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Implementation of the Job Creation Law on the Supervisory Function of Foreign Workers by the Manpower and Transmigration Service

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Abstract

The phenomenon of the high number of foreign workers (TKA), which is increasing every year in Indonesia, especially in the Central Sulawesi region, of course, means that the supervisory function carried out by the Central Sulawesi Province Manpower and Transmigration Service will be increasingly strict. However, since the existence of the Job Creation Law, employment agencies have changed the supervisory function of TKA. The research aims to analyze the role of the employment service in carrying out the supervisory function of foreign workers entering the Central Sulawesi region after the existence of the Job Creation Law. The research method used in this research is Normative Juridical research, which will examine the role of the employment department's supervisory function from changed aspects of the Job Creation Law. To examine how the law should apply. where based on cases in the field, researchs try to analyze facts and also applicable legislation. The research results show that the supervisory function of the Manpower Service after the existence of the Job Creation Law still provides a mandate similar to the Manpower Law. However, in its implementation, as an institution appointed by the state that has the task and function of issuing IMTA (Permits to Employ Foreign Workers), it has now been revoked by the Job Creation Law. The regulations regarding foreign workers after enacting the Job Creation Law underwent significant changes.

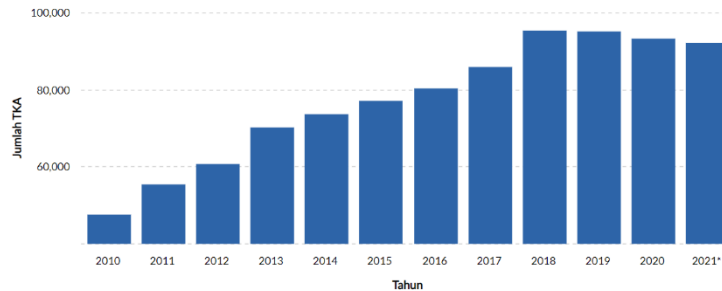
Keywords: *Employment Service; Supervisory Function; Job Creation Law*

INTRODUCTION

The Indonesian government is vulnerable to the phenomenon of workforce numbers increasing daily. To improve living standards, the government must fully support this by issuing policies regulating employment and companies. Providing and creating jobs on a global scale can be done by opening up the broadest possible opportunities for local and foreign investors to carry out activities in Indonesia. In line

with this, to support this policy, Indonesia certainly needs to participate in legalizing the problem of foreign workers in Indonesia to provide legal certainty.¹

Field facts show that the number of foreign workers is increasing daily, which can be proven by several surveys that focus on the existence of foreign workers. We can see as follows:



*Figure 1: TKA data table for 2010 to 2021*²

The number of foreign workers in Indonesia as of May 2021 was 92,058; there has been a decline in the last three years since 2018, the highest number of 95,335. TKA, previously since 2010, the number of TKA has continued to increase every year. Apart from that, from the data found, the number of foreign workers in Central Sulawesi, especially in the Morowali Regency area, is around 3,000 foreign workers; this number is not tiny, mainly since this data was found for only one company, namely the company PT. Indonesia Morowali Industrial Park. Not to mention other companies in the Central Sulawesi region.

Since 2003, labor regulations in Indonesia have been issued under Law Number 13 2003 concerning employment. This regulation was the only employment law book until the publication of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which had much turmoil until it was finally passed based on Law Number 6 of 2023 concerning Determination of the Government Regulation on Job Creation which also changed several norms in previous employment regulations.

Amendments to the Employment Law, several articles of which were amended in the Job Creation Law, one thing that is an indication of the high number of foreign workers in Indonesia is that, for example, Article 42 paragraph (6), which regulates foreign workers whose term of employment has expired and can be replaced by foreign

¹ Bangsawan, Achmad "Pengaturan Penggunaan Tenaga Kerja Asing (TKA) Pasca Berlakunya Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja," JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah 8, no. 3 (n.d.): 1907-14, <https://doi.org/10.24815/jimps.v8i3.25351>.

