

THE ROLE OF FOREIGN WORKERS POST JOB CREATION ACT

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Abstract

The increasing number of Foreign Workers (TKA) each year, particularly in Central Sulawesi, is undoubtedly a phenomenon contributing to the disparity amidst the persistently high unemployment rates in the region. The role of the government is increasingly crucial in ensuring harmony, fairness, and the fulfillment of rights for every worker in Indonesia. However, the Job Creation Act has changed the regulations governing foreign workers by relevant institutions, from ministries to local offices. This research aims to analyze the position of foreign workers entering Indonesia. The research method employed is Juridical Normative research, which examines the position of foreign workers after enacting the Job Creation Act and explores the changes that have occurred. The research utilizes legal and analytical approaches. The findings indicate that the position of foreign workers after the enactment of the Job Creation Act provides legal certainty for the rights of all workers, regardless of whether they are foreign workers (TKA) or Indonesian workers (TKI). However, the Job Creation Act introduces new regulations regarding administrative provisions, as the permit for employing foreign workers (IMTA) has now been revoked by the Job Creation Act.

Keywords: Employment Service; Foreign Workers; Job Creation Act; Supervisory Function.

Abstrak

Tingginya jumlah Tenaga Kerja Asing (TKA) yang setiap tahunnya semakin meningkat di Indonesia khususnya di wilayah Sulawesi Tengah tentunya menjadi fenomena ketimpangan terhadap masih tingginya jumlah pengangguran di wilayah Sulawesi Tengah, peran pemerintah tentu semakin banyak terkait pengaturan agar tercipta keselarasan, keadilan serta jaminan terpenuhinya hak bagi setiap pekerja yang berkedudukan di Indonesia pada umumnya. akan tetapi keberadaan Undang-Undang Cipta Kerja terdapat perubahan pengaturan TKA oleh lembaga terkait dalam hal ini kementerian hingga dinas. Tujuan penelitian ini untuk menganalisis kedudukan TKA yang masuk di Indonesia. Adapun metode penelitian yang digunakan ini yaitu penelitian Yuridis Normatif, dimana

penelitian ini akan mengkaji kedudukan TKA pasca keberadaan Undang-Undang Cipta Kerja yang telah mengalami perubahan, serta penelitian ini menggunakan pendekatan Undang-Undang dan Analistis. Hasil penelitian menunjukkan bahwa kedudukan TKA pasca keberadaan Undang-Undang Cipta Kerja bahwa undang-undang memberikan kepastian hukum terhadap hak-hak tenaga kerja tanpa melihat TKA maupun TKI, akan tetapi Undang-Undang Cipta memberikan pengaturan baru terkait ketentuan administratif sebab IMTA (Izin Mempekerjakan TKA) kini telah dicabut oleh Undang-Undang Cipta Kerja.

Kata Kunci: Dinas Ketenagakerjaan; Fungsi Pengawasan; Tenaga Kerja Asing; UU Cipta Kerja.

A. INTRODUCTION

Indonesia can be considered a country highly attentive to the increasing workforce as an effort to meet the growing demand for job opportunities. The increasingly stringent labor and company policies reflect the country's earnest response to this phenomenon. Providing and creating job opportunities on a global scale can be facilitated by providing extensive opportunities for both local and foreign investors to engage in activities in Indonesia.¹ In line with this, to support such policies, Indonesia undoubtedly needs to actively address and legalize issues related to Foreign Workers (TKA) as a step towards providing legal certainty.²

Field facts indicate that the number of Foreign Workers (TKA) is steadily increasing, as evidenced by several surveys focused on the presence of Foreign Workers. We can observe the following data: the number of Foreign Workers (TKA) in Indonesia until May 2021 reached 92,058. ³ This figure experienced a decline in the last three years since 2018, which recorded the highest number at 95,335. Since 2010, the

¹ Aries Harianto, "Regulating Foreign Labor in Emerging Economies: Between National Objectives and International Commitments," *Academic Journal of Interdisciplinary Studies* 10, no. 3 (May 2021): 384–93, <https://doi.org/10.36941/AJIS-2021-0092>.

² Bangsawan, Achmad "Pengaturan Penggunaan Tenaga Kerja Asing (TKA) Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja," *JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 3 (n.d.): 1907–14, <https://doi.org/10.24815/jimps.v8i3.25351>.

