

## IMPLICATIONS OF THE EXISTENCE OF FOREIGN WORKERS ON EFFORTS TO REALIZE JUSTICE AND WELFARE INDONESIAN WORKFORCE

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### ABSTRACT

The problem of Foreign Workers in Indonesia is Foreign Workers who work in the industrial and infrastructure sectors that do not require special skills, so their presence has an impact on reducing job opportunities for local workers. The entry of foreign workers into Indonesia is also inseparable from the visa-free policy issued by the government. The policy on visa-free visits for 169 countries and the implementation of the ASEAN Economic Community (AEC), this policy makes the gates of Indonesia wide open for foreigners entering and exiting Indonesia. The fact is that what happens in the field is that many foreigners abuse this visa-free visit policy and many of them not only travel but work in Indonesia by taking advantage of the visa-free visit, if foreigners want to work in Indonesia the foreigner must use a work visa, not only that this visa-free visit policy causes many problems ranging from reduced state revenue, domestic security, order, and labor issues. This study aims to know, analyze and explain the government's supervision system over the policy of using Foreign Workers in Indonesia as stipulated in Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law, and aims to find out the implications of the existence of Foreign Workers on efforts to improve justice and welfare of Indonesia's workforce. The research method uses normative juridical research. The results of the study show that the implications of the existence of Foreign Workers on efforts to improve justice and welfare of Indonesia's workforce are the filling of positions that local workers are unable to fill, the transfer of technology and expertise from foreign workers to Indonesia workers which is expected to be beneficial for Indonesia's workforce itself and help in terms of economic development of Indonesia because Foreign workers who come bring capital to be invested.

**Keywords:** labor, foreign. Justice, well-being

## INTRODUCTION

Entering the era of liberalization of the free labor market, the free *labor movement* tends to increase, marked by requests and *offers* from WTO member countries to Indonesia that ask Indonesia to open job opportunities for professional Foreign Workers (TKA) to work in Indonesia.

Labor policy, including the policy of the Use of Foreign Workers in responding to multi-dimensional changes, leads to the principle of selective *policy* and one *gate policy*, so that the interests of labor protection can be carried out without ignoring the principles of globalization and the implementation of regional autonomy.

The use of Foreign Workers must provide as many benefits as possible for the benefit of Indonesia's workforce through business expansion efforts that will have a positive impact on the creation and expansion of job opportunities as well as the transfer of technology from Foreign Workers to Indonesia workers.

Nowadays, the rise of foreign workers, especially those from China who enter Indonesia, raises problems related to their activities while in Indonesia. The problem of Foreign Workers in Indonesia is Foreign Workers who work in the industrial and infrastructure sectors that do not require special skills, so their presence has an impact on reducing job opportunities for local workers.

Based on data on Foreign Workers in Indonesia in 2023, it was recorded that from January to September there were 121,206 Foreign Workers in Indonesia. In detail, as many as 56,353 foreign workers are in the industrial sector, 61,483 people in the service sector, and 3,370 other people are in the agricultural and maritime sectors. As of September 2023, China dominated Indonesia's Foreign Workers, namely 57,738 people. The reason why many Chinese dominate foreign workers is because of the large amount of investment that comes into Indonesia from China.

Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law in the employment cluster, the government provides convenience for entrepreneurs or investors to use the services of Foreign Workers in accelerating the increase in domestic investment. On the other hand, the background of the issuance of the Law is to create a prosperous, just and prosperous society in an effort to fulfill the rights of citizens to work and a decent livelihood for humanity in the hope of absorbing as much Indonesia as possible in the midst of the demands of economic globalization and increasingly competitive competition.<sup>1</sup> Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law, regulates every employer, in this case companies that employ Foreign Workers are required to appoint Indonesian workers as a companion for Foreign Workers to accelerate technology experts and expertise experts to Indonesia's workforce.<sup>2</sup>

Although the regulation on the use of Foreign Workers has been regulated

in such a way in various applicable laws and regulations (positive law), it does not mean that the use of Foreign Workers in Indonesia has been running according to expectations or has been in accordance with the provisions of the law. Various problems in the use of Foreign Workers in Indonesia still occur, for example violations of residence permits, work permits and up to the problem of fulfilling the requirements in the use of Foreign Workers by companies. In practice, often in the passport of Foreign Workers it is written that the permission given by the immigration authorities is to work as a Foreign Worker in Indonesia with a certain position and time or even only as a tourist. However, it is not uncommon for Foreign Workers and companies that use Foreign Workers to violate the work permit.

