

WORK PERMIT FOR FOREIGN WORKERS IN INDONESIA

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ABSTRACT

This study focused on the arrangement of working permit for foreign workers in Indonesia. It's aimed to find out legal protection arrangement for foreign workers and legal actions and sanctions can be given to the work permit violations committed by foreign workers working in companies in Indonesia. This study concluded that legal protection arrangements for foreign workers in Indonesia should obtain a work permit from the Indonesian government through authorized or designated officials. Moreover, protection afforded to the foreign workers by granting rights and obeying obligations in accordance with Indonesian labour legislation should also be adjusted to the provisions of International Labour Organization. However, when the rights of the foreign workers are violated by the company or other parties, the foreign worker concerned can make legal remedies, dispute settlement either non litigation or litigation. Furthermore, legal actions and legal sanctions that may be imposed on foreign workers who violate the working permit in Indonesia are by preventive action and repressive action.

Keywords: Foreign Workers, Legal Protection, Legal Sanction.

INTRODUCTION

The demands of globalization lead to changes in the conduct of business activities for economic/business agents in Indonesia. In connection with the use of labour, foreign capital companies and even domestic capital companies may employ foreign workers. Under such conditions, the worker of foreign nationals is inevitable. They can work in Indonesia considering that foreign workers are also an integral part of foreign capital. This is in line with Indonesian government policy through WTO/GATT Ratification with Act no. 7 of 1994 which has started with the enactment of ASEAN Economic Community (AEC) in 2015.

By the opening of employment opportunities for foreign workers, the civil relationship between legal subjects from various countries will increase. In this case there are also many linkage points involving foreign elements both in business agreements and contracts of employment, thus the issue can be classified as a matter of International Civil Act (Sudargo, 1976). Desire harmonization on one hand is to provide greater employment opportunities to Indonesian citizens and on the other hand provides employment opportunities to foreigners although in certain positions in the era of globalization (the fourth industrial revolution) is very dilemmatic. Dilematization occurs because the workforce of most Indonesian citizens belonging to Human Resources (HR) who are not ready to compete in accordance with the job market instead of foreign workers are ready with that condition. Therefore, there is a need for an arrangement that can balance a harmonious working relationship.

Along with the advancement of information technology, although various arrangements regarding job requirements, job description, supervision and others on foreign workers may take

action beyond their authority as workers in Indonesia. Because of being required by the company then there is action beyond of their authority so that potentially harm the Indonesian workers. Of course in such cases the foreign workers can be accountable for the actions done, for example violating the law or work permit but also causing the loss of other parties, especially employment opportunities for Indonesian citizens. Based on the background, two legal issues are raised, namely: (1) the regulation of legal protection for foreign workers in Indonesia; (2) the legal actions and legal sanctions that may be imposed on foreign workers who violate the working permit in Indonesia (Ija, 2014).

RESEARCH METHOD

This research is an empirical legal research. This research used primary data and secondary data. Primary data were collected through observation and interview technique. The sample was determined using non probability sampling/non-random sampling technique. After all, the collected data is processed and analysed using qualitative analysis techniques.

RESULT AND DISCUSSION

The Settings of Foreign Labour Law in Indonesia

Legal basis of foreign employment

To create a legal basis for the use of foreign workers in Indonesia, for the first time the government issued Law No. 3 of 1958 on the Placement of Foreign Personnel which is still valid. The objective of this Law is to ensure decent and comprehensive employment opportunities for the citizens of the Republic of Indonesia so that the use of foreign workers in Indonesia is monitored for their use. In Law No. 3 of 1958 it is generally regulated on the employment of foreign nationals both on the terms, work that can be run. Obligations of employers and workers of foreign nationals and government authorities to grant work permits. The granting of work permits of foreign workers is essentially regulated in accordance with the needs according to the planning in the field of national economic development and still prioritizes the provision of employment opportunities of Indonesian citizens.

Work permits requirements for foreigners in Indonesia

Every foreign worker who wishes to work in Indonesia must obtain a work permit from the Department of Labour or a designated official. Provision of work permits for foreign workers by the government is done very selectively. This is to prevent foreign workers from pressing for available jobs for foreign workers. As it is known that to bring in foreign workforce in Indonesia is through a very strict selection in addition to also must meet the requirements that have been determined. In connection with this, Suny and Rochmat in their book entitled "*Review and Discussion of Foreign Investment and Foreign Credit Laws*" are explained have a valid national passport or permit and get permission to travel to Indonesia (commonly called a visa) from Indonesian representatives abroad (Suny and Rochmat, 1978). Furthermore, in the decision of the President of the Republic of Indonesia Number 23 of 1974 concerning Restrictions on the Use of Foreign Migrant Workers, Article 1 Sub a and b are determined the types of jobs that are

completely closed for foreign migrant workers because of the availability of Indonesian citizens and establishing the types of work that for a certain period of time may be filled by foreign workers while preparing Indonesian citizens to replace them. In the Ministerial Decree of Manpower No: KEP-416/MEN/90 concerning the granting of licenses to employ foreign migrant workers, in Article 5 paragraph 2 is determined: Foreign migrant worker who will be applying for a foreign work permit as meant in paragraph 1 shall meet the following requirements: have skills in the positions that will be filled, willing and able to transfer his expertise to Indonesian workers, especially companion and also able to communicate in Indonesian or English and willing to be tested. Based on the above requirements, BKPMP may issue a work permit for foreign workers based on the Letter of the Minister of Manpower No. 352/M/IV/1985 dated April 26, 1985 on the delegation of authority to issue Foreign Workers Permit (KTA) to BKPMD.

