

Legal Policy On The Existence Of Criminal Law Of Illegal Foreign Labor In Indonesia

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Abstract. The problems that arise in connection with the use of foreign labor in Indonesia, is a violation of residence permit and work permit. In the passport and foreign workers have written that the Indonesian government granted permission by the immigration authorities is to work as migrant workers in Indonesia with a position and a certain time even just as a tourist. Not infrequently the user companies often hide these illegal foreign workers. Indonesia is a country of law where any problems exist in the country has been governed settlement conditions in the form of the rule of law. In matters of illegal foreign workers in Indonesia the rules governing such example Act No. 13 of 2003 on employment has made a policy both administrative and criminal policy. Criminal in the world of employment can not be denied as a punishment to provide a deterrent effect, especially entrepreneurs form of a corporation in the use of illegal foreign labor. Labor gives a great influence in the development of national economy and the arrival of foreign workers into Indonesia when no restrictions are adjusted will cause social unrest, economic, and human resources are poor in Indonesia. Criminal policy has been implemented on the rules governing the use of foreign labor in Indonesia. Labor gives a great influence in the development of national economy and the arrival of foreign workers into Indonesia when no restrictions are adjusted will cause social unrest, economic, and human resources are poor in Indonesia. Criminal policy has been implemented on the rules governing the use of foreign labor in Indonesia. Labor gives a great influence in the development of national economy and the arrival of foreign workers into Indonesia when no restrictions are adjusted will cause social unrest, economic, and human resources are poor in Indonesia. Criminal policy has been implemented on the rules governing the use of foreign labor in Indonesia.

Keywords: Foreign Workers; Illegal; Criminal Policy.

1. Introduction

The Indonesian nation is in full swing to implement development in all areas in an effort to immediately rise from adversity. In pemerosokan stop economic and implement economic development of the important principles that must be adhered to is that every effort should be in base to the capabilities and capacities of the Indonesian people themselves. Economic activity in the community in need of manpower. The need for labor it can also be referred to as a job opportunity. Job opportunities itself is a condition that describes the occurrence of employment (jobs) to fill job seekers.³ But once that principle should not lead to reluctance to utilize the potential of capital, technology and skills available from overseas, as long as everything

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was totally devoted to the economic interests of the people without causing dependence on foreign countries. Therefore, Indonesia did not close the foreign presence in the form of equity as well as professionals who will work in Indonesia.⁴

The problem that arises is that the number of foreign workers working in Indonesia has increased, the impact of the law on these issues in the form of increasing violations of a wide range of legislation on immigration, where many foreigners who are negligent or deliberately not reporting in carrying out his duties in Article 71 letter a of Act No. 6 of 2011 on immigration, namely the obligation of foreigners to provide any information regarding the identity of himself and his family as well as report any change of civil status, nationality, occupation, guarantor, or change of address to the local immigration office.⁵ Other economic impacts, the presence of foreign workers could be shut employment opportunities for the citizen in obtaining strategic positions in companies specified.

Subject to the problems of foreign labor violations also exist in corporations that employ illegal foreign workers. The government did not tolerate the problems of illegal foreign workers in Indonesia and also implement penal policy to combat these practices through the rules regarding labor and immigration. The use of legal remedies, including criminal law, as part of efforts to address social problems, including in the field of law enforcement policies. In addition, because the aim is to achieve the welfare of society in general, the law enforcement policy that was included in the field of social policy, that all rational efforts to achieve the welfare of the community.⁶

The use of penal (criminal law) in the criminal policy has two central problems is the act what is actually used as a criminal act and what sanctions should be used or charged to the offender. The first central issue is often referred to criminalization. According Soerjono Soekanto, criminalizing an act or determination of the authorities regarding acts of certain communities or classes of society regarded as an act which may be liable to be a criminal act or make an act becomes a criminal act and therefore can be imprisoned by the government by way of working on name.⁷

In the era of economic globalization, the restriction is indispensable as a consequence of foreign workers on employment opportunities for workers in Indonesia in accordance stipulation of Article 27 paragraph 2 of the constitution NRI Year 1945 which reads "Every citizen has the right to work and a decent living for humanity".⁸ Pegendalian foreign workers working in Indonesia is one of the goals to protect Indonesian citizens from losing their jobs because the number of foreign workers who come to work in Indonesia. This is an implementation of the fulfillment of human

⁴ Jazim Hamidi dan Charles Christian, 2015, *Hukum Keimigrasian Bagi Orang Asing Di Indonesia*, Sinar Grafika, p 10.