The entry of foreign workers into Indonesia is also inseparable from the visa-free policy issued by the government. The policy on visa-free visits for 169 countries and the implementation of the ASEAN Economic Community (AEC), this policy makes the gates of Indonesia wide open for foreigners entering and exiting Indonesia. Visa-free visits can also have a negative impact on the state of Indonesia, for example the rise of immigration crimes and national and even international crimes committed by foreign citizens in Indonesia, although on the other hand this policy also has an impact on increasing foreign exchange for the state of Indonesia. Another impact that arises is the misuse of labor documents to the detriment of the state to the possibility of theft of natural resources. These policies can result in the potential for an increase in organized transnational crime, illegal *fishing*, *women trafficking*, theft of natural resources, theft of patents, *money laundering*, fish theft, *cyber crime*, falsification of documents and drug trafficking and so on.

Based on the Number of Foreign Workers in Indonesia (Jan – Sept. 2023) from the Ministry of Manpower Data where the presence of Foreign Workers, both legal and illegal, who work as manual laborers or in mining, has implications for the ratio of Indonesia's labor use itself, resulting in the emergence of injustice and a decrease in the level of welfare of Indonesia's workers.

The impact of the deregulation of the policy on the use of foreign workers can be seen from those affected by the content of the policy, namely the local workforce. This is related to the neglect of the demands of Indonesia/local workers, namely rejecting foreign workers who work in menial work and the revocation of Presidential Regulation Number 20 of 2018 because it has abolished IMTA for foreign workers.

After Presidential Regulation Number 20 of 2018 was issued, the government has legalized Foreign Workers without IMTA, which has implications for the ease of entry of Foreign Workers and the increase in the number of Foreign Workers in Indonesia. The government tends to focus on capital-intensive industries, while Indonesia with a massive workforce needs labor-intensive industries so that labor absorption can be optimal so as to reduce unemployment.

Indonesia Labor considers that the deregulation of the policy on the use of foreign workers does not aim to create the widest possible jobs for them, but rather to facilitate and legitimize the entry of foreign workers. In addition, the arrival of foreign workers threatens jobs that should be provided to Indonesia or local workers. This further makes local workers suffer losses due to the lack of opportunities to get jobs.

**Problem Formulation** The author formulates this research problem as follows; to what extent is the government supervision system for the policy of using Foreign Workers in Indonesia as stipulated in Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law? What are the implications of the existence of Foreign Workers on efforts to improve justice and welfare of Indonesia's workforce?

**Purpose of the Research,** The purpose of the research on the Implications of the Existence of Foreign Workers as an Effort to Realize Justice and Welfare of Indonesia's Workers is: to know, analyze and explain the government supervision system over the policy of using Foreign Workers in Indonesia as stipulated in Law Number 6 of 2023 concerning the Determination of Perpu Number 2 of 2022 concerning Job Creation into Law. To find out, analyze and explain the implications of the existence of Foreign Workers on efforts to realize improving justice and welfare of Indonesia's workforce.

### **Theoretical Framework**

This research uses several legal theories that have been known among legal scholars such as the theory of justice, the theory of the welfare state, and the theory of supervision.

The theory of justice, as John Rawls argues that "justice is the main virtue of the existence of *social institutions*. However, virtue for the whole society cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak community seeks justice." Specifically, John Rawls developed the idea of the principles of justice by making full use of his concept known as the "*origin position*" and the "*veil of ignorance*".<sup>3</sup>

The Welfare State Theory understands that the state is an organization that in a region can legally impose its power over all other power groups and who can set the goals of that common life. The state establishes the means and boundaries to which power can be exercised in common life, either by individuals, groups or associations, or by the state itself. Thus the state can integrate and guide the social activities of its population towards a common goal.<sup>4</sup>

The modern state is the personification of the rule of law. This means that the state in all its activities is always based on the law. The state in this context is commonly referred to as the state of law. In the development of thinking about the

state of law, two groups of legal states are known, namely formal legal states and material legal states. This material law state is also known as the Welfare state or welfare state.

From a legal perspective, Wilhelm Lunstedt argued, "*Law is nothing but the very life of mind kind in organized groups and the condition which makes possible peaceful co-existence of masses of individuals and social groups and the corporation for other ends than mere existence and propagation.*" This opinion provides an overview of achieving *social welfare*, the first thing that must be known is what motivates people living in a certain level of civilization to achieve their goals.<sup>6</sup> The main key in a well-being state is the issue of ensuring the well-being of the people by the state. Regarding this, Jurgen Habermas argues that ensuring the welfare of all people is a staple for a modern state.

Surveillance theory, where one expert who developed this theory is Travis Hirschi. Travis Hirschi maps the four main elements of internal social control contained in his proposition, namely *attachment*, *commitment*, *involvement*, and *belief*. The four main elements in Trischi's thought map are called *social bonds* which function to control individual behavior.

