



IMPLICATION OF GIVING FOREIGN LABOR PERMITS WORKING FOR INDONESIAN LABOR EMPLOYMENT OPPORTUNITIES

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Abstract

The published regulations relating to the granting of permits for foreign workers to work in Indonesia actually hurt the sense of justice and reduce the rights of local workers in obtaining decent work and life as mandated by the 1945 Constitution of the Republic of Indonesia. It must be honestly admitted that in some fields, local labor is still inadequate, for example in mastering technology. Based on these conditions, the government should be the regulator and facilitator, providing training that is able to improve the ability of local workers to compete with foreign workers. This is important to do so that dependence on foreign workers can be minimized.

Keywords: *implications, permits, foreign workers, employment opportunities*



A. Introduction

Getting decent work is a people's right that is protected by the constitution. The 1945 Constitution of the Republic of Indonesia has mandated the government to provide decent work for the people of Indonesia. The fact and reality that happened in Indonesia, that the number of the population that was very large was not comparable with the availability of employment. As a result, many Indonesian citizens are forced to work abroad.

Another problem is when some regulations emerge and provide opportunities for foreign workers to work in Indonesia. These rules include Law Number 13 of 2003 concerning Manpower, Minister of Manpower and Transmigration Regulation of the Republic of Indonesia Number 12 of 2013 concerning Procedures for the Use of Foreign Workers, Republic of Indonesia Government Regulation Number 97 of 2012 concerning Retribution on Traffic Control and Extension of Permit to Employ Foreign Workers. The latest regulation which is called highly controversial is the Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers. (Suhayati, 2018: 1)

The regulation that allows foreign workers to work in Indonesia certainly makes the opportunities for Indonesian citizens narrower, even though the unemployment rate is so high. Indeed, in the regulation there are restrictions that those who work in Indonesia are not unskilled workers with minimal skills, but are workers at the level of managers, consultants and others. But in reality there are many foreign workers who have a level of unskilled labor.

Based on the latest data recorded at the end of 2018 the number of foreign workers reached 95,335 people. This number increased 10.88% when compared to 2017 which amounted to 85,974 people. The allowance of foreign workers to work in Indonesia, is the impact of Indonesia's participation in the organization as a member of the World Trade Organization by ratifying The Agreement of the World Trade Organization Establishments, and formally declaring this attachment in Law Number 7 of 1994. One of the important things which is part of international commitments is the obligation of WTO members to open



market access to member countries, both in trade in goods and services. (Randang, 2011: 66).

The existence of foreign workers actually threatens the rights of Indonesian citizens in their sovereignty in obtaining decent work for humanity. The entry of Indonesia as a member of the WTO is the culprit of the chaos of the use of foreign workers, so that Indonesian workers become colonized in their own homeland. This policy certainly raises polemics and quite a lot of implications in the level of application and regulation.

B. The Politics of Indonesian Labor Law

It must be acknowledged that some of the laws and regulations in the labor sector that have been in effect so far, are colonial products, human beings work as objects, as objects or as a factor of production, so that workers are at a disadvantage in service and industrial relations that emphasizes position and certain interests. The colonial product law was of course deemed no longer in line with the development of employment in Indonesia. (Kusumaatmadja, Sidharta, 2000: 80-81)

Labor has a very big role in national development, of course, with various challenges and risks it faces. In a legal perspective, labor needs to be given protection, maintenance and improvement of welfare, so that it can provide a significant contribution in the implementation of national development.

The central point in looking at workers is the political paradigm of labor law, which is related to views about humans and work; the relationship between the manifestation of work (energy) with wages, and basic rights of workers. The political agenda of labor law will be operationalized if there is a condition that supports it, both systemically and culturally, in which an actual action is needed, namely building worker strength, social relations of workers with production, protection of workers with production, and workers' spiritual welfare. (Charda. 2015: 4)

In the enforcement of labor law, it includes instruments of partiality to the interests of workers and pioneering workers' justice (industrial relations court) which leads to justice with a simple, fast and



low-cost settlement process (justice delayed, justice denied) while heeding the principles of order, justice, truth and legal certainty in enforcing labor law in Indonesia. (Charda. 2015: 4)

To protect Indonesian workers, politics of labor law is needed in accordance with the basic values of this nation, namely Pancasila. Pancasila as the basis of state philosophy (*philosofische gronslag*) contains the consequence that in every aspect of state administration it must be in accordance with the values of the Pancasila. (Kaelan, 2009: 59)

Seeing the ease with which foreign workers enter Indonesia because of the convenience obtained, there needs to be tighter regulations on the presence of foreign workers. The regulation is intended to provide protection for employment opportunities for Indonesian citizens as mandated by law.

