

THE URGENCE OF REGULATION OF FOREIGN WORKERS IN LAW NUMBER 11 OF 2020 CONCERNING WORK CREATION IN THE TIME OF THE COVID-19 PANDEMIC

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Abstract

The rate of entry of Foreign Workers in Indonesia during the current pandemic is very concerning, this is due to the consequences for the health of Indonesian citizens during the current Covid 19 period. This situation is made more complicated by the unregulated supervision and restrictions on the use of foreign workers in this country. This writing aims to analyze the problem of the absence of restrictions and supervision of foreign workers during the Covid 19 period in Indonesia today. The method used is normative juridical. Based on the study conducted, it was found that the political implementation of the use of foreign workers has not been able to achieve justice, this is because the legal politics of the use of foreign workers has resulted in reduced job opportunities for domestic workers which in turn resulted in unemployment and poverty problems. The weaknesses in the implementation of the politics of using foreign workers are the shortcomings in the form of time limits and the amount of use of foreign workers is not clearly regulated in the politics of foreign labor law in Indonesia, then the weakness in the case of dualism in work permits for foreigners in Law no. 13 of 2003 and Law no. 6 of 2011. The supervision of foreign workers in the Employment Creation Law is not fully regulated, this results in an unstoppable rate of foreign workers so that it has an economic impact on TKI and health impacts for the local community.

Keywords: Creation of Work, Foreign Workers, Urgency

A. Introduction

The journey of the world of Indonesian labor today is not going well. Based on data stated by the Secretary General of the Ministry of Manpower, that in 2021 there have been 29.4 million workers who have experienced layoffs during the current Covid-19 period.(Tribun News, 2021)

The data above shows that although it is considered to have decreased, the number of layoffs is still considered large when viewed in terms of the impact of increasing poor people due to unemployment in the community. The issue of layoffs clearly shows that there are still many disharmony issues in the world of industrial development. This disharmony is also caused by one of the problems of workers' welfare.(Organisasi Pekerja Nasional, 2020)

The low wages and welfare of workers basically occur due to the politics of labor law in Indonesia which is still considered to be in favor of the entrepreneur. Kwik Kian Gie stated that the low wage of labor in Indonesia has always been the main capital to attract foreign investors and seek profit from selling Indonesian products in the free market.(Kwik, 1998) Basically, the sad condition of Indonesian workers is due to the emergence of the tyrannical agendas of developed countries through the tempting economic globalization. Noam Chomsky's explanation above seems to have really happened through the extension of the agents of globalization, namely the World Trade Organization or WTO for short. This is indicated by historical facts that explain that discussions related to labor in WTO meetings can be seen as a form of protection against the Multy National Corporation and Trans National Corporation originating from developed countries that have power and influence within the United Nation or the United Nations. -Nation. This can be seen from the

practice of dumping trade in the free market, one of which is by lowering the wages of workers in order to suppress the production of goods in order to seek the maximum profit in free trade.¹

This is getting more and more murky with the fact that the Indonesian state in the era of the Asean Economic Community or MEA is currently being invaded by foreign workers. Foreign workers according to Presidential Regulation Number 20 of 2018 concerning Foreign Workers are foreign citizens holding visas who intend to work in Indonesia. This shows that every foreign citizen holding a visa can easily enter to become a foreign worker. In its development, the arrival of foreign workers also provides benefits for the country of origin of the foreign worker, one of which is reducing unemployment.

China, which increased the value of its investment in Indonesia by US\$ 2,665 million in its development, also sent 21,300 workers to Indonesia.(Merdeka.com, 2018) The increasing number of Foreign Workers in Indonesia is also supported by the Presidential Regulation Number 20 of 2018. The Presidential Regulation provides flexibility for Chinese investors to use and bring in large numbers of workers from their country, this can be seen in the provisions of Article 3 letter c. Presidential Regulation Number 20 of 2018 which states that the parties who can bring in foreign workers are foreign private companies who are doing business in Indonesia. In addition, the article also provides a gap for foreign workers who do not only come from China to come to Indonesia through work calls from institutions as stated in Article 3 of Presidential Regulation Number 20 of 2018. Meanwhile, Law Number 13 of 2003 has not fully regulated related to foreign workers.

