

# Legal Review of Immigration Authorities and Handling of Foreign Workers in Indonesia, a Comparison to Immigration Provisions in the United States

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## Abstract

*Experts in certain fields are very much needed by Indonesia during the development period. currently being activated, triggering national private companies to bring in foreign workers with certain skills. Their presence is a necessity because Indonesia still needs foreign experts in developing human resources in various economic sectors in Indonesia. In contrast to the United States where all companies in the United States are required to ensure that all employees can work legally. If a person is not a citizen or legal permanent resident in the United States, then they will need a valid work permit known as an Employment Authorization Document to prove eligibility to work in the United States. The focus of the problems studied in this study, namely how is the legal review of immigration authority in handling foreign workers in Indonesia and the United States? and how does the legal authority compare to foreign workers in Indonesia and the United States? The research method used in this study is a comparative qualitative method with a qualitative approach and data analysis used by researchers using qualitative analysis. In practice, law and policy regarding foreign workers, Indonesia has several regulations regarding foreign workers which are frequently updated, until now foreign workers are based on Presidential Regulation No. 34 of 2021 concerning Foreign Workers which is a derivative of the Job Creation Act. Unlike the case with the United States which tends to add federal laws rather than updating the rules regarding applicable Foreign Workers.*

## Keywords

Law; policy; foreign workers



## I. Introduction

In Southeast Asia, Indonesia is a member of the ASEAN Economic Community (AEC) which was established in 2015 with the aim of developing the ASEAN member economies and increasing economic growth in the ASEAN region in particular and is expected to fix problems in the international economy. The negative impact of the establishment of the MEA is the emergence of a free market that will make it easier for foreign workers to come and work in Indonesia, thereby creating competition for local workers. One of the cases that arise is the arrival of foreign workers who have expertise and companies in Indonesia prioritize these foreign workers compared to local workers, another problem is the arrival of foreign workers who are not in accordance with the skills required by the development sector in Indonesia.

The Indonesian government's target to become the 4th largest economy in the world by 2045 will have an impact on the development of the industrial sector. This economic growth must be supported by industrial economic development in Indonesia. With this aim, Indonesia must prepare a workforce that has superior skills to be able to compete.

The need for human resources for national development is increasing with the existence of free trade and the industrial revolution, the presence of foreign workers is a reality and a challenge that cannot be avoided.

Human Resources (HR) is the most important component in a company or organization to run the business it does. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired (Shah et al, 2020). The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020).

In PP Article 81 and letter b, Article 185 of Law Number 11 of 2020 concerning job creation, Government regulations regarding the use of foreign workers must be complied with. This government regulation aims to encourage the acceleration of national development through the selective use of foreign workers and the requirements and restrictions on foreign workers imposed by some foreign workers who are employed for a certain period of time. PP 34 of 2021 concerning the use of foreign workers is to increase the role of the government in order to improve the quality and participation of the government in national development in accordance with human dignity.

With the existence of free trade, one of the policies issued by immigration is a visa-free policy that allows foreign workers to have the right to exchange electronic data for foreign workers and their families.

When the government enforces the visa exemption policy for Foreign Workers, many foreign workers in Indonesia do not have the necessary skills, for example many foreign workers from China who come to Indonesia without the necessary skills, special abilities required by Indonesian companies.

Contrary to the policy of the Indonesian government, the issuance of visas for people visiting the US is very strict because the US is one of the dream countries of job seekers.

There are several ways immigrants can enter the United States; (1) apply for all types of visas; Immigrant visas, visitor visas, fiance visas (for foreigners engaged or about to marry an American), student visas, work visas and transit visas; (2) refugees; and (3) asylum seekers (United States Government, 2021). Meanwhile, immigrants with permanent residency in the United States or Legal Permanent Residents (LPRs) are required to obtain a green card in various ways, but most immigrants are sponsored by law enforcement agencies, family members or employers.