The provisions of Article 9 and article 10 paragraph (1) of the Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers are considered to be contrary to Law Number 13 of 2003 concerning Manpower (Labor Law). Likewise, the provisions of Article 19 and Article 26 of the Regulation of foreign workers are considered to provide concessions for foreign workers in Indonesia. There are several articles in the Presidential Regulation on foreign labor that are contradictory to the Manpower Act, including the Manpower Act which requires the Planned Use of Foreign Workers (PUFW), while in the Presidential Regulation the Foreign Workers do not require foreign workers to positions such as commissioners and directors workers needed by the government. (Suhayati, 2018: 1)

The issuance of Presidential Decree Number 20 of 2018 concerning the Use of Foreign Workers creates injustice in the eyes of labor law activists. The high unemployment rate in Indonesia at productive age should be a reference for policy makers not to provide broad space for the presence of foreign workers.

Article 27 paragraph (2) jo. Article 28D paragraph (2) of the 1945 Constitution is an image of Indonesian labor law which is in line with the objectives of national economic development which adheres to the



concept of Pancasila economic democracy, namely to realize prosperity for all Indonesian people. (Zulkarnain and Utami, 2016: 409)

Article 28D paragraph (2) of the 1945 Constitution states that each citizen has the right to decent work and livelihood for humanity, and every person has the right to work and receive compensation and fair and proper treatment in work relations. Based on the article, the task of the Indonesian state is not only to create jobs but the state must ensure that in all working relations all parties, especially workers/laborers, obtain decent living as human beings and receive fair treatment. (Zulkarnain and Utami, 2016: 409)

Labor has a role and position that is very important as an actor in achieving development goals. Employment development in Indonesia is organized on the principle of integration and partnership. (Zulkarnain and Utami, 2016: 409). As stipulated in Article 4 of the Manpower Act that labor development aims to:

1. Empower and utilize the workforce optimally and humanely;
2. Realizing equal employment opportunities and providing labor in accordance with national and regional development needs;
3. Providing protection for workers in realizing prosperity; and
4. Improve the welfare of workers and their families.

C. Urgency of Foreign Workers in Indonesia

Indonesian workers are one of the human resources as development actors who have a productive work ethic, skills, creativity, discipline and professionalism, and are able to utilize foreign workers, develop and master science and technology. In reality and practice, the existing Indonesian workforce cannot yet fully master the growing science and technology. As a result, in some fields it turns out there is a scarcity of native Indonesian workers with qualities that are in line with the needs of formation in some parts of the work with a high degree of difficulty or that require workers who have very special expertise (specialization). The result is that employers do not provide these opportunities to Indonesian workers who meet these requirements/ qualifications. This then became



one of the reasons for the opening of foreign labor taps in Indonesia. (Randang, 2011: 68).

In principle, the use of foreign workers in Indonesia is those who are needed in 2 (two) things, namely foreign workers who bring capital (as investors) and/or bring skills in terms of transfer of knowledge or transfer of know-how. (Sumarprihatiningrum, 2006: 56). In addition to these two reasons, the essence is not permitted and must prioritize the use of labor from Indonesia. (Sumarprihatiningrum, 2006: 57)

Foreign workers based on Article 1 point 13 of the Labor Law are foreign nationals holding visa with the intention of working in the territory of Indonesia. According to Budiono, there are several objectives for the placement of foreign workers in Indonesia, namely:

1. Meeting the needs of skilled and professional workers in certain fields that cannot yet be filled by foreign workers;
2. Speed up the national development process by accelerating technology transfer or transfer of knowledge, especially in the industrial sector;
3. Provide expansion of employment opportunities for foreign workers
4. Increasing foreign investment as supporting development capital in Indonesia. (1995: 115)

Foreign workers users can use foreign workers until a certain time limit (Article 46), so that up to a certain time the Indonesian workers has been able to adopt the skills of the foreign workers concerned and implement it themselves without having to involve Indonesian workers. Thus the use of foreign workers is carried out selectively in the context of optimizing the use of Indonesian workers.

Foreign workers have the same position as Indonesian workers when they work in Indonesian companies. When foreign workers work in Indonesian companies, the law that applies to these foreign workers is Indonesian law, especially Law Number 13 of 2003 concerning Labor. In addition to the same position as Indonesian workers, there are certain jobs that are closed or prohibited for foreign workers as stated in the Decree of the Minister of Manpower and Transmigration of the Republic of



Indonesia Number 40 of 2012 concerning Certain Positions that Are Prohibited from Being Occupied by Foreign Workers.

The regulation was issued to provide broader employment opportunities for Indonesian labor migrants, as well as the government's efforts to limit the use of foreign workers and supervise the use of foreign workers on the basis of legislation. The government also issued a number of legal instruments ranging from licensing, guarantees health protection to supervision based on the provisions of Presidential Decree Number 75 of 1995 concerning the Use of Foreign Workers.