⁵ Article 71 letter a of Act No. 6 of 2011 on immigration

⁶ Agusmidah, 2011, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum*, Jakarta: PT. Sofmedia, p.12.

⁷ Soerjono Soekanto, *Kriminologi: Suatu Pengantar*, Jakarta: Ghalia Indonesia, 1981, p 62.

⁸ Article 27 paragraph (2) of the Constitution of the Republic of Indonesia of 1945.

rights, including the rights to work freely in their own country. In order to achieve public welfare, terkhususnya in this case is the workers / laborers, and to prevent all crimes against workers / laborers, the government adopted a policy to use the means of "penal" (criminal law) is to publish legislation on employment nature regulate the use of foreign labor by including penal provisions to it, either in the form of administrative punishment, criminal fines, imprisonment, Based on the description on the background of the above problems, it can be proposed formulation of the problem How criminal law policy against any illegal foreign workers in Indonesia?

Research methods

In undertaking this study the authors use the method of normative. Juridical itself is the method of approach by applying the principles and legal principles derived from the written regulations that have been applied in public life. Normative known approach to literature, by studying books, legislation and other documents related to this research. Normative juridical approach in the sense in juridical terms in addition to seeing from the existing regulation also see the normative terms through literary materials relating to the criminal law policy against any illegal worker in Indonesia.

2. Results and Discussion

The criminal acts generally consist of two (2) types of criminal act (*rechtsdelicten*) and the crime of violation (*wetsdelicten*). Basic distinction of a felony and violations can be inferred that the division is based on the premise that in fact in society there are acts that basically had been despicable and deserves to be convicted, even before it is declared as such by law, and also there are actions that the new is against the law and shall be punished after the law says so.⁹ Differences crimes and violations can also be viewed in terms of the impact caused by such actions against the public interest, whether broad or narrow. Crime is evil or conduct contrary to the values and norms that have been authorized by any written law, while the offense is an act of abuse or a crime that is lighter than the crime and the impact of crime greater than violations of the sanctions for the crimes too far heavier than the offense.

Related to criminal offenses in the field of employment, there are two (2) types of criminal acts are crimes and violations in the field of employment. The criminal sanctions can be given administrative criminal penalties, criminal fines, imprisonment, up to imprisonment. Government responds to various criminal acts in the field of employment by issuing laws and regulations governing the protection of workers / laborers, better protection of the rights and obligations of workers / labor, occupational safety of workers / laborers, the company's obligation to report on

⁹ Adami Chazawi, 2010, *Stelsel Pidana, Tindak Pidana, Teori-teori Pemidanaan dan Batas Berlakunya Hukum Pidana*, Raja Grafindo Persada, Jakarta, p 123.

employment in the company, the fulfillment of rights workers / laborers on social security, the protection aspects of employment and protection of migrant workers,¹⁰ specifically will be addressed in the legislation, and to determine the criminal provisions in the form of criminal sanctions against those who violate the provisions that have been set.

