

# The Role of Immigration and Employment Law as a Media for Licensing and Supervision of Foreign Workers in the Republic of Indonesia

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## Abstract

*Today, society is being heralded by the entry of foreign workers into Indonesia which will later rob domestic jobs. If we have understood and mastered the discussion material regarding the convention; then the direction of international law is clear as a complement to enforce the law that applies to foreign workers in terms of immigration. ASEAN and ACFTA are a concrete example of the involvement of foreign workers in a place. For this reason, an understanding of international law is needed; how an agreement applies and what is contained in the agreement. Immigration, employment and international law are interrelated. They cannot stand alone. These three things will form a new order as well as how the role of immigration and manpower law in explaining how foreign workers should be employed.*

## Keywords

role of immigration;  
employment law; licensing and  
supervision; foreign workers



## I. Introduction

Law is the most important instrument in order to maintain order in the life of the nation and state. It is impossible without law, there will be order and discipline in the social strata. Justice, usefulness, and legal certainty are the three main objectives in the formation of a law (Rahardjo, 2006). Immigration Law itself is an integration of several parts of the law that form a usefulness in the form of functions and purposes in the field of immigration. The role of immigration law as a medium for implementing the supervision of foreign workers in the Republic of Indonesia is a complex object of study in which the relationship between immigration law, international law and labor law is formed. Against the law according to Bemmelen (in Purba, 2019) is an act that is contrary to the proper accuracy in the association of people regarding other people or goods, and contrary to the obligations. Indonesia is a country based on law as regulated in the 1945 Constitution article 1 paragraph 3 which reads "The State of Indonesia is a State of Law". The inclusion of this provision in the section of the 1945 Constitution shows the strength of the legal basis and the mandate of the State, that the State of Indonesia is a State of Law. Thus, it can be said that Indonesia is a country that aims to maintain law and order to realize public welfare, forming a just and prosperous society. (Rozak in Tumanggor, 2019).

Immigration law acts as a pioneer assisted by international law and labor law. Immigration is a matter of traffic of people entering and leaving the Indonesian Territory and its supervision in order to maintain the upholding of state sovereignty (President of the Republic of Indonesia, 2011). The territory of the Republic of Indonesia, hereinafter referred to as the Territory of Indonesia, is the entire territory of Indonesia as well as certain zones determined by law (President of the Republic of Indonesia, 2011). International law and labor law are complementary in the object of the study. The relevance of international law in

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immigration is the emergence of obligations and rights of foreigners during visits to Indonesia. In addition, labor law plays a basic role regarding the behavior of a foreign worker placed and following the applicable law. The three parts of the law are combined into a single unit that has a function and purpose. For this reason, it is necessary to hold a discussion on the role of immigration law as a medium for organizing the supervision of foreign workers in the Republic of Indonesia because this is a complex and actual thing in global life.

Today, the world's workforce is flocking to leave their country for job missions in other countries that offer higher wages. Workers who have a high selling value will certainly have a large enough opportunity to achieve higher wages. Globalization not only causes a rapid turnover of investment and information, it also involves labor issues (Astuti, 2005). The rapid flow of labor migration is basically the result of three different conditions in each developed country, newly industrialized countries, as well as in poor and developing countries. The success of economic development in developed countries has pushed the level of wages and working conditions to a better level. In newly industrialized countries, the acceleration of economic development causes the demand for skilled labor to be imported from developed countries, while jobs that are more concerned with physical labor are imported from poor and developing countries (Astuti, 2005).

Foreign workers are a fairly sensitive context in the world of work. This is inseparable from developing international conventions or agreements such as the ASEAN Economic Community (AEC) and the ASEAN-China Free Trade Area. Not only that, at a global level such as the World Trade Organization (WTO), it also influences the increase in foreign workers globally, especially in Indonesia.

## **II. Review of Literatures**

The legal product used as a guide in the following study is Law Number 6 of 2011 concerning Immigration assisted by Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration (President of the Republic of Indonesia, 2011; 2013).

In addition, assisted by Law Number 25 of 1997 concerning Manpower and Law Number 11 of 1998 concerning Amendments to the Entry into force of Law Number 25 of 1997 concerning Manpower; and Law Number 28 concerning the Stipulation of Government Regulation in Lieu of Law Number 3 of 2000 concerning Amendments to Law Number 11 of 1998 concerning Changes in the Enforcement of Law Number 25 of 1997 concerning Manpower into Law. Then the most recent is Law Number 13 of 2003 concerning Manpower (Astuti, 2005).

