

PROTECTION OF THE RIGHTS OF INDONESIAN CITIZENS TO WORK AGAINST THE USE OF FOREIGN LABOUR IN INDONESIA

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Abstract: *The use of foreign labour in Indonesia at this time in addition to the transfer of knowledge and technology is also in the interests of foreign investment in Indonesia. To ease the foreign investment Indonesian government changed the legislation of foreign labour. Changes to the regulations by changing the presidential regulation Number 72 of 2014 to the new Presidential Regulation, namely Presidential Regulation Number 20 of 2018 concerning foreign labour. The latest Presidential Regulation on foreign labour is made a simplification and ease of licensing for foreign workers who will work in Indonesia. The ease of licensing the use of foreign labour in presidential regulation number 20 of 2018 is contrary to the higher statutory regulations, namely act number 13 of 2003 concerning labour and act number 6 of 2011 concerning Immigration. The ease of licensing the use of foreign workers does not protect the interests of local workers to get work, where the situation of employment is still lacking for Indonesian workers, because there are still many Indonesian workers sending abroad and the high unemployment rate is 6.82 million people. Protection of local workers against the use of foreign workers in the Province of West Sumatra at present, is constrained in supervision because in Presidential Regulation Number 20 of 2018 the process of licensing the use of foreign workers is fully carried out by the ministry of labour. The licensing process which is entirely under the authority of the central government has resulted in the regional government of West Sumatra province not having direct data from foreign labour employers regarding the use of foreign workers and local workers as co-work foreign workers in their territory. The Ministry of labour should submit data on foreign workers to the regional government where foreign workers work.*

Key Words: *Protection, Rights Of Indonesia Citizens, Foreign labour.*

1. INTRODUCTION:

The Republic of Indonesia is a welfare state that protects all its citizens. Welfare can be created by providing jobs for people who will produce material in the form of money or other forms. Article 27 paragraph (2) of the 1945 Constitution. In Article 27 paragraph (2) of the 1945 Constitution which contains the right to work and income intended to help Indonesian citizens, not citizens who live in Indonesia.[1]

Protection of employment for Indonesian citizens is reinforced by act Number 13 of 2003 concerning labor. In addition to regulating the Indonesian labour, the Manpower Act also provides opportunities for Foreign labour to be able to work in the territory of the Republic of Indonesia with certain positions and types of work according to statutory regulations.

The use of foreign labour in Indonesia originally intended to meet the needs of professional labour in certain fields that could not be filled by Indonesian labour by accelerating technology transfer and increased investment,[2] therefore Foreign Labour must have a complementary Indonesian Labour as stipulated in the provisions Article 45 Paragraph (1) Sub-Paragraph a of the Labour Act which states "Foreign Labour providers must appoint Indonesian Citizen labour as accompanying Foreign Labour employed for technology transfer and skills from Foreign Labour".

The use of foreign labour is contained in Article 42 paragraph (1) of the labor Act, that is, it must have written permission from the Minister or a designated official. This permission is granted with due regard to:[4]

- The condition of the job market.
- The development of the labor market.
- National aspirations to occupy important places in all fields adapted to education, vocational and concrete development plans.

The granting of permission for the use of Foreign Labour is intended so that the use of Foreign Labour is carried out selectively in order to optimally empower local labour. Therefore, in employing Foreign Labour, it is carried out through very strict mechanisms and procedures, especially by requiring companies that use Foreign Labour working in

the territory of Indonesia by making a Plan for the Use of Foreign Workers.[5] The Plan for the Use of Foreign Workers is a requirement for obtaining a work permit.

Implementing regulations regarding the use of foreign labour are further regulated by Presidential Regulation Number 20 of 2018 concerning Use of Foreign Labour. The existence of the Presidential Regulation on the Use of Foreign Labour is regulated in Article 49 of the Labour Act. So that the Presidential Regulation on the Use of Foreign Labour is also referred to as delegated legislations as subordinate legislations under the act.[6] The presidential regulation concerning the use of foreign labour has been rejected by the public, especially from the Indonesian workforce. Rejection of the Presidential Regulation on foreign labour by Indonesian labour because Indonesian labour assume that the Presidential Regulation on foreign labour that facilitate foreign labour will result in many foreign labour entering Indonesia so that it can harm the interests of Indonesian labour.

