

LIMITATION ON FOREIGN LABOR IN INDONESIA

Rini Irianti Sundary¹

¹Law Faculty, Universitas Islam Bandung
riniiriantisundary@unisba.ac.id

Abstract

The presence of foreign investment income and capital investment in the country has allowed the inclusion or use of foreign citizen labor entrants. The influx of foreign labor beginning with Indonesia which became part of the community like the WTO (World Trade Organization), the AFTA (Asean Free Trade Area) and the APEC (Asia Pacific Economic Cooperation) which gives great opportunities for entry of foreign labor to Indonesia. The purpose of this research is to know the rules governing about controlling the influx of foreign labor in Indonesia and discover the extent to which the control is done by the Government in order to protect the workforce Indonesia itself. This Research used methods used the method of juridical normative approach which is equipped with search data through interviews with stakeholders or experts in the field of employment, officials at the Department of employment, and data have been analyzed with qualitatively analysis

As a summary of this research, Indonesian government has made various regulations in limiting the number of foreign labor and protects labor Indonesia, among others. Restrictions and controls carried out by the Government against foreign labor is an important element to use manpower, good labor foreign and local labor employment, such government control against foreign labor should be reinforced, including by closing certain offices for foreign worker and provide it staffs are specific to Indonesia.

Keywords: *Foreign labour, Man power, Control*

Introduction

Foreign labor coming into Indonesia, giving a positive impact against economic growth. But on the other hand the influx of foreign labor give negative impact, including narrowing the job opportunities and wage level affect the local workforce (Indonesian labor) which currently totaled 118 million inhabitants¹. A passion for protecting the local labour from competition with foreign labor (TKA) performed by the Government, as in the ACT. No. 13 year 2003 about Labor (UUK) which generally stipulate the need to protect, guarantee and provide decent work opportunities for Indonesian workers/labour of Indonesia.

The use of foreign labor in Indonesia also shows the existence of violations of the law committed, such as violation of a residence permit, and work permit. In the Passport foreign

labor is written that the permissions granted by the Indonesia immigration was to tour, but it turns out they work at companies in Indonesia. Very unfortunate user companies foreign labor that just hides the existence of these illegal labors.

The large number of foreign labor goes into Indonesia also did not escape the influence of the formation of the Asean Economic Community (MEA), because MEA has not only meets all the Member countries of the ASEAN, but also as a MEA event economic competition between the Countries including labor.

With regard to the problem of the large number of incoming foreign labor to Indonesia either legal or illegal, then the Government should set up special strategies to deal with the implications of the MEA, particularly in relation to protection of labor job opportunities for Indonesia itself. The strategy must be fully prepared, especially its legal aspects,.

Based on the above background, then the problem can be identified as follows: How does the Government of Indonesia set up the placement of foreign labor in order to still give priority to employment opportunities for labor of Indonesia? And How far the extent of surveillance conducted by Immigration against foreign labor after the implementation of the ASEAN Economic Community?

The study aims to: Assess and evaluate foreign labor placement settings in Indonesia in order to protect Indonesia's labor opportunity and obtain an overview of the surveillance conducted by the immigration law against foreign labor after the implementation of the Asean economic community (MEA).

This Research used methods used the method of juridical normative approach , it is mean thatthis research was conducted through the research librarieswhich is equipped with search data through interviews with stakeholders or experts in the field of employment, officials at the Department of employment , the data in this study is secondary data composed of primary law, secondary legal materials and legal materials tertiary, then The data is analyzed with qualitatively analysis.

B. Analysis and Discussion

Analysis

Article 1 number 1 of Manpower and TransmigrationMinister Regulation Number 35 Year 2015 give the definition of foreign labor as: citizens of foreign visa holderswith the intention of working in the region of Indonesia.