² Teguh Firmansyah, "3.000 Tenaga Asing Kerja Di Morowali," *News.Republika.Co.Id* (palu, December 1, 2022).

workers. Others changed. Regulations discussing expiring foreign workers' work periods will be re-regulated in Government Regulations. This needs to provide legal certainty regarding the tenure of foreign workers who work in companies domiciled in Indonesia.³

One of the state's efforts to support companies in the field processing industry is implementing supervision. Supervision is the discovery and application of methods and equipment to ensure that plans that have been implemented are by the stated objectives. The company's aim in its operational activities is to create commodity products to make a profit and provide certainty to workers so they can work in an organized workplace, safe from potentially dangerous conditions, and a healthy work environment to increase productivity. Workforce that will directly improve company performance. For this reason, it is necessary to have labor inspections carried out by the authorized agency, namely the Manpower and Transmigration Service.

From the data above, the number of foreign workers is high which is increasing every year. This increases the burden of supervisory⁴ implemented by the Manpower and Transmigration Service since the existence of the Job Creation Law; there have been many changes since it was passed, so this research aims to examine the role of the supervisory function carried out by the Manpower Service, especially in Central Sulawesi Province, so it is necessary to carry out further analysis in depth about how the monitoring function carried out by the Manpower Service is implemented.

METHOD

The research was carried out from January 1 - August 30, 2023, at the research site of the Central Sulawesi Province Manpower and Transmigration Service and 3 (three) companies that employ foreign workers who have legal status⁵ in the Central Sulawesi Province area.⁶ The type of research used in this article is using the Normatif Juridical research⁷ method. This research examines the applicable legal provisions and what

³ Nurhidayati Nurhidayati, "Perizinan Tenaga Kerja Asing, Kebijakan Dan Implementasinya," *Widya Cipta: Jurnal Sekretari Dan Manajemen* 3, no. 2 (2019): 241-48, <https://doi.org/10.31294/widyacipta.v3i2.6444>.

⁴ Christina NM Tobing, "Sanksi Hukum Terhadap Pelanggaran Penggunaan Tenaga Kerja Asing Pasca Uu Cipta Kerja," *Sol Justicia* 5, no. 2 (2023), <https://doi.org/10.54816/sj.v5i2.559>.

⁵ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020), <https://doi.org/10.14710/gk.2020.7504>.

⁶ Sulaiman Sulaiman, "Paradigma Dalam Penelitian Hukum," *Kanun Jurnal Ilmu Hukum* 20, no. 2 (2018), <https://doi.org/10.24815/kanun.v20i2.10076>.

⁷ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 1483-90.

happens in society.⁸ To examine how the law should apply.⁹ The approach used in this research is a case approach,¹⁰ where based on cases in the field, researchs try to analyze facts and also applicable legislation.¹¹

RESULT AND DISCUSSION

1. The Role of the Manpower Service in Carrying Out the Supervisory Function of Foreign Workes Entering the Central Sulawesi Region

Handling of employment and transmigration within the Regional Government of Central Sulawesi Province was previously carried out by the respective Regional Office for Manpower and the Regional Office for Transmigration and PPH of Central Sulawesi Province since 2001 with the stipulation of Regional Regulation No. 28 of 2000 concerning the Establishment of Services within the Regional Government of Central Sulawesi Province, the Regional Manpower and Transmigration Service of Central Sulawesi Province was formed. The role of labor in national development is increasingly accompanied by various challenges and risks faced so that, in time, it will be possible to increase national productivity.

Regarding the workforce, the task carried out is supervision regarding the implementation of employment.¹² Carrying out labor inspections is essential to ensure that the labor administration process can run according to the provisions in the regulations. Article 1 paragraph (32) of Law Number 13 of 2003 concerning Employment and Article 1 Paragraph (1) of Presidential Regulation Number 21 of 2010 concerning Labor Inspection defines labor inspection as the activity of supervising and enforcing the implementation of laws and regulations in employment.

The function of labor inspection is to (a) provide guarantees for the enforcement of labor laws,¹³ (b) Guarantee providing information and technical advice to business actors and workers regarding matters that can ensure the effective implementation of regulations in labor laws, and (c) Collecting information about work relations and

⁸ S H I Jonaedi Efendi, S H Johnny Ibrahim, and M M Se, *Metode Penelitian Hukum: Normatif Dan Empiris*, 2018.

⁹ Peter Mahmud Marzuki, "Penelitian Hukum, Cetakan Ke-11," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022).

