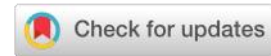




Research Article



The Regulation of Foreign Workers as Technology and Knowledge Transfer

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Abstract: *The regulation of using foreign employees as a tool for technology and knowledge transfer, roadblocks that arise while implementing technology and knowledge transfer, and government initiatives to promote the quickening of technology and knowledge transfer are all examined in this study. This study is a normative legal investigation. Legal main and secondary sources are examples of primary data. The method for gathering data was a literature review, which involved reading books, looking over rules and regulations, and looking over other relevant research findings. The findings of this study suggest that Indonesia's laws governing the employment of foreign workers have not explicitly restricted the means through which technology can be transferred through foreign workers.*

Keywords: Foreign Labor; Regulations; Technology and Knowledge Transfer



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INTRODUCTION

The manifestation of national development is the same thing as the national goal, which is contained in the Preamble of the 1945 Constitution, namely protecting the whole nation and all of Indonesia's bloodshed, advancing public welfare, educating the nation's life, and participating in carrying out world order based on freedom, eternal peace, and social justice. It is hoped that national development can become an instrument in order to improve people's welfare through improving the quality of human resources. Manpower development is an important component in national development, aimed at advancing human dignity and worth among the workforce in order to create a more prosperous, just and equitable society.¹

Manpower development is a factor that plays an important role for national and regional development where the subject of manpower development is the workforce.² Given the important role of the workforce, the state regulates it through a number of laws and regulations, including Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning the Stipulation of Substitute Government Regulations Law Number 2 of 2022 concerning Job Creation becomes

¹ Niken Kusumawardhani and others, 'Heterogeneous Impact of Internet Availability on Female Labor Market Outcomes in an Emerging Economy: Evidence from Indonesia', *World Development*, 164 (2023), 106182 <https://doi.org/https://doi.org/10.1016/j.worlddev.2022.106182>

² Suparman, *Pembangunan Ketenagakerjaan: Teori, Konsep, Model, Dan Studi Empiris* (Jakarta: Publica Indonesia Utama, 2022).



Law (hereinafter referred to as Law Number 6 of 2023 concerning Job Creation), and additional regulations such as Government Regulation Number 34 of 2021 concerning the Use of Foreign workers. The government stipulates rules that make it easier for investors to meet the needs of foreign workers through Law Number 6 of 2023 concerning Job Creation to increase foreign investment in Indonesia.³

Article 1 Number 13 of Law Number 13 of 2003 concerning Manpower defines the meaning of foreign workers. Foreign workers are foreign citizens with visas and intend to work in Indonesia. The objectives of foreign workers working in Indonesia include, among other things, fulfilling industrial needs whose competencies must be fulfilled by a qualified and professional workforce but cannot be occupied by local workers in certain fields. The purpose of using other foreign workers is aimed at increasing foreign investment as capital for national development.⁴ The use of foreign workers is based on several philosophical principles, including security and legality (must have a work permit from the Central Government) and the principle of benefit (fulfilling industrial needs that cannot yet be occupied by local workers as well as being an instrument for technology transfer and increased investment).⁵ Thus, it can be concluded that the use of foreign workers in Indonesia cannot be avoided because foreign workers are needed as investors and have the skills to transfer knowledge.⁶

Data for 2021 shows that foreign workers working in Indonesia are dominated by foreign workers from China (37,711), Japan (9,870) and South Korea (9,302).⁷ This shows that foreign workers working in Indonesia are dominated by developed countries. Technology transfer is intended as a means for developing countries to be able to master technology as has been practiced in developed countries, and indeed the implementation of technology transfer is usually carried out by developed countries and then transferred to developing countries. Transfer of technology according to Article 11 Number (1) of Law Number 18 of 2019 concerning the National System for Research, Development and Application of Science and Technology is the transfer of the ability to utilize and master science and technology between institutions, agencies or people, whether located within the country or from abroad to within the country and vice versa. Procedures regulated for the transfer of technology and knowledge are regulated in Article 81 of Law Number 6 of 2023 concerning Job Creation regulates the obligations of mandatory foreign workers employers; appoint workers of Indonesian citizenship as accompanying foreign workers who are employed to transfer technology and transfer skills from foreign workers.⁸

³ Matthew Libassi, 'Uneven Ores: Gold Mining Materialities and Classes of Labor in Indonesia', *Journal of Rural Studies*, 98 (2023), 101–13 <https://doi.org/https://doi.org/10.1016/j.jrurstud.2023.01.013>

⁴ Zarfina Muhammad, Alvi Syukri, Maiyestati, & Zarfina, 'Disharmonisasi Regulasi Penggunaan Tenaga Kerja Asing Di Indonesia' (Universitas Bung Hatta, 2021).

