Foreign Workers Status in Indonesian Labor Law

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***Abstract*— The background of this research is the issue of foreign workers' status in Indonesia. The issue that occurred i.e. within the dispute of industrial relationships related to the layoff of the foreign workers by the enterprise. The legal status of such foreign worker, whether the foreign workers constitute permanent workers or casual workers. In addition, about the compensation of the laying off policy that should be received by the foreign workers. Both legal issues occurred because the Act No. 13 of 2003 and its implementation rules did not rule clearly and specifically about the Fixed Term Employment Contract for foreign workers. This research is doctrinal research, based on the normative juridical research method which constitutes theoretical approach through literature study over the applied constitution i.e. Act No 13 of 2003 about Employment especially the one regulating the protection for foreign workers in terms of justice as well as other constitution regulating about foreign workers.**

***Keywords:*employment relationship, manpower, resources, justice**

I. INTRODUCTION

Foreign Workers in Indonesia seen from its development has been a common phenomenon[1]. The background of the occurrence of Foreign Workers in Indonesia has shifted along with the change of time and the need of National labor market. Indonesia has had legal foundation to rule the limitation of the existence of Foreign Workers, i.e. by the issuance of Act No. 13 in 2003 about Manpower and its implementation rules.

Philosophically, the employment of Foreign Workers in Indonesia had been aimed as a means to transfer technology and skill from the Foreign Workers to the local workers[2]. The limitation of the employment of Foreign Workers was also limited to certain position and within certain period of time.

In hiring Foreign Workers, business owners were also limited by several terms and condition. Business owners were demanded to have Plan of Foreign Workers Employment (RPTKA)[2]. The definition of such plan (RPTKA) is a preliminary document that must be prepared by employers containing a plan to employ Foreign Workers in certain position within certain period of time and it must be authorized by designated minister or officials[3]. Such Plan of Foreign Workers Employment (RPTKA) is used as the foundation to obtain a permit to hire foreign workers (IMTA)[4].

The obligation to make a Plan of Foreign Workers Employment for the employers who would hire the Foreign Workers is exempted especially if the employers were government institutions, international boards, and foreign country representations. It is further regulated in implementing regulation within the Regulation of the Ministry of Manpower Number 16 in 2015 about the Regulation of the Employment of Foreign Workers. In addition to RPTKA, Foreign Workers also have to have a Permit to Hire Foreign Workers (IMTA) issued by the Ministry of Manpower and Transmigration. The working relationship between the business owners and the foreign workers is based on the Certain Period Employment Contract (PKWT) in which the PKWT for Foreign workers follows the rule about PKWT applied for Indonesia's National manpower[5].

However, in fact, many issues occur in the practice of the implementation of PKWT for Foreign Workers. Simple issues that frequently occur was that PKWT made by the business owners for the Foreign Workers was not written in Indonesia, instead, it was written in foreign language. It will incur legal issues if it was related to the provisions in article 57 verse (1) and (2) of Act No. 13 in 2003. Where it was mentioned clearly that PKWT must be written in Bahasa Indonesia or at least it was written bilingual. Other issues found is about the period of the employment of Foreign Workers.

Article 13 jo. 24 verse (3) The Regulation of Ministry of Manpower and Transmigration No. PER.02/MEN/III/2008 about the procedures in the employment of Foreign Workers regulates that RPTKA is applied for five years period and extendible. Such unclear period affects the unclear PKWT that is continuously extendible without any renewal even its method of extension and renewal could only be done by ora which of course it is against the provision of article 57 verse (1) and (2) of Act No. 13 in 2003 so that such PKWT legally is stated to become Uncertain Period Employment Contract (PKWTT).

Such issue could be seen if it occurred in industrial relation dispute related to the lay off between the business owners and the Foreign Workers. There have been two interesting issues in such dispute. First, about the legal status of the Foreign Workers itself, whether the Foreign Workers are permanent or non-permanent workers. The Second is about the compensation of the payoff received by the Foreign Workers. Both legal issues occurred because the Act No. 13 in 2003 and its implementing regulation did not regulate clearly and specifically about PKWT for Foreign Workers.

II. METHOD

The research method in this journal writing used doctrinal research, based on the normative juridical research, i.e. theoretical approach through literature study based on the available constitution of Act Number 13 of 2003 about

Manpower especially the one regulating about the protection towards foreign workers for justice as well as other rules regulating about the foreign workers.

III. RESULTS AND DISCUSSION

Based on the analysis towards the rules regulating the legal application towards the legal status of the Foreign workers which was not matched with the provision in Act no. 13 of 2003 about Manpower and its implementing regulation, it was found that PKWT made by the business owners and foreign workers did not go along with the provision article 57 verse (1) of Act No. 13 of 2003 must be considered that the PKWT turned into PKWTT so that foreign workers became permanent worker and entitled to have benefit compensation of Lay off just like permanent workers.