As a result of the turmoil of foreign workers in Indonesia, two main problem topics of considerable significance for immigration have emerged, namely as follows;

1. How is the regulation regarding foreign workers in Indonesia?
2. To what extent is the supervision and licensing of Indonesian foreign workers?

These two things are related to each other. The author assumes that these two questions have not been answered satisfactorily and further studies are needed to find out in detail.

## **III. Discussion**

We will first discuss the employment side, after that we will continue with immigration. This is because employment law is a supporting object in the formation of immigration law. After that, it will be continued by discussing the central role of immigration in the placement of foreign workers. After that, it will be discussed in general about the relation of internal

law to the influence of immigration and labor law. The division of this discussion is carried out so that later the discussion flow has a clear and measurable framework and makes it easier to decipher existing problems.

### **3.1 Regulation of Foreign Workers in Indonesia**

To provide wider employment opportunities for Indonesian workers (TKI), the Government limits the use of foreign workers (TKA) and supervises the use of TKA on the basis of statutory regulations. Prior to the enactment of Law Number 13 of 2003 concerning Employment, the use of foreign workers in Indonesia was regulated in Law Number 3 of 1958 concerning the Placement of Foreign Workers. The Law on the Placement of Foreign Workers has been revoked by the Manpower Act Number 13 of 2003 in Article 192 paragraph (9). Furthermore, the regulation regarding the use of foreign workers is no longer regulated in a separate law, but is already part of the compilation of the new Manpower Act. The UUK contains, among other things, the regulation on the Use of Foreign Workers (TKA) which is contained in Chapter VIII, Article 42 to Article 49 (Astuti, 2005).

One of the contents of Law Number 13 of 2003 concerning Manpower is the use of permanent foreign workers, in accordance with the required competencies. Provisions related to the use of foreign workers are contained in Chapter VIII starting from article 42 to article 49. To meet the needs of the national labor market, especially in filling the vacancies of expertise and competence in certain fields that cannot be fulfilled by Indonesian workers, foreign workers can be employed in Indonesia as long as in a working relationship for a certain position and a certain time (Astuti, 2005).

Employment of foreign workers can be carried out by any party in accordance with the provisions except the individual employer. Every employer who employs foreign workers is required to have written permission from the minister or appointed official except for representatives of foreign countries who use foreign workers as diplomatic employees and counselors. In addition to having a permit to employ foreign workers, the employer must already have a plan for the use of foreign workers approved by the Minister or an appointed official except for government agencies, international agencies and representatives of foreign countries. The Plan for Employment of Foreign Workers (RPTKA) must at least contain the following provisions (Astuti, 2005);

- a. Reasons for using foreign workers;
- b. Position of foreign workers in the organizational structure of the company concerned;
- c. The period of use of foreign workers;
- d. Appointment of Indonesian citizen workers as companions of foreign workers employed for technology transfer and transfer of expertise from foreign workers.

To achieve technology transfer and transfer of expertise from foreign workers to Indonesian citizens, education and job training are held for Indonesian workers in accordance with the qualifications of positions occupied by foreign workers, except for foreign workers who occupy the positions of directors and/or commissioners (Astuti, 2005). It is intended that the presence of foreign workers in Indonesia is not considered a serious enough threat to Indonesian workers; Instead, their presence is a trigger for Indonesian workers to be more professional (Astuti, 2005).

If examined in terms of legal history, the development of labor law in Indonesia has undergone fundamental changes. Likewise, regulations relating to the presence of foreign workers in Indonesia, but normatively in the laws and regulations it is still possible to place or have foreign workers in Indonesia for different reasons and purposes. The foreign labor law is closely related to providing employment opportunities for Indonesian workers. Therefore, in the context of Indonesia's human development, the government intervenes in

the placement of foreign workers, so with the intervention of the government there is a shift in the nature of civil law inherent in labor law to become public law.