⁵ Lego Karjoko dan Isharyanto Meiliana Wanda Agesa, 'Politik Hukum Fasilitas Keimigrasian Bagi Tenaga Kerja Asing Dengan Hukum Ketenagakerjaan Indonesia', *Jurnal Hukum Dan Pembangunan Ekonomi*, 2018, 57.

⁶ C. Sumarprihatiningrum, *Penggunaan Tenaga Kerja Asing Di Indonesia* (Jakarta: HIPSMI, 2006).

⁷ Kementerian Ketenagakerjaan, 'Tenaga Kerja Asing Yang Berlaku Di Indonesia Bulan Januari-Mei Tahun 2022', 2021.

⁸ Regina Niken Wilantari and others, 'Additive Mixed Modeling of Impact of Investment, Labor, Education and Information Technology on Regional Income Disparity: An Empirical Analysis Using the



Further arrangements related to the transfer of technology and knowledge are contained in Article 7 paragraph 1 Government Regulations Number 34 of 2021 concerning the Use of Foreign Workers explains that foreign worker companions are Indonesian workers employed by foreign workers Employers who are trained as assistants to foreign workers in accordance with the qualifications of positions occupied by foreign workers. In line with the implementation of technology transfer through foreign workers, foreign workers employers are also required to provide education and job training for foreign workers accompanying workers. This implementation will later be carried out at home and/or abroad, then later the foreign workers Associate Workers must obtain competency certification in accordance with statutory regulations. foreign workers assistance is concentrated on transferring knowledge to provide the skills needed by foreign workers which will eventually occupy the position of the foreign workers they are mentoring.⁹

To improve the investment climate, one of the government's efforts is through regulations that make it easier for investors or industry players to meet the needs of foreign workers. Previously, in Presidential Decree Number 20 of 2018, foreign workers entering Indonesia are required to have permits, including Plans to Use Foreign Workers (RPTKA), Permit to Use Foreign Workers (IMTA), and Limited Stay Visa (VITAS). It is sufficient for foreign workers who will work in Indonesia at this time to have the RPTKA which has been approved by the Central Government after the amendment of Law Number 6 of 2023 concerning Job Creation.¹⁰ With the ease after the amendment of Law Number 6 of 2023 regarding permits for the use of foreign workers is expected to become an instrument for technology transfer. In addition, the presence of foreign workers Associate Workers can also speed up the process of technology transfer, so that technological capabilities and knowledge and the quality of Indonesian Workers can increase.¹¹

Unfortunately, the implementation of technology and knowledge transfer through foreign workers encountered obstacles. The reason is because there are differences between Associate Workers and foreign workers, which causes delays in the implementation of the transfer of knowledge.¹² The first factor is the difference in work ethic where the average foreign workers have high discipline, especially in terms of time. The other factor is in a different socio-cultural environment and influences the process of transferring expertise and technology so that it is absorbed effectively and does not create misunderstandings. Besides that, differences in geographical

Statistics Indonesia Dataset', *Data in Brief*, 45 (2022), 108619
<https://doi.org/https://doi.org/10.1016/j.dib.2022.108619>

⁹ Ida Hanifah, 'Peluang Tenaga Kerja Asing Untuk Bekerja Di Indonesia Berdasarkan Rancangan Undang-Undang Cipta Kerja', *Jurnal Ilmu Hukm*, 6.1 (2021), 158–73.

