

MEASURING LEGAL PROTECTION FOR FOREIGN WORKERS IN THE LEGALITY OF EMPLOYMENT AGREEMENTS IN INDONESIA DURING THE DISRUPTION

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Abstract

Workforce Presence _ Foreign no balanced with Settings clear law , thing _ this result in problem uncertainty law in the field of employment . Writing This research uses a non- doctrinal or juridical sociological type of research. As for this research, it is found that the implementation of the politics of using foreign workers has not been able to achieve justice, this is because the legal politics of using foreign workers has resulted in reduced job opportunities for domestic workers which in turn resulted in unemployment and poverty problems. Sumiritas in political law agreement foreign workers work as well various type weakness has make agreement remote foreign workers from teachings principle halal about something agreement .

Keywords: *Halal, Legal Policy , Protection , Foreign Workers*

A. preliminary

A conducive industrial development basically requires synchronization from three layers, namely the layers of entrepreneurs, workers, and the government. These layers are also called aspects of Human Resources which are incorporated in the industrial development system. Synchronization in the field of Human Resources in the industrial development system is intended so that investment can develop properly, this is because investment will develop if the industrial world in the country can run safely for investors both from outside and within the country, so that this can be achieved. then conducive industrial development is needed, so that investment will develop and economic growth will be achieved.

A conducive business world view will be able to be realized when the government, workers' organizations, and employers' organizations are able to synergize to suppress disputes in the field of industrial development. This view is in fact not going well, this is shown by data which states that there were 208 cases of layoffs which resulted in 1,377 people losing their jobs and the highest number was in the DKI Jakarta area, which was 1,047 people. ¹Based on data from the Directorate General of Industrial Development and Social Security for Manpower Ministry of Manpower, in semester 1 of 20-20 there were 1,494 cases with a total of 7,954 workers affected by layoffs, this shows a drastic decrease in the number of layoffs when compared to the number of workers laid off in In 2015 with the same initial semester, there were 8,575 people affected by layoffs from 126 cases.²

Although it is considered to have decreased, the number of layoffs is still considered large when viewed in terms of the impact of increasing poor people due to unemployment in the community. The issue of layoffs clearly shows that there are still many disharmony issues in the world of industrial development. This disharmony is also caused by one of the problems of workers' welfare.³ The low wages and welfare of workers basically occur as a result of the politics of labor law in Indonesia which is still considered to be in favor of the entrepreneurs. Kwik Kian Gie stated that the low wage of labor

in Indonesia has always been the main capital to attract foreign investors and seek profit from selling Indonesian products in the free market. ⁴Basically, the sad condition of Indonesian workers is due to the emergence of tyrannical agendas of developed countries through tempting economic globalization. Noam Chomsky's explanation above seems to have really happened through the extension of the agents of globalization, namely the *World Trade Organization* or WTO for short. This is indicated by historical facts that explain that discussions related to labor in WTO meetings can be seen as a form of protection against the *Multy National Corporation* and *Trans National Corporation* originating from developed countries that have power and influence within the *United Nation* or the United Nations . -Nation. This can be seen from the practice of dumping trade in the free market, one of which is by lowering the wages of workers in order to reduce the production of goods in order to seek the maximum profit in free trade. ⁵This is getting more and more murky with the fact that the Indonesian state in the era of the Asean Economic Community or MEA is currently being invaded by foreign workers. Foreign workers according to Presidential Regulation Number 20 of 2018 concerning Foreign Workers are foreign citizens holding visas who intend to work in Indonesia. This shows that every foreign citizen holding a visa can easily enter to become a foreign worker. In its development, the arrival of foreign workers also provides advantages for the country of origin of the foreign worker, one of which is reducing unemployment.