In addition, between Presidential Regulation Number 20 of 2018 and Law Number 13 of 2003 there is disharmony. This can be seen in the provisions of Article 9 of the Presidential Regulation Number 20 of 2018 which states that the ratification of the Plan for the Use of Foreign Workers (RPTKA) is a requirement for obtaining a work permit. This is different from the provisions of Article 43 of Law Number 13 of 2003 which does not only make RPTKA the only entry for foreign workers into the Indonesian state. However, TKS must also have a permit in the form of a foreign worker permit. In addition, Article 9 of the Presidential Regulation Number 20 of 2018 also contradicts Article 8 of the Presidential Regulation Number 72 of 2014 concerning Foreign Workers which states that foreign workers can work in Indonesia on condition that they have an RPTKA and a permit to employ foreign workers from entrepreneurs who employ foreign workers. The disharmony of Article 9 of Presidential Decree No. 20 of 2018 with various provisions of labor law in Indonesia shows that the making of Presidential Decree No. 20 of 2018 did not go through a mature academic study. It is clear that the current policy of labor law still has many weaknesses in terms of regulating foreign workers which in the end will be able to cause employment problems and problems of providing employment opportunities for indigenous Indonesians who need livelihoods and the feasibility of economic life in this country.

The entry of foreign workers from China as mentioned above has resulted in a large increase in unemployment in this country. This can be seen from data from the Institute for Development Of Economic And Finance which states that the unemployment rate in 2019 will increase to 53%. (Cnbc indonesia, 2018) This situation is increasingly in a dilemma with the problem of the spread of Covid-19 in the country which is increasingly unstoppable. The United Nations Covid 19 Response notes that:(Nation, 2021)

One in 10 people in Indonesia today live below the national poverty line. Child poverty rates can also increase significantly. The negative impact on the socio-economic situation of the pandemic could be much worse without any social assistance from the government

The United Nations Covid 19 Response further stated that almost three quarters of households (74.3%) interviewed in October-November 2020 experienced a decrease in income from what they received in January 2020. This clearly shows how current employment policies are not wise in responding to the economic crisis that hit the workers in this country.

So it can also be concluded that the failure of labor law politics in Indonesia will have an impact on increasing poverty rates in Indonesia due to the increase in unemployment in Indonesia as one of the impacts of the flood of foreign workers in Indonesia with the number of job opportunities dwindling. This is clearly contrary to the Fifth Precepts of Pancasila and Article 27 point 2 of the 1945 Constitution of the Republic of Indonesia regarding the right to have a job and a decent living for Indonesian citizens.

The problem of turbulence of interest in the world of work due to the rate of arrival of foreign workers in Indonesia is not only related to the loss of employment and income. In the current pandemic era, the arrival of foreign workers also brings fear in this motherland, because in 2021 there have been four foreign workers who have contracted Covid-19 in their home countries. The presence of these foreign workers is in Maluku. The number of foreign workers carrying the Covid-19 virus is relatively low, however, although it is not the only cause, the presence of foreign workers infected with Covid-19 also contributes to the rate of the number of Maluku people infected with Covid-19. This is shown by the fact that in 2021 there were 11,607 people infected with Covid-19 in Maluku and 108 people died.(Indonesia, 2021)

The various dilemmas above show that the government has failed to find a formulation for regulating foreign workers in Indonesia which has an impact on the lack of job opportunities and employment opportunities for Indonesian citizens. Departing from this problem, this paper wants to discuss and analyze the "Urgency of Regulation of Foreign Workers in Law Number 11 of 2020 concerning Job Creation During the Covid-19 Pandemic".

B. Issues to be Discussed

The issues discussed in this article are related to the implementation of policies regulating the use of foreign workers, which are currently not balanced with the equitable distribution of the labor market for Indonesian workers.