D. Implications for Granting Foreign Workers' Permits to Work for Indonesian Employment Opportunities

Every year the number of the Indonesian workforce continues to increase. This fact, of course, will be a burden on the economy because of the increase in the number of the workforce but not offset by the expansion of employment. Work forces that are not absorbed in employment will cause an increase in unemployment. (Adianto, Fedryansyah, 2018: 79)

The suffering of Indonesian workers is increasing when opportunities are opened for foreign workers to work in Indonesia with the issuance of several regulations relating to licensing for foreign workers. Despite the restrictions, these permits make the chances of Indonesian laborers getting smaller. The hope of getting a job and living a decent life as mandated by the 1945 Constitution is also getting smaller.

The right to get a decent job and livelihood is also stated in Article 23 paragraph (1) of the United Nations Declaration on Human Rights (HAM) mentioning:

“Everyone has the right to work, has the right to freely have a job, has the right to labor conditions that are in accordance with the principle of non-discrimination”.

This principle is also adopted in The International Covenant on Economic, Social and Cultural Rights and has been ratified by the Republic of Indonesia Law Number 11 of 2005 concerning Ratification of



the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social Rights and Culture.

Article 6 paragraph (1) International Covenant On Economic and Cultural 1966 states:

“The participating countries of this agreement recognize the right to work which includes everyone for the opportunity to earn a living by doing work that he freely chooses or accepts and will take appropriate measures to protect this right.”

Article 38 paragraph (2) of Law Number 39 of 1999 concerning Human Rights states:

“Every citizen in accordance with their talents, skills and abilities, has the right to decent work”.

Broadly speaking, it can be explained that work and a decent level of life are the rights of every citizen as a sign of humanity. Livelihoods that are worth interpreting are the ability to fulfill basic needs.

Many of the problems faced by domestic workers are related to the limited employment opportunities caused by internal constraints and due to labor market conditions in Indonesia, including the entry of foreign workers, the decline of labor-intensive industries that shift to technology (capital intensive), qualifications that high demand as well as high demand, wages that still have not found a mutually beneficial scheme, an unclear working relationship scheme (determining core and non-core schemes in outsourcing), which ultimately makes the pile of homework continues to grow. (Saleh, 2016: 234)

Restoration of this condition is a fixed and absolute price, because if it is allowed to drag on it will trigger social insecurity, which in the long run will affect Indonesian National Resilience. Looking at the complexity of the problems, the role of the Government in its capacity as a regulator that carries out the functions of facilitators and catalysts, as well as labor inspection is absolutely necessary.

The government should make efforts to control the number of foreign workers working in Indonesia, as an effort to protect Indonesian citizens from losing their jobs which are their rights. Control or limitation of the number of foreign workers working in Indonesia is also part of



fulfilling the rights for foreign nationals to be able to work in Indonesia, even with certain restrictions. Its legal politics are that foreign nationals may work in Indonesia but may not reduce the right of Indonesian citizens themselves to obtain decent work in their own country. (Pottag, 2018: 245)

The most difficult fact to stem the flow of foreign workers in Indonesia is the arrival of foreign investments that require the use of foreign workers from these investor countries. Like simalakama fruit, and two sides of the same coin, the presence of foreign workers cannot be denied.

It is also necessary to pay attention to the transfer of knowledge from foreign workers to Indonesian workers. Knowledge transfer as a condition for foreign workers to work in Indonesia if it runs according to existing rules, should not make foreign workers work too long in Indonesia. Therefore supervision in terms of transfer of knowledge needs to be improved. Regulations so that there are local workers who accompany foreign workers must be realized.

The issue of knowledge of the latest technology which has been an obstacle for local workers in competing with foreign workers, should not be a major obstacle, if the government conducts training in vocational training centers with the latest technology. The urgency of this training is very important so that dependence on foreign workers can be minimized. This means that the use of foreign workers must provide as much benefit as possible for the benefit of Indonesian workers through efforts to expand work which will have a positive impact on the creation and expansion of employment opportunities and the occurrence of technology transfer from foreign workers to Indonesian labor. (Ariani, 2018: 120).

E. Conclusion

Giving permission to foreign workers in Indonesia should not minimize the opportunities for local workers to get decent jobs. Local labor in accordance with the mandate of the 1945 Constitution, becomes a priority scale in obtaining work in his own homeland. Therefore, there needs to be tighter regulations related to granting licenses for foreign



workers who will work in Indonesia. The government has an obligation to provide training so that the ability and quality of local workers are not left behind from foreign workers. Knowledge of foreign workers who master technology should be the trigger for the government to make improvements in the labor sector, especially mastery of technology. Mastery of technology is important to be addressed so that Indonesian workers not only become laborers/laborers, but also become consultants, managers and others.