¹⁰ F.C. Susila Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (2019), <https://doi.org/10.14710/alj.v2i4.697-709>.

¹¹ Benuf and Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer."

¹² Arif Moh Zaino and Sutrisni, "Analisis Politik Hukum Tentang Omnibuslaw Di Indonesia," *Journal of the Japanese Society of Pediatric Surgeons* 4, no. 1 (2020): 156–57, https://doi.org/10.11164/jjsps.4.1_156_2.

¹³ Saskia Nina Sartori and Ufran Ufran, "Implikasi Perubahan Perizinan Tenaga Kerja Asing Terhadap Pendapatan Asli Daerah Kabupaten Lombok Barat," *Indonesia Berdaya* 4, no. 3 (2023), <https://doi.org/10.47679/ib.2023496>.

employment conditions in a broad sense as material for preparing and improving labor laws and regulations.

There is Minister of Manpower Regulation Number 3 of 1990, mentioned in Article 21, that those who have the authority to carry out supervisory functions regarding the implementation of regulations regarding the granting of permits to employ foreign workers are the Labor Inspection Officers of the Department of Manpower. Legislation to protect workers/workers will only have meaning if its implementation is supervised by an expert whose task is to visit the workplace at certain times to be able to carry out 3 (three) main tasks, namely:

- a) See employing checking and investigating whether the provisions in the regulations are implemented. If this is not the case, we can take reasonable action to ensure their implementation.
- b) Helping workers and business leaders by providing technical explanations and advice they need.
- c) Investigate the condition of the workforce and collect materials needed for the preparation of labor regulations and the establishment of Government policies.¹⁴

Apart from that, the existence of the ILO Convention Number 81 of 1947 concerning Labor Inspection in Industry and Trade makes the Indonesian state feel the need to ratify the ILO Convention as a guideline for the laws in force in Indonesia based on Law Number 21 of 2003 concerning Ratification of ILO Convention No. 81 Concerning Labor Inspection In Industry And Commerce. This is not without reason because the Law provides regulations regarding the function of labor inspection so that it can be carried out well, which directly strengthens labor regulations. Apart from that, the supervisory function after the enactment of the Job Creation Law does not change the supervisory function of foreign workers at the Manpower Service. In the organizational structure of the Manpower Service, 5 (five) fields have different duties and functions, one of which is a field that carries explicitly out supervisory functions, namely the Division of Industrial Relations Development and Labor Inspection. More specifically, in carrying out its role as a supervisory function at the Manpower Service, the labor inspection development section has the task of carrying out the preparation of policy preparation materials, coordination, guidance, facilitation, as well as monitoring and evaluation of the implementation of labor inspection development activities.

¹⁴ Rahmat Junaidi, "PELAKSANAAN PENGAWASAN TENAGA KERJA ASING OLEH DINAS TENAGA KERJA KABUPATEN SUKAMARA (Mencermati Rancangan PERDA Tentang Retribusi Perpanjangan Izin Memperkerjakan Orang Asing)," *Biro Hukum Sekretariat Daerah Provinsi Kalimantan Tengah* (Palangka Raya, 2018).

2. Position of Foreign Workers in Indonesia After The Enactment of The Job Creation Law

The development of labor law is in line with the development and progress of the Indonesian state toward a better direction¹⁵ The government has made Various efforts, including making policy changes in a direction that always starts from the noble constitutional Law, which permanently protects the entire Indonesian nation. It cannot be denied that it has a significant role and position as an actor and goal of development. Of the role and position of the workforce, labor laws are needed, which are aimed at improving the workforce's quality and participation in development, as well as increasing the protection of workers and their families with human honor and dignity.¹⁶

