

Juridical Review on The Use of Foreign Workers From The Perspective of Immigration Law

Tessar Bayu Setyaji¹, Evita Isretno Israhadi², Suparno³
tessar_bs@yahoo.co.id¹, evita_isretno@borobudur.ac.id², suparno@borobudur.ac.id³

Universitas Borobudur^{1, 2, 3}

Abstract. Along with the large use of foreign workers, the problems encountered were regarding the misuse of documents in the labor administration regarding licensing (TKA). This examination was led utilizing a subjective regularizing approach, specifically by dissecting the issues through legitimate standards contained in the regulations and guidelines in Indonesia. With the ascent of unfamiliar laborers who don't have official reports taking care of business in Indonesia, it is necessary to supervise the use of foreign workers in Indonesia by conducting direct inspections of companies that use foreign workers by the Department of Manpower and Transmigration to provide orderly administration of permits in employing foreign workers and imposing sanctions on companies that employ illegal foreign workers as well as taking strict action against these foreign workers. Supervision of Foreign Workers must be carried out regularly and periodically to avoid and prevent the entry of illegal workers.

Keywords: Foreign Workers (TKA); Immigration; Manpower Service

1. Background

The current era of globalization encourages investment mobility to various aspects of life around the world, including the labor sector, which results in people migrating between nations. To grant permits for foreign workers, it is necessary to have a legal order in employing foreign workers in an area so that regional development is realized and increase the quality of work for local workers. Work as a foreign worker in other countries. An agreement between the people of ASEAN is required so that labor regulations can control foreign workers and stop illegal foreign workers from entering a region, which can hurt economic growth. In the thought of Regulation no. As indicated by Regulation No. 13 of 2003 on Labor supply, the assurance of laborers is planned to guarantee laborers' fundamental freedoms, equivalent open doors, and treatment without segregation to guarantee the government assistance of laborers and their families while considering changes in the business world.

Due to their actions while on Indonesian soil, the recent influx of foreign workers (TKA), particularly those from China, caused issues. According to Yasonna H. Laoly, the Minister of Law and Human Rights (Menkumham), the number of Chinese foreign workers registered in Indonesia through the Indonesian Ministry of Manpower (Kemnaker) is only 21.00 of the total number of foreign workers in Indonesia. Between 70,000 and 100,000 people live in Indonesia. The data kept by Immigration shows that there are 31,000 Chinese foreign workers, all because Immigration also tracks all crossings in Indonesia.[1] However, the National Police Chief,

General Tito Karnavian, said that the issue of unlicensed foreign workers from China had been completed and had been clarified by the relevant ministries and agencies, so there was no need to worry.[2]

As of November 2016, there were 74,183 foreign workers in Indonesia, according to the Indonesian Ministry of Manpower (Kemnaker). There were 21,271 foreign workers from China, followed by 12,490 foreign workers from Japan and 8,424 foreign workers from the Republic of Korea.

From January 2016 to December 2016, the Ministry of Manpower Inspection found 1,324 violations of the use of foreign workers (central and regional) in 69 companies (without IMTA = 794 people, and abuse of position = 530 people).[3]

Since 2011, the number of foreign workers in Indonesia has been relatively at 70 thousand each year. In 2011 there were 77,307 foreign workers in Indonesia, in 2012 there were 72,427 foreign workers, in 2013 there were 68,957 foreign workers, in 2014 there were 68,762 foreign workers, and in 2015 there were 69,025 foreign workers.[4] According to the Minister of Manpower (Menaker), Hanif Dakhiri, one of the issues that arises in many nations today in the context of the dynamics of an increasingly open global economy is the emergence of illegal migrant workers. Regarding the control and supervision of the use of foreign worker services by business actors, Indonesia itself has implemented clear and firm laws and regulations. As a result, the large-scale influx of foreign workers to Indonesia cannot be linked to foreign investment. Although international investment may include foreign workers, Menaker wants to emphasize that foreign workers are constrained by position and time.[5]

Along with the large use of foreign workers, the problems encountered were regarding the misuse of documents in the labor administration regarding licensing (TKA). As per Official Guideline of the Republic of Indonesia Number 21 of 2016 with respect to further developing relations between the Republic of Indonesia and different nations, working on the economy, and expanding the quantity of unfamiliar traveler visits, it is necessary to facilitate foreigners' entry into Indonesian territory where foreign workers are permitted to obtain visit visas. The Manpower and Transmigration Service must conduct direct inspections of companies that use foreign workers and impose sanctions on businesses that use illegal workers in order to ensure the orderly administration of permits for the use of foreign workers. unfamiliar laborers and make a decisive move against these unfamiliar specialists. Regular and periodic supervision of foreign workers is necessary to prevent and stop the entry of unauthorized personnel.

