidential Decree No. 20 of 2018 and Permenaker No. 10 of 2018. Article 5 describes the mandatory conditions that must be fulfilled by Foreign Workers, if they do not meet the requirements of the Foreign Workers they cannot be employed by the employer. Foreign workers in Indonesia are entitled to protection that provides legal and social guarantees so as to obtain legal certainty and create a comfortable and conducive working atmosphere for foreign workers. Presidential Regulation No. 20 of 2018 Article 4 paragraph (1) states that every Employer of Foreign Workers must prioritize the use of Indonesian labor in all types of positions available. From the article it is clear that the government protects Indonesian workers to obtain their rights as citizens in accordance with Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia.

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