The first law that specifically regulates the presence of foreign workers in Indonesia is Law Number 3 of 1958 concerning the Placement of Foreign Workers. This law in principle provides the widest opportunity for Indonesian workers to occupy positions in all employment fields. On the other hand, due to limited human resources, it is possible or permissible for foreign workers to occupy certain positions and work in the territory of Indonesia. However, foreign workers who are allowed to work in Indonesia must be limited and supervised. In addition, in carrying out the placement of foreign workers is closely related to economic development; the restrictions on foreign workers were initially directed at eliminating colonial elements in the economic structure of the state and also in business fields that are vital to the national economy. Therefore, supervision of foreign workers is carried out somewhat tighter or harder, including by closing certain positions for foreign workers and providing them specifically for Indonesian workers. On the other hand, the substance of Law Number 3 of 1958 concerning the Placement of Foreign Workers emphasizes the use of a permit system to employ each foreigner, so that all work of foreigners can be supervised by the Government. Therefore, an entry permit for foreigners who want to work in Indonesia must be linked to a permit to employ foreigners (Astuti, 2005).

Second, Law Number 14 of 1969 concerning Basic Provisions Regarding Manpower, the difference with Law Number 3 of 1958 concerning the Placement of Foreign Workers, particularly in regulating the placement of foreign workers, among others; In Law Number 14 of 1969 concerning Basic Provisions Regarding Manpower, the regulation of the placement of foreign workers in Indonesia is not specifically regulated in a separate manpower law. While the basic principles that are the reasons why it is still possible for foreign workers to work in Indonesia are related to issues of technology transfer, labor transfer, and work assistance and job training; where this is aimed at the utilization of Indonesian workers. While the similarities, in Law 14 of 1969 concerning Basic Provisions Regarding Manpower; the legal substance relating to licensing and supervision institutions and legal substance relating to the use and placement of foreign workers are still maintained, which in practice are still carried out by different agencies or institutions (Astuti, 2005).

Third, Law Number 25 of 1997 concerning Manpower, regulations relating to foreign workers are regulated in Articles 152 to 157, while those relating to supervision of foreign workers are regulated in Article 166 and Article 167 of Law Number 25 of 1997. About Employment (UUK). Fourth, the UUK relating to the regulation of foreign workers is regulated in Articles 42 to 49 and those relating to supervision are regulated in Articles 176 to 181 (Astuti, 2005).

Thus, in the above-mentioned Law, it is basically still possible for Foreign Workers to work in Indonesia, with the conditions, procedures for licensing, planning, controlling and supervising. The amendments to the Manpower Act (UUK) still include the substance of licensing the use of foreign workers with different purposes. In the latest Manpower Law, namely Number 13 of 2004 concerning Manpower, it is possible to use foreign workers but to be implemented selectively, these restrictions are carried out in the context of optimally utilizing Indonesian workers.

Normatively, the UUK regulates the selective use of foreign workers, this is intended in the context of optimally utilizing Indonesian workers by using technology for the use of foreign workers. Those who employ foreign workers are required to have a permit, thus in the above law, supervisory agencies and licensing instruments are used, in the implementation of supervision, one of which uses a licensing instrument involving several agencies (Astuti, 2005).

On the other hand, there is Law Number 22 of 1999 which has been replaced by Law Number 32 of 2004 concerning Regional Government. The law regulates the division of authority, including the division of authority in the manpower sector, among others in Article 13 of Law No. 32 of 2004 concerning Regional Government, it is stated that the mandatory affairs under the authority of the regional government for districts/cities are district/city-scale affairs. One of them is employment services. Thus, the Provincial Government and Regency/Municipal Government are affairs on a regency/municipal scale, one of which is service in the field of manpower. Thus, the Provincial Government and Regency/Municipal Government with such authority should make regional regulations (Perda) which are substantially related to labor regulations in the regions. However, ideally it should be a product of regional law into a unified system, in the hierarchy of laws and regulations as determined by Law Number 10 of 2004 concerning the Establishment of Legislation. With the given authority, in its implementation in the provinces, regencies and cities, local regulations are issued which regulate the presence of foreign workers in each region (Astuti, 2005).

Thus, there is a difference in understanding between the center and the regions regarding foreign workers. The Regional Government interprets that the compensation fund is a regional right whose legalization is stated in regional regulations; while the Central Government considers that the funds are part of what must be deposited with the Central Government. Because of this, there has been a synchronization between the local regulations relating to the presence of foreign workers in the regions with the regulations contained in the central government.

