



Regulation of the Employment of the Foreign Workers

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Abstract

Hiring foreign workers is accomplished through very strict mechanisms and procedures, in particular by requiring companies or corporations that use foreign workers to work in Indonesia by making plans to employ foreign workers regarding the procedures for using foreign workers. The technology transfer process for Indonesian migrant workers must be closely monitored by certifying these experts.

Keywords: *Foreign Workers; Government; Policy; Law*

Introduction

Globalization fosters capital and investment flows across the globe, as well as cross-border labor migration. Labor migration occurs because investments in other countries generally require direct oversight by owners/investors. To ensure business and investment continuity. To avoid legal complications and excessive foreign worker employment, the government needs to carefully consider policies to maintain a balance between foreign workers (foreign capital) and domestic workers. Recognizing that Indonesia continues to require foreign investors and the influence of civilization globalization, Indonesia, as a WTO member, must facilitate the entry of foreign workers.

To prepare for this, there should be comprehensive regulation governing foreign workers' requirements and safeguarding their jobs. The regulation must address fundamental issues and regulations that apply not just at ministerial level, with the goal of selectively employing foreign workers while prioritizing Indonesian migrant workers. As a result, hiring foreign workers is governed by extremely strict mechanisms and procedures, notably by requiring companies or corporations employing foreign workers to make plans for foreign worker employment (RPTKA), as specified in Ministerial Regulation Number PER.02/MEN/III/2008 on Foreign Worker Use Procedures. Foreign workers in 2020 totaled 98,902. According to data, China's foreign workers accounted for 35,781 people or 36.17%. Japan came in second with 12,823 people, South Korea came in third with 9,097 people, India came in third with 7,356 people, Malaysia came in third with 4,816 people, the Philippines came in third with 4,536 people, the United States came in third with 2,596 people, Australia came in third with 2,540 people, England came in third with 2,176 people and Singapore came in third with 1,994 people.

Literature Review

Fundamental Legal Principles Concerning Foreign Workers

1995 Presidential Decree on Foreign Migrant Workers. In contrast to the Manpower Law, which uses the term foreign labour for foreign citizens holding visas with the intention of working on the territory of the Republic of Indonesia (NKRI), Presidential Decree No. 75 of 1995 on the Employment of Foreign Migrant Workers uses the term Foreign Citizen Migrant Workers, namely Foreign Citizen Migrant Workers. The term is considered inaccurate because a foreign worker not only comes (as a migrant) from outside the Republic of Indonesia territory, but because of the immigration status of his parents, a foreign worker is born and resides in Indonesia. In general, Presidential Decree No. 75 of 1995 on the use of foreign migrant workers requires that Indonesian workers be prioritized in the available fields and types of work, unless fields and types of work are available that are not or are not fully filled by Indonesian workers. Use of foreign labour migrants is permitted to a certain time limit.

This provision hopes that Indonesian workers can adopt the skills of the foreign workers concerned and perform their own work without involving foreign workers. Foreign workers are hired selectively to maximize the use of Indonesian workers. Manpower Law 13, 2003. Prior to Law No. 13 of 2003 on Manpower (UK), the use of foreign workers in Indonesia was governed by Law No. 3 of 1958 on the Placement of Foreign Workers (UUPTKA). Regulations governing the employment of foreign workers are no longer regulated in a separate law, but become part of a compilation in the new Manpower Law. The regulation begins with the obligation of employers to use TKA to obtain written permits; has a plan for the use of TKA that includes the reasons, type of position and time to use TKA; the obligation to appoint Indonesian citizens to assist foreign workers; and the obligation to return the foreign worker to the country of origin after the employment relationship has ended. UUK emphasizes that, without the Minister's written permission, no entrepreneur can hire foreigners.

Foreign workers' definition has also been narrowed to include only foreigners with visas intending to work in Indonesian territory. This provision reaffirms that any employer employing foreign workers must obtain written permission from the minister or appointed officer. To expand employment opportunities for Indonesian migrant workers (TKI), the government restricts and supervises foreign workers' use. The government has issued a number of legal instruments from licensing to health protection guarantees to supervision. Moreover, in order to meet the needs of the domestic labor market, in particular by filling the void of expertise and competence in certain fields that cannot be covered by Indonesian workers, foreign workers may be employed in Indonesia as long as they are in a work agreement for a specific position and a specific time. Except for an individual employer, any party may employ foreign workers as provided. Except for foreign-country representatives employing foreign workers as diplomatic and consular employees, any employer employing foreign workers must have written permission from the minister or appointed official.

