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THE EXISTENCE OF FOREIGN WORKERS IN INDONESIA BASED ON PRESIDENTIAL REGULATION NUMBER 20 OF 2018 CONCERNING THE USE OF FOREIGN WORKERS

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16

Abstract: The purpose of this study was to find out and analyze the implications of Presidential Regulation No. 20 of 2018 concerning the Use of Foreign Workers in the presence of foreign workers in Indonesia. This research is a normative legal research, with a legislative approach and a conceptual approach. The existence of foreign workers in Indonesia is based on Law No. 13 of 2003 concerning Manpower, Article 42 to Article 49, and Presidential Regulation No. 20 of 2018. Juridical implications of Presidential Regulation No. 20 of 2018 on the existence of foreign workers in Indonesia, namely changes in licensing and procedures for the use of foreign workers through the Minister of Manpower Regulation No. 10 of 2018. Sociologically has an implication for increasing the value of investment and the number of Foreign Workers.

Keywords: foreign workers, Presidential Regulation No. 20 of 2018

I. INTRODUCTION

Economic development in Indonesia is an important part of national development with the ultimate goal, namely to improve people's welfare.¹ One of the ways to increase economic growth is through strengthening the employment element. Employment develops on the use of Foreign Workers (TKA).

TKA is stipulated through Law Number 13 of 2003 concerning Manpower (Law No. 13 of 2003), Technical arrangements stipulated in Presidential Regulation Number 72 of 2014 are replaced with Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers (Presidential Regulation No. 20 of 2018). Issuance of Presidential Regulation No. 20 of 2018 triggers polemics in the community, especially the surge in investment and projects from Chinese companies in Indonesia which increases the number of foreign workers from China.

¹ Afifuddin, *Pengantar Administrasi Pembangunan (Konsep, Teori dan Implikasinya di Era Reformasi)*, Alfabeta, Bandung, 2015, p. 175

The government states that the issuance of the Presidential Regulation is an effort to improve the investment climate by regulating or simplifying licensing procedures and bureaucracy, but not liberating.²

Data from the Ministry of Manpower shows that the number of foreign workers based on permits to use foreign labor (IMTA) which is still valid continues to increase every year. In 2015, the number of workers with IMTA still valid reached 77.15 thousand. After a year, the number increased to 80.37 thousand people and last year it became 85.97 thousand people.³

Deputy Speaker of the Indonesian House of Representatives Fahri Hamzah assessed the issuance of Presidential Regulation No. 20 of 2018 can narrow the number of fields for local workers. The regulation has the potential to be large enough to make it easier for Chinese workers to invade Indonesia.⁴ According to Anderson,⁵ Even though the state in the choice of capitalism, such as through the opening of investment and providing space for market domination, has the potential to create social inequality. Ahmad Jazuli wrote legislation that regulates the control and supervision of foreigners and TKA has not been optimally implemented, especially coordination between relevant agencies so that it has the potential to increase immigration violations committed by foreigners.⁶

Based on this, Presidential Regulation No. 20 of 2018 it is necessary to conduct a study considering the use of foreign labor has potential for several issues. The focus of the discussion in this study is the implications of Presidential Regulation No. 20 of 2018 on the existence of foreign workers in Indonesia. This research is normative legal research; with the approach used are the statute approach and the conceptual approach.

II. RESULT AND DISCUSSION

2.1 *Implications of Presidential Regulation Number 20 of 2018 concerning the Use of Foreign Workers on the Existence of Foreign Workers in Indonesia*

The basic provisions of Foreign Workers are listed in Law No. 13 of 2003 in Chapter VIII concerning the Use of Foreign Workers, contained in Article 42 through Article 46. Fundamentally the use of Foreign Workers in Indonesia is carried out through a licensing mechanism so that every employer who employs foreign workers must have written permission from the minister or appointed official. Written permission from the Minister or appointed official means that the authority to issue licenses to employ Foreign Workers (IKTA) is the authority of the Minister of Manpower and Transmigration. If the authority is

² Sekretariat Kabinet Republik Indonesia, Peraturan Presiden Nomor 20 Tahun 2018 Ikhtiar Untuk Meningkatkan Investasi dan Perluasan Kesempatan Kerja, diakses pada <http://setkab.go.id/peraturan-presiden-nomor-20-tahun-2018-ikhtiar-untuk-meningkatkan-investasi-dan-perluasan-kesempatan-kerja-2/>, accessed on September 23, 2018.