### **3.2 Licensing and Supervision of Foreign Workers in Indonesia by the Ministry of Manpower and the Directorate General of Immigration Law and Human Rights**

The Immigration Department has a central role in this case of foreign workers. The initial flow of all this begins with the actions taken by immigration officials at immigration points throughout Indonesia; both ports, airports, and border points. Immigration Officers are employees who have gone through special Immigration education and have Immigration technical expertise and have the authority to carry out their duties and responsibilities under this Law (President, 2011). The authority to enter and/or exit foreign workers is in the hands of immigration, it is clear and certain that immigration has a full role in determining actions against foreign workers in Indonesia. The basis on which immigration is held is to allow foreign workers to enter on the basis of the permits they have.

If the foreign worker does not have a permit or misuses the permit, then of course there will be deterrence. Today, many people misunderstand vacation visas that will be used for work. The overstayed act is considered a gap and opportunity for foreign workers to work in Indonesia, especially for high-end entrepreneurs who visit Indonesia.

The granting of permits for the use of foreign workers is intended if the use of foreign workers is carried out selectively in the context of optimally empowering Indonesian workers (Astuti, 2005). To enforce the provisions in the regulated licensing, supervision is needed. Permission is a dispensation from a prohibition. In terms of employing foreign workers, actually the use of foreign workers is prohibited, but to fill the vacancy of workers due to certain skills it is still possible to use foreign workers. Therefore, permission is given to employ foreign workers, with supervision in accordance with the regulations, namely the Decree of the Minister of Manpower and Transmigration Number 20 of 2004 concerning procedures for obtaining permits to employ foreign workers as an implementation of the Manpower Act (Astuti, 2005).

A work permit in principle is a permit granted by the Minister of Manpower or an official appointed by him to certain employers or companies to employ foreign workers in Indonesia by receiving wages or not for a certain period of time (Astuti, 2005). There are 2 (two) kinds of permits, namely:

1. Permit to employ foreign workers;
2. Permits to do free work according to type, there are 3 (three) kinds of work permits for foreign workers, namely:
  - Foreign worker work permit (new); Permission granted to employ certain foreign workers for the first time.
  - Expatriate work permit (extension)
  - Work permit for foreign workers (change positions). Permission granted to transfer workers.

The Directorate General of Immigration at the Ministry of Law and Human Rights (DEPKUMHAM) of the Republic of Indonesia plays a very important role in supervising foreign workers who will work in Indonesia. DEPKUMHAM plays a role in regulating the use of foreign workers in accordance with their expertise that is indeed needed in the country, in planning and regulating and supervising/controlling the use of foreign workers. With this role, it can be monitored early and avoid bringing in foreign workers, because in fact there are already experts in the country. In addition, to avoid the use of certain foreign workers in the country, routine controls are carried out on the presence of foreign workers.

The Directorate General of Immigration through the Sub-directorate of Immigration Status Determination has the following functions: Prepare plans and regulate the control of the use of foreign workers residing in Indonesia, especially those related to Foreign Investment (PMA) and Domestic Investment (PMDN). With the above functions, the Sub-Directorate for Determining the Immigration Status of Foreign Workers can play a role in controlling TKA, in the sense of security in order to regulate and direct to certain goals, so that the presence of TKA in Indonesia can truly be utilized for the national interest. Where in the implementation of these controls, preventive nature is more prominent; while in supervision, it focuses more on enforcement by the field of immigration control and prosecution (Astuti, 2005).

The activities of the Sub-Directorate for Determining Immigration Status are still limited to controlling the use of foreign labor experts, and the emphasis is on regulating the transfer of work from foreign workers who work for companies within the framework of Foreign Owned Companies (PMA) and national private companies. In this regard, priority is given to foreigners who are truly beneficial to the Indonesian government and there are still no Indonesian workers who can replace the position of the TKA. Meanwhile, the preventive measures taken by the Immigration officers include:

- a. It is done when a foreigner applies for a Visa at the RI representative abroad; supervision is associated with the intent and purpose of coming to Indonesia. In addition, it is assessed whether or not there are benefits for the development of the nation and state.
- b. Upon arrival in Indonesia, immigration officers carry out surveillance at the air/sea port; check whether the Visa is valid and still valid or not on the deterrence list.
- c. Supervision after a foreigner has a residence permit or at the time of extending his stay permit, it is checked whether or not there is misuse of the permit that has been given to the foreigner.