A Ministerial Decree, Ministerial Decree Number: KEP-173/MEN 2000 on the Period of Employment of Foreign Migrant Workers, specifies provisions for specific positions and a specific time for foreign workers. Any application or plan to use foreign workers in Indonesia must be limited in the number and fields that foreign workers can occupy. It is intended that the presence of foreign workers in Indonesia is not considered a sufficiently serious threat to Indonesian workers; rather, their presence serves as a catalyst for Indonesian workers to become more professional and constantly improve their ability to compete with Indonesian workers and Indonesian workers. Workers in other countries as a result, the UUK restricts foreign workers' positions. Foreign workers are prohibited from holding staff positions and/or certain positions that are further regulated by the 2003 Minister's Decree on Positions in Educational Institutions Exempt from the Pay Compensation Obligation. Before applying for the use of foreign workers, employers must consider prohibited positions. Besides adhering to the provisions governing positions, they must also adhere to applicable competency standards. Position provisions and

competency standards are delegated through a ministerial decree. However, this delegated and attributing authority has not applied the rules in accordance with the UUK. Foreign workers may be considered one of foreign exchange carriers for a country where compensation is paid for every foreign worker employed.

Employers of foreign workers who are government agencies, foreign representatives, international organizations, social institutions, religious institutions, and certain positions in educational institutions are exempt from paying this compensation. The compensation amount for Indonesian workers abroad is US\$15, while the compensation amount for foreign workers in Indonesia is US\$100. Employers are required to educate and train accompanying workers when implementing the transfer of knowledge from foreign workers to Indonesian workers. An unspecified presidential decree governs this. Ministerial Regulation Number PER.02/MEN/III/2008 Procedures for Foreign Workers This Ministerial Regulation is set out for the UUK's implementation. With the issuance of Ministerial Regulation Number PER.02/MEN/III/2008 on Procedures for the Use of Foreign Workers, several previous regulations related to the implementation of this UUK, namely: Ministry of Manpower and Transmigration Decree KEP.228/MEN/2003 on Procedures for Ratification of Plans for the Use of Foreign Workers.

Implementation

Following the implementation of regional autonomy, the five main areas that fall under central authority are foreign affairs, defence and security, monetary, judiciary, and fiscal. Manpower issues are also within the scope of the regional government's authority, as they are included in the organizational structure and work procedures in the "service" structure. It is submitted to the Minister of Manpower and Transmigration, and then the Director or Governor / Mayor grants an extension. This condition has created new issues in the region. As an illustration of a case that occurred in Medan City, Prior to the enactment of the UUK, the Regional Government had the task and authority in the process of issuing permits for foreign workers in Medan City through the work placement and foreign workers section. However, following the enactment of the UUK, the sections' duties and authorities are abolished. Entrepreneurs who wish to hire foreign workers must first visit the Ministry of Manpower and Transmigration in Jakarta. Of course, this new mechanism will take a significant amount of time and money to develop. Our Ministry's bureaucracy is still viewed negatively; simple tasks are made more difficult.

The complexity perceived by employers seeking permission to employ foreign workers is in the spotlight, particularly for the ministry responsible for the manpower sector in order to improve its performance in providing services, particularly in granting permits to employ foreign workers. Furthermore, the Minister of Manpower and Transmigration issued Decree Number B.388 / MEN / TKDN / VI / 2005, which was socialized by the Medan City Manpower Office. This decree drew strong support from Medan businessmen who wanted to review the RPTKA's ratification. Another significant objection is the high cost of processing applications for and permits to employ foreign workers. The arrangement of permits for the placement of foreign workers also arises in connection with local revenue (PAD), because there are at least 1400 foreign workers spread across the Regency / City in relation to compensation funds in East Java Province. Furthermore, the technical arrangements for the completion of the IKTA settlement for companies in the context of PMA and PMDN must be adjusted and adhere to the provisions in Kepmenaker Number KEP-416 / MEN / 1990. However, based on Kepmenaker Number KEP-169 / MEN / 2000 concerning the revocation of Kepmenaker Number KEP-105 / MEN / 1977 concerning the delegation of authority to grant work permits for foreign workers working in the context of Investment Coordination and Kepmenaker Number KEP-105 / MEN / 1985 concerning the appointment of the Chairman of the BKPM to ratify (RPTKA) in the framework of (since 1 July 2000). Furthermore, the Minister of Manpower grants IKTAs in accordance with the applicable laws and regulations.

Conclusion

With the enactment of Law No. 13 of 2003 on manpower, provisions on foreign workers in Indonesia are no longer regulated in a separate statutory regulation, as they were in Law No. 3 of 1958 on placement of foreign workers, but are included in the compilation in the new regulation. Contains provisions governing foreign worker employment. However, many obstacles remain in the way of implementing the new law, most notably in promoting investment, as a number of regulations necessary for foreign workers' seamless employment have not been completed. The new Ministerial Regulation Number PER.02/MEN/III/2008 on Procedures for the Use of Existing Foreign Workers, along with the other three Permenakers, was issued to fill the legal void by issuing the necessary regulations. The old regulations are still in effect, though. After approving foreign worker planning (RPTKA) by the Ministry of Manpower and Transmigration and issuing a permit to employ foreign workers, the placement of foreign workers may begin. A foreign worker must have a limited stay permit (KITAS) issued by the Directorate-General for Immigration, Ministry of Law and Human Rights to work in Indonesia for the foreign worker concerned. Governments and private firms should bring highly skilled experts to assist economic and technological development in Indonesia. The technology transfer process for Indonesian migrant workers, both managerial and professional, must be closely monitored and certified.

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