³ Online News Site, www.cnnindonesia.com, accessed on the link: <https://www.cnnindonesia.com/ekonomi/20180501074618-92-294822/momok-perpres-tenaga-kerja-asing-akibat-pengawasan-loyo>, accessed on September 23, 2018

⁴ Online News Site, www.detik.com, link: <https://news.detik.com/berita/d-3976865/politisi-pdip-perpres-tenaga-kerja-asing-untuk-lindungi-tki>, accessed on September 23, 2018

⁵ Gosta Esping Andersen, *The Three Worlds Of Welfare Capitalism*, Princeton University Press, 1990, page 5-8

⁶ Ahmad Jazuli, *Eksistensi Tenaga Kerja Asing Di Indonesia Dalam Perspektif Hukum Keimigrasian*, Pusat Pengkajian dan Pengembangan Kebijakan Badan Penelitian dan Pengembangan Hukum dan HAM Kementerian Hukum dan HAM RI, JIKH Vol. 12 No.1 March 2018, p. 102. Assessed in: <http://dx.doi.org/10.30641/kebijakan.2018.V12.89-105>

delegated, then in issuing the IKTA, it is stated on behalf of the Minister of Manpower and Transmigration and IKTA that it is given to the employer and not to the foreign worker concerned.

Technical provisions then undergo a change through Presidential Regulation No. 20 of 2018 which has a regulatory scope: Use of Foreign Workers; Implementation of Education and training; Reporting; Guidance and supervision; Sanctions; and Financing.

Change of arrangement for the use of Foreign Workers in Presidential Regulation No. 20 of 2018 basically has implications for the scope of the field of work and technical licensing on the use of foreign workers in Indonesia. Regulations in Presidential Regulation No. 20 of 2018 covers the field of use of Foreign Workers, and arrangements for RPTKA, IMTA, Vitas and Itas, addition of certain work areas that do not require RPTKA, urgent and emergency work, as the subject of regulatory changes with the previous provisions, namely Presidential Regulation No. 72 of 2014. RPTKA ratifies as well as IMTA, urgent and emergency conditions for employers, and certain positions that do not require RPTKA but are sufficient for Vitas or Itas. This provision is different from the previous provision, namely Presidential Regulation No. 72 of 2014 which requires the RPTKA as the basis for obtaining an IMTA.

In addition, the provisions of Article 16 in the Presidential Regulation No.20 of 2018 stipulate that for certain positions the employer can directly employ foreign workers without the need to take care of the RPTKA first, in the previous provision namely Presidential Regulation No. 72 of 2014, this is not possible because the procedure that must be taken by the employer is obtaining the approval of the RPTKA then IMTA, except for foreign workers in government agencies, representatives of foreign countries, and international agencies.

The logical consequence of changing the provisions on the use of Foreign Workers through Presidential Regulation No. 20 of 2018 gives birth to technical provisions to regulate the procedures for their use which are then stipulated by Minister of Manpower Regulation Number 10 of 2018 (Minister of Manpower Regulation No. 10 of 2018), it can be said that Minister of Manpower Regulation as a form of judicial implication of Presidential Regulation No. 20 of 2018. Coverage of Minister of Manpower Regulation No. 10 of 2018 namely: Field of Work for Foreign Workers; Plan for the Use of Foreign Workers; Notification; Limited Stay Visa and Limited Stay Permit; Compensation Fund, Social Security and Insurance; Online Integration; Implementation of Education and Training; Reporting; Guidance and supervision; Sanctions; and Financing.

Implications of Presidential Regulation No. 20 of 2018 shows that there are very significant differences with Presidential Regulation No. 72 of 2014. OPSI Secretary General, Timboel Siregar,⁷ highlights at least 6 provisions regulated by Presidential Regulation No.20 of 2018.