¹⁰ Muafiqoh Dwiarini and others, 'Relationship between Fear of Childbirth, Self-Efficacy, and Length of Labor among Nulliparous Women in Indonesia', *Midwifery*, 105 (2022), 103203
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¹¹ Paul W Grimes, Jane S Lopus, and Dwi Sulistyorini Amidjono, 'Financial Life-Skills Training and Labor Market Outcomes in Indonesia', *International Review of Economics Education*, 41 (2022), 100255
<https://doi.org/https://doi.org/10.1016/j.iree.2022.100255>

¹² Sangkala, *Knowledge Management: Suatu Pengantar Memahami Bagaimana Organisasi Mengelola Pengetahuan Sehingga Menjadi Organisasi Yang Unggul* (Jakarta: PT Rajagrafindo Persada, 2007).



conditions, in which Indonesia is a developing country with facilities and technology that are still quite limited.

METHOD

The normative legal research methodology is used in the research. The approach method is primary, secondary, and tertiary legal literature with a legal and conceptual framework. The normative approach (law) and the conceptual approach are used (conceptual approach).¹³

RESULT AND DISCUSSION

The growth of foreign workers in Indonesia is quite rapid, namely since 2010 the number of foreign workers in Indonesia is only less than 50,000 and in 2021, the number of foreign workers in Indonesia will be 88,271. The growth of foreign workers can be seen in the following table:

Table 1. Distribution of Business Types that Employ Foreign workers

Type of Business	2019	2020	2021
Service	65.416	53.323	46.795
Industry	41.418	38.087	39.225
Agriculture and Maritim	2.712	2.351	2.251
Total	109.546	93.761	88.271

Source: Ministry of Manpower of the Republic of Indonesia, Directorate General of Binapenta and PKK, Directorate of Controlling the Use of Foreign workers (2021).

The largest number of foreign workers in Indonesia are in the service business sector, namely the trade category. The second highest position is in the construction sector, and the third position is in the tourism sector. If grouped, the majority of foreign workers working in Indonesia according to their job title are:

Table 2. Distribution of Position Levels of Foreign workers

Job Level	2019	2020	2021
Advisor	27.241	21.600	20.807
Directors	11.508	9.596	8.936
Commissioner	991	718	656
Manager	23.082	19.941	19.127
Professional	46.724	41.906	38.745
Total	109.546	93.761	88.271

Source: Ministry of Manpower of the Republic of Indonesia, Directorate General of Binapenta and PKK, Directorate of Controlling the Use of Foreign workers (2021).

The majority of foreign workers working in 2021 are 38,745 professionals, 20,807 advisors/consultants, and 19,127 managers. It can be concluded that the positions most favored by foreign workers over the past 3 years have been at the Professional level. If 10 years ago, the positions most in demand by foreign workers were consultants, now the positions most in demand have shifted to professional positions. This cannot be separated from the influence of developments in knowledge and

¹³ Abdul Kadir Jaelani and Muhammad Jihadul Hayat, 'The Proliferation of Regional Regulation Cancellation in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.2 (2022), 121–38 <https://doi.org/https://doi.org/10.53955/jhcls.v2i3.55>



technology which has forced companies that employ foreign workers as professionals to switch to becoming foreign consultants.¹⁴

The statutory regulations are a set of codified legal standards with the force of law that can be used to impose order on a community. Legislation includes both those made by legislators and those made by law enforcement agencies, which receive delegated authority from laws to make special regulations in accordance with applicable regulations. Other types of regulations are Government Regulations, Ministerial Regulations, Regional Regulations, and so on.¹⁵ Procedures regarding the use of foreign workers in Law Number 13 of 2003 contained in Chapter VIII Article 42 to Article 49. Article 42 explains the things that must be owned by foreign workers employers, including, in paragraph (1) having written permission from the Minister or appointed official. Employers of individual foreign workers are not authorized to use foreign workers as stipulated in Article 42 Paragraph 2.¹⁶ The rules governing permits to employ foreign workers have several exceptions, namely for representatives of other countries who employ foreign workers in the diplomatic and consular fields do not require written permission. Furthermore, in Article 42 Paragraph 4 it is stated that foreign workers are only allowed to work in a work relationship for certain positions and certain times. Furthermore, Article 42 Paragraph 5 states provisions regarding certain positions and a certain number of workers whose time is determined through a Ministerial Decree. If the foreign workers in paragraph (4) have expired and cannot be extended, it can be replaced with another foreign workers in accordance with Article 42 paragraph (6).¹⁷