With the presence of immigrants and the speed with which immigrants move to the United States, there are certainly positive and negative impacts. To minimize potential negative impacts, under the Homeland Security Act of 2002, the United States established the Department of Homeland Security (DHS), the United States Federal Enforcement Agency responsible for public safety, comparable to the Department of Homeland Security. Minister of Home Affairs. Its duties include counterterrorism, border security, immigration and customs, cybersecurity and disaster prevention, and administration.

From the description above, this study aims to find out how the legal review of immigration authority in handling foreign workers in Indonesia and the United States, and how the legal authority compares against foreign workers in Indonesia and the United States.

## **II. Research Method**

This study uses a comparative qualitative method with a qualitative approach. Comparative research is research that compares the existence of one or more variables in two or more different samples. This research was conducted using a qualitative method with a descriptive approach that is juridical normative and uses primary and secondary data collection techniques to analyze problems through legal norms contained in the laws and regulations in Indonesia. The theory used in this research is the Utilitarianism Theory (the theory of utility) which was initiated by Jeremy Bentham (1748-1832), (a follower of positivism/legism and utilitarianism) and the theory of Rudolf von Jhering which suggests that the law is a union of interests for the purpose of the same thing, namely benefit.

## **III. Results and Discussion**

### **3.1 Legal Review on Immigration Authority in Handling Foreign Workers in Indonesia and the United States**

Every foreign worker who enters and works in Indonesia must comply with the existing rules and regulations. This is inseparable from the legal basis for regulations for foreign workers, including: RI Law No. 3 of 1958, RI Law No. 14 of 1969, RI Law No. 25 of 1997, RI Law No. 11 of 1998, RI Law No. 13 of 2003, Decree of the President of the Republic of Indonesia Number 23 of 1974, Decree of the President of the Republic of Indonesia Number 75 of 1995, Permenakertrans RI Number 02/Men/XII/2004, Permenakertrans RI Number Per-07/Men/IV/2006 Permenakertrans RI Number Per-15/Men/ IV/2006 Permenaker RI Number Per.02/Men/III/2008, Permenaker RI Number 12/2013, Minister of Manpower Regulation No.10/2018, Government Regulation No.34/2021

In Indonesia, hiring illegal foreign workers is a violation law which results in sanctions being imposed on both the company providing employment to the worker and the unofficial foreign worker. Criminal sanctions imposed on Foreign Workers and employers will receive a minimum imprisonment of 1 (one) year and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah) with the addition of the company providing the work will be included in the blacklist of foreign workers recipients.

Labor Law No. 13 of 2003 is the basis of all labor regulations in Indonesia and this labor law can also be applied to regulations relating to foreign workers. If the foreign worker is still working in the territory of the State of Indonesia and receives salary or wages in other forms, then it can be said to be a foreign worker and in the provisions of the Indonesian Manpower Law it can be applied to the foreign worker.

The Manpower Copyright Law (hereinafter referred to as the Ciptaker Law) is a law designed to regulate job creation, efforts to create employment opportunities through efforts to facilitate, protect, and increase private investment, micro, small and medium enterprises and cooperatives.

In America, regulations governing foreign workers who want to work in foreign countries are regulated by the Immigration and Nationality Act which regulates the provisions and structure of immigration law. The laws governing immigrants and foreign workers are written in the Immigrant and Nationality Act and TKA is regulated in INA in code 1188 regarding temporary H-2A workers which focuses on accepting foreign workers

to be applied to the category of workers who have an H-2A visa, namely workers who have permission to work a certain time.

Sanctions given to foreign workers who violate the H1B and H2B visa holders who stay beyond the time limit given and violate the provisions of the non-immigrant visa will be deemed to have no status and will be subject to deportation by the United States Department of Homeland Security. . This also applies to holders of other types of visas, if they commit violations such as overstaying in the United States, they will be subject to deportation and even no longer allowed to enter and work in the United States.