First, Law No. 13 of 2003 concerning Manpower requires RPTKA, but in the Presidential Regulation there is a gap for employers to avoid that obligation even though it is limited to the type of work of directors and commissioners and the foreign

⁷ Hukum Online, Sabtu, 07 April 2018, access to the link <https://www.hukumonline.com/berita/baca/lt5ac84e6ea1f84/serikat-buruh-soroti-6-ketentuan-dalam-perpres-penggunaan-tenaga-kerja-asing>

workers needed by the government. "The Presidential Regulation No.20 of 2018 should comply with the provisions of Article 42-49 of the Manpower Act."

Secondly, the provisions regarding a limited stay visa (Vitas) which can be managed by representatives of the Republic of Indonesia in North Sumatra are horrifying, giving space for TKA to be able to work first in Indonesia after arranging work permits. Third, Article 6 Paragraph (1) Presidential Regulation No.20 Year 2018 has the potential to close the opportunity for local professional workers to occupy positions in companies because foreign workers may hold the same position in different companies.

Fourth, Presidential Regulation No.20 Year 2018 removes IMTA so that it will be difficult for the apparatus to carry out supervision. The regulation states that ratification of the RPTKA is IMTA, even though it is wrong because the two things are different. "This Presidential Regulation does provide convenience for employers and foreign workers but it violates the provisions of the Manpower Act which states there are RPTKA and IMTA," he said.

Fifth, Article 10 of the Presidential Regulation No.20 Year 2018 states that RPTKA is not needed for commissioners and directors as well as foreign workers needed by the government. According to Timboel, ensuring that foreign workers with these positions no longer need to pocket permits, the impact will be to reduce income for the country, namely compensation for foreign workers in the form of PNBP.

Sixth, the existence of Vitas and limited residence permits (Itas) as stipulated in Article 17 Presidential Regulation No.20 Year 2018 opens TKA space to work without a legal entity employer. It is feared that this provision will be used by individual employers to recruit TKA. Even though Article 42 of the Manpower Act prohibits individuals from hiring TKA.

The Head of the One-Stop Integrated Services Section (PTSP) of the Directorate of TKA (PPTKA) Use of the Ministry of Manpower, Ratih Rulliyanti, explained that the new provisions essentially simplify the procedures for using foreign workers, namely as follows:⁸

1. First, regarding permission to use TKA, now only the Plan for the Use of Foreign Workers (RPTKA) is needed, no longer needing Permits to Employ Foreign Workers (IMTA).
2. Second, ratification of the use of TKA through RPTKA and Notification, no longer RPTKA and IMTA.
3. Third, regarding the time of service, previously for IMTA it took 3 days and the 3-day RPTKA, now it was cut to 4 days with details of the 2-day RPTKA and 2-day Notification.

⁸ Workshop Hukumonline 2018, "Penggunaan TKA Berdasarkan Peraturan Ketenagakerjaan dan Perkembangannya di Indonesia, Selasa (24/7), Hukumonline publications, Wednesday, July 25 2018, accessed at: <https://www.hukumonline.com/berita/baca/lt5b57d36fd6277/inilah-10-aturan-baru-tata-cara-penggunaan-tka-yang-perlu-dipahami>

