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The Political Legal Implications Of The Liberalization Of Foreign Labor Use in National Strategic Projects From The Perspective Of The Job Creation Law

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Abstract: *Legal politics have a significant impact in the era of globalization and economic growth, especially in the context of the use of Foreign Labor in Indonesia's national strategic projects. While the liberalization of foreign labor is intended to support foreign investment and infrastructure development, it has also raised issues regarding the legal politics related to the liberalization of foreign labor use in national strategic projects from the perspective of the Job Creation Law, and how these legal politics impact local employment. The research methodology employed in this study is juridical normative, using legal regulations as the basis for analyzing these issues. The research results indicate that the legal politics in the form of policy that has led to the liberalization of foreign labor use has created inequality in employment opportunities between Foreign Labor and local workers, making it difficult for local workers to find suitable employment. This is due to the government being the employer of Foreign Labor, with the authority to regulate their use in national strategic projects. The implications of liberalizing the use of Foreign Labor have had an impact on employment opportunities and the welfare of local workers, which has led to an unbalanced situation in national strategic projects. The dependence on Foreign Labor increases project costs, while trained local workers can reduce them.*

Keyword: *Legal Politics, Liberalization, Foreign Labor, National Strategic Projects, Job Creation Law.*

INTRODUCTION

Legal politics have a significant impact on the era of globalization and rapid economic growth, in line with the implementation of the ASEAN Economic Community (AEC). Indonesia has also adapted in various fields, including the labor sector, due to the

implementation of the AEC and the presence of foreign labor forces.¹ In Indonesia, a number of national strategic projects have been established as part of the government's efforts to achieve sustainable economic development. As a part of these efforts, the use of Foreign Labor in these projects has become a significant topic in the realm of labor law and national policies. In recent years, the Indonesian government has relaxed regulations regarding the use of foreign labor in national strategic projects, including under the legal framework provided by the Job Creation Law.

Legal politics have transformed the phenomenon of globalization and brought about significant changes in the global economy. One crucial aspect of this globalization is the liberalization of the use of foreign labor, which refers to policies that facilitate and regulate the mobility of workers between countries. Some countries, including Indonesia, have adopted a liberal approach to foreign labor in an effort to support economic growth, foreign investment, and infrastructure development. However, these measures also have profound implications for local employment. Globalization can impact workforce performance due to the influx of foreign direct investment.²

According to Mahfud MD, legal politics encompasses: First, legal development, which involves creating and updating legal materials to make them fit the needs. Second, the implementation of existing legal provisions, including clarifying the functions of institutions and developing law enforcers. As a country governed by the rule of law, Indonesia, in the process of forming legal regulations, cannot be separated from legal politics. Furthermore, it is argued that legal politics is the state's official policy (legal policy) regarding laws that will be enacted or repealed (establishing new rules or revoking old ones) to achieve the state's objectives..³

Legal politics related to liberalization in Indonesia concerning the labor market is addressed by the government through the revision of various labor-related regulations, which include provisions regarding Foreign Workers.⁴ The liberalization of foreign labor has become a significant concern due to its impact on local labor in Indonesia. As a country with a large and diverse labor market, Indonesia has experienced significant changes in labor dynamics as a result of this liberalization policy. These changes include issues such as increased competition between local and foreign workers, the potential for lower wages for local workers, dependence on foreign labor in specific sectors, and disparities in skills between local and foreign labor. Therefore, understanding the implications of liberalizing the use of foreign labor is crucial in the context of labor law and labor regulations in Indonesia.

Based on the issues outlined above, the problems related to the legal politics of this liberalization policy have raised several legal and social issues, including questions about its impact on employment opportunities and the well-being of local labor. In this context, it is relevant to examine the existing regulations and the government's role in regulating the use of foreign workers in national strategic projects in Indonesia. Politically, the existence of regulations created by the government in the Omnibus Law, including its implementing regulations, falls within the legal framework governing the use of foreign labor. This includes regulations related to work permits, foreign labor quotas, training requirements, and the protection of the rights of local labor. However, it is essential to continually evaluate and adjust these regulations to strike a balance between supporting foreign investment and protecting the interests of local labor. With so many stakeholders involved, including the government,

¹ Suhandi, 2016, Pengaturan Ketenagakerjaan Terhadap Tenaga Kerja Asing Dalam Pelaksanaan Masyarakat Ekonomi ASEAN di Indonesia, *Jurnal Perspektif* XXI(2), h. 136

² Agusmidah, 2010, *Hukum Ketenagakerjaan Indonesia: Dinamika Dan Kajian Teori*, Bogor: Ghalia Indonesia, h. 111.

³ M. Mahfud MD, 2001, *Politik Hukum di Indonesia, Cet. II*, Jakarta: LP3ES, h. 9.

⁴ Agusmidah, 2011, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum*, Medan: Sofmedia, h. 350.

companies, labor unions, and civil society organizations, the challenge of addressing the implications of liberalizing the use of foreign labor in the context of Indonesian labor law becomes increasingly complex. Therefore, an in-depth and ongoing legal political study is required to understand, address, and manage these implications so that local labor can remain protected while supporting sustainable economic growth.

Based on the problem statement outlined in the background above, the problems can be formulated as follows: First, how is the legal political aspect related to the liberalization of the use of foreign labor in national strategic projects from the perspective of the Omnibus Law? Second, what are the legal political implications of the liberalization of foreign labor on local labor from the perspective of the Omnibus Law?

RESEARCH METHOD

The research method used in this study is normative legal research. Normative legal research is a process to discover legal rules, legal principles, and legal doctrines to address legal issues.⁵ This research is descriptive-analytical because it focuses on analyzing issues related to the legal political implications of liberalizing the use of foreign labor in national strategic projects and then examines the articles of legislation that have been violated.

The problem approach used in this research is a legal approach that involves examining laws related to the topic under investigation and regulations relevant to the legal issues being studied. This includes Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 Concerning Job Creation into Law, Law No. 13 of 2003 concerning Manpower, and Minister of Manpower Regulation No. 8 of 2021 concerning the Implementation of Government Regulation No. 34 of 2021 on the Use of Foreign Workers. These three legal products serve as the legal reference basis for analyzing the issues related to the legal political implications of liberalizing the use of foreign labor in national strategic projects.

DISCUSSIONS

Legal Politics Related to the Liberalization of Foreign Labor in National Strategic Projects in Indonesia

The legal political implications of Foreign Labor policies have resulted in disparities in the presence of local labor in Indonesia. The regulations provide preferences to Foreign Labor, which can lead to inequalities in employment opportunities between Foreign Labor and local labor. This can mean that Foreign Labor may find it easier to secure employment compared to local labor, who may face difficulties in finding suitable employment. In this situation, local labor may struggle to find employment that matches their background. The government's role in addressing labor issues has not been maximized because it is still influenced by the factors causing an excess of Foreign Labor in Indonesia.⁶ This can lead to unemployment or a decrease in income among local labor. Ultimately, local labor may be forced to become labor under Foreign Labor. Considering the regulations that provide more leeway to Foreign Labor compared to local labor, which should be pioneers in project development in Indonesia, this situation raises issues related to the use of Foreign Labor in national strategic projects.

The problem of using Foreign Labor in national strategic projects began with the enactment of the Job Creation Law, which serves as the legal basis for the employment of

⁵Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Cetakan-6, Jakarta: Kencana Prenada Media Group, h.3.

⁶ Nurhidayati, 2019, Perizinan Tenaga Kerja Asing, Kebijakan dan Implementasinya, *Widya Cipta: Jurnal Sekretari Dan Manajemen*, 3(2), hal. 247.

Foreign Labor in projects designated as national strategic in Indonesia. The legal basis for the government's use of Foreign Labor is governed by Article 37, paragraph (1) of the Job Creation Law, which states that the implementation of labor placement, as referred to in Article 35, paragraph (1), consists of government agencies responsible for labor and labor placement in the private sector. The substantive issue raised is the involvement of the government as a legal entity responsible for the placement of Foreign Labor, especially in government strategic projects that involve vital sectors of national development and employ Foreign Labor. Given the sporadic nature of the policy implementation, and its limited ability to solve problems in the field, it is crucial to adopt strategic measures in policy implementation.⁷

The impact of the legal policy direction on the government's involvement in the use of Foreign Labor in national strategic projects is a crucial aspect, as the government plays a central role in overseeing and regulating the use of Foreign Labor in national strategic projects. This includes policy-making, approval of the placement of Foreign Labor while considering local labor, and ensuring that all legal procedures are fulfilled for the placement of Foreign Labor. The government is responsible for ensuring that all legal procedures are met, particularly in granting visas and work permits and meeting the requirements that facilitate Foreign Labor's engagement in these strategic projects.

The involvement of legal policy by the government should ideally prioritize national interests regarding local labor in the context of national strategic projects. The government should ensure that the use of Foreign Labor does not harm local labor and supports the goals of national development. Based on this, the government should make certain that the use of Foreign Labor does not threaten local jobs and that local labor has a fair opportunity to find employment. The government should regulate fair competition between Foreign Labor and local labor. This can include setting quotas for Foreign Labor allowed in specific projects and establishing training or qualification requirements that must be met by Foreign Labor to ensure that they not only fulfill the project's needs but also benefit local labor. On the other hand, the government should also ensure that the wages paid to Foreign Labor and local labor are fair and comply with applicable labor standards. This is to prevent Foreign Labor from receiving higher wages than what should be paid to similarly qualified local labor. The essence of regulation is ultimately aimed at advancing the national economy and expanding employment opportunities.⁸

Politically, the provision of Foreign Labor by private institutions, as regulated by Article 37 paragraph (2) of the Job Creation Law, which requires compliance with Business Licensing issued by the Central Government, is vulnerable to misuse in the development of national strategic projects. For example, in the construction of a toll road that involves foreign investors, this can potentially serve as another gateway to introduce more Foreign Labor into the construction sector. This poses an additional challenge for the government, which determines the use of Foreign Labor for national strategic projects.

The government's legal policy in granting legitimacy to the use of Foreign Labor creates issues of unequal treatment between local Indonesian labor and Foreign Labor in national strategic projects. It's essential that foreign service providers are treated equally by the government. This can create inequality in employment competition in these projects, as Foreign Labor can receive more favorable treatment, such as lower wages or more flexible working conditions, compared to local labor. The impact of this inequality is that local Indonesian labor faces difficulties in finding suitable employment, fair wages, or adequate working conditions,

⁷ Rizky Dian Baretta, 2018, Politik Hukum Perlindungan Tenaga Kerja Indonesia Fase Purna Bekerja, *Kanun Jurnal Ilmu Hukum* 20(1), h. 173

⁸ S Atalim dan Shierly Debora, 2019, Tinjauan Hukum Terhadap Penggunaan Tenaga Kerja Asing di Indonesia Berdasarkan Pengaturan yang Dibuat oleh Presiden Nomor 20 Tahun 2018 Jo. Peraturan Menteri Ketenagakerjaan Nomor 10 Tahun 2018, *Era Hukum Jurnal Ilmiah Ilmu Hukum*, 17(2), h. 238.

ensuring they are not victims of discrimination or inequality in national strategic projects involving the use of Foreign Labor.