2. Method

This study took a qualitative normative approach, specifically by examining the issues through the lens of Indonesia's legal norms and regulations. The review falls under the class of doctrinal lawful exploration since it looks at legitimate teachings, standards, and standards both in court choices and in books.[6]

The nature of this study's typology is descriptive analysis, with the goal of describing, inventorying, also, dissecting the genuine states of unfamiliar laborers in Indonesia according to a migration viewpoint through library research with an accentuation on auxiliary information sources.[7]

3. Result and Discussion

3.1 Regulations of Legislation Regarding Migration

The Directorate General of Immigration carries out three main tasks and functions which collectively are referred to as the "Tri Function of Immigration": Community Service Assistance, Law Enforcement, Security, and Economic Development (Permenkumham RI No. 29 of 2015), formed a Foreigner Monitoring Team (PORA Team) at the central and regional levels as a follow-up in conducting surveillance of the activities of foreigners in Indonesian territory.[8] The existence of foreign workers in Indonesia is also part of the supervisory duties carried out by the Directorate General of Immigration (Ditjen. Immigration) regarding foreigners. At the end of 2016, the Directorate General. Immigration held a Foreigner Monitoring (POA) operation in the context of controlling and securing New Year's Eve. The target of the activity which was carried out on December 31 was a nightclub that was suspected of facilitating the activities of foreigners who were carried out illegally. This POA operation was held in the DKI Jakarta Region, as well as several other areas carried out by the Directorate of Immigration Supervision and Enforcement and the Immigration Office. During the operation, hundreds of foreigners suspected of committing immigration violations were arrested. The Directorate General of Immigration has arrested 76 women of Chinese nationality aged 18-30 years who were engaged in activities as massage therapists, song guides, and commercial sex workers (PSK) whose fees start from Rp. 2,800,000 (two million eight hundred thousand rupiahs) up to Rp. 5,000,000 (five million rupiahs). In addition to securing the 76 foreigners, evidence was also secured in the form of 92 passports of Chinese nationality, receipts/proof of payment, approximately Rp. 15,000,000 (fifteen million Rupiah), mobile phones, bags, underwear, and tools. contraception.

Apart from the Directorate General of Immigration, several Immigration offices also held a similar operation, among others:[9]

- a. South Jakarta Special Class I Immigration Office secured 10 (ten) foreigners from various nationalities such as Italy, India, France, Guinea, China, Australia.
- b. The Class I Immigration Office specifically for Soekarno Hatta secured 5 (five) foreigners consisting of 4 (four) Chinese citizens and 1 (one) South Korean citizen.
- c. Class I Immigration Office in Central Jakarta secured 11 (eleven) foreigners consisting of 6 (six) Indian citizens and 5 (five) Nigerian citizens.
- d. West Jakarta Special Class I Immigration Office secured 11 (eleven) foreigners, the majority of whom are Chinese nationals, 8 (eight), 2 (two) Hong Kong citizens, and 1 (one) Malaysian citizen.
- e. The North Jakarta Immigration Office has arrested 2 (two) Chinese citizens.
- f. Class I Immigration Office specifically in Surabaya secured 7 (seven) Chinese citizens.
- g. The Sorong Immigration Office secured several 3 (three) Chinese citizens.

Therefore, 125 (one hundred and twenty-five) foreign nationals who were arrested in the POA Operation allegedly violated various provisions of Law Number 6 of 2011 concerning Immigration, including overstaying, not showing passports when requested (Article 116), and misusing immigration. residence permit (Article 122). Immigration Law Number 6 of 2011 concerning Immigration stipulates that during the examination of foreign nationals by Immigration Investigators may be subject to Immigration Administrative Actions (TAK) such as paying fees or fines, deportation, and detention, as well as criminal sanctions. with a maximum imprisonment of 5 (five) years.