In addition, there is also surveillance that is repressive/repressive. Supervision activities in this form are carried out by immigration officials if there are foreigners who are in the territory of Indonesia and it turns out that they are not useful, disturbing the peace and national security. Such action can be in the form of: (1) Requiring foreigners to reside in a

certain place; (2) Prohibiting foreigners from being in certain places; (3) Removing foreigners from the territory of Indonesia.

Furthermore, supervision is also carried out by the Ministry of Manpower, this aims to control foreign workers in Indonesia. As the information conveyed by the Director of Supervision of Labor Norms, that the background of the regulation of the use of foreign workers in Indonesia is intended to provide protection of employment opportunities for Indonesian workers. Therefore, restrictions are placed on the use of foreign workers (TKA) in Indonesia. The arrangement is regulated in labor laws and regulations, the contents of which include: (1) Planning for the use of foreign workers in certain companies or institutions; (2) Licensing the use of foreign workers based on expertise with the requirements of Indonesian workers in the context of technology transfer (transfer of knowledge).

The implementation of the rules for the use of foreign workers in companies that have been allowed to receive supervision related to the positions and functions of the foreign workers concerned. This is done so that there are no irregularities or violations in terms of the use of foreign workers. The use of foreign workers must comply with the requirements set by the government which are included in the permit for the use of foreign workers. If in its implementation, deviations or violations of requirements are found, then actions are taken according to the weight of the deviations, violations which include: (1) A written warning in the context of coaching; (2) Removing the foreign worker concerned from the work location; (3) Investigation of the use of foreign workers who have violated labor laws and regulations in the use of foreign workers. Meanwhile, the implementation of law enforcement in the context of supervising the use of foreign workers is carried out through coordination, both at the central and regional levels with relevant agencies in accordance with the authority of each agency; among others with the Directorate General of Immigration, Ministry of Law and Human Rights; The Police of the Republic of Indonesia, and other related agencies as the leading sector of foreign workers.

### **3.3 International Law Conventions and Treaties concerning Foreign Workers**

International law is complementary law, in the sense that it is only complementary. According to Mochtar Kusumaatmadja, international (public) law is the entirety of legal rules and principles governing relations or issues that cross state borders (international relations) that are not civil (Sefriani, 2014). Looking at his understanding, we can say that one of the major contributors to this understanding is the phrase "crossing national borders", which is the object of study that is studied in immigration law.

In addition, several reasons why international law was brought into this complementary discussion are related to the ASEAN Economic Community (AEC) and ACFTA. Both of these things were born and sparked in the rules of international law. These multilateral agreements will certainly discuss the regulations, arrangements, and applications of foreign workers in the receiving country. Obligations and rights of entry will be the main focus of the problem. For this reason, we cannot view immigration and employment laws as standing alone in carrying out their duties. All of these legal elements must enter and support each other to create an orderly and clearly measurable legal order.

ASEAN and ACFTA are a concrete example of the involvement of foreign workers in a place. For this reason, an understanding of international law is needed; how an agreement applies and what is contained in the agreement. Today, society is being heralded by the entry of foreign workers into Indonesia which will later rob domestic jobs. If we have understood and mastered the discussion material regarding the convention; then the direction of international law is clear as a complement to enforce the law that applies to foreign workers in terms of immigration.

## IV. Conclusion

Judging from the discussion that has been described, there are several things that we can make as conclusions. Immigration, employment and international law are interrelated. They cannot stand alone. These three things will form a new order as well as how the role of immigration and manpower law in explaining how foreign workers should be employed.

Immigration as the starting point for foreign workers is expected to be able to carry out their duties properly and with discipline. If not, legal chaos and the creation of it are feared which will have the potential to disrupt the state's condition. Furthermore, the role of the Ministry of Manpower has an equally important role, namely in terms of controlling the number of permits granted to foreign workers entering Indonesia. If not, then of course there will be free entry of foreign workers and without official permission.

The author would like to emphasize that immigration and employment law has full power over entry and is like a foreign worker to be employed in the territory of the Unitary State of the Republic of Indonesia. Therefore, licensing and supervision of foreign workers working in Indonesia must be carried out in detail and regularly. so that what is aspired and planned can be carried out properly; so, it's not just contained in the plan file. Therefore, the central role is expected to be able to create a legal order that has strong quality and binding power in the norms in carrying out the life of the nation and state. Without the presence of these laws, it is impossible if we want to have an orderly and peaceful everyday atmosphere.

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