

Legal Protection for Foreign Workers in Indonesian Companies

Haryono Edi Hermawan

Tangerang Raya University, Tangerang, Indonesia

Email: haryono@gmail.com

Abstract

This study aims to understand the labor regulations for foreign workers in Indonesia. It employs a descriptive qualitative approach, using data collection techniques such as field surveys, direct observation of field conditions, and in-depth interviews with key respondents to gather accurate facts. The use of foreign workers in Indonesia remains relatively high and is challenging to avoid due to several factors, including the need for capital investment for development, the ongoing process of technology transfer, and limitations in local labor that meets required qualifications. Additionally, the use of advanced technology requiring skilled experts and the increasing demand from businesses that rely on foreign labor are key reasons. Indonesia has established legal regulations concerning foreign workers, including legal protections related to compensation fees for foreign labor and legal sanctions for employers who do not pay these fees. This normative legal research is conducted through the examination of theories, principles, regulations, and concepts. Thus, legal protection for foreign workers in Indonesia mandates that employers pay compensation fees for employing foreign workers, with administrative sanctions imposed on employers who fail to fulfill this obligation.

Keywords: Legal Protection, Foreign Workers

A. Introduction

Indonesia possesses the capability to independently manage its natural resources. However, a significant portion of the workforce still lacks the qualifications desired by employers. Limited skills, expertise, and educational attainment result in a workforce that is often unprepared to handle the complexities of resource management, hindering economic growth. With national development progressing across sectors, workforce challenges particularly those affecting economic dimensions—have arisen, prompting businesses to increasingly seek skilled professionals with specialized knowledge.

The advent of global trade, catalyzed by the World Trade Organization's (WTO) promotion of free trade in 1995, initiated a borderless exchange of goods and services, fundamentally transforming commerce. This globalization has brought about the flow of capital worldwide, including significant foreign investments in Indonesia. Consequently, foreign expertise is needed to support these investments, especially skilled professionals who can manage and optimize capital effectively.

With industries shifting toward digitalization, Indonesian local labor has yet to fully adapt, necessitating foreign expertise to help guide and develop the local workforce. Currently, the use of foreign labor remains substantial and challenging to avoid due to several key factors: 1. The necessity of foreign labor for ongoing capital investments and technology transfer to drive

sustainable national development. 2. A shortage of skilled and proficient Indonesian workers able to replace foreign expertise. 3. Limited availability of local workers who meet the necessary qualifications for specific roles. 4. The use of high-risk, advanced technology that requires specialized expertise to operate safely. 5. A rising number of businesses requiring skilled foreign labor.

Hiring foreign professionals presents substantial advantages for Indonesia, including technology and knowledge transfer, which in turn enhances the quality of the local workforce. This provides an opportunity for Indonesia to grow towards the standards of developed nations. Foreign workers can offer significant benefits to companies, allowing them to adopt advanced production systems and management practices from more developed economies. Historically, nearly every country has transitioned from developing to developed status, beginning with foreign investment.

In the investment process, foreign labor plays a crucial role, particularly in sectors requiring specific expertise. Additionally, one key consideration in employing foreign workers is the Payment of Compensation for Foreign Workforce Utilization, which mandates that employers in all companies hiring foreign workers comply with compensation obligations.

B. Methods

This study employs a normative juridical approach, beginning with an examination of theories, principles, regulations, and ultimately concepts. The research follows a doctrinal legal method, or library research, grounded in written regulations closely related to library resources as a secondary source of legal materials. This legal research is a form of scientific inquiry based on specific methods, systems, and thought processes aimed at studying and analyzing legal phenomena.

1. Data Collection Techniques

- a. Conducting interviews with legal practitioners, judges, policymakers, or affected individuals can provide qualitative insights into the practical application of laws and regulations. Interviews can be structured, semi-structured, or unstructured, depending on the research goals.
- b. Surveys can be used to gather quantitative data from a larger population. They may include questionnaires or structured interviews targeting specific legal issues or public perceptions regarding laws and policies.
- c. Direct observations of legal proceedings, such as court trials or legislative sessions, allow researchers to gather firsthand information about the legal process, behaviors, and interactions.
- d. Organizing focus groups with stakeholders (e.g., legal experts, community members, or advocacy groups) enables a collaborative discussion on specific legal issues, generating diverse perspectives and insights.

2. Data Analysis

Researchers may analyze existing datasets or records maintained by government agencies, NGOs, or research institutions. This method is useful for understanding trends and patterns in legal enforcement or compliance. This technique involves systematically coding and analyzing text data from legal documents, media reports, or public statements to identify themes, trends, and biases in legal discourse.

C. Results and Discussion

1. Legal Protection for Foreign Workers through Compensation Funds for Foreign Labor Usage

As a state governed by law, as stipulated in the 1945 Constitution of the Republic of Indonesia, Indonesia emphasizes the necessity of a robust legal foundation as a guiding principle. This framework aims to ensure legal certainty, uphold fairness, and support the democratic legitimacy of the nation's operations. In this context, all activities in Indonesia must be conducted based on the rule of law. Consequently, Indonesia, as a state governed by law, is obligated to provide legal protection to all legal subjects within its territory, including foreign workers employed in the country. The law should thus guarantee legal protections for all individuals.