PKWT as a working contract surely must meet the condition of the existence of a working contract regulated in Article 52 verse (1) of Act No. 13 of 2003, they were the agreement of both parties, ability or skill in executing legal action, the existence of the work promised and the work promised may not be against the order of public, morality, and applied act of regulation.

The PKWT written by the business owner for the foreign workers if it had fulfilled the four conditions could be stated as legit and binding both business owners and foreign workers[1]. The issue emerged about the form of PKWT between the business owners and the foreign workers was not written in Bahasa Indonesia as required within the provision in article 57 verse (1), so that according to the provision in verse (2) Article 57, PKWT could be legitimately mentioned as PKWTT.

Because of the aforementioned, it could not apply the provision article 57 verse (1) and (2) of Act No. 13 of 2003 rigidly. It could not only be focused by the PKWT written not in Bahasa Indonesia, by seeing the Temporary Stay Permit Card (KITAS) and work permit (IMTA) as one of the working permit requirement that must be owned by the foreign workers as the proof of the existence of certain period working contract between the business owner and the foreign workers itself.

The existence of KITAS and IMTA absolutely show that the working relationship between the business owner and the foreign workers was made in certain period working relationship[6]. Therefore, even though the PKWT between the business owners and the foreign workers was written in a foreign language which was against the article 57 verse (1) of Act No. 13 of 2003 but it did not automatically make the PKWT to become PKWTT since the presence of KITAS and IMTA as one of the requirements of working permit that must

PKWT had met the requirements of a working contract as regulated in Article 52 verse (1) of Act No. 13 of 2003. PKWT which was not made based on the provision article 57 verse (1) of Act No. 13 of 2003 caused the PKWT was considered PKWTT with all its legal consequences, however, be owned by the foreign workers could define more about the working relationship between the business owners and the foreign workers was certain period working relationship.

The presence of KITAS and IMTA were also along with one of the principles of valid restriction of foreign workers employment which was the principle of temporary period based on the article 42 verse (2) of Act No. 13 of 2003. Therefore, the interpretation of the article 57 verse (1) and (2) of Act No. 13 of 2003 could not only be based on a working relationship based on the PKWT but further by interpreting law or the presence of a working relationship through KITAS and IMTA. Where both documents are requirements that must be fulfilled so that the working relationship between the business owners and the foreign workers may apply legally and legitimately. Either KITAS and IMTA could be the evidence of the presence of certain period working contract since on KITAS and IMTA it was mentioned the name of the business owners, occupation, the position of the worker and the period of time the employer hired the foreign workers. The three elements were parts of the four working contract elements revealed by Rood.

Even though in Act No. 13 of 2003 and its implementing regulation did not specifically regulate PKWT for foreign workers, yet, seen from the history of the formation of articles about foreign workers in Act No. 13 of 2003, the provisions about PKWT for foreign workers should be lexspecialis[6]. Based on the historical review, there were two things that were lexspecialis regarding with PKWT for foreign workers. First, the writing of PKWT for foreign workers in English instead of Bahasa Indonesia should be understood not as bad intention to break the provisions in Article 57 verse (1) of Act No. 13 of 2003 [7]or the Decision of Minister of Manpower and Transmigration No. KEP.100/MEN/VI/2004 yet it was merely to ease both parties; employer and foreign workers.

Should the violation occur over the form of PKWT which was written not in Bahasa Indonesia, it could not directly make such PKWT into PKWTT. Secondly, about the period of the PKWT for the foreign workers and the extension or the renewal which take longer time. Based on the Regulation of Minister of Manpower and Transmigration No. PER.02/MEN/III/2008, RPTKA was applied to go along with need of the foreign workers employment. Therefore, the period of PKWT for Foreign Workers and the extension or its renewal and the PKWT for local workers could not be equalized.

IV. CONCLUSIONS

A PKWT for foreign workers which was not made in written and not in Bahasa Indonesia remains legal and valid binding the employer and the foreign workers, since in principle, especially for PKWT for foreign workers, different lex spesialis applied for PKWT for local workers so that PKWT could not directly be considered as PKWTT. Such Lex spesialis occurs since historically and the objective of the

formation of articles about foreign workers in Act No. 13 of 2003 which is different from the local workers.

The legal status of foreign workers in determining the working relationship of a foreign workers in industrial relationship dispute was not fixed only on PKWT but should also be able to consider IMTA and KITAS where such documents were the permits required to hire foreign workers whose PKWT were made not based on the provision article 57 verse (1) of Act No. 13 of 2003.

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