

Dynamics Of Legal Protection Of Foreign Workers In The Era Of Globalization In Indonesia

Mashari¹

¹University of August 17, 1945 Semarang

Retno Mawarini Sukmariningsih²

²University of August 17, 1945 Semarang

Indriyasari³

³University of August 17, 1945 Semarang

Sriyanti⁴

⁴University of August 17, 1945 Semarang,

Imam Subiyanto⁵

⁵University of August 17, 1945 Semarang

Tubagus Achmad Darodjat⁶

⁶Rajamangala University of Technology Krungthep-Thailand

Email Koresponden : mmashary@gmail.com, bagus2m@gmail.com

Abstract

*The purpose of this study is to analyze the legal protection of Foreign Workers (TKA) which is difficult to avoid due to investment activities in the context of national development and for the mastery and transfer of technology as a continuous and ongoing process so that it is possible to use TKA, in addition to the lack of Indonesian Migrant Workers (TKI) who are experts and skilled to replace TKA. The problems in this study include: Regulation of TKA in the era of globalization, and the dynamics of legal protection of Foreign Workers in the era of globalization in Indonesia. The research method uses a normative legal research type, a study that uses secondary data and primary data. The results of the study show that: First, the regulation of foreign workers in the era of globalization in Indonesia has been regulated in **Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, and Law Number 6 of 2023 concerning Job Creation** in licensing foreign workers made easier. Second, the dynamics of legal protection of foreign workers in the era of globalization in Indonesia Based on the work agreement, foreign workers also receive social security as regulated in Article 1 number 4 of Law Number 24 of 2011, which in essence*

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stipulates that social security participants are every person, including foreigners who work for at least 6 (six) months in Indonesia and are required to be provided with protection through national social security. Government policy has removed several regulations that hinder investment progress through deregulation of foreign worker use policies to increase foreign investment in Indonesia.

Keywords: Legal Protection; Foreign Workers ; Globalization Era

INTRODUCTION

Indonesia as a country based on law must provide a sense of justice for all citizens with regulations that are orderly in their implementation , so as to produce good and quality legal regulations in order to achieve the goals of justice and welfare for all Indonesian citizens. (Farida Sekti Pahlevi, 2019). According to Gustav Radbruch , legal justice determines the purpose of establishing legal regulations, this is very important to avoid internal conflict. Justice is normative because positive law is based on justice. Justice is constitutive, meaning an absolute element for the law itself, and rules without justice are not worthy of being law (Tanya et al., 2013)

The government has an important role to fulfill basic needs in order to realize the welfare of the people (Sarah Selfina Kuahaty et . al, 2021) The right to work is the right of all citizens guaranteed by the constitution. Based on Law No. 13 of 2003 concerning Manpower, labor protection is a guarantee to obtain justice, opportunity, and equal treatment without discrimination to realize the welfare of workers while still paying attention to the progress of the business world.

The era of globalization can cause the outflow and inflow of foreign citizens to Indonesia. Foreign Workers (TKA) are foreigners who work in Indonesia with permission from the government. The globalization factor has indirectly forced and encouraged the movement of workers between one country and another. Foreign Workers cannot be avoided in the era of globalization that is happening in Indonesia. In fact, the use of foreign workers in Indonesia is those who are needed in 2 (two) things, namely those (foreign workers) who bring capital (as investors) and/or bring skills in terms of *transfer of knowledge or transfer of know how* .(Sumarprihati Ningrum, 2006,) Apart from these two things, in essence it is not permitted and must prioritize the use of labor from Indonesia.

Based on data collected by the Ministry of Manpower (Kemenaker), in mid-2023 there



were 73,011 foreign workers in Indonesia. The details are as many as 37.6 thousand foreign workers are in the service sector, 33.4 thousand people in the service sector; and 1.9 thousand others are in the agricultural and maritime sectors. China dominates [foreign workers, as evidenced](#) throughout January to June 2023, which is 33 thousand people. The second place is Japan with 7.7 thousand foreign workers. The third is South Korea with 7.5 thousand foreign workers. India is in fourth place with 3.7 thousand foreign workers, followed by Malaysia in fifth place with 2.6 thousand people. The countries sending foreign workers on this list are mostly dominated by Asia. Data on the number of foreign workers in Indonesia based on their country of origin as shown in the table below.