³ Anis Tiana Pottag, "Politik Hukum Pengendalian Tenaga Kerja Asing Yang Bekerja Di Indonesia," *Media Iuris* 1, no. 2 (2018), <https://doi.org/10.20473/mi.v1i2.8827>.

number of foreign workers has consistently increased annually.⁴

Employment regulations in Indonesia have been established since 2003 through Act Number 13/2003 concerning Manpower. This regulation served as the primary legal framework for labor matters until Act Number 11/2020 on Job Creation (The Job Creation Act) issuance. The latter has generated significant controversies and was last ratified based on Act Number 6/2023 concerning the Ratification of Government Regulations on Job Creation, which also led to amendments in several norms within the previous labor regulations.

Changes to the Manpower Law, with several articles amended within the Omnibus Law on Job Creation, indicate a notable increase in the number of Foreign Workers (TKA) in Indonesia. One specific example is Article 42 paragraph (6), which pertains to expiring work permits for Foreign Workers and the possibility of replacement by other Foreign Workers, which has been altered. Government Regulations will further govern regulations regarding the expiration of work permits for Foreign Workers That are perceived as not providing legal certainty concerning the tenure of Foreign Workers employed by companies based in Indonesia.⁵

The government has committed to supporting companies in the manufacturing sector through various efforts, one of which is through the implementation of supervision.⁶ Supervision is a method used to discover and implement various ways and tools to ensure that implementing a company's plans aligns with the predetermined objectives. Companies aim to produce products, achieve profits, and assure the workforce, enabling them to work in an organized, hazard-free, and healthy environment. All of these efforts are aimed at enhancing workforce

⁴ Kementerian Ketenagakerjaan, "Tenaga Kerja Asing Di Indonesia 2010-2021," lokadata, accessed November 2, 2023, <https://lokadata.beritagar.id/chart/preview/tenaga-kerja-asing-di-indonesia-2010-2021-1627024243>.

⁵ Nurhidayati Nurhidayati, "Perizinan Tenaga Kerja Asing, Kebijakan Dan Implementasinya," *Widya Cipta: Jurnal Sekretari Dan Manajemen* 3, no. 2 (2019): 241-48, <https://doi.org/10.31294/widyacipta.v3i2.6444>.

⁶ Ida Hanifah, "Peluang Tenaga Kerja Asing Untuk Bekerja Di Indonesia Berdasarkan Rancangan Undang-Undang Cipta Kerja," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 158-73, <https://doi.org/https://doi.org/10.30596/dll.v6i1.5536>.

productivity, which, in turn, will positively impact the company's overall performance. Therefore, reassessing the position of Foreign Workers (TKA) in Indonesia is necessary.⁷

The above data regarding the high number of Foreign Workers (TKA) that increases yearly certainly adds to the government's responsibilities.⁸ There have been numerous changes in the regulation of Foreign Workers (TKA) since the law's enactment. Therefore, this research aims to examine the position of Foreign Workers after implementing the Omnibus Law on Job Creation.

B. METHOD

The research is conducted using the normative legal research method.⁹ The approach employed in this research is a normative approach based on primary legal materials by examining legislation.¹⁰ The primary legal materials for this research include the Omnibus Law on Job Creation, the Manpower Law that has now been incorporated into the Omnibus Law on Job Creation, and the regulations beneath them that govern foreign workers (TKA) in Indonesia. Additionally, this study utilizes an approach to examining or analyzing legal theories,¹¹ concepts, and principles¹². This approach is also known as a literature review, involving the study of books, relevant legislation, and other documents related to this research.¹³

⁷ Hanifah.

⁸ Christina N Tobing, "Sanksi Hukum Terhadap Pelanggaran Penggunaan Tenaga Kerja Asing Pasca UU Cipta Kerja," *SOL JUSTICIA* 5, no. 2 (2023), <https://doi.org/10.54816/sj.v5i2.559>.

⁹ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 1483-90.

¹⁰ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Kencana, 2018).

¹¹ Peter Mahmud Marzuki, "Penelitian Hukum, Cetakan Ke-11," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).

¹² F.C. Susila Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (2019), <https://doi.org/10.14710/alj.v2i4.697-709>.

¹³ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020), <https://doi.org/10.14710/gk.2020.7504>.

C. RESULTS AND ANALYSIS

1. The Role of the Government in Ensuring the Rights of Workers

The Ministry of Manpower and Transmigration and its branches are institutions with authority and responsibilities in governing labor and transmigration affairs. Handling issues related to labor and transmigration at the regional government level is carried out by the Regional Office of Manpower and the Regional Office of Transmigration and Resettlement in each province. However, since 2001, based on Regional Regulation No. 28 of 2000 concerning the Establishment of Departments in the Central Sulawesi Provincial Government, the Department of Manpower and Transmigration of Central Sulawesi Province was formed to consolidate and coordinate efforts in these two areas. The role of the workforce in national development is increasing, accompanied by various challenges and risks. Consequently, this is expected to enhance national productivity. One effort to protect the workforce involves monitoring the implementation of labor regulations.¹⁴