In the case of foreign workers, such people certainly need some work to meet the needs of daily life is no exception strangers. In carrying out an occupation or business activity in definite need of manpower. "In Article 1 paragraph 2 of Act No. 13 of 2003 on Labor states that labor is everyone who is able to work in order to produce goods or services to meet the needs of themselves and society ".¹¹ Foreign workers currently widely used by employers such as limited liability companies or other business entities. Article 1 paragraph 4 of Act No. 13 of 2003 on Labor, is the employer is an individual, business, corporation, or other entity that employ manpower by paying them wages or other forms of remuneration. According to Article 1 paragraph 13 of Act No. 13 of 2003 on Labor, is a Foreign workers are foreign nationals visa holder to work in Indonesia. "According to Boediono, Foreign Labor is any person not a citizen of Indonesia that is capable of doing the job, both inside and outside the employment relationship, in order to produce goods or services to meet the needs of society ".¹²

To be able to use foreign labor, hereinafter called the foreign workers to work in Indonesia, the employer must follow the rule of law in Indonesia, one of which is regulated by Act No. 13 of 2003 on Manpower. There are requirements that must be met in the use of foreign workers regulated in Act No. 13 Of 2003 on Manpower. If you do not follow the rules regarding the use of foreign workers, meaning employers have been using illegal foreign workers and no legal consequences to be borne by the employer as well as the illegal foreign workers.

Regulating the use of TKA regulated in various laws and laws in Indonesia, one of them is Act No. 13 of 2003 on Manpower. The use of TKA set of Articles 42 and 49 of Act No. 13 of 2003 on Manpower. Article 42 of Act No. 13 of 2003 on Labor, stated that:

- Every employer who employs foreign workers should have written permission from the Minister or a designated official;
- Employers individuals are prohibited from employing foreign workers;
- Obligation to obtain permission referred to in subsection (1) does not apply to representatives of foreign countries that employ foreign as diplomatic and consular employees;
- Foreign workers can be employed in Indonesia in the employment relationship for a certain position and a certain time;

¹⁰ Abdul Khakim, 2014, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Bandung: PT. Citra Aditya Bakti, p 109.

¹¹ Lalu Husni, 2014, *Pengantar Hukum Ketenagakerjaan*, Edisi Revisi, PT Raja Grafindo Persada, Jakarta, p 27.

¹² Budiono, Abdul Rachmad, 1995, *Hukum Perburuahan di Indonesia*, Cetakan Pertama, Raja Grafindo Persada, Jakarta, p 259

- Provisions concerning certain position and a certain time referred to in paragraph (4) shall be determined by the Minister;
- Foreign workers referred to in paragraph (4) whose tenure expired and can not be extended can be replaced by other foreign workers.¹³

Giver of labor in this case provided by Article 43 related provisions in the use of foreign labor, namely:

- Employers that use foreign workers must have a plan for use of foreign workers authorized by the Minister or a designated official;
- Plan for the use of foreign workers as referred to in paragraph (1) at least the following information:
 - reasons for the use of foreign labor;
 - position and/or status of foreign workers in the company's organization structure;
 - term of use of foreign labor; and
 - labor designation Indonesian citizens as a companion to the employment of foreign labor.
- The provisions referred to in paragraph (1) does not apply to government agencies, international agencies and representatives of foreign countries;
- The procedure of ratification of the planned use of foreign labor regulated by ministerial decision.¹⁴

In addition, the foreign manpower employer shall designate workers Indonesian citizens as facilitators of foreign workers employed for the transfer of technology and skills transfer from expatriate and implement education and training for workers of Indonesia in accordance with the qualification positions occupied by foreign workers sebagaimana provided for in Article 45 items a and b of Act No. 13 Of 2003 on Manpower.¹⁵ In terms of office for foreign workers who work in Indonesia, in accordance with Article 46 of Act No. 13 of 2003 on Labor, namely:

- Foreign workers are prohibited from positions in charge of personnel and / or certain positions;
- Certain positions referred to in paragraph (1) shall be regulated by the Minister.¹⁶

Article 46 paragraph 1 of the Labor Law determines that prohibited foreign workers occupying certain positions. In the Appendix the Ministry of Manpower and Transmigration Republic of Indonesia Number 40 Of 2012 on Position-Specific Prohibited Position Occupied TKA more specifically mention the positions that are prohibited for handshake by foreign workers in Indonesia. The positions that may be occupied by foreign workers fall into several groups based on the Ministry of

¹³ Article 42 of Act No. 13 of 2003 on Manpower.

