

Legal Policy Reform in the Use of Foreign Workers in Indonesia Based On Justice

Gunarto

Lecturers of Faculty of Law, UNISSULA, Semarang

TeguhWidodo

The Student of Law Doctoral Programme UNISSULA, Semarang

Amin Purnawan

Lecturers Of Faculty Of Law, UNISSULA, Semarang

WahyuWidodo

Lecturers Of Faculty Of Law, UPGRIS, Semarang

ABSTRACT

Globalization and advances in information and communication technology have created a borderless state, this has resulted in the opening of public interaction relations between countries in the world. It can be known together that economic globalization has led to the entry of foreign workers into Indonesia. This is able to support the progress of industrial development through the transplantation of work systems and mastery of technology and new skills for the industrial world in the country. However, this will clearly reduce the speed of work for Indonesian citizens who have the quality of expertise and education that is inferior to the foreign workers who attend. This situation is becoming increasingly dilemma with the unpreparedness of labor law politics in welcoming the entry of foreign workers in the country. This is shown by not clearly regulating the limits for the number and length of time the use of foreign workers in the country. The research aims, among others, 1. To analyze the legal political correctness of foreign workers who are currently not fair. 2. To analyze the weaknesses of the current legal politics of foreign workers. 3. To reconstruct the legal politics of foreign workers based on the value of justice. This dissertation research uses non-doctrinal or juridical sociological research. As for this research, it is found that the implementation of the politics of using foreign workers has not been able to bring about justice, this is because the politics of law on the use of foreign workers have resulted in reduced employment opportunities for domestic workers, which in turn results in unemployment and poverty problems.

KEYWORDS: Legal Policy, Value of Justice, Reform, Foreign Workers

Date of Submission: 26-10-2020

Date of Acceptance: 06-11-2020

I. INTRODUCTION

A conducive industrial development basically requires synchronization from three layers, namely the layers of employers, workers and government. These layers are also known as aspects of Human Resources which are incorporated in the industrial development system. With synchronization in the field of Human Resources in the industrial development system, it is intended that investment can develop properly. This is because investment will develop if the industrial world in the country can run safely for investors both from outside and inside the country, so that this can be achieved. Then it requires a conducive industrial development, so that investment will develop and economic growth is achieved.

A conducive business world view will be able to be realized when the government, workers 'organizations and employers' organizations are able to synergize in suppressing dispute issues in the field of industrial development. In fact, this view is not going well, this is shown by the data which states that there were 208 cases of layoffs which resulted in 1,377 people losing their jobs and the highest number was in the DKI

Jakarta area, namely 1,047 people¹. Based on data from the Directorate General of Industrial Development and Social Security for Workers of the Ministry of Manpower, in the first semester of 2016 there were 1,494 cases with 7,954 laid-off workers, this shows a drastic reduction in the number of layoffs when compared to the number of workers who were laid off in the year 2015 with the same initial semester, there were 8,575 people affected by layoffs from 126 cases.²

Even though it is considered to have decreased, the number of layoffs is still considered large in terms of the impact of increasing poverty due to unemployment in society. The issue of layoffs also clearly shows that there are still many problems of disharmony in the world of industrial development. This disharmony is also caused, one of which is the problem of labor welfare.³ Low wages and worker welfare basically occur as a result of the politics of labor law in Indonesia, which is felt to be in favor of employers. KwikKianGie stated that the low wages of labor in Indonesia have always been the main capital to attract foreign investors and seek profit from selling Indonesian products in the free market.⁴ Basically, the sad condition of Indonesian workers is due to the birth of the agendas of the tyrannical developed countries through the tempting economic globalization. Noam Chomsky's explanation above seems to have really occurred through the extension of the agents of globalization, namely the World Trade Organization or the WTO for short. This is indicated by the existence of historical facts which explain that discussions related to labor in WTO meetings can be seen as a form of protection for the Multi National Corporation and Trans National Corporation originating from developed countries that have power and influence within the United Nations. This can be seen from the dumping practice of trade in the free market, one of which is by lowering the wages of to suppress the production figures of goods in order to seek the maximum profit possible in free trade.⁵ This is getting worst with the fact that the Indonesian state in the era of the Asean Economic Community or MEA is currently being invaded by foreign workers. Foreign workers according to Presidential Regulation Number 20 of 2018 concerning Foreign Workers are foreign citizens who hold visas who intend to work in Indonesia. This shows that every foreign citizen who holds a visa can easily enter to become a foreign worker. In its development, the arrival of foreign workers has also benefited the country of origin of the foreign workers, one of which is reducing unemployment.