In Article 44 explains the position and standard of competence. Then, Article 45 explains that employers of foreign workers must employ Indonesian workers who will later become foreign workers companions as a means of transferring technology and knowledge through foreign workers and conducting job education and training for Indonesian workers according to the needs of positions occupied by foreign workers. Foreign workers who serve as directors and/or commissioners are exempt from this obligation. Prohibitions against foreign workers holding certain personnel or positions in controlling roles are explained in Article 46. Apart from that, Article 47 regulates the obligation to provide wages for every foreign worker employed.¹⁸

¹⁴ Sadha P.U Yudanto N, Prasetyo A.J, Nugroho F, *Laporan Survey Nasional Tenaga Kerja Asing Di Indonesia Tahun 2009* (Jakarta: Biro Statistik Ekonomi Moneter Bank Indonesia, 2010).

¹⁵ Ade Fartini, 'Politik Hukum Otonomi Daerah Pasca Amandemen UUD 1945 Upaya Menjaga Keseimbangan Antara Prinsip Unity Dan Diversity', *Pledoi Jurnal Hukum Dan Keadilan*, 1 (satu).Politik Hukum (2022), 1–9.

¹⁶ Krisztina Kis-Katos and Robert Sparrow, 'Poverty, Labor Markets and Trade Liberalization in Indonesia', *Journal of Development Economics*, 117 (2015), 94–106 <https://doi.org/https://doi.org/10.1016/j.jdeveco.2015.07.005>

¹⁷ Irene Sondang Fitrinitia and Mihoko Matsuyuki, 'Role of Social Protection in Coping Strategies for Floods in Poor Households: A Case Study on the Impact of Program Keluarga Harapan on Labor Households in Indonesia', *International Journal of Disaster Risk Reduction*, 80 (2022), 103239 <https://doi.org/https://doi.org/10.1016/j.ijdr.2022.103239>

¹⁸ Mahmut Yasar and Roderick M Rejesus, 'International Linkages, Technology Transfer, and the Skilled Labor Wage Share: Evidence from Plant-Level Data in Indonesia', *World Development*, 128 (2020), 104847 <https://doi.org/https://doi.org/10.1016/j.worlddev.2019.104847>



Law Number 6 of 2023 which replaced Law Number 13 of 2003 concerning Manpower changed a number of rules, one of which is related to the use of foreign workers. Foreign workers can now work in Indonesia more easily in accordance with the provisions of Law Number 11 of 2020. Article 81 stipulates that foreign workers must obtain written approval from the Minister or other appointed officials. According to Presidential Decree Number 20 of 2018 which regulates the use of foreign workers, foreign workers are required to have permits, such as Plans to Use Foreign Workers (RPTKA) Permit to Use Foreign Workers (IMTA), and Limited Stay Visa (VITAS). This provision also changed with Law Number 6 of 2023 so that foreign workers is sufficient to prepare RPTKA which is approved by the Central Government and no longer requires IMTA and VITAS.¹⁹ Second, the provisions of Articles 43 and 44 which respectively regulate the use of foreign workers, and the application of competency and job standards, are repealed by Law Number 6 of 2023 concerning Job Creation. Government Regulation Number 34 Concerning the Use of Foreign workers and Regulation of the Minister of Manpower Number 8 of 2021 are derivative regulations that further regulate the use of foreign workers. A more complete mechanism is set forth in Regulation of the Minister of Manpower Number 8 of 2021, particularly in Chapter VIII Articles 39 to Article 43 concerning Education and Job Training for Associate Workers of Foreign workers and foreign workers. Chapter IX Article 44 regulates Reporting, related to the transfer of technology and knowledge through foreign workers.²⁰