According to Article 47(1) of Law No. 13 of 2003 on Manpower, "Employers are obligated to pay compensation to each foreign worker employed." This provision establishes the requirement for employers to pay compensation. The compensation for employing foreign labor must be paid by any company utilizing foreign workers, which includes submitting required documentation such as the foreign worker's data from their KITAS (Limited Stay Permit) and passport.

Furthermore, Article 32 of the Ministry of Manpower Regulation No. 12 of 2013 on the Procedures for Employing Foreign Workers mandates that all employers pay compensation for foreign labor usage, specifying a compensation rate of USD 100 per position per month. Payment must be made upfront for each foreign worker. If the contract period is 12 months, the employer must pay a total of USD 1,200 to the designated account as assigned by the ministry.

In addition, the Ministry of Manpower Regulation No. 35 of 2015, amending Regulation No. 16 of 2015 on the Procedures for Employing Foreign Workers, outlines further requirements in Article 40, which include:

- a. Foreign Labor Compensation Funds (DKP-TKA) as outlined in Article 38(1) are set at USD 100 per position per month for each foreign worker, payable upfront.
- b. Employers hiring foreign workers for less than one month are still required to pay one full month's compensation.
- c. The payment form includes details such as: Employer's name, Foreign worker's name, Foreign worker's position, Duration of employment, and Total amount paid.
- d. Employers of foreign workers must deposit the compensation fund into the designated government account specified by the Ministry.

If a foreign worker's employment is less than one month, the employer is still required to pay a full month's compensation, as outlined in Article 15 of Presidential Regulation No. 20 of 2018 on the Employment of Foreign Workers:

- a. Employers are required to pay foreign labor compensation after receiving notification.
- b. Payment is to be made through a bank designated by the Ministry.
- c. Compensation payments are considered non-tax state revenue.

Article 24(1) of Presidential Regulation No. 20 of 2018 mandates that compensation payments be made annually in accordance with the duration of the foreign worker's employment in Indonesia. This Foreign Labor Compensation Fund is a prerequisite for obtaining or extending a KITAS, underscoring the requirement that companies comply with regulations for the processing of foreign worker permits.

2. Legal Sanctions for Employers Who Fail to Pay Foreign Worker Compensation

In the event of labor law violations, penalties or sanctions are imposed as with any other legal infringement. Labor laws outline various sanctions for violations, depending on the type of offense committed. Sanctions serve as a legal mechanism imposed by the state to ensure that offenders understand their wrongdoing and are deterred from repeating the offense.

In industrial relations, three main types of sanctions may be imposed for violations: administrative, civil, and criminal sanctions. Articles 183 to 189 of Law No. 13 of 2003 on Labor provide for criminal sanctions, including imprisonment, detention, and monetary fines. Meanwhile, Article 190 of the same law specifies administrative sanctions, one of which includes the obligation for employers to pay compensation for each employed foreign worker.

Failure to fulfill compensation payments constitutes a legal violation on the part of the employer and may result in administrative penalties. Administrative sanctions are generally imposed by authorities to address non-compliance with legal requirements. Sanctions against employers who fail to pay foreign worker compensation may include warnings, written notices, restrictions on business activities, permit revocation, and even suspension of production operations.

Article 190 (1) of Law No. 13 of 2003 on Labor empowers the Minister or designated officials to impose administrative sanctions for violations as outlined in Articles 5, 6, 15, 25, 38 (2), 45 (1), 47 (1), 48, 87, 106, and 126 (3), as well as Articles 160 (1) and (2) of this law and its implementing regulations. Sanctions that may be imposed under Article 190 (2) include:

- a. Warning
- b. Written notice
- c. Business activity restriction
- d. Business suspension
- e. Permit cancellation
- f. Registration revocation
- g. Temporary halt of some or all production equipment
- h. Permit revocation

Based on the articles previously explained, employers who fail to pay the compensation fund for employing foreign workers—a mandatory obligation for all employers of foreign labor may face administrative sanctions. A written reprimand serves as a formal warning for employers who violate this legal requirement, such as neglecting to pay the required foreign labor compensation fund. Business activity restrictions can limit production capacities, whether in goods or services, for a specified period and may also delay business licenses in certain locations where a company operates multiple projects. Temporary suspension of part or all production equipment entails halting some or all operations for goods or services production within a specified timeframe. Business activity suspension implies ceasing all production processes of the company's goods and services for a set period.

D. Conclusion and Suggestion

1. Conclusion

Based on the research findings and discussions regarding regulations on foreign labor, the following conclusions can be drawn:

- a. Legal protections for employees regarding the foreign worker compensation fund are provided under Indonesia's labor regulations concerning foreign employment. These laws mandate that every employer using foreign labor must pay compensation for employing foreign workers.
- b. Sanctions imposed on employers who do not fulfill their obligations to pay the foreign labor compensation fund include administrative penalties such as reprimands, written warnings, business activity restrictions, license cancellations, suspension of part or all production equipment, and revocation of licenses, as outlined in Article 190 (1) and (2) of Law No. 13 of 2003 on Employment.

2. Suggestion

From the analysis and conclusions concerning the protection of foreign workers, several recommendations can be made, as follows:

- a. Legal protections related to the foreign worker compensation fund should be enforced in full accordance with current laws, and employers must strictly adhere to all regulations, especially those governing compensation for employing foreign labor.
- b. Stricter penalties should be applied to employers who fail to pay the foreign worker compensation fund to ensure deterrence, preventing repeat offenses by employers.

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