The Chinese state, which increased its investment value in Indonesia by US \$ 2,665 million in its development, also sent its workers to Indonesia by 21,300 people.⁶ The increase in the number of foreign workers in Indonesia is also supported by the existence of Presidential Regulation Number 20 of 2018. The Presidential Regulation provides flexibility for Chinese investors to use and bring in large numbers of workers from their country, this can be seen by the provision of Article 3 letter c. Presidential Regulation Number 20 of 2018 which states that the parties who can bring in foreign workers are foreign private companies who are doing business in Indonesia. In addition, the article also provides an opportunity for foreign workers who are not only from China to come to Indonesia through work calls from institutions as stated in Article 3 of Presidential Regulation Number 20 of 2018. Meanwhile, Law Number 13 of 2003 has not completely regulated related to foreign workers.

In addition, between Presidential Decree Number 20 of 2018 and Law Number 13 of 2003 there is disharmony. This can be seen in the provisions of Article 9 of Presidential Decree Number 20 of 2018 which states that the ratification of the Plan for the Use of Foreign Workers (RPTKA) is a requirement for obtaining a work permit. This is different from the provisions of Article 43 of Law Number 13 Year 2003 which not only makes RPTKA the only entry point for foreign workers into the Indonesian State. However, TKS must also have

¹ Tempo.co Edisi 11 Februari 2016, *Data Jumlah PHK Menurut Kementerian Tenaga Kerja*, Download on 11 Mei 2017

² Detik.com Edisi 26 Agustus 2016, *Kementerian Tenaga Kerja Klaim PHK Selama Semester I-2016 Menurun*, Download on 11 Mei 2017

³ Labor issues are currently closely related to the problem of limited employment opportunities, low human resources for workers, low wages and modest social security, persecution, assault violations, humiliation, intimidation, and sexual harassment which has resulted in the problem of increasing numbers of workers becoming laborers. abroad. The large number of TKI workers abroad also have problems in the form of legal protection. The discourse to realize the mandate of social welfare as stated in the 1945 Constitution of the Unitary State of the Republic of Indonesia and Pancasila for labor issues is seen only as a hope that has not been realized. Government decrees regarding workers are often detrimental to workers because KKN acts between the government and employers are still common in Indonesia. (read: Organisasi Pekerja Nasional, *Problematika Buruh Di Indonesia*, download on 12-01-2017 di Spn.Or.Id)

⁴ Kwik Kian Gie, *Gonjang-Ganjing Ekonomi Indonesia, Badai Belum Segera Akan Berlalu*, Gramedia Pustaka Utama, Jakarta, 1998, page. 565.

⁵ *Ibid*, page. 567-568.

⁶ m.merdeka.com, *Terbongkar, Alasan Indonesia Dibanjiri Tenaga Kerja Asing Terutama Asal China*, Download on 12 May 2018.

a permit in the form of a TKA permit. In addition, Article 9 of Presidential Decree Number 20 of 2018 also contradicts Article 8 of Presidential Decree Number 72 of 2014 concerning TKA which states that foreign workers can work in Indonesia provided that they have RPTKA and a permit to employ foreign workers from entrepreneurs who employ foreign workers. The disharmony of Article 9 of Presidential Decree Number 20 of 2018 with various provisions of labor law in Indonesia shows that the making of Presidential Decree Number 20 of 2018 did not go through a thorough academic study. It is clear that the politics of labor law currently has many weaknesses in terms of regulating foreign workers, which in turn will be able to cause labor problems and employment problems for indigenous Indonesians who need livelihoods and the feasibility of economic life in this country.