### **3.2 A Comparison of Legal Authority against Foreign Workers in Indonesia and the United States**

Every organization or company that employs foreign workers that has been ratified by the Minister or authorized official must issue instructions and guidelines to foreign workers to transfer technology and knowledge and transfer expertise to local workers ( TKI). Employed foreign workers are required to receive Indonesian language education and training facilitated by the recipient of the job.

Employers of foreign workers must be in the form of companies or legal entities because foreign workers are not allowed to obtain work from individuals or employees. An employed foreign worker may not hold more than one position in the same company.

In its implementation, the work copyright law has a number of advantages and disadvantages when it is ratified. Some of the advantages obtained from the ratification of the work copyright law are the emergence of various new job opportunities that can be sought by workers who have recently experienced layoffs and also school graduates who want to find work. The next advantage is obtained for individuals who want to establish a company that has been facilitated and is no longer hindered by financing and the minimum number of personnel required. Another advantage that can be found in the work copyright law is given to agencies and also private business founders who are trying to reduce the number of corruption and extortion caused by workers who take assets or rights from the company.

The advantages possessed by the work copyright law are not able to cover the deficiencies identified in the preparation of the law. The shortcomings found in the law consist of drafting a law which is considered by observers to be a fast and non-open law formulation which is considered to only benefit some of the people listed in the law and has the potential to harm the community. The weakness that can be found in the law is that there are still a number of loopholes that can be used by some elements of the community or politicians that can harm the implementation of the law.

Overall, there are some major problems with the Human Resources section of the Job Creation Act. First, the loss of the maximum clause in certain working time contracts (PKWT). Second, the omission of the phrase “fair living necessities” as a benchmark in formulating the calculation of the minimum wage has resulted in changes to the rules regarding wage protection. Third, remove the prohibition on the types of work that can be done through other parties (outsourcing). Fourth, the possibility of layoffs easily changes the pattern of job claims, because employers only announce to employees without prior negotiation. Fifth, the Job Creation Bill severely limits state control over the employment relationship, because many issues such as the time limit for PKWT and the right to extend leave are included in the agreement mechanism of the parties.

Regulations on state management are regulated in Title XI of the Manpower Law, which regulates Chapter 174 on competence and Chapter 175 of amendments to Law 30/2014. The jurisdictional provisions in Article 174 are based on overlaps and

discrepancies in agreements between the government (president, ministers and institutions) and local governments. The government's willingness to tackle regulatory obesity, which poses a number of challenges at the implementation level, including investment, should be appreciated. However, the absence of a declaration plus a brief provision on the powers of the president and local government in Article 174 raises concerns about the loss of decentralization.

Decentralization emphasizes the importance of local government for the regulation and management of government affairs. In the case of decentralization, the central government should ideally still have the means to monitor local policies, but this oversight cannot be intervened. The Governance Act makes several changes to the Employment Administration Act, including discretionary rights, electronic decisions, and positive fictitious provisions. Regarding the right to self-determination, the previous Manpower Law ascended to the autonomous throne on the condition that it was "not against the law" in Law no. 30/2014. While this is in line with theory, on the contrary, he worries about letting the "fun" do what he wants against the laws and regulations. Merging the position of electronic decisions with the State Administration Law really provides convenience in the openness and transparency of information, because it can be recorded in electronic form. But electronic decisions are subject to change, authentication systems, and other technical issues.

On the one hand, positive fictitious regulatory changes in the Labor Code should be appreciated, as it shows the government's efforts to serve the city more quickly. On the other hand, reducing the validity of the positive model to 5 days creates its own problems in practice. Furthermore, the abolition of regulations regarding the establishment of PTUN effectively negates the rule of law in society and extends management time. The competent authority, who does not issue a decision within 5 days and must decide with the previous TUN decision, does not have a legal obligation to carry out or process citizen requests to an appropriate standard, then it must be tested by the Constitutional Court because it does not provide legal certainty, is widely interpreted and discriminatory.