According to data from the Bandung Immigration Office, there were 178 Chinese nationals working in the construction sector, such as the construction of the Cileunyi-Sumedang-Dawuan toll road, all workers have official documents to work in Indonesia. However, not all foreign nationals comply with immigration regulations. From the data they have, Bandung Immigration often deports foreign nationals with problems which are generally for committing immigration violations, such as trading, even though they are using visit visas, or committing minor crimes.[9]

The variables that have prompted the ascent of unfamiliar laborers, particularly from China, incorporate:

- a. Indonesia's degree of receptiveness to venture. We are mindful that Indonesia is by and by creating, and the public authority is carrying out a program to get financial backers alongside their labor force — from top directors to laborers — with regards to speeding up improvement.
- b. Sans visa system factor. Various Chinese residents showed up in Indonesia because of the kickoff of section doors for outsiders without visas (169 nations), which brought about an expansion in migration infringement.
- c. The ASEAN Monetary People group's (AEC) execution This has prompted less boundaries among countries and an expansion in the quantity of unfamiliar laborers showing up.[10]

The major principle of utilizing TKA is to increment venture, innovation move, and ability move to TKI, as well as to increment business valuable open doors.[11] As a result, the welfare of Indonesians is the sole objective of foreign investment in Indonesia. This is as per Regulation No. 13 of 2003 on Labor, which plans to shield laborers by furnishing them with essential freedoms, equivalent open door, and non-oppressive treatment on any premise to guarantee the prosperity of laborers and their families while as yet watching out for business patterns.

Of course, carrying out a POA, especially for foreign workers, is a tough task that must be carried out by immigration officials. The existence of TKA can be seen from various sides, one of which is the regional financial contribution as well as the legal standing and method of approval for the imposition of fees. A TKA is a person who is not a citizen of Indonesia but is able to produce goods or services to meet society's needs both inside and outside the workplace.[12]

The general provisions of law number 13 of 2003 concerning Labor Article 1 section (13) express that what is implied by TKA is unfamiliar nationals holding visas to work in an Indonesian area. It is ironic to hire foreign workers while the country still has a lot of unemployed people. However, these foreign workers must be hired for a number of reasons.

Budiono says that placing foreign workers in Indonesia has several goals, i.e:[13]

- a. supplying the demand for professional and skilled workers in particular fields that have not been filled by Indonesian migrant workers.
- b. speeding up the exchange of innovation or information, especially in the modern area, to speed up the course of public turn of events.
- c. Giving extension of business potential open doors to Indonesian Transient Laborers.
- d. As a means of supporting development capital in Indonesia, increase foreign investment.

The legal basis governing the use of foreign workers and the IMTA Renewal Levies are as follows:

- a. Law Number 13 of 2003, as stated in Article 1 Number 13, defines labor inspection, and Article 1 Number 32 defines foreign workers (TKA). Regarding Plans to Employ Foreign Workers, Article 43.
- b. Regulation No. 12 of 2013 issued by the Minister of Manpower and Transmigration of the Republic of Indonesia regarding Procedures for the Use of Foreign Workers includes the following sections: Article 1 Number 1, Article 1 Number 4, Article 1 Number 5, Article 1 Number 11, Article 1 Number 13, and Article 1 Number 15 concerning the Definition of Foreign Workers (TKA), Plans for Using Foreign Workers (RPTKA), and Permits to Employ Foreign Workers (IMTA). Regarding TKA Employers, Article 3; Article 7: Ratification of the Plan to Utilize RPTKA Foreign Workers); Article 30 on the Application Process for IMTA.
- c. Traffic Control Retribution and Permit Extension to Employ Foreign Workers listed in Articles 1 through 5 of Government Regulation No. 97 of 2012 of the Republic of Indonesia regarding the meaning of regional fees, IMTA extension fees, extension of IMTA, and definition of Foreign Workers (TKA); The amount of IMTA Retribution rates based on regional regulations is regulated in Chapter IV, Article 15 of Government Regulation Number 97 of 2012 Concerning Traffic Control Retribution and Permit Extension to Employ Foreign Workers. Article 16 describes how IMTA Retribution is received and used.