Quoting Satjipto Rahardjo's opinion in his book on legal science, legal policy is described as the activity of choosing and the means used to achieve certain social and legal objectives in society. Based on this perspective, the situation regarding the influx of Foreign Labor in Indonesia and the government's efforts to increase the involvement of local labor in national strategic projects can be viewed in the context of legal policy. In this context, legal policy refers to the policies and regulations chosen by the government to manage the entry and activities of Foreign Labor in Indonesia. The goal of this legal policy is to achieve specific social and legal objectives in society, which, in this context, is to ensure that the local population has better access to employment opportunities in national strategic projects. Politically, the government must choose appropriate means to regulate and control the entry of Foreign Labor and ensure that it does not harm local labor. This may include the creation of regulations related to work permits, Foreign Labor quotas, training requirements, and the protection of the rights of local labor.⁹ These steps reflect the government's efforts to achieve a larger social goal, which is to increase job opportunities and the welfare of local labor, as part of the national development objectives.

The government has the authority to implement policies that require private institutions involved in national strategic projects to employ local labor. By implementing these requirements, the government seeks to create more job opportunities for the local population, which, in turn, can help reduce unemployment rates in the area. By involving local labor, national strategic projects can have a more positive socio-economic impact on the local community. This includes increasing the income of local residents and improving their quality of life because increased local labor involvement can also provide opportunities for local residents to develop their skills and work experience. This can make them more skilled and competitive in the job market.

The central government has the full authority to make decisions to collaborate with private companies to ensure the implementation of local labor engagement requirements. This creates a partnership between the public and private sectors to achieve common goals in national strategic projects. The government not employing local labor because it is considered incapable of competing with Foreign Labor is merely a political excuse that undermines local labor, which should be at the forefront of national strategic project development. Therefore, this can be refuted by the government through the enhancement of qualifications and training, which is a crucial aspect of the government's efforts to increase the involvement of local labor in national strategic projects. Providing training and skill development programs should be tailored to the specific needs of particular strategic projects. This means that training should be designed to match the skills required in the liberalized sectors.

From the beginning, the government's efforts to partner with companies involved in strategic projects to provide training and skill development programs are indeed political partnerships. This can create training that meets industry sector needs, ensuring better access for the local population to acquire the qualifications needed for jobs in these projects. The government can develop a certification and accreditation system to measure the qualifications of local labor. This will help companies and projects assess the potential abilities of local labor. Regular monitoring and evaluation of training and skill development programs are essential. This helps assess the effectiveness of the programs and makes improvements if needed. Local residents and local labor should be involved in the planning and decision-making processes related to national strategic projects. This can help ensure that the training programs reflect their needs.

⁹ Ahmad Jazuli, 2018, Eksistensi Tenaga Kerja Asing di Indonesia Dalam Perspektif Hukum Keimigrasian, *JIKH*, 12(1), h. 90

Implications of Legal Politics on the Liberalization of Foreign Labor Use for Local Employment

The government's legal policy has had an impact on the Policy of Liberalizing the Use of Foreign Labor on Local Employment, as seen in Article 42 paragraph (1) of the Omnibus Law on Job Creation, which states that every employer who employs foreign labor must have an approved plan for the use of foreign labor by the Central Government. Furthermore, individual employers are prohibited from employing foreign labor, as stipulated in Article 42 paragraph (3) letter (a) of the Omnibus Law on Job Creation. The provision in paragraph (1) does not apply to directors or commissioners with specific share ownership or shareholders in accordance with the provisions of the prevailing regulations. The issue lies in the substance of Article 42 paragraph (3) letter (a) of the Omnibus Law on Job Creation, which, on one hand, restricts the use of foreign labor by individuals but, on the other hand, provides space and legal legitimacy for foreign labor by granting an exception to directors or commissioners with specific share ownership. Share ownership is closely related to investors in national strategic projects who, as individuals, have the right to use foreign labor in the construction of national strategic projects.

Article 42 paragraph (4) of the Omnibus Law on Job Creation states that foreign workers can be employed in Indonesia only in specific job positions and for a specific period, and they must have the required competencies for the positions they will hold. Therefore, national strategic projects can involve employment relationships for specific job positions and for a specific period (Temporary Work Visas) that provide space for foreign labor. When a national strategic project requires foreign workers for specific job positions, the central government has the authority to issue temporary work permits or specific work visas for foreign workers who will work on the project.

Politically, the central government is positioned as a legal subject with full authority to regulate the use of foreign labor in national strategic projects. When national strategic projects require foreign workers for specific job positions, the government has the power to issue temporary work permits or specific work visas to foreign workers who will work on the project. However, the issuance of foreign worker permits is not balanced with the positions in the strategic sector that should be filled by local workers in the construction of national strategic projects. This is due to the fact that the impact of foreign labor use does not reflect the welfare that was only an elusive aspiration in enacting the spirit of the Omnibus Law on Job Creation. The commitment and efforts of the state to provide protection for Indonesian workers and prevent inhumane actions that impact the workforce are not fully realized.¹⁰

The government's political maneuvering in national strategic projects often requires specialized skills that may not be readily available in the country. This is used as a baseless pretext. Hence, the Indonesian government, with its authority, decides to allow the use of foreign labor to fill these skill gaps in the development of national strategic projects, simplifying the work permit process for them. Given that the Indonesian government has full authority to regulate and oversee the use of foreign labor in national strategic projects, this includes determining the necessary number of foreign labor, the types of work permits to be granted, and the qualifications. Therefore, the government should evaluate whether the intended foreign labor has the competence or qualifications appropriate for the positions they will occupy in the project. This is important to ensure that foreign labor can perform their duties well and in line with the project's requirements. Work permits are granted to foreign labor based on the assessment of their qualifications' suitability or relevance to the project's needs. This prevents the use of foreign labor without the appropriate qualifications for the strategic

¹⁰ Lelisari, 2019, *Kajian Yuridis Undang-Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia*, *Jurnal Media Informasi Ilmiah*, 13(2), h. 236.

positions in the development of national strategic projects.

The political implications have raised issues regarding reducing dependence on foreign labor, which is significantly costly in many national strategic projects. The use of foreign labor can add to the overall project costs, including salaries, allowances, housing, and administrative expenses related to permits. By enhancing the skills and competence of local workers, stakeholders hope to reduce dependence on foreign labor. This has the potential to lower project costs overall, making it more efficient and allowing for better budget allocation for critical project aspects. The use of foreign labor often involves complex permitting processes and intricate administration. In national strategic projects, timely project implementation is often key. By reducing dependence on foreign labor, stakeholders can reduce administrative hurdles related to foreign labor permits, ensure project smoothness, and meet tight deadlines. However, this poses a problem, as the use of foreign labor in the construction services sector actually provides convenience, considering the construction services sector is a vital element in the development of national strategic projects. Therefore, the use of foreign labor often requires compliance with various regulations and legal requirements. By involving more well-trained local workers, stakeholders can simplify administrative complexity associated with foreign labor use. This can streamline the project execution process, minimize the risk of regulatory violations, and avoid potential legal sanctions.

CONCLUSION

The legal policy on the liberalization of the use of Foreign Workers in national strategic projects in Indonesia, as regulated by the Omnibus Law on Job Creation, has resulted in inequality in employment opportunities between of foreign labor and local labor. This has the potential to create difficulties for local workers in finding suitable employment and may lead to unemployment or a decrease in their income. The relevance between the Omnibus Law on Job Creation and the welfare of local workers needs to be reassessed in the context of national strategic projects. The issue of the legality of using Foreign Workers in national strategic projects is that foreign labor -related policies must strike a balance between supporting foreign investment and protecting the interests of Indonesian Workers.

The political and legal implications of the liberalization of the use of Foreign Workers on local employment in the context of the Omnibus Law on Job Creation have significant impacts. The exception for shareholders: Exceptions for shareholders who also serve as Directors or Commissioners in the use of foreign labor in national strategic projects provide greater opportunities for the use of foreign labor. This can lead to neglect of local labor, which should have a more significant role in the development of these projects.

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