The entry of foreign workers from China as mentioned above has resulted in a large increase in unemployment in this country as well. This can be seen with the data from the Institute for Development of Economics and Finance, which states that the unemployment rate in 2019 will increase to 53%⁷. So it can also be concluded that the failure of labor law politics in Indonesia will have an impact on increasing the poverty rate in Indonesia due to increased unemployment in Indonesia as a result of one of which is the flood of foreign workers in Indonesia with a dwindling number of jobs. This clearly contradicts the Fifth Precepts of Pancasila and Article 27 point 2 of the 1945 Constitution of the Republic of Indonesia regarding the right to have a decent job and livelihood for Indonesian citizens. Departing from the various explanations above, it is necessary to discuss more deeply related to: "LEGAL POLICY REFORM IN THE USE OF FOREIGN WORKERS IN INDONESIA BASED ON JUSTICE".

Problem Formulation

The issues discussed in this article are related to the implementation of policies regulating the use of foreign workers, which are currently not balanced with an even distribution of the labor market for Indonesian workers.

II. METHODOLOGY

This research is a qualitative research, the hope is that it can produce a descriptive of the values of justice for the benefit of society in general regarding the current political capacity of labor law in facing the challenges of globalization, so this dissertation research uses a sociological juridical approach.

III. DISCUSSION

1. The Implementation of Legal Policies Regarding Current Regulations on the Use of Foreign Workers in Indonesia

In its development, the implementation of legal politics of foreign employment in Indonesia has problems, namely the problem of limiting the number of foreign workers, time limits on the use of foreign workers, and supervision of the use of foreign workers.

Regarding the issue of timeframe for the use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only five years but can be extended with consideration of the needs of foreign workers domestic job market.

This is different from the provisions in Article 9 paragraph (2) of the Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers which states that "the RPTKA period as referred to in paragraph (1) is in accordance with the work agreement or employment agreement". This clearly shows that the implementation of policies on the use of foreign workers so far does not contain a clear and clear limit on the length of time the use of foreign workers.

Even though it has differences in terms of language substance, both the Minister of Manpower and Transmigration Decree Number 228 of 2003 concerning RPTKA and Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on decisions of the usage of foreign workers or entrepreneurs who employ foreign workers.

Then with regard to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This resulted in an uncontrolled growth rate of the number of foreign workers in the job market in Indonesia.

2. Weaknesses in the Implementation of Legal Policies Related to Regulating the Current Use of Foreign Workers in Indonesia

a. Weaknesses of the Implementation of Foreign Employment Law Politics

⁷ CNBC Indonesia, *Anka Pengangguran Dan Kemiskinan Di Indonesia Akan Naik, Begini Ramalan Dari INDEF*, Diunduh Melalui: www.CNBCindonesia.com, on 12 May 2018.

It has been explained above that the implementation of the legal politics of foreign labor in Indonesia has problems, namely the problem of limiting the number of foreign workers, time limits for the use of foreign workers, and monitoring the use of foreign workers.

Regarding the issue of timeframe for the use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only five years but can be extended with consideration of the needs of foreign labor users and circumstances domestic job market.

This is different from the provisions in Article 9 paragraph (2) of the Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers which states that "the RPTKA period as referred to in paragraph (1) is in accordance with the work agreement or employment agreement". This clearly shows that the implementation of policies on the use of foreign workers so far does not contain a clear and clear limit on the length of time for the use of foreign workers.

Even though it has differences in terms of language substance, however, both the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA and Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on decisions the use of foreign workers or entrepreneurs who employ foreign workers.