As a general rule, unfamiliar laborers in Indonesia are ordered into 2 (two) classifications, in particular:[14]

TKA legal (have official documents)

It refers to the general provisions of Law no. 6/2011 concerning immigration, Article 1 Paragraph:

(13) Official travel documents containing the holder's identity are issued by an authorized official of a nation, the United Nations, or other international organization for travel between countries.

(14) The Republic of Indonesia's travel documents and stay permits are known as immigration documents. They are issued by immigration officers or foreign service officials.

Unless otherwise specified by this Law or international agreements (see Article 8 Paragraphs (1) and (2) of the Migration Law), all foreigners, including TKA, are required to have valid and valid Travel Documents (Passport and Passport-like Travel Letter) and Visas to enter and exit Indonesian territory.

As per Article 39, the TKA Visa is a restricted stay visa that is conceded to ministry, specialists, scientists, understudies, financial backers, the old, and their families. It likewise permits outsiders who are legitimately hitched to Indonesian residents to make a trip to the Indonesian Domain to live there for a restricted measure of time; or to join to deal with ships, drifting gear, or establishments in the regional ocean, mainland rack, or Indonesian Select Monetary Zone.

Illegal TKA (without official documents)

Workers from other countries are welcome to work in Indonesia. However, if TKA is utilized in a manner that does not conform to the regulations outlined in Law No. 13 of 2003 regarding Manpower, this indicates that TKA has employed illegal workers. It is against the law to employ illegal foreign workers, and doing so may result in criminal sanctions. Employers who hire

foreign nationals in violation of Article 185 of Law No. 13 of 2003 Concerning Manpower can face criminal penalties, as can TKA:

- (1) (1) Anyone who disregards the arrangements alluded to in Articles 42, 68, 69, 80, 82, 90, section 1, Article 143, and 160, passages (4) and (7), is dependent upon a fine of essentially Rp or potentially detainment for a time of something like one year and a limit of four years. 100,000,000.00 IDR (100,000,000 rupiahs) and a limit of 400,000,000.00 IDR).
- (2) The offense mentioned in Paragraph 1 is a crime. act.

In this way, bosses who mean to utilize TKA should get composed authorization from the clergyman or designated authorities, and individual businesses are restricted from utilizing TKA under Article 42 passages (1) and (2) of Regulation No. 13 of 2003 concerning Labor supply. Managers who abuse the arrangements of Regulation No. 13 of 2003 concerning Labor supply in regards to the utilization of unfamiliar specialists will be dependent upon criminal assents.

In order to obtain a Permit to Employ Foreign Workers (IMTA), employers of foreign workers are required to submit a Plan for Using Foreign Workers (RPTKA) and are willing to face retaliation. However, the government cannot ignore the fact that the circumstances in Indonesia continue to prevent the creation of jobs for some job seekers.[15] The purpose of issuing permits for the use of foreign workers is to ensure that the use of foreign workers is limited in order to maximize local workers' empowerment.[16] As a result, companies that employ foreign workers are required to work on Indonesian soil by making plans for the use of foreign workers (RPTKA) in accordance with the Ministerial Regulation when hiring them. This requirement is especially important because it requires companies to follow extremely stringent procedures. Regulations for Employing Foreign Workers in Manpower and Transmigration of the Republic of Indonesia No. 12 of 2013.

In the provisions of Article 71 of the Immigration Law, it is stated that every foreigner who is in Indonesian Territory must:

- b. give all vital data with respect to the personality of himself as well as his family and report any adjustment of common status, citizenship, business, Underwriter, or change of address to the nearby Movement Office; or
- c. if the Immigration Officer in charge of monitoring immigration requests it, they must show and submit their Travel Documents or Stay Permit.