¹⁴ Article 43 of Act No. 13 of 2003 on Labor

¹⁵ Ibid.

¹⁶ Ibid.

Manpower and Transmigration Republic of Indonesia.¹⁷ Furthermore, an employer who employs foreign workers shall repatriate foreign workers to their home country after their employment relationship ends as set forth in 48 of Act No. 13 of 2003 on Manpower.

Employers may employ foreign workers to work in Indonesia. However, if the use of foreign workers do not follow the rules that have been established by Act No. 13 of 2003 on Labor means employs illegal foreign workers. The use of illegal foreign workers is unlawful and may give rise to legal consequences in the form of criminal sanctions. Criminal sanctions can be wearing to foreign workers and to employers who have hired foreigners who violate the provisions of Article 185 of Act No. 13 of 2003 on Labor, stated:

- Any person who violates the provisions referred to in Article 42 paragraph (1) and (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143 and Article 160 paragraph (4) and (7) may be subject to imprisonment for a minimum of 1 (one) year and a maximum of four (4) years and / or a fine of Rp 100,000,000.00 (one hundred million rupiah) and at most Rp 400,000. 000,00 (four hundred million);
- The criminal acts referred to in paragraph (1) is a criminal offense ".¹⁸

Then the criminal provisions Act No. 13 of 2003 on Labor Article 187 as follows:

- Any person who violates the provisions referred to in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76 paragraph (2), Article 78 paragraph (2), Article 79 paragraph (1) and (2), Article 85 paragraph (3), and Article 144, subject to penalties imprisonment for a minimum of 1 (one) month and a maximum of twelve (12) months and / or a fine of Rp, 10,000,000.00 (ten million rupiah) and Rp. 100,000,000.00 (one hundred million rupiah);
- The criminal acts referred to in paragraph (1) is a criminal offense infringement.¹⁹

Then in Article 187 of Act No. 13 Of 2003 on Manpower explained that whoever violates the provisions referred to in Article 44 paragraph (1), namely Employers of foreign workers should comply with the provisions regarding occupations and competence standards in force, and Article 45 paragraph (1) is the employer of foreign workers should: a. Labor pointed Indonesian citizens as facilitators of foreign workers employed for the transfer of technology and skills transfer of foreign workers; and b. implement education and job training for Indonesian workers as referred to in paragraph a suitable qualification positions occupied by foreign labor is a violation of criminal acts.

¹⁷ Appendix Minister of Manpower and Transmigration Republic of Indonesia No. 40 of 2012 on Specific Position Prohibited Occupied Position of Foreign Workers.

¹⁸ Article 185 Act No. 13 of 2003 on Manpower.

¹⁹ Ibid.

3. Closing

3.1 Conclusion

Then in Article 187 of Act No. 13 Of 2003 on Manpower explained that whoever violates the provisions referred to in Article 44 paragraph (1), namely Employers of foreign workers should comply with the provisions regarding occupations and competence standards in force, and Article 45 paragraph (1) is the employer of foreign workers should: a. Labor pointed Indonesian citizens as facilitators of foreign workers employed for the transfer of technology and skills transfer of foreign workers; and b. implement education and job training for Indonesian workers as referred to in paragraph a suitable qualification positions occupied by foreign labor is a violation of criminal acts.

3.2 Suggestion

- Control arrangements explanation needed foreign workers who worked in Indonesia more concrete that Indonesia has assured citizens their right to work in their own country before bringing foreign workers;
- Improve supervisory cooperation in this regard the Ministry of Labor and related agencies such as Immigration to supervise directly to the field, because there are many illegal foreign workers who have not been as far back as the existence and activities.
- In this case increase the number of human resources of relevant officers in order to control more optimally viewed Indonesia has a large population and still a developing country that still had to race to improve the quality of labor and the distribution of jobs evenly to push the unemployment rate for the Indonesian people themselves.

4. References

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