While the definition of employer under article 1 point (3) Manpower and Transmigration Minister Regulation Number 16 years 2015 : “ legal entities or other agencies that employ foreign labor by paying wages or remuneration in other forms”. Further, based on the

provisions of article 4 paragraph (1), 9 (nine) subjects who can employ foreign labor, namely:

Government agencies;

International bodies;

Representatives of foreign countries;

International organizations;

Foreign trade representative offices, representative offices of foreign companies, and representative offices of foreign news;

Foreign private companies, foreign business entities that are registered with the relevant authorities;

Legal entities established under the laws of Indonesia in the form of a limited liability company or Foundation;

Social, religious institutions, education, and culture; and

Business Services *impersariat*.

Indonesia, the country with human resources (HR) are very abundant, far higher than other ASEAN countries can, if managed properly, can be a force of its own, in dealing with ASEAN free market competition. The Government has a dominant role in improving the quality of the workforce, but that does not mean the whole responsibility is in the hands of the Government, on the contrary, it should be the realization that the effects of the MEA will be felt directly by the community, so that any elements of the community should be able to contribute and participate and prepare academics, including through studies and research can be used as input to the Government for the current foreign labor that is not unavoidable.³ The hiring of foreign labor is a thing that irony, while within the country there are still many unemployed community. However, because of some reason, employing foreign labor that is inevitable. According to Budiono, there are several objective placement of foreign labor in Indonesia, namely:⁴

Meet the need for skilled labor and professionals in specific areas that have yet to be filled by Indonesian labor.

Accelerate the process of national development with the way accelerate the process of technology transfer or over the science, especially in the field of industry.

Providing the expansion of job opportunities for local labor.

Boost foreign investment as supporting capital development in Indonesia.⁴²

Discussion

Since the opening of the free job market in the 20th century, along with the globalization and liberalization and competition levels since work domestically and abroad increasingly characterized by the large number of foreign investment coming into Indonesia brings significant impact towards increasing manpower from outside the State of Indonesia coming into Indonesia and threaten the existence of the labor of Indonesia in particular who have no special skills.

The waves liberalization and free market is forecast to be moving faster and harder to stem. This would make Indonesia must be prepared to face the advancing liberalization in particular in the field of services regarding the ability to prepare human resource quality as the workforce in order to be able to compete snatch local and international job market.⁵

-Supervision and Control of Foreign Labor

Background using of foreign labor in Indonesia is based on 2 things, i.e. those (foreign labor) who brought capital (as investors) and/or bring skills in order to transfer of knowledge or the transfer of knowhow. In addition to the second reason for things such as, in fact, not allowed to use the foreign labor should give priority to the use of labor from Indonesia (local labor). It is similar with the Presidential Decree No. 75 Year 1995 that state which use the foreign labor is obligated to give priority to the use of the Indonesian labor in all areas and types of jobs available.

In addition, the supervision over the use of foreign labor is also exercised by immigration officers on duty at the control and sancties from Immigration, are coordinated in accordance with the scope of the duty and the authority of each of them, the question of control/inspection/ This supervision, in practice the supervision of use of foreign labor performed in teamwork among others which consists of Trustees employment, immigration, Ministry of Foreign Affairs, and police.

Actually, foreign labour was employed⁶ in Indonesia , because there are no workforce with the qualifications which need in job market that exists in this country ,that meets to carry out activities or work in the country or a number of domestic labor is very limited and not proporsional between regular labor and skill labor number .

In principle, using of foreign labour in Indonesia is meaning two things i.e. those foreign labor which takes capital (as an investor) and takes skill. Basically that two things is allow and must give priority to use Indonesian labor.

According to John Rawls theory (John Rawls : 1971 : 17), ⁷foreign labor placement must be based on the principle of Justice;, which recognizes that social and economic differences between one party with the other party still is something fair along the difference benefit each of the parties, so that social differences and the economy will be managed in such a way that :

These differences are expected to provide the peuntungan for each of the parties and

These differences can be observed by public officials and agencies who give permits for foreign labor.