C. Originality And Novelty

There are quite a lot of writings related to Foreign Workers, one of which is Ida Hanifah's writing about the Opportunities for Foreign Workers to Work in Indonesia Based on the Draft Job Creation Law. The article discusses the influx of foreign workers in Indonesia, which cannot be stopped due to the large number of jobs that are not matched by the capabilities and skills of Indonesian workers, thus opening up great opportunities for foreign workers to work in the country. While the writing compiled by the author is related to the absence of rules and legal systems related to the supervision and restriction of foreign workers, which has a lot of negative impacts on Indonesian citizens during

the current Covid-19 pandemic. So the author sees the issues discussed by the author are legal issues that have not been discussed by other authors.

D. Methods used

The method used in this paper is normative juridical. Juridical-normative research is a form of scientific research activity that uses library materials and statutory regulations.(Rahmawati & Rahmawati, 2020)

E. Discussion

1. Implementation of Legal Policies Related to Regulating the Use of Foreign Workers in the Era of the Covid-19 Pandemic

In its development, the implementation of foreign labor law politics in Indonesia has problems, namely the issue of limits on the number of foreign workers, time limits on the use of foreign workers, and supervision of the use of foreign workers. Regarding the issue of the period of use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only five years but can be extended by considering the needs of foreign workers and circumstances. domestic job market.(Syahroni et al., 2021)

This is different from the provisions in Article 9 paragraph (2) of Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers which states that "the period of RPTKA as referred to in paragraph (1) is in accordance with the work agreement or work agreement". This clearly shows that the implementation of the policy on the use of foreign workers so far does not contain strict and clear limits on the length of time for the use of foreign workers.

Although they have differences in terms of language substance, however, both the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA and Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on decisions made by foreign workers. users of foreign workers or entrepreneurs who employ foreign workers.

Then related to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This has resulted in the growth rate of the number of foreign workers in the job market in Indonesia being out of control.

The Job Creation Law has simplified the foreign worker licensing process. Previously, based on the Manpower Law and its implementing regulations, foreign workers were required to have a limited stay visa, a plan for the use of foreign workers (RPTKA), and a permit to use foreign workers. This is amended through Article 81 number 4 of the Job Creation Law, which is enough with RPTKA. The Job Creation Law also removes the minimum provisions that must be in the RPTKA. Previously, based on Article 43 paragraph (2) of the Manpower Law, the RPTKA at least contained the reasons for the use, position and position, period of time and assistant staff for foreign workers. This provision was omitted in the Job Creation Law and only appeared in PP No. 34 of 2021 concerning the Use of Foreign Workers.

The Job Creation Law provides exceptions for certain foreign workers from the obligation to

have an RPTKA. Based on Article 42 paragraph (3) of the Job Creation Law, the exempted foreign workers are directors or commissioners with certain share ownership, diplomatic and consular employees, as well as foreign workers needed due to emergencies, vocational training, start-up companies, business visits, and study. The Job Creation Law also simplifies the ban on positions for foreign workers. If based on Article 46 of the Manpower Law, the position prohibition applies to personnel positions and/or certain positions, the Job Creation Law only prohibits positions dealing with personnel, while the clause “and/or certain positions” is removed. However, there are a number of rules that remain the same, such as the rules regarding the prohibition for individuals from employing foreign workers and several regulations related to the obligations of employers such as compensation, assistant staff and technology transfer. Some of the conveniences and simplifications regulated in the Employment Creation Law certainly show that the rules for the use of foreign workers in the Job Creation Law provide more convenience for foreign workers to be able to work in Indonesia than the rules contained in the Manpower Act. It’s just that with the Covid-19 Pandemic, the flow of traffic between countries should be greatly minimized to prevent the increasingly massive spread of Covid-19 including its new variants.

The government through the relevant ministries issued a number of regulations aimed at restricting foreigners from entering Indonesian territory. The Ministry of Manpower, through the Minister of Manpower, has restricted the use of foreign workers. The SE is updated periodically in accordance with the development of Covid-19. In February 2020, the initial restriction was only on foreign workers who would be imported from China (SE No.M/I/HK.04/II/2020). Then the restriction rules apply to all foreign workers based on SE No. M/4/ HK.04/IV/2020. The latest restrictions apply to all foreign workers except those working on National Strategic Projects (PSN) and strategic/national vital objects based on special considerations/written permission from the relevant ministries/agencies (SE No.M/3/HK.04/II/2021).(Luthvi Febryka Nola, 2021) This is further complicated by the fact that the unemployment rate in this country is quite high. Data from the Central Bureau of National Statistics shows the unemployment rate in the table below:(Badan Pusat Statistik, 2021)

Table of Data on the Number of Unemployment in Indonesia

Province	Open Unemployment Rate by Province (Percent)					
	2020			2021		
	February	August	Annual	February	August	Annual
ACEH	5.40	6.59	-	6.30	-	-
SUMATERA UTARA	4.71	6.91	-	6.01	-	-
SUMATERA BARAT	5.25	6.88	-	6.67	-	-
RIAU	4.92	6.32	-	4.96	-	-
JAMBI	4.26	5.13	-	4.76	-	-
SUMATERA SELATAN	3.90	5.51	-	5.17	-	-
BENGKULU	3.08	4.07	-	3.72	-	-
LAMPUNG	4.26	4.67	-	4.54	-	-
KEP. BANGKA BELITUNG	3.35	5.25	-	5.04	-	-
KEP. RIAU	5.98	10.34	-	10.12	-	-
DKI JAKARTA	5.15	10.95	-	8.51	-	-
JAWA BARAT	7.71	10.46	-	8.92	-	-
JAWA TENGAH	4.20	6.48	-	5.96	-	-
DI YOGYAKARTA	3.38	4.57	-	4.28	-	-
JAWA TIMUR	3.60	5.84	-	5.17	-	-

BANTEN	7.99	10.64	-	9.01	-	-
BALI	1.25	5.63	-	5.42	-	-
NUSA TENGGARA BARAT	3.04	4.22	-	3.97	-	-
NUSA TENGGARA TIMUR	2.64	4.28	-	3.38	-	-
KALIMANTAN BARAT	4.47	5.81	-	5.73	-	-
KALIMANTAN TEN- GAH	3.33	4.58	-	4.25	-	-
KALIMANTAN SE- LATAN	3.67	4.74	-	4.33	-	-
KALIMANTAN TIMUR	6.72	6.87	-	6.81	-	-
KALIMANTAN UTARA	5.71	4.97	-	4.67	-	-
SULAWESI UTARA	5.34	7.37	-	7.28	-	-
SULAWESI TENGAH	2.93	3.77	-	3.73	-	-
SULAWESI SELATAN	5.70	6.31	-	5.79	-	-
SULAWESI TEN- GARA	3.10	4.58	-	4.22	-	-
GORONTALO	3.29	4.28	-	3.41	-	-
SULAWESI BARAT	2.39	3.32	-	3.28	-	-
MALUKU	6.71	7.57	-	6.73	-	-
MALUKU UTARA	4.09	5.15	-	5.06	-	-
PAPUA BARAT	6.78	6.80	-	6.18	-	-
PAPUA	3.42	4.28	-	3.77	-	-
INDONESIA	4.94	7.07	-	6.26	-	-

Source of data from the Central Statistics Agency in 2021.

2. Weaknesses in the Implementation of Legal Policies Related to Regulating the Use of Foreign Workers in Indonesia Currently

a. Weaknesses of Implementing Foreign Manpower Law Politics

It has been explained above that the implementation of legal politics for foreign workers in Indonesia has problems, namely the issue of limits on the number of foreign workers, time limits for the use of foreign workers, and supervision of the use of foreign workers.

Regarding the issue of the period of use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only five years but can be extended by considering the needs of foreign workers and circumstances. domestic job market.

This is different from the provisions in Article 9 paragraph (2) of Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers which states that "the period of RPTKA as referred to in paragraph (1) is in accordance with the work agreement or work agreement". This clearly shows that the implementation of the policy on the use of foreign workers so far does not contain strict and clear limits on the length of time for the use of foreign workers.

Although they have differences in terms of language substance, however, both the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA

and Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on decisions made by foreign workers. users of foreign workers or entrepreneurs who employ foreign workers.

Then related to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This has resulted in the growth rate of the number of foreign workers in the job market in Indonesia being out of control.

a. Weaknesses in Protecting the Position of Indonesian Workers in Competition with Foreign Workers in the Domestic Job Market

Basically, the spirit of the existence of foreign workers in Indonesia is for the advancement of development technology, the advancement of the development performance system, and the improvement of domestic human resources. However, the legal politics of foreign workers has far ruled out the position of TKI.

This is because legal politics related to national development has neglected the aspect of human resource development by neglecting education financing, resulting in a lack of access to adequate education for the wider community in Indonesia.

In the development of labor law politics in Indonesia, this issue has also been put aside by further emphasizing the open space for free competition in the domestic labor market which is affected by the globalization system of the world economy. This will obviously result in the elimination of TKI in the domestic labor market competition.

b. Weaknesses of Foreign Worker Supervision Arrangements

The rules for controlling foreign workers in the Job Creation Law contain several weaknesses related to the abolition of permits and minimum provisions that must be in the RPTKA, the provision of exceptions to the obligation to ratify the RPTKA, and concessions to the ban on positions. In terms of licensing, the Manpower Law which strictly regulates the licensing process for foreign workers starting from the existence of a plan before issuing a permit has more restraining power/controlling power when compared to the provisions in the Job Creation Law which only requires an endorsement. Validation means the act of legitimizing while one of the meanings of ratifying is approving.

According to Bagir Manan, licensing in a broad sense is an agreement.(Sutedi, 2012) It's just that licensing is not only related to the aspect of approval, narrowly licensing also means binding to a regulation. This means that licensing does not only concern the imposition in special circumstances, but also so that the permitted actions are carried out in a certain way/inscribed in the provisions. Therefore, a permit must be accompanied by supervision. By changing the rules for licensing foreign workers to only ratification, of course, supervision efforts can be neglected. Supervision of foreign workers is very important. At the time the licensing provisions in the Manpower Law were still in effect, there were many violations committed by foreign workers and employers of foreign workers, such as: Working in Indonesia only on a tourist visa; work as manual labor that local workers should be able to do; work without any transfer of technology; and work beyond the specified time period. To overcome this violation, of course, need supervision efforts, especially Labor Inspection. It's just that the Job Creation Law does not change the rules of Labor Inspection in the Manpower Act.(Pratama, 2020)

This is a dilemma because the supervision rules in the Job Creation Law need to be tightened to compensate for the leeway that the law provides for foreign workers. The Job Creation Law also removes detailed provisions regarding what minimum things must be in

an RPTKA. The minimum requirement is withdrawn as a PP charge. The abolition should not be done to provide signs as a limitation on the government in implementing the law. If it is not regulated, the government can at any time provide more relaxed rules for foreign workers. Ironically, after the licensing provisions were abolished and approval for the use of foreign workers could be made through the RPTKA, the Job Creation Law also relaxed the provisions on exceptions to the ratification of RPTKA. Directors and commissioners can be granted exceptions, then if the employer considers that foreign workers are urgently needed, then there is no need to apply for an RPTKA.

3. Urgency of Regulation of Foreign Workers in Law Number 11 of 2020 concerning Job Creation During the Covid-19 Pandemic

The implementation of the regulation of foreign workers in Indonesia is not yet complete. The implementation of the principle of equality in the politics of employment law in the United States is very concerned, especially in terms of regulating foreign workers, most of whom are grouped as immigrant workers. As for ensuring equality in the legal politics of foreign workers, America often uses bilateral and/or multilateral agreements with countries of origin for immigrant workers and countries of destination where American workers will be distributed, while this agreement is based on Social Security Agreements. So that the number and time limit of foreign workers in America are based on bilateral and/or multilateral negotiations with partner countries.(Van Panhuys et al., 2017) So that the existence of foreign workers has been pre-arranged and does not create new problems for American citizens who are looking for work.