4. Fourth, Minister of Manpower Regulation 10 Year 2018 removes recommendations from relevant ministries and institutions. Ministries and institutions have the right to determine what positions may or may not be administered by TKA. The proposals from various ministries and institutions will be stated in one regulation issued by the Minister of Manpower. Previously, the employer must ask for recommendations to the relevant ministries or agencies before hiring TKA. For example, for educators need recommendations from the Ministry of Education and Culture (Kemdikbud) or the Ministry of Research, Technology and Higher Education. The process of issuing recommendations adds to the length of the procedure for using foreign workers, therefore it needs to be simplified. There are already 8 ministries / institutions that give suggestions on what positions may be occupied by TKA. The 8 institutions include the Ministry of Health, the Ministry of Communication and Information, Ministry of Education and Culture, and the Ministry of Public Works and Public Housing.
5. Fifth, the forms of services used now use the online mechanism in full and integrated between ministries / agencies such as the Ministry of Law and Human Rights, Ministry of Finance, and BPJS.
6. Sixth, the validity period of the RPTKA is more flexible, in accordance with the work agreement between TKA and the employer. Previously, the validity period of the RPTKA was only one year and could be extended.
7. Seventh, foreign workers who serve as directors or commissioners as well as shareholders do not need to take care of permits. Previously, the two high positions in the company were required to pocket IMTA. But for directors and commissioners whose position is not as a shareholder, Minister of Manpower Regulation No. 10 of 2018 mandates them to have RPTKA.
8. Eighth, currently employers are required to facilitate TKA for Indonesian language education and training. Ratih emphasized that this was not a requirement that must be met by TKA before coming to Indonesia, but it became mandatory when TKA had worked in Indonesia. The aim is for foreign workers who occupy technical, expert and professional positions to transfer their knowledge to the accompanying local workforce. In addition, not all foreign workers speak English, such as TKA from Japan and China. Therefore employers must facilitate Indonesian language training so that TKA can communicate with the accompanying workforce.
9. Ninth, now concurrent positions not only for directors and commissioners. There are 3 other sectors that can hold more than 1 position, namely vocational education and training, oil and gas (K3S), and digital economy.
10. Tenth, in an emergency, TKA can work first and then take care of the RPTKA. Previously, RPTKA was administered together with the entry of foreign workers. Minister of Manpower Regulation No. 10 of 2018 regulates that there are four types of RPTKA, namely emergency and urgent, temporary, long term, and changes.

The Head of the Manpower Placement Subdivision of the Ministry of Manpower's Legal Bureau, Agung Sugiri, explained that:

The Minister of Manpower Regulation 10 of 2018 reinforces administrative sanctions for parties who violate the rules on the use of foreign workers. The form starts from delays in service, temporary termination of the TKA licensing process, revocation of

notifications, and does not cover the possibility of other sanctions according to legislation.⁹

2.2 Sociological Implications of Presidential Regulations Number 20 of 2018

In connection with changes in regulation, M. Hanif Dhakiri as Minister of Manpower, said:

Presidential Regulation 20/2018 the main objective is to create more and better jobs through investment. Investment is very important because we cannot build on the APBN alone. The presence of this Presidential Regulation is in line with the spirit of bureaucratic reform which is one of the president's priority programs derived from Nawacita's vision. The rapid progress of science, information and communication technology as well as strategic environmental changes requires the government bureaucracy to be reformed and adapted to the dynamics of global competition. Presidential Regulation 20/2018 further regulates the simplification of TKA licensing procedures and accelerates TKA permit services. Why is this important? In order for TKA services not to hamper investment. Because if it is complicated, it certainly inhibits investment, so the Presidential Regulation 20/2018 simplifies aspects of procedures, bureaucracy and licensing mechanisms without eliminating the qualitative requirements of foreign workers. The latest policy prepared by the government is aimed at making the procedures for using Foreign Workers shorter and faster, the entire procedure will be shorter, faster, online-based, and integrated between related institutions.¹⁰

Sociological Implications Presidential Regulation No. 20 of 2018, reflected in the statement of Franky Sibarani as the Head of the Investment Coordinating Board as follows:¹¹

"Foreign investment projects absorb 15 thousand workers. The projects funded by foreign investors consist of industries, power plants, property, and several other industries. Report on the progress of investment in these projects. So far, as many as 59 of the hundreds of projects have been completed in the construction phase and are ready to start production activities. Meanwhile, 141 other projects are still continuing construction. The 59 projects (completed construction) recorded absorbing 15,679 workers; the investment value that has been disbursed from the 59 projects reached IDR 108 trillion. While 141 projects in the construction process have flowed investment funds of Rp. 157 trillion. In the 141 projects, it is projected to absorb 65,000 people. "

⁹ *Ibid.*

¹⁰ Kementerian Ketenagakerjaan Republik Indonesia, *Kemnaker Berkomitmen Permudah Perizinan Pekerja Asing*, <http://kemnaker.go.id/berita/berita-naker/kemnaker-berkomitmen-permudah-perizinan-pekerja-asing>, <http://kemnaker.go.id/berita/berita-naker/menaker-pekerja-asing-ilegal-dan-pelanggar-aturan-langsung-dideportasi>, Accessed on November 15, 2018