## **Research Methods**

The research method regarding the Implications of the Existence of Foreign Workers as an Effort to Realize Justice and Welfare of Indonesia's Workers, in terms of research specifications, is a descriptive research analysis, which is research that describes and describes the circumstances or facts that occur in criminal practice, especially the issue of criminal law enforcement for illegal foreign workers in Indonesia.

Primary legal materials consist of binding documents such as constitutional amendments and trademark laws, while secondary legal materials provide explanations and analysis, such as legal literature and journals. Tertiary legal materials provide additional guidance, such as dictionaries and legal reference materials (Mustomi et al., 2024).

## **DISCUSSION**

Development of the Need for Foreign Workers in Indonesia.

The term foreign workers or abbreviated as TKA has become a common phenomenon, judging from its development, the background of the use of foreign workers in Indonesia has changed according to the times. The situation of labor skills and knowledge is greatly affected by how globalization affects labor performance.<sup>9</sup>

The existence of Foreign Workers in Indonesia has been regulated through various laws and regulations produced since independence in 1945. Each of these regulations is always improved in accordance with the development of global

employment issues. During the period before the current government, there were 7 (seven) laws and policies that have regulated these Foreign Workers, namely:

1. Law Number 3 of 1958 concerning the Placement of Foreign Workers;
2. Law Number 1 of 1967 concerning Foreign Investment (PMA);
3. Law Number 6 of 1968 concerning Domestic Investment (PMDM);
4. Presidential Decree No. 75 of 1995 concerning the improvement of foreign worker rules;
5. Ministerial Decree No. 173 of 2000 concerning the Period of Permits to Employ Migrant Foreign Workers;
6. Law Number 13 of 2003 concerning Manpower; and
  - a. Regulation of the Minister of Manpower and Transmigration Number: Per.02/Men/III/2008.

The regulations that are the basis or legal basis for restrictions and procedures for the use of Foreign Workers in Indonesia from time to time are as follows:

1. Law Number 3 of 1958 concerning the Placement of Foreign Workers;
2. Presidential Decree No. 23 of 1974 concerning Restrictions on the Use of Migrant Foreign Citizen Labor;
3. Presidential Decree No. 75 of 1995 concerning the Use of Migrant Foreign Citizen Labor;
4. Presidential Regulation No. 72 of 2014 concerning the Use of Foreign Workers and the Implementation of Education and Training of Companion Workers;
5. Kepmenakertrans Number Kep.173/Men/2000 concerning the Period of Permits to Employ Migrant Foreign Citizen Workers;
6. Law Number 13 of 2003 concerning Manpower;
7. Kepmenakertrans No. 228/Men/2003 concerning Procedures for Ratification of Plans for the Use of Foreign Workers;
8. Kepmenakertrans No. 20/Men/III/2004 concerning Procedures for Obtaining Permits to Employ Foreign Workers;
  - a. Kepmenakertrans Number 21/Men/III/2004 concerning the Use of Foreign Workers as Singing/Karaoke Guides;

1. Permenakertrans Number 02/Men/XII/2004 concerning the Implementation of the Labor Social Security Program for Foreign Workers;
2. Permenakertrans Number Per-07/Men/IV/2006 concerning Simplification of Procedures for Obtaining IMTA;
3. Permenakertrans No. Per-15/Men/IV/2006 concerning Amendments to Permenakertrans No. Per-07/Men/IV/2006 concerning Simplification of Procedures for Obtaining IMTA;
4. Permenakertrans Number Per.02/Men/III/2008 concerning Procedures for the Use of TKA;
5. Permenaker Number 12 of 2013 concerning Procedures for the Use of Foreign Workers;
6. Permenaker Number 16 of 2015 concerning Procedures for the Use of Foreign Workers;
7. Permenaker Number 35 of 2015 concerning Amendments to Ministerial Regulation Number 16 of 2015 concerning Procedures for the Use of Foreign Workers

Presidential Regulation Number 72 of 2014 concerning the use of Foreign Workers and the implementation of education and training of companion workers which is an elaboration of article 49 of Law Number 13 of 2003 concerning Manpower, especially article 4 which provides signs for the use of Foreign Workers, where (1). Employers of Foreign Workers are required to prioritize the use of Indonesia Workers in all available positions; (2). In a position that cannot be occupied by Indonesia Workers, the position can be occupied by Foreign Workers.

This policy is also intended to provide opportunities for Indonesia citizen workers to get decent jobs in Indonesia's legal territory and at the same time reduce dependence on the use of foreign workers.

1. Restrictions and Use of Foreign Workers, the Existence of Foreigners in Indonesia

To protect Indonesia's labor market from the invasion of immigrants, it is increasingly felt with the issuance of Regulation of the Minister of Manpower Number 16 of 2015 concerning Procedures for the Use of Foreign Workers, as well as Regulation of the Minister of Manpower Number 35 of 2015 concerning Amendments to the Regulation of the Minister of Manpower Number 16 of 2015.