Labor monitoring is crucial to ensure the labor-management processes comply with the existing provisions. With effective monitoring, it is anticipated that a safe, fair, and regulation-compliant work environment can be established, ultimately contributing to improving national productivity. Labor inspection aims to ensure law enforcement. Provide technical information to employers and workers regarding the implementation of labor regulations and collect data related to employment relationships and labor conditions. The goal is to guarantee the effectiveness of labor regulation implementation and provide a foundation for drafting or improving regulations in the field of labor.¹⁵

Based on the Minister of Manpower Regulation Act Number 3/1990, the authority responsible for overseeing the implementation of regulations on granting permits for the employment of foreign workers

¹⁴ Asep Saepul Muharam et al., "Urgensi Penambahan Fungsi Pengawasan Ketenagakerjaan Pada Balai Keselamatan Dan Kesehatan Kerja (K3)," *Jurnal Ketenagakerjaan* 17, no. 2 (2022): 121-32, <https://doi.org/10.47198/naker.v17i2.149>.

¹⁵ Weny Almoravid Dunga and Abdul Hamid Tome, "Identifikasi Faktor Penghambat Penyelenggaraan Pengawasan Ketenagakerjaan Di Provinsi Gorontalo," *Jambura Law Review* 1, no. 1 (2019): 1, <https://doi.org/10.33756/jalrev.v1i1.1605>.

(TKA) is the Labor Inspection Officer of the Ministry of Manpower, as stated in Article 21. Regulations to protect workers will only have meaning if their implementation is supervised by an expert who must visit workplaces at specific times to carry out three main tasks: a) Inspect and investigate whether the provisions of the laws and regulations are implemented, and if not, take reasonable actions to ensure compliance. b) Assist both workers and company leaders by providing technical explanations and advice needed for them to understand the regulations and how to implement them. c) Conduct investigations into labor conditions and gather necessary information for drafting labor laws and determining government policies.¹⁶

The existence of International Labour Organization (ILO) Convention No. 81 of 1947 concerning Labour Inspection in Industry and Commerce prompted Indonesia to feel the need to ratify the ILO Convention as a guideline for the laws applicable in Indonesia, as stipulated in act number 21 of 2003 concerning the Ratification of ILO Convention No. 81 Concerning Labour Inspection in Industry and Commerce.¹⁷ As mentioned earlier, the law is not without reason, as the law provides regulations on the function of labor inspection to ensure effective implementation, directly reinforcing the rules on labor. Moreover, the post-enactment function of labor inspection under the Omnibus Law on Job Creation does not alter the supervision function of Foreign Workers (TKA) by the Ministry of Manpower.

Within the organizational structure of the Department of Manpower, there are five different fields, each with distinct tasks and functions. One of them is a field dedicated explicitly to carrying out supervisory functions, namely the Industrial Relations Development and Labor Inspection Field. More specifically, in performing its role as a supervisory function within the Department of Manpower, the labor inspection development section has the task of preparing materials for

¹⁶ Rahmat Junaidi, "Pelaksanaan Pengawasan Tenaga Kerja Asing Oleh Dinas Tenaga Kerja Kabupaten Sukamara (Mencermati Rancangan PERDA Tentang Retribusi Perpanjangan Izin Mempekerjakan Orang Asing)," *Biro Hukum Sekretariat Daerah Provinsi Kalimantan Tengah* (Palangka Raya, 2018).

¹⁷ *Laws and Regulations on Labour Inspection in Indonesia* (Ministry of Manpower and Transmigration & International Labour Organization, n.d.).

policy formulation, coordination, guidance, and facilitation, as well as monitoring and evaluating the implementation of labor inspection development activities.¹⁸

2. The Status of Foreign Workers Following the Implementation of the Job Creation Act

The development of labor law is in line with the progress and advancement of the Indonesian state towards a better direction. The government has made various efforts, including policy changes always rooted in the noble *ius constitutum* that consistently protects the entire Indonesian nation. It cannot be denied that labor has a crucial role and position as both an actor and a goal in development.¹⁹ Therefore, under the role and position of the workforce, labor law is needed to enhance the quality of labor and its participation in development and improve the protection of workers and their families with human dignity and respect.

Concerning the government's efforts to improve labor policies, several changes have been made from the period after independence until 2005. Based on considerations of labor needs and dynamics, the first of these laws is Act Number 16 of 1969, concerning the introductory provisions regarding Labor, followed by Act Number 25 of 1997 Regarding Manpower, and Act Number 11 of 1998, concerning Amendments to the Enforcement of Act Number 25 of 1997 regarding Manpower. Furthermore, there is Act Number 28 of 2000 regarding the enactment of the Government Regulation in place of Act Number 3 of 2000 concerning Amendments to Act Number 11 of 1998 concerning the Effectiveness of Act Number 25 of 1997 concerning Manpower, followed by the enactment of act Number 13 of 2003 concerning Manpower.

In recent times, the creation of Act Number 11 of 2019 concerning Job creation was subsequently revoked by the government due to various pros and cons, including the Constitutional Court's decision declaring formal defects in the Job Creation Act. The government issued Government Regulation in place of Act Number 2 of 2022 Concerning Job

¹⁸ Siti Ngaisah, "The License For Hiring Foreign Workers In Indonesia," *Journal Of Law Theory And Law Enforcement*, 2023, <https://doi.org/10.56943/jlte.v2i1.274>.

¹⁹ La ode Dediharsiadi, "Peran Pemerintah Daerah Kabupaten/Kota Dalam Pengawasan Tenaga Kerja Asing Di Indonesia," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 9, no. 2 (2019), <https://doi.org/10.15642/ad.2019.9.2.323-337>.

Creation to prevent a legal vacuum. Eventually, it was enacted as Act Number 6 of 2023 concerning the Ratification of Government Regulation in place of Act Number 2 of 2022 Concerning Job Creation. This law encompasses ten scopes, one of which is workforce regulation. Act Number 6 of 2023 regarding the Ratification of Government Regulation in place of an act in 2022 concerning Job Creation is an effort to generate employment through facilitating, protecting, and empowering cooperatives and micro, small, and medium-sized enterprises, improving the investment ecosystem and ease of doing business, and investing in central government and accelerating national strategic projects.²⁰

The consequences of the presence of the Job Creation Act bring changes to the permit for foreign workers based on the Manpower Act and the Job Creation Act as follows: a) Licensing Process: Manpower Act: The foreign worker licensing process involves the Ministry of Manpower and Transmigration as well as the Investment Coordinating Board (BKPM).²¹ Meanwhile, the Job Creation Act introduces changes in the licensing process. It introduces an online-based licensing system involving the role of the Investment Coordinating Board (BKPM) in issuing permits for foreign workers.²² b) Number of Permit Categories: According to the Manpower Act, permits for foreign workers are divided into several categories based on skill level and job position. On the other hand, the Job Creation Act eliminates some restrictions related to permit categories, providing more flexibility in using foreign workers. c) Permit Duration: Under the Manpower Act, the duration of permits for foreign workers typically lasts one year and can be extended. In contrast, the Job Creation Act allows flexibility in permit duration, which can be adjusted according to the company's needs. d) Training Obligations: According to the Manpower Act, companies employing foreign workers must train local

²⁰ Ribka Angelita, Debby Telly A, and Rudolf Sam M, "Pengaruh Undang-Undang Cipta Sistem Permodalan Dan Izin Mikro Kecil Dan Menengah," *Lex Privatum* Vol. XI, no. 2 (2023): 1–9.

²¹ Saskia Nina Sartori and Ufran Ufran, "Implikasi Perubahan Perizinan Tenaga Kerja Asing Terhadap Pendapatan Asli Daerah Kabupaten Lombok Barat," *Indonesia Berdaya* 4, no. 3 (2023), <https://doi.org/10.47679/ib.2023496>.

²² Adella Virginia Z, "Rencana Penggunaan Tenaga Kerja Asing (Rptka) Sebagai Izin Menggunakan Tenaga Kerja Asing Di Indonesia," *Jurist-Diction: Law Journal* 2, no. 2 (2019), <https://doi.org/10.20473/jd.v2i2.14213>.

employees to facilitate knowledge transfer. In contrast, the Job Creation Act also promotes training for local workers, but more detailed provisions may be stipulated in implementing regulations.

Regardless of the presence of the Job Creation Act, the regulations related to Foreign Workers' Permits (TKA) still refer to the Minister of Manpower and Transmigration's Regulation until new regulations revoke it.²³ Two permits are required to employ foreign workers: the Foreign Worker Employment Permit (IMTA) and the Foreign Worker Utilization Plan (RPTKA).

D. CONCLUSION

Efforts to fulfill workers' rights have been carried out based on the mandate of the Manpower Act and further reinforced by the Job Creation Act, granting significant authority to the government in controlling and supervising Foreign Workers' activities. That includes enforcing regulations related to Foreign Workers and imposing stricter sanctions. Constitutional changes in regulations concerning Foreign Workers provide new hope for increased foreign investment and job creation without compromising the rights of Indonesian workers.

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²³ Z.

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