Then with regard to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This resulted in an uncontrolled growth rate of the number of foreign workers in the job market in Indonesia.

b. Weaknesses of Protection of the Position of Indonesian Workers in Competition with Foreign Workers in the Domestic Work Market

Basically, the spirit of having foreign workers in Indonesia is for the advancement of development technology, the advancement of the development performance system, and the improvement of domestic human resources. However, the legal politics of foreign workers has far neglected the position of TKI.

This is because the politics of law related to national development have ignored the aspects of human resource development by setting aside education funding, resulting in a lack of adequate access to education for the wider community in Indonesia.

In its development, the politics of labor law in Indonesia has also put aside this problem by emphasizing the opening of free competition space in the domestic labor market which is affected by the world economic globalization system. This will clearly result in the elimination of Indonesian Workers in domestic labor market competition.

3. Reform of the Implementation of Legal Policies Related to Regulation of the Use of Foreign Workers in Indonesia based on Justice

Based on the various problems above, it is necessary to reconstruct the provisions as contained in Law Number 13 of 2003, Presidential Regulation Number 20 of 2018, and Ministerial Regulation Number 10 of 2018, and Law Number 6 of 2011 concerning Immigration.

Before Reconstruction	Weaknesses	After Reconstruction
Article 42 of Law Number 13 of 2003: 1) Every employer who employs foreign workers must have a written permit from the Minister or an appointed official. 2) Individual employers are prohibited from employing foreign workers. 3) The obligation to have a license as referred to in paragraph (1), does not apply to representatives of foreign countries who employ foreign workers as diplomatic and consular employees. 4) Foreign workers can be employed in Indonesia only in an employment relationship for a certain position and for a certain time. 5) Provisions regarding certain	This provision does not clearly stipulate the length of time for the use of foreign workers and the limits on the number of foreign workers that can be used.	Article 42 of Law Number 13 of 2003: 1) Every employer who employs foreign workers must have a written permit from the Minister or an appointed official. 2) Individual employers are prohibited from employing foreign workers. 3) The obligation to have a license as referred to in paragraph (1), does not apply to representatives of foreign countries who employ foreign workers as diplomatic and consular employees. 4) Foreign workers can be employed in Indonesia only in an employment relationship for a certain position and for a certain time. 5) Provisions regarding certain positions and a certain time as referred to in paragraph (4) shall be stipulated by a

<p>positions and certain times as referred to in paragraph (4) shall be stipulated by a Ministerial Decree. 6) Foreign workers as referred to in paragraph (4) whose working period has expired and cannot be extended can be replaced by other foreign workers.</p>		<p>Ministerial Decree. 6) Foreign workers as referred to in paragraph (4) whose working period has expired and cannot be extended can be replaced by other foreign workers. 7) The time limit for using foreign workers is five years and cannot be extended afterwards B. 8) The amount of use of Foreign Workers is based on the needs of the domestic labor market and based on the approval of the Minister while still paying attention to the needs of the work field for Indonesian Workers.</p>
<p>Article 2 of Presidential Regulation Number 20 of 2018 states that: (1) The employer of Foreign Worker shall use foreign workers in a working relationship for a certain position and for a certain time. (2) The use of foreign workers as referred to in paragraph (1) shall take into account the conditions of the domestic labor market.</p>	<p>It is not clearly regulated nor is the time limit for the use of foreign workers and limits on the number of foreign workers who can be used.</p>	<p>Article 2 of Presidential Regulation Number 20 of 2018 states that: (1) The employer of Foreign Worker shall use foreign workers in a working relationship for a certain position and for a certain time. (2) The use of foreign workers as referred to in paragraph (1) shall take into account the conditions of the domestic labor market. (3) The time limit for the use of Foreign Workers is five years and thereafter it cannot be extended (1) (4) The number of foreign workers who can be used is based on the needs of the domestic labor market and based on the approval of the Minister while still paying attention to the needs of the work field for Indonesian Workers.</p>
<p>Article 9 of the Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers states that: 1) Employers of Foreign Worker who will employ Foreign Worker must have an RPTKA approved by the Minister or an appointed official. 1) 2) The term of RPTKA as referred to in paragraph (1) is in accordance with the work agreement or work agreement.</p>	<p>The time limit for using Foreign Workers is biased, this is because the length of time of use depends on the work agreement which can be influenced by the interests of the employer.</p>	<p>Article 9 of the Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers states that: 1) Employers of Foreign Worker who will employ Foreign Worker must have an RPTKA approved by the Minister or an appointed official. 1) 2) The term of the RPTKA as referred to in paragraph (1) is in accordance with the work agreement or work agreement and can be extended thereafter with the approval of the Minister as well as taking into account the absorption capacity of Indonesian Workers in the domestic labor market and the development of the quality of Indonesian Workers.</p>
<p>Article 61 of Law Number 6 Year 2011 on Immigration states that: The holder of a limited stay permit as referred to in article 52 letters e and f and the holder of a permanent residence permit as referred to in article 54 paragraph 1 letter b and letter d can carry out work and / or business to fulfill the needs of life</p>	<p>This provision is contrary to the provisions of Article 42 paragraph (1) of Law No. 13 of 2003.</p>	<p>Article 61 of Law Number 6 Year 2011 on Immigration states that: 1) The holder of a limited stay permit as referred to in Article 52 letters e and f and the holder of a permanent residence permit as referred to in Article 54 paragraph 1 letter b and letter d can carry out work and / or business to fulfill the needs of life and / or their family.</p>