The Regulation of the Minister of Manpower Number 35 of 2015 which came into effect on October 23, 2015 has several crucial points. First, this new rule removes the provision on the obligation of companies to recruit 10 local workers if the company employs one foreign worker. Previously, in the Regulation of the Minister of Manpower Number 16 of 2015, the obligation to

recruit local workers was contained in Article 3 paragraph (1). The government reasoned that this abolition was to facilitate technology transfer in various companies.

In addition to removing the policy regarding requirements for foreign workers entering Indonesia, the Permenaker on procedures for the use of foreign workers also received the addition of a new article. It reads: "*Employers of foreign workers in the form of domestic investment are prohibited from hiring foreign workers with the position of commissioner.*" In the previous rule, there was no provision for this. This means that a company that is wholly owned by local shareholders cannot granting the position of commissioner to foreigners. Actually, even so far, there are rarely local companies that place foreign workers in the position of commissioners, usually even in the company's board of directors.

Policy changes related to regulations as stated in point (a) in the Regulation of the Minister of Manpower Number 35 of 2015 above, namely the abolition of the provision that employers who employ 1 (one) foreign worker must be able to absorb at least 10 Indonesia workers need to be criticized because it can hinder the expansion of employment opportunities for Indonesia workers. Meanwhile, the prohibition on using Foreign Workers for companies in the form of PMDM employing Foreign Workers for the position of commissioner as stated in point (b) needs to be supported.

The use of Foreign Workers has advantages including:

1. With the existence of Foreign Workers, companies that were previously almost dead, after the existence of Foreign Workers can run smoothly so that they can provide jobs for Indonesian Workers
2. Indonesia Workers Receive Education and Training Opportunities from Foreign Workers
3. Indonesia workers can take many examples of how foreign workers work who are conscientious, disciplined and respectful of working time
4. Over time, they can transfer technology and knowledge owned by foreign workers by first they can occupy the most important position in the company, then the knowledge of foreign workers can be transferred and gradually these positions can be filled or replaced by Indonesia workers.

Meanwhile, the disadvantages of using Foreign Workers include:

1. It can cause difficulties in working together due to different cultural patterns, especially if Indonesia workers lack mastery of foreign languages or certain skills.

2. If the company continues to use foreign workers, it is feared that there will be no job opportunities for Indonesia workers to move forward to replace the most important positions usually occupied by foreign workers; and
3. Between Foreign Workers and Indonesia Workers for jobs that have the same nature, values and responsibilities, there is still discrimination in terms of wages.

The use of foreign workers, according to Abdulsalam, has the goal of meeting the needs of skilled and professional workers in certain fields that cannot be occupied by local workers and as a stage in accelerating the national and regional development process by accelerating the transfer of science and technology and increasing foreign investment in the presence of foreign workers as a support for development in Indonesia. companies in Indonesia, whether foreign private companies or national private companies, are required to use Indonesia's own experts.<sup>10</sup>

Meanwhile, according to Budiono, the purpose of the placement of Foreign Workers in Indonesia is:<sup>11</sup>

1. Meet the needs of skilled and professional workers in certain fields that have not been filled by Indonesia's workforce.
2. Accelerating the national development process by accelerating the process of technology transfer or science transfer, especially in the industrial sector.
3. Providing expanded employment opportunities for Indonesia workers.
4. Increasing foreign investment as a support for development capital in Indonesia.

The use of foreign workers in Indonesia basically requires permits related to the Foreign Worker Utilization Plan (RPTKA) is a plan for the use of foreign workers in certain positions made by the employer of foreign workers for a certain period of time authorized by the Minister or appointed officials. RPTKA is an initial document used as a basis for obtaining IMTA, which is specifically regulated in the Decree of the Minister of Manpower and Transmigration Number 228/Men/2003.

The purpose of regulating Foreign Workers from the perspective of labor law is basically to guarantee and provide decent job opportunities for Indonesia citizens in various fields and levels. Therefore, in hiring foreign workers, it is carried out through strict mechanisms and procedures, starting with selection and licensing procedures and supervision.

The implementation of supervision of the use of Foreign Workers can be carried out functionally, namely through the Manpower Supervisory Officer in each work area, as well as coordinated through the Inter-Agency Supervisory Institution (SIPORA) involving the Directorate General of Immigration, local local governments, the Police, the Ministry of

Transportation and related agencies.