Employers of foreign workers are required to submit a report to the Minister every 1 (one) year at least 1 (one) time regarding the implementation of job education and training for Associate Workers of foreign workers and the transfer of technology and knowledge through foreign workers to Associate Workers of foreign workers through Director General. Employers who do not report to the Minister through the Director General every 1 (one) year regarding the implementation of education and job training for foreign workers and the transfer of technology and skills through foreign workers to Associate Workers for foreign workers are subject to sanctions based on Article 49 concerning Sanctions Administrative²¹ Administrative sanctions include fines, temporary suspension of the application process for RPTKA Approval and/or revocation of RPTKA Approval. The reason for hiring foreign workers in Indonesia is an effort to meet industrial needs which must be fulfilled by competent and professional workers but cannot be fulfilled by Indonesian workers in certain fields. The use of foreign workers is also intended as a means of national development through the process of transferring technology and knowledge. With a large number of foreign workers working in Indonesia and the use of foreign workers has one goal, one of which is the transfer of technology and knowledge, the government has

¹⁹ Nancy Lee Peluso, 'Entangled Territories in Small-Scale Gold Mining Frontiers: Labor Practices, Property, and Secrets in Indonesian Gold Country', *World Development*, 101 (2018), 400–416 <https://doi.org/https://doi.org/10.1016/j.worlddev.2016.11.003>

²⁰ Sneha Kumar, 'Corrigendum to "Offspring's Labor Migration and Its Implications for Elderly Parents" Emotional Wellbeing in Indonesia' [Soc. Sci. Med. 276 (2020) 113832]", *Social Science & Medicine*, 280 (2021), 114061 <https://doi.org/https://doi.org/10.1016/j.socscimed.2021.114061>

²¹ Carol Chan, 'The Politics of Leisure and Labor Mobilities: Discourses of Tourism and Transnational Migration in Central Java, Indonesia', *Mobilities*, 13.3 (2018), 325–36 <https://doi.org/https://doi.org/10.1080/17450101.2017.1356436>



required every employer of foreign workers to provide accompanying workers to transfer technology and knowledge through foreign workers whom he employs.²²

The process of assisting foreign workers as an instrument for transferring technology and knowledge has not been carried out effectively. The obligation to appoint accompanying workers for foreign workers is often the fulfillment of administrative requirements to apply for approval of RPTKA permits. Then when the RPTKA was declared feasible and approved by the Director General, the implementation of the process of transferring technology and knowledge from foreign workers to foreign workers accompanying foreign workers had not been carried out well enough. The practice of transferring knowledge and technology through foreign workers has not been effective, one of which is in Yogyakarta. The Labor Journal entitled "Knowledge and Technology Transfer Through Foreign Worker Assistance Activities (Case Study in Yogyakarta)",²³ discusses the implementation of the existence of Associate Workers as instruments for technology transfer in several companies in Yogyakarta.

The results of this study indicate that the transfer of technology and knowledge has not been carried out effectively. Causal factors such as the unavailability of standard guidelines for carrying out the process of assisting foreign workers from the government have resulted in the implementation of the technology transfer process in the field not being as expected. The absence of established indicators and the technical difficulties of implementing technology and knowledge transfer are the causes of the mentoring process by Associate Workers and Foreign Workers not being effective. If we review the regulation regarding the use of foreign workers as an instrument for technology and knowledge transfer, there are no regulations regarding guidelines for implementing the transfer of technology, both in Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation.²⁴ The inhibiting factor that occurred in the field in implementing the transfer of knowledge occurred at PT Primatexco Indonesia which faced difficulties in the form of juridical obstacles. This is caused by the fact that the law governing technology transfer does not yet have clear boundaries, thus allowing technology owners to unilaterally choose which technology to use.²⁵ If reviewed, in advanced regulations such as Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers and Minister of Manpower Regulation Number 8 of 2021 there are no rules governing guidelines for the use of Foreign Workers as instruments for technology transfer. The Minister of Manpower Regulation Number 8 of 2021 only regulates a

²² Sneha Kumar, 'Offspring's Labor Migration and Its Implications for Elderly Parents' Emotional Wellbeing in Indonesia', *Social Science & Medicine*, 276 (2021), 113832 <https://doi.org/https://doi.org/10.1016/j.socscimed.2021.113832>