Table : 1 Countries Sending Foreign Workers to Indonesia

Number.	Foreign Worker Sending Countries	Amount
1	China	33,072 people
2	Japan	7,779 people
3	South Korea	7,520 people
4	India	3,777 people
5	Malaysia	2,607 people
6	Philippines:	2,471 people
7	United States of America:	1,582 people
8	English:	1,471 people
9	Australia	1,392 people
10	Singapore	973 people
11	Other countries	10,367 people

Source: Ministry of Manpower data , 2023.

Based on the data from the sending countries of foreign workers in Indonesia, it shows that almost half of the foreign workers who work from their job level have a professional job level, which is 37.5 thousand people. Foreign workers who become consultants (16 thousand people), managers (13.8 thousand people), directors (5.1 thousand people), and commissioners (369 people). The provisions in **Law Number 6 of 2023 concerning Job Creation** (Job Creation Law) state that foreign workers are foreign citizens holding visas with the intention of working in the territory of Indonesia.



The use of foreign workers in Indonesia aims to meet the need for skilled and professional workers in certain fields that cannot yet be filled by Indonesian workers, as well as to encourage the transfer of knowledge and technology. The use of foreign workers also raises various problems, such as competition with Indonesian Migrant Workers (TKI), violations of labor rights, and potential social conflict. Foreign workers can be a threat if their presence does not have a significant impact on economic growth, employment opportunities and local worker wages.

The dynamics of legal protection for foreign workers in Indonesia are based on the principles of certainty and justice. The principle of certainty means that every law governing the use of foreign workers must be clear, firm and consistent, so that it can provide legal certainty for the parties involved. The principle of justice means that every law that regulates the use of foreign workers must be fair, proportional and non-discriminatory, so that it can provide balanced legal protection for foreign workers and migrant workers.

The use of foreign workers in Indonesia for the transfer of knowledge and *skills* (*transfer of knowledge*). Various requirements must be met as a condition if entrepreneurs want to bring in foreign workers. The presence of foreign workers is expected to accelerate the transfer of science and technology, thus the foreign workers must be workers who have *skills* and are professional in certain fields that cannot be filled by Indonesian migrant workers. The existence of foreign workers to improve the investment climate in Indonesia is one way to encourage investors to invest in Indonesia to increase national economic growth.

RESEARCH OBJEVTIVES

Based on the explanation above , the problem can be formulated as follows:

1. How are the regulations for foreign workers in the era of globalization? in Indonesia ?
2. How are the dynamics of legal protection for foreign workers in the era of globalization? in Indonesia ?

RESEARCH METHODS

This research uses a juridical research type. normative, namely research whose object is the main study of regulatory documents legislation and library materials.(Soerjono and Sri Mamudji Soekanto, 2015) Normative legal research methods , This method is used to find appropriate concrete laws to be applied to complete a certain legal issues.(Rony Hanintyo Soemitro,1982) In obtaining legal materials in order to know and analyze the urgency ratification



of Job Creation and the reasons for the Job Creation Law which has the aim of giving worker protection and welfare actually got rejection from the workers and trade unions.

Approach used is a statutory approach (*statute approach*) and the approach conceptual (*conceptual approach*). Approach law (*statute approach*) carried out by reviewing all laws and related regulations with the legal issues being handled.(Peter Mahmud Marzuki, 2007). Existing facts are linked to regulations the legislation that regulates it and which is still valid. Constitution and the regulations used in This research is the Law Number 13 of 2003 concerning Manpower.