Bibliography

Books and Journals:

- Adianto, Adianto., Muhammad Fedryansyah, "Improving the Quality of Workers in Facing the ASEAN Economy Community", in the Focus of the Journal of Social Work, Volume I, Number 2, July 2018.
- Ariani, Nevey Varida, "Law Enforcement of Illegal Foreign Workers in Indonesia", in the De Jure Law Research Journal, Volume 18, Number 1, March 2018.
- Arifin, Azis Nur, Maheru Fata, Muhammad Zain, "Political Impressions of National Law Based on Pancasila on National Legislation Systems", in Echo, Year XXVII / 50 / February-July 2015.
- Budiono, Abdul Rachmat, 1995, Labor Law in Indonesia, Jakarta: PT RajaGrafindo Persada.
- Charada S., Ujang., "Characteristics of the Labor Law in Legal Protection of Workers", in the Journal of Legal Insights, Volume 32, Number 1, February 2015.
- Dayanto, "Reconstruction of the Pancasila-Based Indonesian Law Development Paradigm", in the Journal of Legal Dynamics, Volume 13, Number 3, September 2013.
- Hartono, Sunaryati, 1991, Politics of Law Towards a National Legal System, Bandung: Alumni.



- Jehuru, Yohanes, "Observing the Indonesian State's Crisis with the Plato Ideal State Telescope", in *Limen*, Year 7 Number 2, April 2011, the College of East Dawn Theological Philosophy.
- Kaelan, 2009, *Philosophy of the Pancasila of the Indonesian Nation's View of Life*, Yogyakarta: Publisher Paradigm.
- Kusumaatmadja, Mochtar, and B. Arief Sidharta, 2000, *Introduction to Legal Studies (A First Introduction to the Scope of the Applicability of Legal Sciences) Part I*, Bandung: Alumni.
- Mahalli, Kasyful, "State of Welfare in the Context of Regional Development", in the *Journal of Economics*, Volume 18, Number 1, January 2015.
- Mahfud, MD., Moh., 1998, *Political Law in Indonesia*, Jakarta: LP3ES, Cet. I.
- Mulyadi, Dedi, 2012, *Legislation Policy on Criminal Sanctions in Indonesian Legislative Elections in a Democratic Perspective*, Jakarta: Gramata Publishing.
- Pottag, Anis Tiana, "Politics of Law for the Control of Foreign Workers Working in Indonesia", in *Media Jurisprudence*, Volume 1, Number 2, June 2018.
- Randang, Frankiano B., "Readiness of Indonesian Workers in Facing Competition with Foreign Workers", in *Servanda Legal Scientific Journal*, Volume 5, Number 1, January 2011.
- Saleh, Chairul, "Study of Government Policies and Strategies in the Efforts to Protect Local Workers in Facing the ASEAN Economic Community", in *Bisma Journal of Business and Management*, Volume 10, Number 2, May 2016.
- Sastrohardiwiryo, B. Siswanto, 2005, *Management of Indonesian Workers, Administrative and Operational Approaches*, Jakarta: Bumi Literacy.
- Sembiring, Sentosa, 2007, *Association of Laws on Consumer Protection and Related Laws*, Bandung: Nuansa Aulia.
- Setiawan, Rony Ika, "Perception of Local Workers on the Invasion of Foreign Workers in Indonesia: Challenges in Facing the ASEAN



Economic Community (MEA) in 2015", in *Jurnal Kompilek*, Volume 7, Number 2, December 2015.

Suhayati, Monika, "PERPRES Controversy Number 20 of 2018 concerning the Use of Foreign Workers", in *Brief Info on a Brief Study of Actual and Strategic Issues in the Field of Law*, Volume X, Number 09 / I / Puslit / May / 2018.

Sumarprihatiningrum, C., 2006, *Use of Foreign Workers in Indonesia*, Jakarta: HIPSMI.

Syaukani, Imam, and A. Ahsin Thohari, 2012, *Fundamentals of Political Law*, Jakarta: PT RajaGrafindo Persada.

Zulkarnain, Ahmad Hunaeni, and Tantri Kirana Utami, "Legal Protection of Workers in the Implementation of Industrial Relations", in the *PJIH Journal*, Volume 3, Number 2, 2016.

Legislation:

Republic of Indonesia, Act Number 13 of 2003 concerning Manpower.

Republic of Indonesia, Presidential Regulation Number 20 Year 2018 concerning Use of Foreign Workers.

Republic of Indonesia, Government Regulation of the Republic of Indonesia Number 97 of 2012 concerning Retribution on Traffic Control & Extension of Permit to Work Foreign Workers.

Republic of Indonesia, Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 12 of 2013 concerning Procedures for the Use of Foreign Workers.