1. Employment Law Policy in the Use of Foreign Workers in Indonesia

Employment law according to Neh Van Esveld is a law or regulation that has a relationship or is related to work in the work environment, both in the employment relationship and outside the employment relationship.<sup>12</sup> According to Molenaar, labor law (*arbeidrecht*) is a part of the law that essentially regulates the relationship between labor and employers, between labor and authorities.<sup>13 reviews</sup>

Employment law or labor law in Soetikno's opinion is said to be legal regulations in a uniform manner that regulate employment relations that result or cause a person to be personally placed under the leadership or order of another person and regarding the circumstances of the livelihood circumstances that are directly related to the employment relationship.<sup>14</sup>

The elements contained in labor law or labor law from the above definition are: (1) a set of regulations (both written and unwritten); (2) in relation to an event; (3) a person works for another person; and (4) wages. As for the change of the term labor law to labor law, there is a difference in scope. In labor law, it only concerns regulations that regulate legal relations in labor relations, while the scope of labor law becomes broader. Employment law is not only a legal aspect related to the employment relationship, but both before, during, or after the employment relationship.<sup>15 reviews</sup>

Thus, the Employment Policy is a series of regulations, both written and unwritten, related to the workforce both before and after employment.

The scope of labor law from the *gebiedsleer* theory proposed by JHA Logemann is the basis of a law of a state/field in which the legal method applies by distinguishing it into four scopes of law application, namely:<sup>16</sup>

1. Personal Scope (*Personengebied*), has a relationship and with whom (natural person) or what (legal personal role) which is limited by law.
2. Scope According to Time (*Tijdsgebied*), indicates the time when a certain event is regulated by legal methods.
3. Scope by Region (*Ruimtegebied*), related to the occurrence of a legal event that is limited by legal methods.
4. Scope According to the Brotherhood, it relates to what matters are the object of regulation of a method, judging from the content of labor law.

The principles of employment development are basically in accordance with the principles of national development, especially the principles of democracy, fairness, and equity. This is done because employment development involves multidimensional and is related to various parties,

namely between the government, entrepreneurs, and workers or laborers. Therefore, employment development is carried out in an integrated manner in the form of mutually encouraging cooperation. So, the principle of labor law is the principle of integration through functional coordination across central and regional sectors.<sup>17 reviews</sup>

Meanwhile, the purpose of labor law as stated in Article 4 of Law Number 13 of 2003 concerning Manpower:

1. Empowering and utilizing the workforce optimally and humanely which has an explanation as an integrated activity to be useful as providing the widest possible employment opportunities for the workforce or workers in the State of Indonesia, with the hope that the Indonesian workforce can participate optimally in development goals or as National Development.
2. Realizing equal distribution of job opportunities and provision of labor.
3. Providing protection to the workforce in realizing well-being.

1. Improve the welfare of workers and their families.

Employment law can be said to have two characteristics of employment law, namely:

1. The Nature of Labor Law as a Governing Law (*Regelend Recht*).

The nature of this regulation is characterized by the existence of regulations that are not entirely coercive, so that a deviation from these provisions is allowed to occur or be carried out in the agreement, both the Employment Agreement, the Company Regulation (PP) and the Collective Labor Agreement (PKB).

2. The Nature of Employment Law as a Coercive Nature (*Dwingen recht*)

The coercive nature of this Labor Law is the regulations that have been intervened by the State Government which are affirmed to be obeyed and must not be violated by anyone, with an effort to regulate or regulate the employment relationship between the recipient as a worker or worker and the employer as an employer or company, can be punished or sanctioned to every individual who refuses to obey the rules or violates the rules which has a coercive nature.

In relation to Foreign Workers, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers states that TKA companion workers are Indonesia workers appointed by TKA employers and prepared as TKA assistants who are hired for technologists and expertise experts and are obliged to carry out education that includes job training for TKA helpers who are classified according to their position qualifications which is occupied with the provision that if the employment relationship between the TKA and the

employer has ended, then the obligation carried out by the employer is to repatriate the TKA to its country of origin.

The procedure for the use of foreign workers was previously regulated in Law Number 13 of 2003 concerning Manpower which contains two types of licensing for the use of foreign workers, namely starting with the issuance of a permit by the employer in the form of a Foreign Worker Use Plan (RPTKA) to obtain a Foreign Worker Employment Permit (IMTA) issued by the Minister of Manpower.

After the issuance of Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law, the licensing mechanism for the use of foreign workers was then simplified into one type of licensing where employers of foreign workers are only required to make a Foreign Worker Use Plan (RPTKA) approved by the central government or appointed officials.

Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation into Law in the employment cluster, the government provides convenience for entrepreneurs or investors to use the services of foreign workers (TKA) in accelerating increase domestic investment. On the other hand, the background of the issuance of the Law is to create a prosperous, just and prosperous society in an effort to fulfill the rights of citizens to work and a decent livelihood for humanity in the hope of absorbing as much Indonesia as possible in the midst of the demands of economic globalization and increasingly competitive competition.