Conclusion

Thecontrol from government is an important element in the use of manpower, good labor foreign and local labor employment, law enforcement efforts as thoroughly, both against man Manpower department as organizers of the surveillance and the company that accompanies the workforce begins from the start of the using labor.

Immigration has important roles in controlling foreign labor in the sense of security in order to organize and direct it to a specific purpose, so that the existence of foreign labor in Indonesia is really optimal using . Foreign labor can use exactly to the national interests in the implementation of the more prominent control nature of prevention or preventive whereas in more emphasis on law enforcement and control of immigration.

Bibliography

Agusmidah, *Hukum Ketenagakerjaan Indonesia*, Ghalia Indonesia, Bogor, 2010.

-----, *Dinamika Hukum Ketenagakerjaan Indonesia*,USU Press, Medan.

John Rawls, *A Theory of Justice* , The Belknap Press of Harvard University Press, 1971.

G.Kartasapoetra, *HukumPerburuhan di Indonesia Berdasarkan Pancasila*, SinarGrafindo, Jakarta, 1992.

HardijanRusli, *HukumKetenagakerjaan*, Ghalia Indonesia, Jakarta, 2004.

HR Abdussalam, *Hukum Ketenagakerjaan*, Penerbit Restu Agung, Jakarta, 2008.

H.S. Syarif, *Pedoman Penggunaan Tenaga Kerja Asing di Indonesia dan Peraturan peraturannya*,Sinar Grafika, Jakarta, 1996.

Ida Bagus Mantra, 2009, *TeoriKetenagakerjaan*,Yogyakarta, PustakaPelajar.

Iman. Santoso, *Perspektif Migrasi dalam Pembangunan Ekonomi dan Ketahanan Nasional*, UI Press, Jakarta, 2004.

Chirathivat Suthipand, *ASEAN's Role and Interests in the Formation of East Asian Regionalism. Political Issues and Economic Perspective*, 2004

Jurnal Lex et Societatis, Vol. III/No. 1/Jan-Mar/2015.

Labor: Studies in Working-Class History of the Americas was chosen "Best New Journal" by the Council of Editors of Learned Journals in 2005

Henheffer, T. (2009, September 7). Why are the fishermen dying at sea?. *Maclean's*, 122 (34), 21. Retrieved from <http://www2.macleans.ca>

Labour Economics, The Official Journal of the European Association of Labour Economists

Legislation/Regulation

Undang-Undang Dasar Republik Indonesia Tahun 1945;

Act No. 7 Year 1981 About Wajib Laporkan Ketenagakerjaan;

Act No. 13 Year 2003 About Manpower/Ketenagakerjaan;

Act No. 6 Year 2011 About Immigration;

Act No. 6 Year 2012 About Ratification *International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families* ;

Government Regulation No. 38 Year 2007

Presiden Regulation No. 21 Year 2010 About Manpower Control

Presiden Decree No. 37 Year 2014 About Komite Nasional Persiapan dan Pelaksanaan MEA;

PERMENAKER NO.35 Tahun 2015 About Using Labour Foreign Plan

Other Reference:

East Asia Vision Group. (2001). *Towards an East Asian Community: Region of Peace, Prosperity and Progress*. East Asia Vision Group Report.

Internet :

<https://publikasiartikel.wordpress.com/2016/03/12>

(PDF) Penegakan Hukum Terhadap Tenaga Kerja Asing Ilegal di Indonesia. Available from: [https://www.researchgate.net/publication/324239823 Penegakan Hukum Terhadap Tenaga Kerja Asing Ilegal di Indonesia](https://www.researchgate.net/publication/324239823_Penegakan_Hukum_Terhadap_Tenaga_Kerja_Asing_Ilegal_di_Indonesia)

Stig Enemark & Frances Plimmer, Mutual Recognition of Professional Qualifications, International Federation of Surveyors (FIG) Task Force, Denmark, 2002, (http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm).