

Legal Analysis of the use of Foreign Labor in Construction Projects in Indonesia

Nurlaelah¹, Nursina²

¹Civil Engineering Department, Faculty of Engineering, UMJ, Jl. Cempaka Putih Tengah XXVII, Jakarta 10510

²Department of Management, Faculty of Economics, Persada University of Indonesia YAI, Jl. Pangeran Diponegoro No.74, RT.2/RW.6, Kenari, Kec. Senen, Kota Jakarta 10430

ABSTRACTS: This research aims to analyze the legal aspects of employing foreign workers in construction projects in Indonesia and to evaluate the effectiveness of the regulations governing the licensing, supervision, and sanctions related to the use of foreign labor. Alongside increasing foreign investment and infrastructure development, the employment of foreign workers (TKA) in the construction sector has grown, raising legal concerns such as weak enforcement, overlapping regulations, and lenient sanctions for violations. This study employs a normative juridical method with a statutory approach, supported by secondary data from government reports and public records. The findings indicate that although regulations regarding foreign labor are formally established through Law No. 13 of 2003 in conjunction with Law No. 11 of 2020 and Presidential Regulation No. 20 of 2018, their implementation remains ineffective. Weak inter-agency coordination and a lack of labor inspectors are identified as major factors contributing to poor law enforcement. Therefore, policy reform is necessary, including strengthening supervision systems, improving transparency in licensing processes, and enforcing stricter legal sanctions to ensure fair, legal, and locally beneficial management of foreign labor in the construction sector.

KEYWORDS: foreign labor, construction project, labor law, supervision, labor policy

INTRODUCTION

The construction sector in Indonesia has experienced significant growth over the past few decades, in line with the government's accelerated infrastructure development agenda. Large-scale projects such as toll roads, ports, airports, and industrial zones serve as indicators that this sector is one of the main drivers of national economic development. In practice, these projects involve a variety of stakeholders, including a workforce with specialized technical skills. However, the high demand for construction labor cannot always be met by the local workforce, especially in fields that require advanced expertise or specialized technology. This condition has led to the increasing presence of foreign workers (TKA) in Indonesian construction projects, occupying roles such as technical experts, engineers, and field supervisors.

In 2023, the number of foreign workers (TKA) employed in Indonesia reached 168,048, marking a significant increase compared to the previous year, which recorded 133,327 workers. This growth indicates a relatively high dependence on foreign labor, particularly in large-scale and strategic projects. The majority of foreign workers in Indonesia come from China, totaling 82,623 individuals or approximately 49.18% of the overall workforce. Although official data distinguishing the number of foreign workers by employment sector is not fully available, the construction

sector is one of the key areas that absorb a substantial number of foreign workers, especially in technical and managerial positions such as civil engineers, technical supervisors, and project managers.

Overall, the construction sector in Indonesia employed approximately 9.25 million domestic workers as of August 2023. However, the proportion of foreign workers (TKA) in this sector remains significant, especially in regions experiencing intensive infrastructure development such as Central Sulawesi, North Maluku, West Java, DKI Jakarta, and Banten. These areas are recorded as the provinces with the highest number of foreign workers in Indonesia. The presence of foreign workers in construction projects often raises concerns regarding job competition and the effectiveness of technology transfer policies. Therefore, stricter government supervision and regulation are necessary to ensure that the employment of foreign workers complies with applicable laws and does not neglect the rights and opportunities of the local workforce.

However, the use of foreign workers (TKA) in this sector generates its own legal dynamics, particularly in the context of labor regulations and immigration licensing. The Indonesian government, through Law No. 13 of 2003 on Manpower (which has been amended by Law No. 6 of 2023 on Job Creation) and Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers, has clearly regulated the

mechanisms, requirements, and responsibilities of employers using foreign labor. Despite the existence of these regulations, in practice, various issues persist, such as weak supervision of work permits, the employment of foreign workers without a Foreign Worker Usage Plan (RPTKA), and social conflicts arising from the perception that foreign workers are "taking over" local jobs.

Additionally, there are concerns regarding the legal protection of local workers' rights when competing with foreign workers, as well as the extent to which construction companies applying foreign labor uphold the principles of justice and legal certainty. On the other hand, companies also have the right to obtain competent labor to ensure project quality, making this issue a dilemma between industrial needs and national interests.

Based on these issues, an in-depth legal study is necessary to examine how the use of foreign workers in Indonesia's construction sector is regulated, how its implementation is carried out in practice, and what legal implications arise concerning labor employment and the legal protection of local workers. This research is expected to provide both academic and practical contributions in establishing a fair, orderly, and compliant governance framework for the use of foreign workers in accordance with Indonesian labor law principles.

LITERATURE REVIEW

A. Labor Law and Foreign Workers

Labor law governs the employment relationship between workers and employers, including the rights and obligations of each party. According to Sudikno Mertokusumo (2006), labor law is a set of legal norms that regulate the relationship between laborers and employers, as well as their relationship with the government.

The use of foreign workers (TKA) in the construction sector falls within the scope of labor law because it involves regulating cross-border employment relationships. Based on Law No. 13 of 2003 on Manpower (partially amended by Law No. 6 of 2023 on Job Creation), the government grants permit for the use of foreign workers for certain positions and under specific conditions, while still prioritizing domestic labor (Article 42 of Law No. 13/2003).

B. Regulations on the Use of Foreign Workers in Indonesia

The employment of foreign workers in Indonesia is regulated by several key regulations, including:

1. Law No. 13 of 2003 on Manpower
2. Law No. 6 of 2023 on the Ratification of the Job Creation Law
3. Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers
4. Minister of Manpower Regulation No. 8 of 2021 on Procedures for the Use of Foreign Workers
5. Minister of Law and Human Rights Regulation No. 27 of 2014 on Limited Stay Permits

Presidential Regulation No. 20 of 2018 stipulates that every employer of foreign workers must have a Foreign Worker Usage Plan (RPTKA) as the basis for obtaining a work permit. The RPTKA contains information such as the number of foreign workers employed, job positions, and the duration of employment. The purpose of this regulation is to ensure that the use of foreign workers is selective, limited, and only for positions that cannot be filled by local workers.

C. Theory of Justice and Legal Certainty

In analyzing regulations on the use of foreign workers (TKA), approaches based on the theory of justice and the theory of legal certainty can be applied. Aristotle divided justice into distributive justice and corrective justice. In the context of foreign workers, distributive justice means that employment opportunities should be allocated fairly, especially to Indonesian citizens.

Meanwhile, Gustav Radbruch stated that law must fulfill three fundamental values: legal certainty, justice, and utility. Legal certainty is important to ensure that the implementation of regulations related to foreign workers is consistent and non-discriminatory.

D. Construction Industry and Foreign Experts

The construction sector is a strategic sector that heavily depends on technical expertise. According to BPS (2022), the construction sector absorbs more than 8 million workers in Indonesia; however, the majority are low-skilled laborers. Under certain conditions, large-scale projects require expertise that is not yet available locally, such as the use of Building Information Modeling (BIM) technology or internationally based project management systems. Therefore, the employment of foreign workers in certain positions can be legally justified, provided that priority is given to training and technology transfer to local workers (Hermawan, 2021).

RESEARCH METHOD

A. Research Approach

This study employs several approaches, including:

1. Statute Approach

Used to analyze relevant legislation, such as Law No. 13 of 2003 on Manpower (and its amendments), Presidential Regulation No. 20 of 2018, and Minister of Manpower Regulation No. 8 of 2021.

2. Conceptual Approach

Used to understand the concepts of labor law, foreign workers, as well as the principles of justice and legal certainty within Indonesian labor law.

B. Sources of Legal Materials

1. Primary Legal Materials

Main binding legal materials, such as:

- Law No. 13 of 2003 on Manpower
- Law No. 6 of 2023 on Job Creation
- Presidential Regulation No. 20 of 2018
- Minister of Manpower Regulation No. 8 of 2021

- Relevant court decisions (if any)

2. Secondary Legal Materials

Materials that provide explanations of the primary legal materials, such as:

- Textbooks and labor law literature
- Legal journals and scientific articles
- Previous research findings
- Opinions of academics and legal practitioners

3. Tertiary Legal Materials

Supporting sources that help in understanding primary and secondary legal materials, such as:

- Legal dictionaries
- Legal encyclopedias
- Directories of legislation

C. Legal Material Collection Techniques

Data collection is conducted through library research, which involves reading, reviewing, and studying legal documents, textbooks, journals, and relevant legislation. If the researcher wishes to deepen empirical data, interviews may also be conducted with sources such as officials from the Ministry of Manpower or labor inspectors, but still within the context of secondary legal materials.

D. Legal Material Analysis Techniques

Legal materials are analyzed qualitatively and normatively by interpreting the applicable legal norms and comparing them with field practices and relevant legal theories. The results of this analysis are then used to draw descriptive-analytical and prescriptive conclusions, providing suggestions or recommendations for improvements within the legal system.

RESULT AND DISCUSSION

A. Overview of the Use of Foreign Workers in the Construction Sector

The construction sector is one of the strategic sectors supporting national development and employing a large workforce. Along with the acceleration of infrastructure development in Indonesia, the demand for skilled experts with high technical competence has increased. It is in this context that foreign workers (TKA) are increasingly employed, especially to fill certain positions that are considered not yet fully met by local workers, such as specialist civil engineers, international project managers, heavy equipment technicians, and structural design consultants.

The use of foreign workers in the construction sector is generally carried out by multinational companies or in large-scale projects, including national strategic projects (PSN) involving international cooperation. However, the employment of foreign workers must comply with several legal requirements as stipulated in Law No. 13 of 2003 (in conjunction with the Job Creation Law) and Presidential Regulation No. 20 of 2018. Violations of the procedures for

employing foreign workers often occur, particularly in supervision and the transfer of technology to local workers.

B. Legal Analysis of the Use of Foreign Workers in Construction Projects

1. Compliance with the Foreign Worker Utilization Plan (RPTKA)

Based on the provisions of Presidential Regulation No. 20 of 2018 and Minister of Manpower Regulation No. 8 of 2021, employers of foreign workers are required to submit and obtain an RPTKA before employing foreign workers. However, in practice, many construction projects often employ foreign workers without an RPTKA or extend their roles beyond the designated positions. The analysis shows that weak supervision by the Ministry of Manpower and local governments creates opportunities for both administrative and substantial violations of foreign worker usage regulations. This results in disrupted prioritization of local workers and breaches the principle of distributive justice.

2. Principle of Local Worker Protection and Technology Transfer

Article 42 of the Manpower Law stipulates that the use of foreign workers is only allowed for certain positions and within a limited period, with the obligation to conduct knowledge transfer. However, based on reports from the Ombudsman and the annual evaluations by the Ministry of Manpower, many employers fail to effectively fulfill this obligation.

The systematic failure to implement technology transfer indicates weak enforcement of the principles of justice and legal utility. This also contradicts the long-term goals of developing Indonesia's human resources.

C. Factors Causing Weak Law Enforcement on the Use of Foreign Workers

The weak enforcement of laws regarding the use of foreign workers (TKA) in Indonesia's construction sector is a complex and multidimensional problem. One of the main factors is the insufficient number and capacity of labor inspectors in the field. In many cases, the number of inspectors is disproportionate to the vast work areas and the numerous active construction projects, resulting in suboptimal supervision. Additionally, ineffective coordination among agencies, such as the Ministry of Manpower, Immigration, and Regional Manpower Offices, often leads to overlapping authorities and slow responses to violations.

Another factor is the low transparency in the foreign worker permit process, including the approval of the Foreign Worker Utilization Plan (RPTKA). This creates opportunities for procedural abuse by companies employing foreign workers. The influence of investment and political interests also acts as a barrier, where strategic projects involving international cooperation or large foreign capital are often “immune” to strict supervision in order to maintain a

favorable investment climate. Furthermore, relatively light legal sanctions that fail to deter violators exacerbate weak law enforcement. In some cases, companies found guilty of violations are only subjected to administrative penalties without further criminal prosecution or deportation.

This situation sets a negative precedent for the rule of law in the labor sector and neglects the rights of local workers who have the potential to be empowered. Therefore, structural reforms and capacity enhancements for supervisory institutions are necessary to ensure that law enforcement regarding the use of foreign workers is carried out firmly, fairly, and transparently.

D. Legal Implications and Policy Recommendations

The use of foreign workers (TKA) in the construction sector carries significant legal implications, especially when not in compliance with applicable laws and regulations. Normatively, violations of the provisions governing the use of foreign workers can result in administrative sanctions as stipulated in Law No. 13 of 2003 on Manpower in conjunction with Law No. 11 of 2020 on Job Creation, as well as Presidential Regulation No. 20 of 2018 on the Use of Foreign Workers. These legal consequences may include the revocation of foreign worker permits, imposition of administrative fines, deportation of illegal foreign workers, and sanctions against companies that fail to fulfill obligations related to technology transfer and training for local workers. However, weak implementation and law enforcement have minimized the deterrent effect of these sanctions. Many cases are resolved administratively without further legal action, indicating suboptimal legal protection for domestic workers.

Therefore, comprehensive and implementable policy recommendations are necessary to improve governance of foreign worker utilization in the construction sector. First, the implementation of a digital and real-time monitoring system should be prioritized to ensure cross-agency oversight of all licensing and reporting processes related to foreign workers. Second, increasing the capacity of labor inspectors and enhancing transparency in the approval of the Foreign Worker Utilization Plan (RPTKA) must be prioritized. Third, legal sanctions need to be strengthened to include not only administrative penalties but also criminal charges for serious violations. Fourth, affirmative policies for local workers, such as government- and industry-supported training and competency certification programs, should be prioritized to ensure that the presence of foreign workers does not hinder the development of domestic human resources. Fifth, independent audits of large-scale projects involving foreign workers are crucial to ensure compliance with regulations and to safeguard legal integrity and national labor sovereignty.

RECOMMENDATIONS

1. The government needs to enhance integrated digital supervision of foreign worker (TKA) utilization in construction projects.

2. Every project involving foreign workers must be required to submit periodic reports on technology transfer.
3. Revisions to the Ministry of Manpower regulations (Permenaker) should strengthen mechanisms for firm and measurable administrative sanctions.
4. There should be improved synergy between the Ministry of Manpower, Immigration authorities, and Regional Governments in screening and monitoring the use of foreign workers.

CONCLUSION

Based on the results of the research and analysis of legislation as well as the practice of employing Foreign Workers (TKA) in construction projects in Indonesia, the following conclusions can be drawn:

1. The use of Foreign Workers in construction projects in Indonesia is legally permitted, provided that the applicable laws and regulations are complied with, particularly by preparing and obtaining approval for the Foreign Worker Utilization Plan (RPTKA), in accordance with Presidential Regulation No. 20 of 2018 and Minister of Manpower Regulation No. 8 of 2021.
2. The legal obligations of companies employing Foreign Workers have not been optimally implemented. Numerous violations have been found, including the employment of Foreign Workers without official permits, neglect of technology transfer obligations to local workers, and exceeding the positions stipulated in the RPTKA.
3. Supervision and law enforcement related to the use of Foreign Workers remain weak due to the limited number of labor inspectors, lack of transparency in the licensing process, and conflicts of interest between legal compliance and the investment interests of national strategic projects.
4. From a legal perspective, the misuse of Foreign Workers in violation of regulations results in juridical implications such as administrative sanctions up to deportation; however, the effectiveness of law enforcement in practice remains questionable.

Furthermore, Suggestions for future research on the legal analysis of the use of foreign labor in construction projects in Indonesia could focus on several areas. First, it would be valuable to examine how recent changes in regulations affect the rights and working conditions of foreign workers in this sector. Additionally, comparative studies between Indonesia and other countries in the region regarding foreign labor laws in construction could provide broader perspectives and best practices. Future research could also investigate the effectiveness of enforcement and compliance mechanisms in ensuring that companies adhere to labor laws related to foreign workers. Moreover, exploring the social and economic impacts of employing foreign labor on local workers within the construction industry would offer a more comprehensive understanding of the issue. Lastly, studies

incorporating the experiences and viewpoints of foreign workers themselves could enrich legal analyses with qualitative insights and highlight areas needing policy improvement.

REFERENCES

1. Aristoteles. (2008). *Nicomachean Ethics*. Jakarta: Pustaka Pelajar.
2. Hermawan, D. (2021). The Role of Foreign Workers in National Construction Projects: A Review of Regulations and Practices. *Journal of Law & Development*, 51(1), 115–132.
3. Hasan, R. (2019). Juridical Analysis of the Use of Foreign Workers in Construction Projects in Indonesia. *Lex Et Societatis Law Journal*, 7(3), 89–98.
4. Law of the Republic of Indonesia Number 13 of 2003 on Manpower.
5. Law of the Republic of Indonesia Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation.
6. Mertokusumo, Sudikno. (2006). *Legal Discovery: An Introduction*. Yogyakarta: Liberty.
7. Presidential Regulation of the Republic of Indonesia Number 20 of 2018 on the Utilization of Foreign Workers.
8. Regulation of the Minister of Manpower Number 8 of 2021 on Procedures for the Utilization of Foreign Workers.
9. Radbruch, Gustav. (2006). *Legal Philosophy*. (Translation). Jakarta: Pustaka Pelajar.
10. Statistics Indonesia. (2022). *Indonesian Labour Statistics*. [Online] Available at: <https://www.bps.go.id>
11. Wulandari, A. (2020). Juridical Review of the Implementation of RPTKA in the Construction Sector. Undergraduate Thesis, Faculty of Law, Diponegoro University.