#### 1. Supervision of Foreign Workers in Indonesia

Supervision is the most important element in the use of labor, both foreign workers and local workers as an effort to enforce labor law comprehensively, both for labor agencies as supervisors and companies that accompany their workforce starting from the beginning of the use of the workforce.

Manpower supervision is carried out to supervise the compliance with labor laws and regulations, which are operationally carried out by labor supervisory employees based on the regulation of the Minister of Manpower on Integrated Manpower Supervision.

The granting of permits to use foreign workers in Indonesia is related to political, economic and security interests in the country of Indonesia. Therefore, this absolutely requires vigilance from the Government, without vigilance from the Government it will be able to cause losses to the country. In addition, it is also intended to prevent the flow of foreign workers to Indonesia which will urge the employment of the Indonesian nation. Permits are only given if the use of foreign workers will provide benefits to the nation and state

of Indonesia.<sup>19</sup>

Supervision of Foreign Workers working in a country is *quasi*, involving the government and the private sector, starting from the process of arrival, working in the country, to the process of returning from duty. The institutions or ministries involved in the process of supervising Foreign Workers are cross-sectoral, ranging from the Ministry of Manpower, the Ministry of Law and Human Rights, Finance, Health, Police, Interpol, companies that use Foreign Workers and others.

Companies that employ foreign workers, of course, must also be selective and must not be careless in recruiting and/or supervising their foreign workers. The main problem in hiring foreign workers is regarding the residence permits that each foreign worker has. If the residence permit owned has been overstayed or not in accordance with the residence permit granted by the Directorate General of Immigration but still employs the Foreign Worker. So, the company It can be said that he misused his residence permit based on Article 124 of Law Number 6 of 2011 concerning Immigration.

This type of misuse of a residence permit is overstay or the expiration of the validity period of a residence permit and still being in Indonesia territory for more than 60 days. Meanwhile, overstays that are less than 60 days are only subject to a burden fee in accordance with the provisions of laws and regulations.

The supervision carried out by the Immigration on the existence of foreigners, especially foreign workers in Indonesia, is related to the provisions stipulated in Article 13 of the Immigration Law, Immigration Officials have the right to refuse foreigners to enter Indonesia territory as a form of preventive measures.

In the implementation of the use of Foreign Worker services in Indonesia in accordance with the Manpower Law, it is based on the following principles:

1. *Legal*, that every employer that employs Foreign Workers must have written permission from a minister or appointed official.
  2. *Sponsorship*, that individual employers are prohibited from hiring Foreign Workers.
  3. *Selective*, that Foreign Workers are employed in employment relations for a specific position and a certain time.
- b. *Security*, that the use of Foreign Workers must be in accordance with the applicable laws and regulations in Indonesia and do not endanger state security.

The immigration policy towards foreigners that applies in Indonesia

through 2 (two) prosperity approaches, namely foreigners who are allowed to enter, be and carry out activities in Indonesia territory only those that are really beneficial to the prosperity and welfare of the people of Indonesia, in addition to that through the security approach, namely allowing to grant immigration permits only to those who will not endanger state security and public order.<sup>20</sup>

This is in line with the principle of selective *policy* of immigration so that it can minimize the negative influence on the state and people of Indonesia that can harm the economy of the Indonesia nation, and may even cause instability in security and order because the foreigner can commit criminal acts against Indonesia citizens.

To realize the principle of selectiveness, comprehensive supervision of foreigners is needed when foreigners enter Indonesia territory and also includes all their activities while in Indonesia. Therefore, the implementation of the three functions of immigration must be carried out properly and strictly so that it does not interfere with state sovereignty as a form of political operationalization of immigration law.

In terms of laws and regulations, the Directorate General of Immigration is authorized to supervise and take action against foreigners, but in the implementation in the field, sometimes resistance arises between related agencies, this is due to the existence of sectoral egos and also the absence of Standard Operating Procedures (SOP) that regulates the supervision mechanism involving the PORA Team.

#### 1. Visa-Free Policy for Foreign Workers

In the context of immigration, a visa serves as an immigration control instrument issued by a country to supervise foreigners who plan to enter it. A visa is an official document that grants entry to a specific country and can be obtained at a foreign embassy or consulate representing the country.

The implementation of the visa policy to enter a territory is influenced by the immigration legal system and diplomatic relations between countries. A visa is a "visitable" sign that shows the entry permit of a country and is a manifestation of the country's sovereignty. Visas are considered an effective preventive measure to avoid the arrival of unwanted foreigners into a country. Therefore, a visa can be considered as the first step of immigration administrative supervision activities, as part of immigration control efforts before a foreigner enters a country.