²³ Nurlia Rahmatika and Nur Siti Annazah, 'Alih Pengetahuan Dan Teknologi Melalui Kegiatan Pendampingan Tenaga Kerja Asing (Studi Kasus Di Yogyakarta)', *Jurnal Ketenagakerjaan*, 15.1 (2020) <https://doi.org/10.47198/naker.v15i1.64>

²⁴ Johan Lindquist, 'Brokers, Channels, Infrastructure: Moving Migrant Labor in the Indonesian-Malaysian Oil Palm Complex', *Mobilities*, 12.2 (2017), 213–26 <https://doi.org/https://doi.org/10.1080/17450101.2017.1292778>

²⁵ S. Zulaekhah, 'Pelaksanaan Alih Teknologi Pada Industri Tekstil Terpadu (Integrated Textile Mills) PT Primatexco Indonesia Di Kabupaten Batang Jawa Tengah', *Law Reform*, 5 (2010).



number of matters, namely reporting, guidance and supervision, and administrative sanctions.²⁶

According to Article 44 paragraph (1), employers of foreign workers must report at least 1 (one) time a year to the Minister through the Director General in the context of transferring knowledge and technology through foreign workers to accompanying foreign workers. The form of coaching is regulated in Article 45 in the form of coaching to workers accompanying foreign workers in their work and helping employers of foreign workers to employ foreign workers. The Ministry of Manpower and the District/City Manpower Office have this authority.²⁷ In addition, another form of guidance is monitoring and evaluating the implementation of foreign worker assistance. Regarding administrative sanctions, Article 49 states that employers of foreign workers who do not report every 1 (one) year in carrying out education and job training for Associate Workers of Foreign Workers and implementation of technology transfer and transfer of expertise from Foreign Workers to Indonesian Workers Companion of foreign workers. Administrative sanctions that are charged for violating the norms for using foreign workers are in the form of fines, temporary suspension of the application process for RPTKA Approval, and revocation of RPTKA Approval.²⁸

CONCLUSION

It should be noted that the absence of a clear mechanism for transferring technology through the use of foreign workers in the job creation law is inseparable from the absence of a clear mechanism for transferring technology and knowledge, both the employment law and the job creation law have not provided standard guidelines. against the use of foreign workers. The birth of the Job Creation Law should be used as a means of improving the Manpower Law to fix the main employment problems contained in the Law.²⁹ Indeed, currently several regulations related to the use of foreign workers have required the implementation of technology transfer for domestic investors and employers, who employ foreign workers through accompanying foreign workers. However, in the annotations of these regulations along with the relations in the cases described, even though there are already regulations governing the relations in the examples presented, Indonesia in general does not yet have substance (law) governing them. As a result, a clear mechanism is needed regarding technology transfer through foreign workers in Indonesia.

²⁶ Faizal Rahmanto Moeis and others, 'A Longitudinal Study of Agriculture Households in Indonesia: The Effect of Land and Labor Mobility on Welfare and Poverty Dynamics', *World Development Perspectives*, 20 (2020), 100261 <https://doi.org/https://doi.org/10.1016/j.wdp.2020.100261>

²⁷ Achsanah Hidayatina and Arlene Garces-Ozanne, 'Can Cash Transfers Mitigate Child Labour? Evidence from Indonesia's Cash Transfer Programme for Poor Students in Java', *World Development Perspectives*, 15 (2019), 100129 <https://doi.org/https://doi.org/10.1016/j.wdp.2019.100129>

²⁸ Indar and others, 'Legal Protection of Labor Fatigue in the Production Part of PT. Maruki International Indonesia Makassar', *Gaceta Sanitaria*, 35 (2021), 576–78 <https://doi.org/https://doi.org/10.1016/j.gaceta.2020.12.021>

²⁹ Nurrahman Aji Utomo Kania Rahma Nureda, Okta Rina Fitri, Brian Azeri, *Kertas Kebijakan Tinjauan Atas Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja Dan Peraturan Pelaksanaannya Pada Klaster Ketenagakerjaan Terhadap Hak Atas Pekerjaan Dan Penghidupan Yang Layak Bagi Pekerja Prekariat* (Komisi Nasional Hak Asasi Manusia Republik Indonesia., 2021).



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