RESULT

Foreign Workforce Regulations In the Era of Globalization In Indonesia

Indonesia is in an era of globalization that greatly influences the advancement of developments, including in the fields of technology and information that will continue to experience renewal. Indonesia is currently carrying out all efforts for development in the field of employment to create a conducive environment for the growth of the business world. Employment development as part of national development is an effort made by all components in order to achieve the goals of the state.(Rizal Achmad, et al., 2018) Labor in Article 1 paragraph (2) of the Law Number 13 of 2003 concerning Manpower is every person who is able to do work to produce goods and services either to meet their own needs or for the community. The definition of manpower is broader than workers, including in the definition of manpower.(Ronny Soplantila,2019)

Based on Article 47 (1) of Law Number 13 of 2003 concerning Manpower, it states that employers are obliged to make compensation payments to every foreign worker they employ. Compensation funds for the use of foreign workers are funds that must be paid by every company that uses foreign workers. The requirements for compensation funds for the use of foreign workers are to fill out the form provided, according to the foreign worker data in the KITAS and Passport. (Hidayat Muharam, 2006) Article 32 of the Regulation of the Minister of Manpower and Transmigration Number 12 of 2013 concerning Procedures for the Use of Foreign Workers regulates the obligation to pay compensation funds for foreign workers by every employer and also regulates the provisions for the amount of compensation for the use of foreign workers, with the amount being 100 US dollars per position/per month.(Widodo Suryandono, 2007)

Based on Government Regulation Number 34 of 2021 concerning the Use of Foreign



Workers , it states that Foreign Worker Companion Workers are Indonesian Workers appointed by the foreign worker employer . Article 42 paragraph (1) and paragraph (2) of the Job Creation Law explains that every employer who will employ foreign workers is required to have a plan for the use of foreign workers (RPTKA) that is approved by the central government. The use of foreign workers is difficult to avoid, due to several factors, including:

1. Investment activities in the context of national development and for the control and transfer of technology as a continuous and ongoing process so as to enable the use of foreign labor.
2. There is still a lack of skilled and expert Indonesian workers to replace foreign workers.
3. Lack of availability of Indonesian workers who meet the requirements to do the available work.
4. The use of high-tech machines which have high risks if handled by non-experts.
5. The increasing number of businesses that require foreign workers.(Syarif HS, 2003)

The provisions in Article 24 (1) of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers regulate that the payment of compensation funds for the use of foreign workers is carried out annually in accordance with the length of time the worker has worked in the territory of Indonesia. This Compensation Fund for the Use of Foreign Workers is an absolute requirement for processing a suspended KITAS. (Teguh Hambudi, 2015) In this case, so that the company complies with the provisions that the suspended KITAS is processed in connection with waiting for the completion of the IMTA.

The provisions in the Job Creation Law , every employer in this case a company that employs foreign workers is required to appoint Indonesian workers as TKA companions to accelerate technological expertise and expertise to Indonesian workers. This is very much needed because the main purpose of using TKA is *the transfer of knowledge* , the government targets the knowledge and advanced technology owned by TKA so that it can be distributed and absorbed by TKI through the companion worker program.

Employers of individuals are prohibited from employing foreign workers . The mechanism and procedures for submitting and ratifying RPTKA are regulated in Article 12, Article 13, and Article 16 of Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers. Legal sanctions against foreign workers employers who violate the use of foreign workers, based on Article 36 of Government Regulation Number 34 of 2021, that the minister or appointed official will impose administrative sanctions, namely the imposition of fines for violations of the law for



foreign workers employers who do not have RPTKA and/or revocation of RPTKA ratification, the amount of the fine referred to in Article 36 refers to the explanation of Article 37 of Government Regulation Number 34 of 2021 which regulates the amount of fines imposed on each position and each foreign worker per month. Administrative sanctions that can be given to employers who do not pay compensation funds for the use of foreign workers can be in the form of reprimands, written warnings, restrictions on business activities, cancellation of approvals, cancellation of registration, temporary suspension of part or all of the production equipment, and revocation of permits.(Much Nurachmad, 2009)

Dynamics of Legal Protection for Foreign Workers in the Era of Globalization In Indonesia

Legal protection for foreign workers based on the work agreement, foreign workers also receive social security. The right to social security for foreign workers is regulated in Article 1 number 4 of Law Number 24 of 2011 which in essence determines that social security participants are every person including foreigners who work for at least 6 (six) months in Indonesia. The provisions of Article 36 paragraph (1) letter f of the Regulation of the Minister of Manpower Number 35 of 2015 determine that foreign workers who work for more than 6 (six) months must be given protection through national social security.