In its development, some countries have begun to provide visa-free access for certain reasons, especially to encourage tourism and its positive impact on the economy. Although this policy eliminates one level of immigration oversight, it must be in line with considerations of security, the principle of benefit, and the principle of reciprocity that is beneficial to the

country providing such visa-free facilities.

The legal basis for granting visa-free visas for certain countries is regulated in Law Number 6 of 2011 concerning Immigration Article 43. In the explanation of Law Number 6 of 2011 concerning Immigration Article 43, it is explained that the visa exemption policy is given to other countries by paying attention to the principle of reciprocity, namely that visa exemption is only given to foreigners from countries that also provide visa exemption to Indonesia citizens and the principle of benefits, namely that only foreigners can provide benefits for the welfare of the people, nation and state of the Republic of Indonesia and does not endanger security and public order and is not hostile to both the people and the State of the Republic of Indonesia which is allowed to enter or exit the territory of Indonesia.

The visa-free facility is for visits to Indonesia with a duration of stay of 30 days, and this residence permit cannot be extended or transferred to another residence permit, as stipulated in Article 3 of the Regulation of the Minister of Law and Human Rights Number 17 of 2016 concerning Certain Immigration Checkpoints, Conditions, and Destinations of Arrival for Foreigners Who Receive Visa-Free Visits.

The policy of implementing visa-free in Indonesia is based on Presidential Regulation Number 21 of 2016 concerning Visa-Free Visit in Indonesia is related to the provision of visa-free visitor facilities which is a permit granted to foreign nationals by immigration officials to enter Indonesia. Foreign nationals whose countries are included in visa-free countries generally use the short-stay visa-free facility or tourist visit visa, who will get a visit residence permit according to the Visa-free or visa-free entry. The visit residence permit explained that this visit permit is only used for tourism.

The Visa-Free Visit Policy, which came into effect in 2016, allows or waives visas for foreign tourists from 169 countries approved by Indonesia.

Visa-free visit is also a tool to promote tourism and trade in Indonesia. However, this policy also makes it easier for foreigners to enter Indonesia's territory, as well as the positive impact of this policy such as increasing state foreign exchange, increasing regional original income and also state revenue, in other words, state revenue will increase, in addition to that foreigners who visit will create information exchange and cultural exchange between countries so as to enrich insight and knowledge for both sides of the country concerned.

To get a Visa-Free Visit, the requirements are quite easy as foreigners (Foreign Citizens) only need to have a passport with a minimum validity of 6 months and have a return ticket or a ticket to continue the trip to another country. These fairly easy requirements cause many foreigners to come to

Indonesia, policies that are not balanced with strong requirements cause many negative impacts to emerge compared to the positive impacts. The negative impacts caused include many immigration violations, making it easier to smuggle people or illegal labor.<sup>21 reviews</sup>

In terms of granting visa-free visits based on Presidential Regulation Number 21 of 2016 concerning Visa-Free Visits at Immigration Offices related to the dualism of the policy of granting visa-free visits, a residence permit is a permit granted to foreigners by Immigration officials or foreign service officials to be in Indonesia Territory. Foreign Citizens (WNA) who enter Indonesia generally use the visitor visa-free facility or use a tourist visit visa who will get a visit residence permit in accordance with the entry sign with a visa or visa-free.

The impact of the Visa Free Policy for Chinese Citizens (PRC) on the emergence of illegal workers is the freedom in the traffic of labor demand and supply, so that workers from other countries will easily work in Indonesia, especially from China (PRC).

#### 1. Implications of the Existence of Foreign Workers on Local Workers in Indonesia

Law Number 6 of 2023 concerning the Stipulation of Perpu Number 2 of 2022 concerning Job Creation is a law in the employment cluster, the government provides convenience for entrepreneurs or investors to use foreign labor services in accelerating the increase in domestic investment. On the other hand, the background of the issuance of the Law is to create a prosperous, just and prosperous society in an effort to fulfill citizens' rights to decent work and livelihood for humanity in the hope of absorbing Indonesia's workforce As much as possible in the midst of the demands of economic globalization and increasingly competitive competition.

Prior to the existence of Law Number 6 of 2023 concerning Job Creation, the mechanism for applying legal sanctions for violations of the use of foreign workers by workers who employ foreign workers without IMTA is subject to criminal sanctions regulated in article 185 paragraph (1) and paragraph (2) of the Labor Law, namely imprisonment for 1 year and a maximum of 4 years and a fine of IDR 100,000,000/00 to IDR 400,000,000, 00. After the Job Creation Law was passed, the regulatory provisions related to IMTA were deleted and indirectly criminal sanctions were no longer included in the regulatory provisions related to violations of the law regarding the simplified TKA use permit in the form of RPTKA which only included administrative sanctions against employers who did not have RPTKA.