¹¹ Ministry of Manpower of the Republic of Indonesia, *Proyek Investasi Asing Serap Ribuan Tenaga Kerja*, <http://kemnaker.go.id/berita/sorot-media/proyek-investasi-asing-serap-ribuan-tenaga-kerja>, accessed on 117 November 2018

Dina Martiany also wrote that this global, regional and bilateral economic cooperation would of course increase investment in Indonesia.¹² The presence of foreign workers is one of the bearers of foreign exchange for the country.¹³

On the other hand, Indonesia still has problems in the gap in competition. When compared roughly, elementary school graduates (SD) cover 45.13% of the population, while the workforce at the Bachelor level and above is only 8.29%. This worker competence imbalance makes labor very vulnerable to issues and requires protection and requires broader employment opportunities.¹⁴

The Indonesian Muslim Workers Brotherhood (PPMI) considers the government's motives in the Presidential Regulation TKA to accommodate the interests of Chinese workers. The issue of TKA was also a demand of the mass of workers on Labor Day May 1 2018. They urged the government to revoke the Presidential Regulation. A number of members of the House of Representatives initiated the formation of the Special Committee for Foreign Workers.¹⁵

2.3 ¹ Presidential Regulation Number 20 Year 2018 Implications of the Existence of Foreign Workers from China

China is Indonesia's biggest trading partner in the last seven years in a row. In 2017, the two countries had a total trade of USD63.3 billion, up 18% from a year earlier. With this fact, there is an increase in Chinese Workers.

China, Japan and South Korea are the largest contributors to foreign workers in Indonesia. In 2007, 13.07 percent or 4,301 TKA came from China. The number has increased to 24,804 people, equivalent to 28.85 percent of the total foreign workers in 2017. The increase in the number of foreign workers from China is inseparable from the increase in the number of investments and projects from this country in Indonesia. Some infrastructure projects rely on investment from China. In 2015, the value of Chinese investment realization in Indonesia amounted to \$ 628.34 million and increased to \$ 3.36 billion in 2017. The number of projects also increased from 1,052 projects in 2015 to 1,977 projects in 2017.¹⁶

III. CONCLUSION

Foreign workers in Indonesia are regulated in Law No. 13 of 2003 concerning Manpower, listed in Chapter VIII concerning the Use of Foreign Workers, which are contained in Article 42 through Article 49. Implementing regulations namely Presidential

¹² Dina Martiany, *Tenaga Kerja Asing Dan Ancaman Perdagangan Perempuan*, *Majalah Info Singkat Kesejahteraan Sosial*, Vol. IX, No. 01/A/Puslit/Januari/2017, p. 9

¹³ L. Hadi Adha, *et.all.*, *Kebijakan Penggunaan Tenaga Kerja Asing Di Indonesia*, *Jurnal Hukum Jatiswara Fakultas Hukum Universitas Mataram*, Vol. 31 No.1 March 2016, p. 163

¹⁴ Angelia Pratiwi Mastiurlani Christina S, *Penegakan Hukum Terhadap Tenaga Kerja Asing Asal Tiongkok (Studi Di PT WHW Kecamatan Kendawangan Kabupaten Ketapang)*, (Tesis, Magister Ilmu Hukum, Universitas Tanjungpura), Pontianak, 2017, p. 3

¹⁵ [www.kompas.com](https://ekonomi.kompas.com/read/2018/04/30/103600226/pro-kontra-perpres-tenaga-kerja-asing), accessed on the link: <https://ekonomi.kompas.com/read/2018/04/30/103600226/pro-kontra-perpres-tenaga-kerja-asing>, diakses on November 4, 2018

¹⁶ Situs Berita Online dan Kajian Ilmiah, www.tirto.id, <https://tirto.id/28-persen-tenaga-kerja-asing-berasal-dari-cina-cKqJ>, accessed on November 4, 2018

³
Regulation No. 20 of 2018 concerning the Use of Foreign Workers provides juridical implications for changes in licensing and procedures for use which are regulated by Minister of Manpower Regulation No. 10 of 2018. Sociologically has an implication for increasing the value of investment and the number of Foreign Workers.

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PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6

PAGE 7

PAGE 8

PAGE 9