If this obligation is not carried out, then based on Article 116, you will be punished with imprisonment for a maximum of 3 (three) months or a fine of up to Rp. 25,000,000.00 (twenty-five million rupiahs). Article 119 also states that:

- a. Without the travel documents and visas mentioned in Article 8, any foreigner who enters or resides in Indonesia will be subject to a maximum sentence of five years in prison and a fine of up to Rp 10,000. 500,000,000.00 (or 500,000,000).
- b. Any outsider who uses Travel Records with plan when it is known or sensibly thought that the Movement Reports are phony or misrepresented is dependent upon a greatest sentence of five years in jail and a fine of Rp 1,000,000. 500,000,000.00.

likewise, Article 122 sentenced to a maximum of five years in prison and a fine of Rp. 500,000,000.00 (500,000,000 rupiahs):

- a. every foreign national who intentionally misuses or engages in activities that are not intended to grant him a Stay Permit;

- b. anyone who instructs or allows a foreign national to abuse or engage in activities that are not intended to grant him a Stay Permit.

Article 123 Condemned to a greatest detainment of 5 (five) years and a most extreme fine of Rp. 500,000,000.00 (500,000,000 rupiahs):

- a. any individual who, with the intention of obtaining a Visa or Stay Permit for themselves or another person, provides false or falsified letters, data, or incorrect information;
- b. every foreign national who intends to enter or remain in Indonesian territory through the use of a Visa or Stay Permit described in letter a.

To implement the Three Functions of Immigration: Community Service, Law Enforcement and Security, and Economic Development Facilitator (Permenkumham RI. No. 29 of 2015 concerning ORTA Kemenkumham R.I.), monitoring of the activities of foreigners in Indonesian territory is carried out by the Foreigners Monitoring Team (PORA Team).

Based on existing laws and regulations, Immigration Officers have the right to refuse foreigners to enter Indonesian territory if:

- a. do not have valid and valid Travel Documents;
- b. have fake Immigration documents;
- c. do not have a Visa, except those who are exempt from the obligation to have a Visa;
- d. has given incorrect information in obtaining a Visa;
- e. suffering from an infectious disease that endangers public health;
- f. involved in international crimes and transnational organized crime;
- g. remembered for the needed rundown of people for capture from a far off country;
- h. associated with treachery exercises against the Public authority of the Republic of Indonesia; or
- i. included in the network of practices or activities of prostitution, human trafficking, and smuggling
- j. human.

Overstaying, not entering through TPI (Article 113), not being able to show a passport when asked by officers (Article 116), and misuse of Immigration Stay Permits (Article 122) are all examples of immigration violations committed by foreigners that can result in Immigration Administrative Actions (TAK) in the form of paying fees/fines, deportation, and deterrence, as well as criminal sanctions (projustisia) with the threat of imprisonment for a.

In a country like Indonesia, the dynamics of national and state relations make it logical to use the services of foreign workers. The radical acceleration of the development of Science and Technology (IPTEK) and the development of investment policies are two logical outcomes of various conditions and factors that continue to develop. As a result, the fundamental tenet of utilizing TKA is to make a series of efforts to boost investment, exports, technology transfer, skill transfer, and employment opportunities. Therefore, employers are required to appoint Indonesian Migrant Workers (TKI) as TKA companions when hiring TKA, as stated in Article 45 paragraph 1 of Law Number 13 of 2003 concerning Manpower. Additionally, foreign workers are required to provide training to accompanying migrant workers as a means of technology and skill transfer.

Currently, Indonesia is bound by inter-nation and bilateral commitments that include various regulations for the entry and exit of workers. Where every country in the interaction of

trade in goods and services may not be discriminatory, open, and reciprocal through the request and offer mechanism.

The implementation of the use of foreign workers' services in Indonesia should be based on the following principles:

- a. According to Article 42 section 1 of Regulation Number 13 of 2003, each business who utilizes unfamiliar specialists should acquire composed authorization from the priest or delegated official,
- b. Sponsorship, which stipulates that individual employers are not permitted to employ foreign workers (Article 42, paragraph (2) of Law No. 13 of 2003),
- c. Particular, that TKA is utilized in a functioning relationship for a specific position and a specific time (Article 42 Passage (4) of Regulation Number 13 of 2003), and
- d. Security: Employing foreign workers must comply with Indonesia's laws and regulations and not jeopardize the country's security.