China, which increased the value of its investment in Indonesia by US\$ 2,665 million in its development, also sent 21,300 workers to Indonesia. ⁶The increasing number of foreign workers in Indonesia is also supported by the Presidential Regulation Number 20 of 2018. The Presidential Regulation gives Chinese investors the freedom to use and bring in large numbers of workers from their country, this can be seen in the provisions of Article 3 letter c. Presidential Regulation Number 20 of 2018 which states that the parties who can bring in foreign workers are foreign private companies who are currently doing business in Indonesia. In addition, the article also provides a gap for foreign workers who do not only come from China to come to Indonesia through work calls from institutions as stated in Article 3 of Presidential Regulation Number 20 of 2018. Meanwhile, Law Number 13 of 2003 has not fully regulated related to foreign workers.

In addition, between Presidential Regulation Number 20 of 2018 and Law Number 13 of 2003 there is disharmony. This can be seen in the provisions of Article 9 of the Presidential Regulation Number 20 of 2018 which states that the ratification of the Plan for the Use of Foreign Workers (RPTKA) is a requirement for obtaining a work permit. This is different from the provisions of Article 43 of Law Number 13 of 2003 which not only makes RPTKA the only entry for foreign workers into the Indonesian state. However, TKS must also have a permit in the form of a foreign worker permit. In addition, Article 9 of the Presidential Regulation Number 20 of 2018 also contradicts Article 8 of the Presidential Regulation Number 72 of 2014 concerning Foreign Workers which states that foreign workers can work in Indonesia on condition that they have an RPTKA and a permit to employ foreign workers from entrepreneurs who employ foreign workers. The disharmony of Article 9 of Presidential Regulation Number 20 of 2018 with various provisions of labor law in Indonesia shows that the making of Presidential

4 Kwik Kian Gie, *Indonesia's Economic Chaos, The Storm Will Not Pass Soon*, Gramedia Pustaka Utama, Jakarta, 1998, p. 565.

5 *Ibid*, p. 567-568.

6 m.merdeka.com, Revealed , *The Reason Indonesia Is Flooded With Foreign Workers Especially From China*, Downloaded On May 12 2020 .

Regulation Number 20 of 2018 did not go through a mature academic study. It is clear that the current policy of labor law still has many weaknesses in terms of regulating foreign workers which in the end will be able to cause employment problems and problems of providing employment opportunities for indigenous Indonesians who need livelihoods and the feasibility of economic life in this country.

The entry of foreign workers from China as mentioned above has resulted in a large increase in unemployment in this country as well. This can be seen from the data from the Institute for Development of Economics and Finance which states that the unemployment rate in 2019 will increase to 53%.⁷ So it can also be concluded that the political failure of labor law in Indonesia will have an impact on increasing poverty rates in Indonesia due to the increase in unemployment in Indonesia as one of the impacts of the flood of foreign workers in Indonesia with the number of job opportunities dwindling. This is clearly contrary to the Fifth Precepts of Pancasila and Article 27 point 2 of the 1945 Constitution of the Republic of Indonesia regarding the right to have a job and a decent living for Indonesian citizens.

B. Issues to be Discussed

As for the issues discussed in article this is related implementation policy Settings Labor use _ The current foreigner this not yet balanced with even distribution division of labor market for power Indonesian work .

C. Method Used _

This research is a qualitative research, it is hoped that it can produce a descriptive analysis of the values of justice for the benefit of society in general regarding the current political ability of labor law in facing the challenges of globalization, so that this dissertation research uses a sociological juridical approach.

D. Discussion

1. Implementation Related Legal Policies Arrangement Labor Use _ Foreigners in Indonesia Currently This

In development The implementation of foreign labor law politics in Indonesia has problems, namely the issue of limits on the number of foreign workers, time limits for the use of foreign workers, and supervision of the use of foreign workers.

Regarding the issue of the period of use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only for five years but can be extended by considering the needs of foreign workers and circumstances. domestic job market.

This is different from the provisions in Article 9 paragraph (2) of Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers which states that “the period of RPTKA as referred to in paragraph (1) is in accordance with the work agreement or work agreement”. This clearly shows that the implementation of the policy on the use of foreign workers so far does not contain strict and clear limits on the length of time for the use of foreign workers.

Although they have differences in terms of language substance, however, both the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA and

⁷ CNBC Indonesia, *Unemployment and Poverty In Indonesia Will Increase, Here's Forecast From INDEF*, Downloaded Via: www.CNBCIndonesia.com, On May 12, 2018.

Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on the decision . users of foreign workers or entrepreneurs who employ foreign workers.

Then related to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This has resulted in the growth rate of the number of foreign workers in the job market in Indonesia being out of control.

2. Weaknesses In Implementation Related Legal Policies Arrangement Labor Use _ Foreigners in Indonesia Currently This

a. Weaknesses of Implementing Foreign Manpower Law Politics

It has been explained above that the implementation of the legal politics of foreign manpower in Indonesia has problems, namely the problem of limiting the number of foreign workers, the time limit for the use of foreign workers, and the supervision of the use of foreign workers.

Regarding the issue of the period of use of foreign workers, it has been clearly regulated in the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA which states that the time limit for the use of foreign workers is only for five years but can be extended by considering the needs of foreign workers and circumstances. domestic job market.

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Although they have differences in terms of language substance, however, both the Decree of the Minister of Manpower and Transmigration Number 228 of 2003 concerning RPTKA and Ministerial Regulation Number 10 of 2018 concerning Procedures for the Use of Foreign Workers, have the same meaning, namely the time limit for the use of foreign workers based on the decision. users of foreign workers or entrepreneurs who employ foreign workers.

Then related to the limit on the number of foreign workers who can be accepted to work in Indonesia, it is not regulated in the legal politics of foreign workers. This has resulted in the growth rate of the number of foreign workers in the job market in Indonesia being out of control.

b. Weaknesses in Protecting the Position of Indonesian Workers in Competition with Foreign Workers in the Domestic Job Market

Basically, the spirit of the existence of foreign workers in Indonesia is for the advancement of development technology, the advancement of the development performance system, and the improvement of domestic human resources. However, the legal politics of foreign workers has far neglected the position of TKI.

This is because legal politics related to national development has neglected the aspect of human resource development by neglecting education financing, resulting in a lack of access to adequate education for the wider community in Indonesia.

In its development, the politics of labor law in Indonesia has also put aside this issue by further emphasizing the open space for free competition in the domestic labor market which is affected by the globalization system of the world economy. This will obviously result in the elimination of TKI in the domestic labor market competition.

3. Halal Something Labor Agreement _ In Islamic Law Perspective

In contemporary Islamic law, engagement (*verbinten*) has the equivalent of “iltizâm”, while the term agreement/contract/ *overeenkomst* has the equivalent of the word “ *aqd* “ (*akad*).⁸

The concept of *iltizam* or According to Syamsul Anwar, engagement in Islamic law can be interpreted as: “ Containing the dhimmah of a person or a party with a right that must be fulfilled by him to another person or other party.” The term dhimmah is used by jurists when discussing the debt relationship between two or more parties. Linguistically the meaning of dhimmah is dependent, while in terms it means a container within a person that accommodates rights and obligations. So it can be said if someone has a debt of rights to another person, then that person’s *dhimmah* has been filled.⁹

Sumiritas Settings law employment foreign and various type weakness will result in agreement work that doesn’t clear and will harmful various party affected especially foreign workers. such thing clear far from law agreement according to Islam so that result in not Halal in agreement employment for foreign workers during this is in Indonesia as well impact in the form of shrinking field work for Indonesian society also resulted in not Halal agreement the employment of foreign workers in aspect impact or result .

E. Conclusion

1. That the implementation of the politics of using foreign workers has not been able to achieve justice, this is because the legal politics of using foreign workers has resulted in reduced job opportunities for domestic workers, which in turn resulted in unemployment and poverty problems.
2. The weaknesses in the implementation of the politics of using foreign workers are the lack of time limits and the amount of use of foreign workers is not clearly regulated in the politics of foreign labor law in Indonesia, then the weakness in the case of dualism in work permits for foreigners in Law no. 13 of 2003 and Law no. 6 of 2011. state thereby clear has far from principle halal something agreement employment according to Islam.

8 Syamsul Anwar, *Sharia Covenant Law* , PT RajaGrafindo Persada, Jakarta , 2007, p . 42.

9 *Ibid*, p . 48.

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