The increasing number of foreign labour working in Indonesia is also accompanied by problems regarding the use of foreign labour, such as the findings of the Ombudsman of the Republic of Indonesia finding problems regarding the use of foreign labour such as foreign labour who are actively working but the validity period of a Foreign Labour Permit (IMTA)) has been exhausted and has not been extended, companies providing employment to foreign labour whose existence cannot be ascertained, foreign labour who work as unskilled laborers are jobs that cannot be occupied by foreign labour.

2. CONCEPTUAL FRAMEWORK:

a. Foreign Labour

Foreign Labour according to Article 1 number 13 of the Labaour Act are foreign nationals holding a visa with the intention of working in the territory of Indonesia.

b. Legal Protection

Legal protection is the protection of the rights of every person and the recognition of those rights based on the provisions of the applicable legal provisions. According to Philipus M. Hadjon, legal protection functions to recognize and protect the dignity and worth of every person.

c. Citizens Rights

The right is the power to do something because it is determined by act.[7] In this research the right which is taken up is the right to get a job. Citizens are all people who according to the act are categorized as Indonesian citizens.[8] So what is meant by the right of citizens to work is the right of Indonesian citizens to get jobs in accordance with what has been determined by the Indonesian constitution, namely the 1945 Constitution.

3. THEORITICAL FRAMEWORK

a. Walfare State

According to Lalu Husni, one of the goals of the state is the welfare function, namely the state must realize the welfare of all people.[9] The concept of the welfare state is a concept that arises because of the concept of the rule of law. Hamid S. Attamimi stated that Rechtsstaat Indonesia is Rechtsstaat which promotes public welfare, enlightens the life of the nation and realizes a social justice for all Indonesian people.[10]

b. Legal Protection

The law is to protect the interests in society. According to Theresia Geme, legal protection relates to the actions of the state to do something by (enforcing state law exclusively) in order to provide certainty of the rights of a person or group of people.[11]

c. Stufentheorie

Hans Kelsen said that legal norms are layered and tiered in a hierarchy, in the sense that lower legal norms apply, sourced and based on higher norms, higher norms apply, sourced and based on higher norms, thus it comes to a norm that cannot be traced further and is hypothetical and fictitious namely the basic norm (Grundnorm).[12]

4. LITERATURE REVIEW:

Labour Protection before, during and after employment, is carried out by the state, especially the government. The presence of the government in the protection of labour is due to an industrial relations system in which actors are involved in the production of goods and / or services consisting of elements of employers, laborers, and the government. According to Soepomo, labor protection is divided into:[13]

a. Economic Protection

Protection of labour in the form of adequate income, including workers unable to work against their will.

b. Social Protection

Protection in the form of work health insurance and freedom of association and protection of the right to organize.

c. Technical Protection

Labour protection in the form of work safety and security.

Against the use of foreign labor, the protection afforded by the government in the labor laws of the local workforce is arranged requirement for foreign workers to work in Indonesia, namely:

- a. Foreign Labour who work must have written permission from the Minister or a designated official.
- b. Foreign Labour can only work with certain positions and times.
- c. Before obtaining the permit, the Foreign Worker employer must have a Foreign Workers Use Plan which must be ratified first by the Minister or an appointed Officer. This Foreign Workers Use Plan is excluded for foreign Labour who work for government agencies, international agencies and representatives of foreign countries.
- d. Foreign Labour Employers must appoint Indonesian Labour as a companion for Foreign Labour and carry out work education and training for Indonesian Labour aimed at transferring knowledge from Foreign Labour to Indonesian Labour.
- e. Foreign Labour occupy certain positions, such as positions that take care of personnel.
- f. Employers of Foreign Labour are required to pay compensation for each Foreign Labour employed. The compensation fund is non-tax state revenue.

5. METHOD:

The method used in this research is Empirical Juridical, which compares existing norms with the facts in the field in accordance with the research conducted.[14] Data for this study were obtained from the TPI Padang I class immigration office and the West Sumatra province labour and transmigration office.

6. DISCUSSION:

Elucidation of article 42 paragraph (1) of the Labour Act explains that the permit to use a Foreign Labour is intended so that the use of Foreign Labour is carried out selectively in the context of optimizing the utilization of Indonesian Labour. In 2018 the government issued a new presidential regulation, namely presidential regulation Number 20 of 2018 concerning the use of Foreign Labour. Presidential Regulation Number 20 of 2018 received rejection from Indonesian Labour, such as the statement of the Chairperson of the Confederation of Indonesian Trade Unions (KSPI) Said Iqbal said that the labour agreed to reject Presidential Regulation Number 20 of 2018 because of the Perpres according to Said Iqbal dangerous for the survival of domestic Labour.[15] The new presidential regulation has been rejected by labour and labour organizations in Indonesia. Indonesian labour reject the presidential regulation concerning foreign labour because the presidential regulation facilitates the licensing of the use of foreign labour to be able to work in Indonesia. Ease of licensing the use of foreign labour in the presidential regulations on the use of foreign labour, namely:

- a. No longer requires employers to have a permit to employ Foreign Labour (IMTA) as stipulated in the previous Presidential Regulation.
- b. Foreign Labour can work for two employers at the same time.
- c. The period of endorsement and amendment of the Plan for the Use of Foreign Labour (RPTKA) is no later than 2 (two) days from when the application is received in full.
- d. Work that is emergency and requires employers to employ foreign Labour prior to the ratification of the RPTKA from the Minister or designated Officer.
- e. A Limited Stay Visa for Foreign Labour is given no later than 2 (two) days since the application is received in full by the Immigration Official at the Republic of Indonesia's representative abroad.
- f. Limited Stay Visa and Limited Stay Permit can be applied at once.
- g. Foreign Labour are not required to have Indonesian language skills.

The ease of licensing for the use of foreign labour occurs at a time when there is still an increase in the number of foreign labour who work in Indonesia each year, namely in the year. Based on data from the Indonesian Ministry of Labour, at the end of 2018 the number of Foreign Labour in Indonesia was 95,335 people, that number increased by 10.88% from the data in 2017.[16] In 2017 the number of Foreign Labour in Indonesia was 85,974 people, compared to 2018 the number of Workers Foreign Labour increased by 9,361 people, the increase in the number of Foreign Labour in 2018 was quite large compared to previous years, as a comparison in 2016 to 2017 the increase in the number of Foreign Labour in Indonesia amounted to 5,599, in 2015 to 2016 the increase in the number of Labour Foreigners in Indonesia as many as 3,226 people. In addition to the increasing number of foreign labour, the presidential regulation on foreign labour was issued at a time when the unemployment rate in Indonesia was still high, according to data from

the Central Statistics Agency published in May 2019 of 6.82 million people. That is still open unemployment, not to mention labour whose working hours are not full and their income is below the minimum wage.

Presidential regulations on foreign labour that facilitate the licensing of foreign labour, the contents of which contradict the higher regulations. Contradiction is in article 9 of the presidential regulation which states that the RPTKA is a permit to employ foreign workers, but in the elucidation of article 43 paragraph (1) of the Labour Act explains that RPTKA is a condition for obtaining a work permit for foreign labour. Article 10 paragraph (1) of the Presidential Regulation states the exception of the obligation to take care of the RPTKA for employers who employ foreign labour who are shareholders who serve as members of the Board of Directors or members of the Board of Commissioners, diplomatic and consular employees at representative offices of foreign countries and TKA on the type of work required by the government. Article 43 paragraph (1) of the Labour Law explains that employers who employ foreign labour must have a RPTKA and in Article 43 paragraph (3), the requirement to have an RPTKA is excluded for Government agencies, International agencies and representatives of foreign countries. Article 43 Paragraph (3) of the Labour Act does not mention that it is excluded for shareholders who serve as members of the Board of Directors or Board of Commissioners to have RPTKA, but in Article 10 paragraph (1) of Presidential Regulation Number 20 of 2018 states that RTPKA is not mandatory for employers who employ foreign labour who hold shares and serves as a member of the Board of Directors or a Board of Commissioners. Article 20 Presidential Regulation Number 20 of 2018, the application for a limited stay permit can be carried out simultaneously with the application for a limited stay visa while Article 46 paragraph (2) of the Immigration Act states that every foreigner who enters with a limited stay Visa and has received an entry sign, then he is required to apply for a limited stay permit and Article 52 letter a also states that a limited stay permit is granted to foreigners who enter the territory of the Republic of Indonesia on a limited stay visa. From the provisions in the Immigration Act, to be able to have a limited stay permit, foreigners must first enter Indonesia with a limited stay visa and get an entry.

The use of foreign labour in the Province of West Sumatra until March 2019 as many as 36 foreign labour, they occupy positions of leadership of the company and also occupy positions that can actually be occupied by local Indonesian labour, such as marketing and engineering positions. After the issuance of presidential regulation number 20 of 2018 concerning the use of foreign labour which gave the authority to arrange permits for the use of foreign labour to the central government, resulting in labour and transmigration services in the Province of West Sumatra experiencing obstacles in the data collection and supervision of foreign labour in its territory because it was not there is socialization from the central government or the ministry of labour. The absence of data on foreign labour in the Province of West Sumatra, resulting in obstacles in monitoring the use of foreign labour by the Department of Labour and Transmigration of the Province of West Sumatra. To improve the supervision of the use of foreign labour, the Department of Labour and Transmigration of the Province of West Sumatra independently collected data on foreign labour in the West Sumatra Province. The data collection of foreign labour is done by asking companies that are known to use foreign labour to report foreign labour who are employed as well as local labour data as a companion to foreign labour, in addition there are also companies that directly report data on the use of foreign labour and implementation training and education for local counterparts.

7. ANALYSIS:

A. Protection Of The Rights Of Indonesian Citizens To Job Against The Use Of Foreign Labour

The State of Indonesia as a welfare state is responsible for advancing the welfare of Indonesian citizens. Welfare can be achieved, one of which is done by providing employment for Indonesian citizens to earn income in the form of money or materials that will be used to meet the needs of life. Employment in Indonesia is prioritized for Indonesian citizens, so every legislation regarding employment must be in favor of the interests of Indonesian citizens. The labour law has provided some protection for Indonesian labour against the use of foreign labour in the form of restrictions on the use of foreign labour. All restrictions on the use of Foreign Labour and the obligations of employers to empower Indonesian Labour that are regulated in the Labour Act are efforts to protect the rights of Indonesian citizens to work in order to achieve the welfare of the Indonesian people as stated in the Republic of Indonesia's Constitution.

Regulations on legislation on labor specifically for the use of foreign labour must emphasize the protection of Indonesian labour, but Presidential Regulation number 20 of 2018 facilitates the conditions for the use of foreign labour. The Indonesian people at this time need jobs because there are many labour force who have not got a job and welfare benefits while working because there are still many Indonesian labour who get wages below the standard of living decent for humanity, so the government should issue legislation to be able to overcome the problems regarding welfare. Indonesian labour. If the reasons for the issuance in the president's regulation regarding foreign labour are to increase investment, it is not in accordance with the investment objectives in Article 3 paragraph (2) of Act Number 25 of 2007 concerning Investment, which is to create jobs and to improve the welfare of the community.

Contradicting the contents of the presidential regulation concerning foreign labour with the labour act and immigration act will create an unsynchronization between the laws and regulations because of the demanding of Lon.

L. Fuller in one of the principles of the formation of laws and regulations is not allowed to contain rules that conflict with each other.[17] In addition Bagir Manan said that one of the juridical foundations in the formation of statutory regulations is the necessity of not contradicting the higher laws and regulations.[18]

Referenced from the concept of the hierarchy of statutory regulations in Indonesia in Article 7 paragraph (1) of Act Number 12 of 2011 which places presidential regulations under the law and in terms of the Stufentheorie concept of Hans Kelsen which explains the statutory regulations are tiered by regulations. the highest to the lowest legislation. Hans Kelsen said "that the norm is tiered and the validity of a norm is determined by other norms, these other norms are higher norms, and so on until finally it ends at the basic norms presumed to exist".[19] then Presidential regulation number 20 year 2018 does not get its validity.

B. Implementation Of The Use of Foreign Labour in the Province of West Sumatra Against The Protection Of The Rights of Indonesian Citizens Against Work

Implementation of the use of Foreign Labour by the Ministry of Labour is carried out by granting permission to use Foreign Labour based on the provisions of Article 42 paragraph (1) of the Labour Act. After granting permission for the use of Foreign Labour the Ministry of Labour is also authorized to ratify the RPTKA based on the provisions of Article 43 paragraph (1) of the Labour Act and Article 8 of Presidential Regulation Number 20 of 2018 and issue notifications based on the provisions of Article 14 paragraph (3) of Presidential Regulation Number 20 In 2018 submitted by employers of foreign labour. During the use of Foreign Labour, Article 30 of Presidential Regulation Number 20 Year 2018 requires employers of Foreign Labour to report the implementation of the use of Foreign Labour every 1 (one) year to the Minister, the report includes:

1. Implementation of the use of foreign labour.
2. Implementation of education and training of Indonesian Workers Companion of Foreign Labour.

Reporting the use of foreign labour by the provider of foreign labour to ensure the implementation of existing provisions in the regulations in force and to ensure that Indonesian citizens are involved in the use of foreign labour and benefit both in terms of knowledge and economic aspects in the use of foreign labour. The Ministry of Labour is also obliged to administer foreign labour in the use of foreign labour and conduct education and training carried out jointly with Provincial / Regency / City Offices based on orders from Article 32 of Presidential Regulation 2018.

Implementation of the use of foreign labour for the protection of Indonesian labour, the Office of Labour and Transmigration of the Province of West Sumatra, because the Office of Labour and Transmigration which can directly carry out checks on companies that employ foreign labour to ensure the use of foreign labour in accordance with regulations applicable laws and do not harm the rights of local labour. The Department of Labour and Transmigration cooperates with Immigration if there are findings about the presence of foreign labour who work illegally and have passed their residence time.

The obstacle experienced by the Department of Labour and Transmigration of West Sumatra Province on the supervision of foreign labour is regarding foreign labour licensing which is only done by the Central Government, namely the Ministry of Labour, resulting in the absence of certain data owned by the Department of Labour and Transmigration of West Sumatra Province other than those reported directly by foreign employers. Supposedly in Article 31 of Presidential Regulation No. 20 of 2018 stipulates that the Ministry of Labour must submit data on foreign labour to the work units of Provincial / Regency / City Governments in charge of employment in accordance with the location of foreign labour. With this condition, it indicates that the reporting of foreign labour data has not yet run from the Ministry of Labour and online integration of foreign labour data between the Ministry of Labour and the Provincial Labour Office.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- Regulations on the use of foreign labour in the Labour Act has regulated the protection of Indonesian citizens from the use of foreign labour. Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Labour which facilitates and simplifies the licensing process for foreign labour does not protect the rights of Indonesian citizens to work and is carried out in conditions of high unemployment in Indonesia and the large number of Indonesian Labour sent to abroad because of insufficient employment in Indonesia. The ease and simplification of the licensing process for foreign labour contained in Presidential Regulation Number 20 of 2018 also contradicts the Labour Act.
- The implementation of the use of foreign labour for the protection of Indonesian Workers in the Province of West Sumatra is carried out by the Labour of Manpower and the Office of Labour and Transmigration of the Province of West Sumatra in coordination with Imigarsi. Every foreign employer must report the implementation of the use of foreign labour every 1 (one) year to the Ministry of Labour. The report is related to the implementation of the use of foreign labour and the implementation of education and training for

accompanying Indonesian labour. The Department of Labour and Transmigration of the Province of West Sumatra, the implementation of the use of foreign labour after Presidential Regulation Number 20 of 2018 has constraints because all permits for the use of foreign labour are carried out by the Ministry of Labour so that data are not available regarding foreign labour who are working in Indonesia, even though in fact in Article 31 Presidential Regulation Number 20 of 2018 stipulates that the Ministry of labour must submit data on foreign labour to the work units of the Provincial / Regency / City Governments in charge of employment in accordance with the location of foreign labour. Supervision of the use of foreign labour in West Sumatra is carried out by the West Sumatra Province Labour and Transmigration Office together with the TPI Padang Class I Immigration Office. If a violation of the use of foreign labour is found, action will be taken in accordance with the provisions of the Labour Act and immigration sanctions will be imposed on foreign labour.

9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Labour, as well as being revoked by the President is replaced by a new Presidential Regulation whose contents are aimed at the welfare and protection of Indonesian citizens, because the contents of the Presidential Regulation contains the use of foreign labour currently available in addition to facilitating foreign labour licensing when there are still insufficient employment fields for Indonesian citizens is also contrary to the Labour Act and the Immigration Act. Every legislative and executive formation of legislation in its discussion must include the parties concerned, in terms of regulating the use of foreign labour, the parties are workers and companies, and each legislation must reflect the objectives of the state in the 1945 Constitution and pay attention to the provisions of the higher laws so that there is no conflict and can create synchronization in each hierarchy of laws and regulations.
- The government should return the process of licensing the use of foreign labour to the regional government, because by doing so, the existing supervision of the regional government will be more effective because it is closer to its reach

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