Rights and obligations of foreign workers in Indonesia

Foreign workers who will be employed in Indonesia as experts, consultants and technicians must have special skills, those who will work as expatriate must obtain prior permission. This work permit will be more easily obtained if the list of positions or jobs to be held by foreign workers has been submitted by companies that will employ to BKPM centre or BKPM Bali Province. Law Number 13 of 2003 regarding Manpower already regulates basic rights and obligations of foreign workers in Indonesia. Furthermore, the Government of Indonesia recognizes the enactment of the provisions of the United Nations Convention on Migration Workers and the International Labour Organization. Articles 10 and 11 of Law Number 25 of 2007 regarding Capital Investment have stipulated the basic provisions on foreign labour relations and guidance for local labour (Budiarta, 2016; Putra, 2000).

Action and Legal Sanction for Foreign Labour That Breaking Work Permissions

Supervision of foreign workers working in Indonesia

Law Number 13 of 2003 Article 176 to 181 regulates the supervision of foreign workers, meaning that the law still allows the use of foreign workers to work in Indonesia on terms, licensing procedures, planning, control and supervision. The form of supervision of companies in the hiring of foreign workers is done by the Directorate General of Binawas, the Department of Manpower as the licensor. For the supervision of foreign workers is the authority of the Directorate General of Immigration, Department of Justice and Human Rights, which is in charge of supervision when they enter (Article 48) and activities that are carried out while in Indonesian territory (Articles 49 to 53) of Law No. 9 of 1992. To hire expert workers, supervision is in the technical department in accordance with its expertise such as Foreign Legal Consultant is at the Directorate General of General Law Administration, Ministry of Law and Human Rights (Hans, 1945). The form of supervision is the Legal Consultant Service (Decree of the Minister of Justice Number JS 13/2417, dated July 6, 1974).

Action and sanctions of employment license violations

In the Emergency Law No. 9 of 1953 (LN 1953 No. 64 explanation of TLN No. 463), a special regulation has been set for foreigners in Indonesia. In carrying out its duties is governed by Government Regulation No. 45 of 1954 on the Supervision of Foreigners Who Are in Indonesia (Soedarto, 1987). However, in carrying out its duties is not easy as we imagine without the help of members of the community who must cooperate with government officials in tackling this problem, to tackle the problem of lawlessness by foreign workers and/or work permits employed by companies in Indonesia. The Manpower Office with its supervisory apparatus will continue to check and be appealed by the relevant Directorate General to members of the public who know if there is unlawful labour in order to report it. Based on the description contained two kinds of action to overcome this problem namely preventive actions (Hamzah, 1986) and repressive action (Pasek, 2016).

Preventive action is conducted in order to overcome the violation of law by Foreign Workers in companies in Indonesia. Preventive action is very necessary that is by providing information about the applicable employment, customs and applicable regulations to the company so that foreigners understand about the situation and condition well because the working system of an existing company in Indonesia may differ from the work system in the country of origin of the foreign workforce. The participation of the community with the government apparatus is also needed to supervise the foreign worker. Which in this case can be done by the Immigration Agency, the Police Department, the manpower department, the company employing the foreign worker, BKPM and also cooperate with the consulate from the country of origin of the foreign worker.

As explained in advance that the prevention of violation of law or work permit by Foreign Workers who work at company in Indonesia besides done by preventive action, also done by repressive action, Prof. Soedarto argues that: "*The meaning of repressive action shall be any action taken by law enforcement officers after the commission of a crime.*" (Soedarto, 1981). Likewise, the violation of the law conducted by foreign workers is the action of settlement of the case will only be implemented after the occurrence of deeds. This repressive action is carried out by immigration officers and the court so that the person committing the violation gets a court decision can be deported and get black list.

CONCLUSION

Legal protection arrangements for foreign workers working in companies in Indonesia must obtain a work permit from the Indonesian government through authorized or designated officials. Protection afforded to the foreign workers by granting rights and obligations in accordance with the field of duties and competence, which is governed by Indonesian labour legislation, is certainly adjusted to the provisions of International Labour Organization (ILO). However, when the rights of the foreign workers are violated by the company or other parties, the foreign worker concerned can make legal remedies, dispute settlement either non litigation or litigation. Legal actions and legal sanctions that may be imposed on foreign workers who violate the working permit in Indonesia are preventive action and repressive action.

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This article was originally published in a special issue, entitled: "[Perspectives on Contemporary Legal Issues](#)", Edited by Muhammad Haseeb.