In the era of economic globalization, restrictions on foreign workers are necessary as a consequence of employment opportunities in Indonesia for Indonesian workers in accordance with the stipulation of Article 27 paragraph 2 of the 1945 Constitution. The link between rights and obligations makes practice to be carried out in a balanced manner. It is often seen that there is an imbalance between rights and obligations, especially in the field of employment and a decent standard of living for every citizen. Employment and a decent standard of living are things that need to be considered. Article 27 paragraph 2 of the 1945 Constitution explains that "Every citizen has the right to work and a decent living for humanity". Broadly speaking, it can be explained that work and a decent standard of living are rights for every citizen as a sign of humanity. Employment is a means needed to generate income that will be used in fulfilling a decent life.

A decent living is defined as the ability to fulfill basic needs, such as: food, clothing, and housing. The disharmony between rights and obligations, especially in the field of fulfilling employment and a decent standard of living for every citizen in Indonesia creates its own problems. Employment and decent living standards are things that need to be considered and prioritized in every policy direction related to employment. Controlling foreign workers working in Indonesia is one of the goals to protect Indonesian citizens from losing their jobs due to the large number of foreign workers who come to work in Indonesia. This is an implementation of the fulfillment of human rights, including the human right to work freely in their own country. And also includes a form of fulfillment of the rights for foreign nationals to be able to work in Indonesia even with certain restrictions. The legal politics is that foreign nationals may work in Indonesia but may not reduce the rights of Indonesian citizens themselves to obtain decent work in their own country. Therefore, the presence of foreign workers needs to be controlled by being limited by existing regulations and only certain fields of work are allowed. Therefore, it is necessary to have laws and regulations concerning the control of foreign workers working in Indonesia. In principle, foreigners even

those who are residents of Indonesia have rights and obligations that are different from the rights and obligations of Indonesian citizens. Foreigners are subject to certain restrictions, especially those concerning rights issues. Based on the provisions of the Manpower Act and Immigration Law, everyone can be limited in their space of movement and even deported or in persona non grata or handed over to other countries, especially when committing a crime. This situation is certainly different from the status as an Indonesian citizen (who has the right to enter and leave Indonesia) but foreigners only have the right to leave the territory of Indonesia. In addition, every foreigner must register himself in accordance with the applicable laws and regulations. In the political field, foreigners are not allowed to interfere in Indonesian domestic politics.

F. Conclusion

1. Whereas the implementation of the politics of using foreign workers has not been able to achieve justice, this is because the legal politics of using foreign workers has resulted in reduced job opportunities for domestic workers, which in turn has resulted in problems of unemployment and poverty.
2. Weaknesses in the implementation of the politics of using foreign workers are the shortcomings in the form of time limits and the amount of use of foreign workers is not clearly regulated in the politics of foreign labor law in Indonesia, then the weakness in the case of dualism in work permits for foreigners in Law no. 13 of 2003 and Law no. 6 of 2011.
3. Supervision of foreign workers in the Employment Creation Law is not fully regulated, this results in the rate of foreign workers being unstoppable so that it has an economic impact on TKI and health impacts for the local community.

G. Suggestion

1. For the government, it is necessary to conduct a review regarding the regulation of supervision and restrictions on the use of Foreign Workers, in addition, it is necessary for the government to make a monitoring system for the management of permits for Foreign Workers in the country;
2. For entrepreneurs, it is also necessary to support the government's efforts in preventing Covid-19 among foreign workers by monitoring the health of foreign workers;
3. For the community, it is necessary to improve the skills and experience of Human Resources so that they are able to compete and be absorbed in employment in the current era of globalization, so that employment is not dominated by Foreign Workers.

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