

# CONTROL OF FOREIGN WORKERS IS CONNECTED WITH THE PROTECTION OF THE WORK RIGHTS UNDER THE CONSTITUTION 1945 AND THE SELECTIVE POLICY PRINCIPLES

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**ABSTRACT**---The placement of TKA in fact gives an advantage in the process of outsourcing knowledge and technology to improve the skills and productivity of the work of TKI, but the placement of the inappropriate TKA legislation has been detrimental to National interest in the field of employment availability for migrant workers who are increasingly difficult to obtain. The purpose of research to know the control of the TKA is connected with the protection of the job rights for Indonesian citizens according to article 27 paragraph (2) CONSTITUTION 1945, knowing the implementation of foreign workers by TKI in the SCIENCE and find supervision With the selective policy principle. This research uses a normative juridical approach. The specification of the study is descriptive analysis. The data types that secondary data uses. The technique of data collection studies and analytical techniques uses a qualitative approach. The results showed that the control of TKA was executed under Article 42 Law No 13 year 2013 on employment which was built on the principles of legality, sponsorship, selective and security. Controlling the placement of TKA in Indonesia aims to protect the rights of Indonesian citizens for the work pursuant to article 27 sentence (2) CONSTITUTION 1945, but factually the policy of the placement control of TKA has not shown results that provide Protection of the work for Indonesian citizens because of the foreign workers who entered Indonesia majority of the abusive worker without the expertise of non-professional personnel. Supervision of TKA implemented by implementing the principle of selective policy through two approaches namely (a) a prosperity approach that establishes only foreigners who truly benefit the national interests and welfare of the people of Indonesia (b) The security approach of an immigration policy to provide licensing permissions for those who do not compromise state security and public order. Limitation of TKA that will enter Indonesia according to the principle of selctive policy becomes a necessity to provide priority position of employment opportunities for TKI.

**Keywords**---control, TKA, job opportunity, Selective Policy

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## I. INTRODUCTION

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The current globalization and information as well as geographical differences, climate, natural wealth and the level of ability of the countries present in the world today, causing each country to require each other. Thus each country is encouraged to be active in the association between nations, if the nation wants to progress and not isolated from international associations. The world tends to be affected by mutually beneficial openness.<sup>2</sup>

The increasing cooperation between nations and the advancement of advanced technology leads to an increase in the flow of human traffic between countries. Indonesia's own country needs a relationship with the outside world, which is tangible investment, technology and expertise. In addition, Indonesia also needs overseas market to market its products, both oil and gas and non-oil. Meanwhile, Indonesia seeks to attract many foreign tourists and intends to make the tourism sector as one of the Primadona in collecting the revenue of the country. The demands of this development led to the increasing flow of human traffic from and to outside the territory of Indonesia.<sup>3</sup>

The performance of the Directorate (Ditjen) of immigration in 2015 focuses on the improvement of service and enforcement of customs law. The operation of foreign control held simultaneously at the immigration office in all of Indonesia through "Operation Bumi Phura Wibawa" net at least 1,077 foreigners with the most percentage of people from the People's Republic of China (RRT). They allegedly misuse the residence permit, visa and overstay. The Directorate General of Immigration has also carried out pro Justitia action against 255 cases of violation of the law 16,531 and the administrative immigration of immigration (deportation), The application of foreigners supervision through the Foreigners Reporting Application (APOA) is a breakthrough that provides easy access to the management of the hotel and the lodging/guarantor to provide a report of the foreign presence to the local immigration office. In order to improve the service to foreign nationals, the application for renewal of stay on-line is currently launched.<sup>4</sup>

Misuse of limited residence permit in Indonesia, one of which is widely done by foreign workers working in the company in Indonesia. Generally, foreign workers are only given permission to work in a certain time to become experts in various companies in Indonesia in the framework of knowledge (transfer knowledge) to the Indonesian workers who are the companion, in addition to teaching the skills of foreign workers also serve to perform technology transfer (transfer of technology) in the field of business, such as technology to accelerate the production of certain goods.

The inclusion of foreign workers to Indonesia seen from its position can help the smooth of foreign companies or local companies in carrying out its business activities. But when viewed further, there are various immigration violations conducted by foreign workers including cooperation with the company so that they can stay longer in Indonesia.

Scan of government uncertainty as mentioned above in the end raises some problems, namely Membanjirnya the amount of TKA, disparity or gaps in position positions and foreign employment income that certainly impacts on national defense and Security disorders and social welfare for local workers. This condition is the responsibility of the State to address it especially the preparation of employment and decent livelihood for the local workforce. Life and decent work is a constitutional duty of the government governed by article 27 paragraph (2) CONSTITUTION 1945. Stating that: "That everyone is entitled to employment and a viable livelihood". So that the government as an important actor in the procurement of opportunities and employment is obliged to possess and proclaimed programs that lead to the expansion of opportunities for job seekers. The situation of TKA to Indonesia without being accompanied by the opening of adequate employment and the improvement of competence for Indonesian workers is the form of the state's neglect of the responsibility of its constituent. The problem is how the control of foreign workers is linked to the protection of the right to work for citizens of Indonesia according to article 27 sentence (2) CONSTITUTION 1945 and how supervision of foreign

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<sup>2</sup> Imam Santoso, *Immigration perspective in human migration*, Design Library, Bandung, 2014, p. 2

<sup>3</sup> Hari Sabarno, *Guiding regional autonomy maintaining unity*, Rays of Grafika, Jakarta, 2008, p 73

<sup>4</sup> Yan Wely (Ed), *Immigration law enforcement year*, in *Bhumi Pura Magazine*, Edition 2016, p. 3

workers in order to provide a priority position of employment opportunities for Indonesian workers connected with the principle of selective policy.

## II. LITERATURE REVIEW

Understanding of foreign workers is ooreign worker is a person who is not an Indonesian citizen who is able to do the job, both inside and outside the work relationship, in order to produce services or goods to meet the needs of the community.<sup>5</sup> The notion of foreign workers is reviewed in terms of legislation (authentic sense), which in article 1 Figure 13 LAW No 13 year 2013 on employment is explained that: "Foreign workers are foreign nationals of visa holders with the intention of working in Indonesian territory".

According to the provisions of Article 33 Act No 13-year 2003 on employment that the scope of labor placement includes:

1. Placement of labor in the country, and
2. Placement of Labor abroad.

The placement of domestic labour includes local work (INTELLECT), interregional interwork (AKAD), and foreign employment placement. Understanding Interwork is a process of labor placement activities that include the work Market Information Service (GPA), labor registration, job registration, guidance and counseling Office, placement, and follow-up placement (article 1 letter D Decree of the Minister of Labor number KEP-203/Men/1999).

Article 32 paragraph (1) of Law No. 13 of 2003 on employment stated that the placement of manpower was implemented based on the following principles:<sup>6</sup>

1. The open principle is a clear provision of information to the job seeker, among others, the type of work, the magnitude of wages, and the working hours.
2. Free principle is a free job seeker chooses the type of work and the employer is free to choose the workforce so there is no coercion of one another.
3. Objective principles are employers in order to offer a suitable job to the jobseekers in accordance with the skills and requirements of the Department needed, and should pay attention to the general interest by not siding with the interests of certain parties.
4. Principle of fair and equal without discrimination is the placement of manpower conducted based on manpower ability and not based on race, gender, skin color, religion, and political flow.

Philosophy and regulation of the use of foreign workers In order to protect and guarantee Indonesian citizen in terms of opportunity to obtain employment, as mandated by law No. 13 year 2003 in the employment of article 4 letter b that the development of manpower aims among others to "realize the equality of employment opportunities and the provision of manpower that suits the needs of national and local development"

The philosophy of the placement of foreign workers in Indonesia is based on the development of Indonesia's superior and skilled human resources, to achieve that goal the government needs to use foreign workers for the transfer of science and technology to Indonesian workers within the allotted time. The achievement of this goal will have a positive impact on the advancement of industry in the country because it is done by skilled humans and mastering science. Distribution of

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<sup>5</sup> Abdul Khakim, *Indonesia Labour Law fundamentals*, Citra Aditya Bakti, Bandung, 2009, p. 27

<sup>6</sup> Abdul Khakim, *Legal aspects of wage pursuant to law No 13 year 2003 on employment law*, PT Citra Aditya Bakti, Bandung 2006, pp. 83

knowledge from developed countries to Indonesia as a form of international cooperation with other countries to help each other build up in foreign workers countries.

### III. METODELOGI RESEARCH

This research is included in legal research, by analyzing relevant positive laws to solve the problem by using the library resources and other necessary sources, so in this research the author uses normative juridical approach because of the way the research uses secondary data relating to the control of foreign workers connected with the State responsibility in protecting employment opportunities for Indonesian workers.

### IV. RESULTS AND DISCUSSION

#### **Control of foreign workers is linked with the right to work for Indonesian workers according to article 27 paragraph (2) CONSTITUTION 1945**

The use of foreign workers has been clearly stipulated in article 37 paragraph (1) of the Ministry of Manpower regulation number 35 year 2015 concerning amendment to regulation of the Minister of Manpower No. 16 of 2015 on procedures for the use of foreign workers (Perfrigher 35/2015), in addition to the other terms as regulated by the immigration authorities. In addition to regulations that have been established the government needs to examine and consider things such as cultural and economic factors of society. Development of PLTU or infrastructure projects in remote areas using foreign workers will certainly affect the culture of surrounding communities. The impact of culture will occur in the midst of difficult economic conditions and under pressure for the success of a project, then the public will not want to accept the impact of the culture that occurred.

Rule of Conquertrans No 12 Years 2013 at that time has not been applied effectively, because there are no technical instructions on the implementation and supervision of Indonesian-language TKA. However, before the Ministry of Manpower can complete the technical Instructions for the implementation of the No. 12-year-2013 Perconquertrans, the requirements for Indonesian-speaking TKA have been removed from the order of the President with the intention of the removal of Indonesian language requirements to facilitate foreign investment in Indonesia.

Analyzed in a philosophical sense, the state as an organization has this purpose and purpose should also have strength. Therefore, the country's purpose is set forth in the fourth paragraph of the opening of the CONSTITUTION of NRI 1945 stating:

"Then, to form a government of the Republic of Indonesia that protects all the nation of Indonesia and all the Indonesian blood and to promote the general welfare, educate the life of the nation, and participate in the order of the world based on independence, eternal peace and social justice."

Noting that the fourth paragraph of the opening of the NRI 1945 CONSTITUTION is clearly stated that it was established in order to improve the welfare of the people. It should be the goal of the forwarding of the licenses of TKA, which aims to accelerate the realization of community welfare through improvement, service, empowerment, and community participation.

#### **Supervision on foreign workers in order to provide priority position of employment opportunities for Indonesian workers connected with the principle of Selective Policy**

The supervision of FOREIGNERS in Indonesia includes 2 (two) fundamentals, namely supervision over its existence (immigratoir) and supervision on the activities of foreigners while in Indonesia.<sup>7</sup> Supervision of foreigners has been governed by Article 68 clause (1) of the immigration LAW, where immigration control of foreigners is executed at the time of Visa application, entry or exit, and the provision of residence permit is by:

1. Collection, processing, and presentation of data and information;
2. Drafting the name of a foreigner with a charge or prevention;
3. Supervision over the existence and activities of foreigners in the territory of Indonesia;
4. photo and fingerprint capture;
5. Other activities that can be held legally accountable.

Governments need to improve coordination related to foreign people, because their entry into the Indonesian territory is not only related to job problems but there may be other motives that can harm national interests such as drug smuggling, human trafficking and other detrimental crimes. Therefore, synergy between agencies in supervising the existence of foreigners need cooperation and strong coordination of the Government and all elements of the nation.

## V. CONCLUSION

1. The control of TKA implemented pursuant to Article 42 Act No 13 year 2013 on employment that is built on the principles of legality, sponsorship, selective and security. This principle is used to control and restrict the current of the Indonesian national interest in the territory of Indonesia. Control of the placement of TKA who will and are in Indonesia aims to protect the rights of Indonesian citizens on employment and appropriate livelihood pursuant to article 27 paragraph (2) CONSTITUTION 1945, but factual placement control policy of TKA has not Showing the results that provide protection for the work for Indonesian citizen because of the foreign workers who entered into Indonesia the majority of abusive worker without the expertise of non-professional personnel, the findings of the working TKA does not correspond to the fields listed On work visas and employment permit for foreign workers (IMTA), expired (over stay) and illegal TKA. This situation raises the national interest because of narrowing the job opportunities for Indonesian citizens.

2. Supervision of TKA implemented by implementing the principle of selective policy through two relevant approaches to supervise foreigners who will enter Indonesia namely (a) a prosperity approach that establishes only foreigners who truly Benefit of Indonesia's national interests and welfare. (b) A security approach, which is an immigration policy, to provide for immigration licensing for those who do not compromise state security and public order. In its realization of supervision of TKA conducted by the foreign control team (Tim Pora) with the agency is conducted by the supervisory team of Foreigners (Tim Pora) with other agencies or government agencies related to the supervision of foreigners Coordinated. The limitation of TKA that will enter Indonesia according to the principle of selctive policy becomes a necessity to provide a priority position of employment opportunities for the community.

## VI. RECOMMENDATIONS

1. Use of TKA as an effort to increase investment, Transfer of Technology and Transfer of Skill to TKI, therefore, Ministry of Manpower and Transmigration should supervise Preventive-educative that includes socialization, technical guidance implementation of the rules of use of TKA, and coaching to the company users of TKA.

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<sup>7</sup> Sihar Sihombing, *Immigration law in Indonesian law*. Nuansa Aulia, Bandung, 2013, p. 28

2. Economic competition at the global level makes the government must be selective in monitoring against foreigners who will work in Indonesia.

## REFERENCE

- [1] Imam Santoso, *Immigration perspective in human migration*, Design Library, Bandung, 2014, p. 2
- [2] Hari Sabarno, *Guiding regional autonomy maintaining unity*, Rays of Grafika, Jakarta, 2008, p 73
- [3] Yan Wely (Ed), *Immigration law enforcement year*, in *Bhumi Pura Magazine*, Edition 2016, p. 3
- [4] Abdul Khakim, *Indonesia Labour Law fundamentals*, Citra Aditya Bakti, Bandung, 2009, p. 27
- [5] Abdul Khakim, *Legal aspects of wage pursuant to law No 13 year 2003 on employment law*, PT Citra Aditya Bakti, Bandung 2006, pp. 83
- [6] Sihar Sihombing, *Immigration law in Indonesian law*. Nuansa Aulia, Bandung, 2013, p. 28

## LEGAL REGULATIONS

- [7] Constitution 1945
- [8] Law No 13 year 2003 on employment
- [9] Law No 6 year 2011 on immigration
- [10] Law No. 8-year 1981 on criminal events Law
- [11] Law No. 29 year 2004 on Indonesian Labour conservation and protection abroad
- [12] Ministerial regulation No. 16 year 2015 on procedures for the use of foreign workers