With the enactment of the visa exemption policy, it will certainly have implications for aspects of state life. What is a big concern for the community

today is the misuse of residence permits by foreigners who use visa-free facilities to work in Indonesia as Foreign Workers (TKA) illegally.

The arrival of illegal foreign workers is a real detriment to the government, because they do not comply with the obligation to pay the compensation fees for foreign workers that have been set per person per month. In addition, this situation also has a detrimental impact on the community, because illegal foreign workers can threaten the local community. Because local communities can become human resources that have the potential to contribute as a workforce.

In addition, there are indications of the presence of foreign journalists and even foreign intelligence agents who enter Indonesia territory by taking advantage of the visa-free policy. This is easy to do, considering that to enjoy the visa-free facility for foreigners, they only need to show their valid passport without having to prepare other documents such as guarantor data, domicile of residence and other accommodations while the foreigner is in Indonesia.

These foreigner data is very important in the context of people monitoring the activities of the foreigner while in Indonesia. In the absence of these data, it will be difficult for foreigners who use visa-free to supervise them. So that this can certainly interfere with the stability of Indonesia's state security.<sup>22 reviews</sup>

The policy of implementing visa-free entry with foreigners using visa-free to work in Indonesia is a form of violation of the law because they work without paying taxes and complete other obligations that have been determined by the Ministry of Manpower.

The implications of the policy of implementing visa-free with the increase of illegal foreign workers from China are accompanied by the opening of foreign investment into Indonesia where the Chinese government has a policy that requires the export of labor from its country if investing abroad. The high amount of investment from China entering Indonesia is certainly followed by the increasing number of Chinese foreign workers entering Indonesia.

The entry of foreign workers will certainly bring positive and negative things. On the positive side, foreign workers can transfer knowledge and technology to Indonesia workers as colleagues. On the negative side, the presence of foreign workers will increase the competitiveness of job opportunities for local residents. On the other hand, the influx of foreign investment will indirectly attract many other foreign workers to work illegally.

Several steps that need to be taken by the government to protect local workers from increasing illegal foreign workers entering Indonesia due to the implementation of the visa-free policy, namely:

1. To anticipate the impact of freedom in the world of employment, especially the use of Foreign Workers (TKA), the government must make laws and regulations that regulate the supervision of Foreign Workers (TKA).
2. Increase supervision of Foreign Workers (TKA) in the context of protecting local workers.
3. Supervision of Foreign Workers (TKA) can be in the form of an inspection of the Foreign Worker Employment Permit (IMTA) for each Foreign Worker (TKA) used by the company concerned, an inspection of the type of work or position position and an examination of the presence or absence of a companion worker.

Regulating all types of foreigners entering and leaving Indonesia, government policy in the field of immigration adheres to the principle of *selective policy*, which is a policy based on the principle of selectivity. According to this principle, only foreigners can provide benefits for the welfare of the people, nation, and state of the Republic of Indonesia, and do not endanger the security and order of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution allowing entry and exit from Indonesia's territory, so it is necessary to regulate and limit the permits granted to foreigners if they want to live in Indonesia.

Foreign workers used in Indonesia by implementing *a Selective Policy*, namely workers who really have quality and ability so that they can transfer *knowledge and technology*. The agency authorized to supervise companies and workers who employ foreign workers is the Ministry of Manpower as the agency that grants permits for the placement of foreign workers. Meanwhile, the supervision of workers as foreigners is the authority of the Directorate General of Immigration which is in charge of supervising when they enter, as well as activities carried out while in Indonesia. To hire expert workers, supervision is in the technical department according to their expertise such as Foreign Law Consultants, it is in the Ministry of Law and Human Rights.<sup>23</sup>

## **Conclusion**

Departing from the discussion above, the conclusion is as follows, the government supervision system for the policy of using Foreign Workers in Indonesia as stipulated in Law Number 6 of 2023 concerning The stipulation of Perpu Number 2 of 2022 concerning Job Creation is carried out by simplifying the licensing mechanism for the use of Foreign Workers into a type of licensing where TKA employers are only required to make a Foreign Worker Use Plan (RPTKA) approved by the central government or appointed

officials. For coaching and supervision, it is carried out by the labor supervisor at the ministry that organizes government affairs in the field of labor at the provincial level. In addition, supervision is also given to immigration officials who are in charge of immigration supervision and enforcement in a coordinated manner by referring to the scope of their respective duties and authority. The system of monitoring the use of Foreign Workers in Indonesia.

The implications of the existence of Foreign Workers on efforts to improve justice and welfare of Indonesia's workforce are the filling of positions that local workers are unable to fill, the transfer of technology and expertise from foreign workers to Indonesia workers which is expected to be beneficial to Indonesia's workforce itself and help in terms of economic development of Indonesia because foreign workers who come bring Capital to be invested.

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