Employment audit of Foreign Workers is carried out by auditors who visit every company that employs Foreign Workers. This may include local authorities and local police. In addition, supervision can be carried out by supervising the use of foreign workers. This supervision is carried out by controlling the activities of foreign workers, in particular by limiting the use of workers to certain positions, with valid reasons, strict and strict regulations for permits to use foreign workers in RPTKA and IMTA.

Regulation of entry and exit of Indonesian territory that passes through the Immigration Monitoring Place (TPI), especially at airports, and ports, or other places or countries determined by the Ministry of Law and Human Rights. The next element of the definition of immigration is the monitoring of foreigners in Indonesia. Monitoring is all the implementation of activities to check and monitor whether a task is carried out according to the plan or set rules. Thus, tracking foreigners is a chain of activities that regulates the entry and exit of Indonesian territory through immigration control and the presence of foreigners in Indonesia, whether intentional or not. The purpose of the visa is issued in accordance with applicable immigration regulations.

Immigration officers are officers who are obliged and authorized to carry out immigration in certain areas. The immigration management department issues residence permits, re-entry permits and immigration papers. The immigration authority also has the power to impose administrative penalties on foreigners in court proceedings, namely the immigration administration process.

As regulated in the Immigration Law, the authority of immigration is to carry out administrative penalties in the field of immigration which do not cover the legal process. If taking immigration penalties to provide security guarantees and legal justice for foreigners who are subject to immigration penalties, the decision must be made in writing, containing at least the identity information of the person sentenced to immigration, the reasons for the sentence, and the type of punishment.

All foreign workers working in Indonesia must have an IMTA, which is approved by the Manpower Act. Employers who accept foreign workers must obtain written permission from the minister or appointed authorized official. The obligation to obtain a permit does not apply to representatives of foreign countries who employ

IMTA. The validity period of IMTA is a maximum of one year and can be extended at the discretion of the competent authority, the validity period of IMTA can be extended. two years, and years. In the event that the foreign worker acts as a member of the Board of Directors or the Board of Directors, a member of the Board of Directors and a judge .

Plan for Employment of Foreign Workers (RPTKA) is a plan approved by the minister or authorized official to employ foreign workers in a predetermined position within a certain period of time. RPTKA is a document or initial requirement that is used as the basis for an IMTA application.

According to the Immigration Law, all foreigners residing in Indonesia must have a valid residence permit, except for those who are still in detention status or are in prison to undergo criminal proceedings after the stay permit expires. A residence permit is a permit issued by immigration which is given to immigrants or foreign officials to stay and carry out activities in the territory of Indonesia.

With the enactment of the Investment Law, currently foreigners living in the territory of Indonesia are required to have a guarantor to guarantee their existence.

Based on the description of the discussion that has been discussed in detail above, then a comparison is made regarding the legal review of immigration agencies between foreign workers in Indonesia and those in the United States as follows.

In Indonesia, there are 18 regulations regarding foreign workers that have been in effect and 3 of them are still in effect today. However, these rules are different from the Foreign Worker rules that apply in the United States. Any immigrant or Foreign Worker in the United States is governed by US federal laws that regulate immigrants through the INA, the US Federal Regulatory Code and through the Following Decisions of the Administrative and Federal Courts.

Overall every foreign worker who will or is working in the United States will be supervised by the United States Department of Labor or the United States Ministry of Manpower and the local Immigration Agency which is regulated in applicable federal regulations, as well as in Indonesia, every foreign worker will be supervised by the Agency Immigration and the Minister of Manpower as regulated in PP No. 34 of 2021 concerning Foreign Workers.

In 2020, the President of the United States, Donald Trump, issued a policy that restricted foreign workers from entering his country. The problem is the H-1B visa which allows businesses to temporarily recruit foreign workers in specific occupations. Rules issued by the Department of Homeland Security limit employment on H-1B visas by tightening the definition of “specialty”, which determines whether a Foreign Worker can be employed in America. Overall, the regulations are simply trying to make it more difficult for skilled foreign workers to obtain visas and work permits because the process is made more difficult for businesses sponsoring foreign workers.