and / or their family.		1) 2) Regarding the right to work for foreign citizens as referred to in paragraph (1), it is necessary to obtain approval from the Minister of Manpower and Transmigration of the Republic of Indonesia.
------------------------	--	---

IV. CONCLUSION

1. The implementation of the politics of using foreign workers has not been able to bring about justice, this is because the politics of law on the use of foreign workers has resulted in reduced employment opportunities for domestic workers which in turn has resulted in unemployment and poverty problems.
2. The weaknesses in implementing the politics of using foreign workers are the shortcomings in the form of time limits and the amount of use of foreign workers is not clearly regulated in the politics of foreign labor law in Indonesia, then the weaknesses in the dualism of work permits for foreigners in Law No. 13 of 2003 and Law no. 6 of 2011.
3. It is necessary to carry out legal reconstruction of the provisions in Article 42 of the Law. No. 13 of 2003, Article 2 of Presidential Decree No. 20/2018, Article 9 Permenakertrans No. 10 of 2018, and Article 61 of the Law. No. 6 of 2011.

REFERENCES

- [1]. CNBC Indonesia, *Anka Pengangguran Dan Kemiskinan Di Indonesia Akan Naik, Begini Ramalan Dari INDEF*, Diunduh Melalui: www.CNBCIndonesia.com, Pada 12 Mei 2018
- [2]. Detik.com Edisi 26 Agustus 2016, *Kementerian Tenaga Kerja Klaim PHK Selama Semester I-2016 Menurun*, Diunduh Pada 11 Mei 2017
- [3]. Kwik Kian Gie, *Gonjang-Ganjing Ekonomi Indonesia, Badai Beleum Segera Akan Berlalu*, Gramedia Pustaka Utama, Jakarta, 1998
- [4]. m.merdeka.com, *Terbongkar, Alasan Indonesia Dibanjiri Tenaga Kerja Asing Terutama Asal China*, Diunduh Pada 12 Mei 2018
- [5]. Organisasi Pekerja Nasional, *Problematika Buruh Di Indonesia*, Diunduh Pada 12-01-2017 di Spn.Or.Id
- [6]. Tempo.co Edisi 11 Februari 2016, *Data Jumlah PHK Menurut Kementerian Tenaga Kerja*, Diunduh Pada 11 Mei 2017

Gunarto, et. al. "Legal Policy Reform in the Use of Foreign Workers in Indonesia Based On Justice." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(11), 2020, pp. 61-66.