In connection with efforts to improve government policies regarding employment, several changes have been made since independence up to 2005. Based on considerations of labor needs and dynamics, the first Law is Law Number 16 of 1969 concerning introductory provisions regarding Manpower, then Law Number 25 of 1997 concerning Manpower, and Law Number 11 of 1998 concerning Amendments to the Applicability of Law Number 25 of 1997 concerning Employment, then there is Law number 28 of 2000 concerning the stipulation of Government Regulations instead of Law Number 3 of 2000 concerning Amendments to Law Number 11 of 1998 concerning Changes to the Entry into Force Law Number 25 of 1997 concerning Employment Became Law, followed by Law Number 13 of 2003 concerning Employment, and most recently Law Number 11 of 2019 concerning Job Creation, which was later withdrawn. Returned by the government due to various pros and cons, including that the Job Creation Law is formally flawed based on the decision of the Constitutional Court, so in order to avoid a legal vacuum, the government issued a Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, and which In the end, it was re-enacted as Law Number 6 of 2023 concerning Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation, wherein the regulation there are ten scopes, including regulating Manpower. Law Number 6 of 2023 concerning the Stipulation of Government Regulations instead of the 2022 Law concerning Job Creation itself is an effort to create jobs through facilitating efforts, protecting and empowering cooperatives and micro, small, and medium enterprises, increasing the investment ecosystem and ease of doing

¹⁵ Disemadi, H. S. (2022). Lensa Penelitian Hukum: Esai Deskriptif tentang Metodologi Penelitian Hukum (Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies). *Journal of Judicial Review JJR*, (2), 289–304. Retrieved from <http://dx.doi.org/10.37253/jjr.v>

¹⁶ Hanifah, Ida. 2021. "Peluang Tenaga Kerja Asing Untuk Bekerja Di Indonesia Berdasarkan Rancangan Undang-Undang Cipta Kerja." *Jurnal Ilmu Hukum* 6 (1): 158–73. <https://doi.org/10.30596/delegalata.v6i1.5536>.

business, and central government investment and acceleration of national strategic projects.

The consequence of the presence of the Job Creation Law provides changes to permit foreign workers based on the Employment Law and Job Creation Law are as follows: a) Licensing Process: Employment Law: The foreign worker licensing process involves the Ministry of Manpower and Transmigration and Investment Coordinating Board (BKPM).¹⁷ Meanwhile, the Job Creation Law: The Job Creation Law creates changes in the licensing process and introduces an online-based licensing system, which involves the BKPM's role in granting foreign worker permits. b) Number of Permit Categories: Employment Law, Foreign worker permits are divided into several categories based on skill level and job position. The Job Creation Law: The Job Creation Law removes some restrictions regarding permit categories, which can provide more flexibility in using foreign workers. c) Duration of Permit: Employment Law: The duration of a foreign worker permit is usually valid for one year and can be extended. The Job Creation Law: The Job Creation Law provides flexibility in the duration of permits, which can be adjusted to the company's needs. d) Training Obligations: Employment Law: Companies that use foreign workers must provide training to local workers to enable knowledge transfer. The Job Creation Law: The Job Creation Law also encourages the training of local workers, but more detailed provisions can be regulated in implementing regulations.

Despite the existence of the Job Creation Law, foreign worker permits still refer to the Regulation of the Minister of Manpower and Transmigration as long as the new regulation. Has not revoked this regulation.¹⁸ 2 (two) permits must be obtained to employ foreign workers, namely Permit to Employ Foreign Workers (IMTA and Plan for Using Foreign Workers (RPTKA).

CONCLUSION

The implementation of supervision of foreign workers by labor inspectors is carried out by the labor inspection work unit in agencies that are within the scope of their duties and responsibilities in the Central Government, Provincial Government, and Regency or City Government, namely that labor norm monitoring employees are State Civil Apparatus who are appointed and assigned to functional positions. The Job Creation Law gives the government great authority to control and supervise TKA activities; this

¹⁷ Saskia Nina Sartori and Ufran Ufran, "Implikasi Perubahan Perizinan Tenaga Kerja Asing Terhadap Pendapatan Asli Daerah Kabupaten Lombok Barat," *Indonesia Berdaya* 4, no. 3 (2023): 857-64, <https://doi.org/10.47679/ib.2023496>.

¹⁸ Adella Virginia Z., "Rencana Penggunaan Tenaga Kerja Asing (Rptka) Sebagai Izin Menggunakan Tenaga Kerja Asing Di Indonesia," *Jurist-Diction* 2, no. 2 (2019), <https://doi.org/10.20473/jd.v2i2.14213>.

includes enforcing regulations related to TKA and stricter sanctions. Constitutional changes in regulations related to foreign workers provide new hope regarding increasing foreign investment and creating jobs without eliminating the rights of Indonesian workers.

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