The influx of foreign workers has an impact on the local workforce, such as diminishing available job opportunities and the level of wages received by local workers. Changes in the level of the economy in the agricultural and industrial sectors are considered as one of the factors that cause foreign workers to enter the labor market.

An interesting hypothesis put forward regarding foreign workers is that the higher the economic development of a country, the more job opportunities for foreign workers. Changes in the level of the economy that lead to a better working environment increase the interest of local workers (TKL) to work in the primary labor market, while job vacancies in the secondary labor market are opportunities for foreign workers. Therefore, changes in the economic level of the agricultural and industrial sectors are often considered as one of the important factors influencing the entry of foreign workers into the labor market of a country.

The influence of foreign workers in Indonesia is not that great, but it is different from the situation in the United States. In the United States, the influx of expatriate workers in California and Los Angeles contributed significantly to the growth of production in various industries in both countries. Meanwhile, the negative impact on local workers (TKL) is very small and is usually focused on local workers from Latin America. According to Simon, the high impact of the influx of foreign workers on economic growth is due to the high growth of the labor force in the two regions. From 1970 to 1980, the workforce increased by 46.1% in California and 52.7% in Los Angeles. This increase in labor force growth was the result of a 5.2% decline in wages in both countries as Foreign Workers entered the labor market .

The United States found that the influx of foreign workers had an unfavorable and significant effect on the level of wages and employment opportunities for local workers. They often work in precarious work, and many even work informally or illegally. This hinders the opportunities for local workers to improve their competence. For this reason, there are a number of studies that believe that foreign workers, especially illegal foreign workers, can reduce employment opportunities and wage levels for local workers

#### IV. Conclusion

Based on the discussion in the description above, it can be concluded as follows:

- a. Based on the results of the discussion regarding the review of the applicable laws in Indonesia, Indonesia has several regulations regarding foreign workers which are frequently updated, until now foreign workers are based on PP No. 34 of 2021 regarding foreign workers which is an amendment to the Job Creation Law. Unlike the case with the United States which tends to add federal laws rather than updating the rules regarding applicable foreign workers.
- b. From the results of the comparison conducted regarding the authority on foreign workers between Indonesia and the United States, foreign workers are equally supervised by the Immigration Agency and the Manpower Agency. Including sanctions given to foreign workers who violate regulations and are illegal in Indonesia and the United States, also apply criminal sanctions (jail), fines and deportation from their country of work and termination of employment contracts that end not giving the foreign worker permission to return to his/her country. country where he works. To obtain a residence permit, foreign workers in Indonesia are required to have Vitas and ITAS with a stay of 5 years and a maximum extension of 1 time for a total of 10 years, as well as accompanying Indonesian Migrant Workers (TKI), while foreign workers in

the United States only need an H1B visa. or an H2B visa with a stay of 3 years and one extension for a total of 6 years.

- c. Foreign workers in Indonesia are seen as not having a bad impact on Local Workers (TKL), but it is different from the case in America which has made President Donald Trump make a policy to limit foreign workers who will work in his country. Foreign workers in America are considered to be able to narrow jobs so that the impact will reduce the level of the economy in that country.

### Suggestion

Based on the discussion above, the researcher compares regulations on foreign workers with the United States, because Indonesia as a country that started with foreign workers, can initiate or accept regulations on foreign workers outside the United States. An example of an appropriate rule to remove Indonesia from the US foreign employment law is to limit and control foreign workers working in Indonesia so as not to reduce job opportunities in Indonesia. However, there are also regulations related to foreign workers in the United States that have not been implemented by Indonesia, namely the freedom of foreign workers to choose jobs. This is because Indonesia still has unemployment problems and if foreign workers are free to choose their jobs in Indonesia, then Indonesian workers will definitely not be able to compete and the unemployment rate will be higher.

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