Also, the Priest of Labor supply Guideline of the Republic of Indonesia Number 35 of 2015 altered the necessities for utilizing unfamiliar specialists (in view of Article 36 Passage (1) of the Clergyman of Labor supply Guideline of the Republic of Indonesia Number 16 of 2015 Concerning the Utilization of Unfamiliar Specialists), namely:

- a. Have schooling following the necessities of the situation to be involved by TKA;
- b. possess a competency certificate or have worked in the position that TKA will be filling for at least five years.;
- c. Make a statement that reports on the implementation of training and training demonstrate that it is necessary to transfer their skills to accompanying TKI.;
- d. Have a NPWP for unfamiliar laborers who have worked for over a half year;
- e. Have proof of insurance policy on assurance combined in Indonesia, and
- f. Participation in the Public Government backed retirement Framework for unfamiliar laborers who have been utilized for over a half year.

Consequently, notwithstanding Indonesia's transparency with respect to the utilization of unfamiliar laborers, the public authority ought to in any case try to shield neighborhood laborers by upholding guidelines containing severe necessities and capabilities for unfamiliar specialists, as illustrated in the corrected Guideline of the Pastor of Labor of the Republic of Indonesia Number 16 of 2015 concerning the Utilization of Unfamiliar Specialists. with the Rule of the Minister of Work supply of the Republic of Indonesia Number 35 of 2015 Article 36 Segment (1) above. This is obviously so the TKA who enter Indonesia are talented (have aptitude), so it is workable for the exchange of abilities and innovation to happen, support monetary turn of events, and empower expanding the capability of TKI.

The Directorate General of Immigration's (Directorate General of Immigration) use of transactional data on the arrival of foreigners (crossing data) is different from the Ministry of Manpower's (Ministry of Manpower's) use of data based on permit documents to work (Permission to Use TKA/IMTA). As a result, the Directorate General of Immigration and the Ministry of Manpower have different numbers of foreign workers.

On the other hand, no integrated database system can be accessed by stakeholders and the general public, which has led to different interpretations regarding the number of foreign workers in Indonesia. For this reason, an integrated database system is needed regarding the supervision of foreigners so as not to create uncertainty in society with several considerations: a) if every foreigner has to report to every relevant agency, it will cause discomfort; b) requires a longer time; c) in certain countries there is no obligation for foreigners to report themselves;

and d) there is a clause that the data of foreigners can be provided if the immigration authorities request it.

4. Closing

Along with the large use of foreign workers, the problems encountered were regarding the misuse of documents in the labor administration regarding licensing (TKA). The use of the services of foreign workers in a country, such as Indonesia, is a logical consequence of the dynamics of national and state relations. This logical consequence arises from various conditions and factors that continue to develop, specifically, the development of investment policies and the radical acceleration of science and technology (IPTEK) development. As a result, the fundamental tenet of utilizing TKA is to make a series of efforts to boost investment, exports, technology transfer, skill transfer, and employment opportunities. So that under Article 45 passage (1) of Regulation Number 13 of 2003 concerning Labor supply, it is accentuated that in recruiting TKA, businesses are expected to delegate Indonesian Traveler Laborers (TKI) as TKA sidekicks. Additionally, foreign workers are required to provide training to accompanying migrant workers as a means of technology and skill transfer.

To get a License to Utilize Unfamiliar Specialists (IMTA), businesses of unfamiliar laborers should present an Arrangement for Utilizing Unfamiliar Laborers (RPTKA) and will confront counter. Then again, the public authority likewise can't choose to disregard, where the circumstance and conditions in Indonesia are as yet unfit to make occupations for a portion of the gig seekers.[15] The reason for giving grants for the utilization of unfamiliar specialists is to guarantee that the utilization of unfamiliar laborers is restricted to expand neighborhood laborers' strengthening.[16] As a result, companies that employ foreign workers are required to work on Indonesian soil by making plans for the uses of foreign workers (RPTKA) in accordance with the Ministerial Regulation when hiring them. This is especially true when it comes to obliging companies to do so. Number 12 of the Republic of Indonesia's 2013 report on labor and migration

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