The formation of laws and regulations must involve the community so that the resulting regulations do not harm the community targeted by the regulations and can be implemented in order to form a complete Indonesian person and the development of a complete Indonesian society. The formation of the Job Creation Law is considered not to involve full participation from the community because individuals or groups of people targeted by the regulations did not receive a draft of the Job Creation Bill. Formation of laws and regulations which was put forward by Gert Jan Verman , namely the principle of accessibility of consistent, understandable regulations that can be accessed by those who are the targets of the policy.(Saiya, et al, 2021).

Since the beginning of 2018, discussions about foreign workers have increased among workers who reject the arrival of foreign workers who work as manual laborers in Indonesia because this causes opportunities for Indonesian workers to get jobs to become narrower. The government issued Presidential Regulation Number 20 of 2018, at least regulating regulations regarding licensing for the use of foreign workers related to the elimination of IMTA . Law Number 13 of 2003 concerning Manpower and Presidential Regulation Number 72 of 2014 states that RPTKA is different from IMTA in this case, ratification of RPTKA is a requirement to obtain IMTA.(



Fara Marisda Martias , 2021)

According to Theodore J. Lowi, regulatory policies are marked by the existence of interest groups that can be seen from who benefits from the policy.(Sveker Gustavsson, 1980,) In this case, entrepreneurs are the ones who benefit because the government deregulates the policy of using foreign workers by reducing policy protection from the government. Meanwhile, the party that is harmed is the Indonesian migrant workers who do not get full attention in policy protection. this is because their aspirations are not properly accommodated.

Employers who will employ foreign workers in Indonesia must really bring in foreign workers who have the standard qualifications of expertise in their fields. Violations of the practice of using foreign workers who do not have expertise still often occur, such as the existence of illegal foreign workers spread across several areas of Southeast Sulawesi, Central Kalimantan, Gresik, West Java, and Semarang, Central Java who work as laborers. The rampant use of illegal foreign workers in the industrial and construction sectors is a problem that must be solved seriously.20]

The policy of using foreign workers towards Indonesian migrant workers in terms of policy gives losses to Indonesian migrant workers from several business organizations such as APINDO and HIPMI fully support the deregulation of foreign worker use policies in Indonesia , while Indonesian migrant workers get the risk of losses from the deregulation of foreign worker policies that have the potential to threaten their survival due to the lack of job opportunities. Regulatory policies related to the use of foreign workers which should aim to create jobs and increasing investment has actually backfired on the working age population in Indonesia. The increasing number of job seekers each year is not balanced by the evenly available job opportunities each year, resulting in an increase in the number of educated unemployed in Indonesia.

CONCLUSION

Regulation of Foreign Workers in the era of globalization in Indonesia has been regulated in **Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers**, which regulates the obligations and prohibitions of employers who use foreign workers, procedures for applying, extending, and changing the ratification of RPTKA, procedures for applying for permits to employ foreign workers (IMTA), procedures for applying for limited stay visas (VITAS) and limited stay permits (ITAS), as well as administrative sanctions for employers who violate the provisions. **Regulation of the Minister of Manpower Number 35 of 2015 concerning Procedures for the Use of Foreign Workers** is a technical regulation that regulates the procedures for the use



of foreign workers in Indonesia. The provisions of Law Number 6 of 2023 concerning Job Creation in licensing foreign workers which made easier, thus having an impact on changing the mechanism for applying sanctions from criminal sanctions to administrative sanctions.

Dynamics of legal protection for foreign workers in the era of globalization in Indonesia based on the work agreement, foreign workers also receive social security. The right to social security for foreign workers is regulated in Article 1 number 4 of Law Number 24 of 2011 which basically determines that social security participants are everyone including foreigners who work for at least 6 (six) months in Indonesia. The provisions of Article 36 paragraph (1) letter f of the Regulation of the Minister of Manpower Number 35 of 2015 determine that foreign workers who work for more than 6 (six) months must be given protection through national social security. Legal protection for foreign workers and migrant workers who occupy the same position. Meanwhile, in terms of policy, the government has removed several regulations that hinder investment progress through deregulation of foreign worker use policies and simplifying policies in order to support increased foreign investment in Indonesia.

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