

Effectiveness Of Law Enforcement Of Violation Of Foreign Labor Performance And Transmigration

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Abstract: The objective of the study was to analyze and explain the effectiveness of law enforcement on the violation of foreign work permit in the Prov. South Sulawesi and to analyze and explain the factors that affect the effectiveness of law enforcement against breaches of employment by foreign workers. The research method used is normative legal research.

Keyword: Effectiveness, Law Enforcement

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I. INTRODUCTION

All actions of the government in carrying out its duties and functions are regulated in legislation. State of the law as mandated by the 1945 Constitution of the Republic of Indonesia, Article 1, paragraph 3. Shows the basis of all actions of the government should be based on the law.

State of the law as the basic concept of state administrative law. Where the law of state administration as a set of rules of law governing the duties and kewenangan government in carrying out governmental and community activities in the state law.

The authority possessed by the government, is also the authority obtained from the law. As in the concept of a legal state especially in the tradition of continental European legal system, one element of the legal state (*rechstaat*) is *wetmatigheid van besture* or government based on legislation. The authority of the government is also given on the basis of the government's duty in performing the duties of general welfare (*bestuurzoorg*). State Administration in carrying out government activities is given the authority to arrange for all people to obtain justice, prosperity, in social life, so that all aspects related to the distribution of welfare within the community must be set by the government in order to be distributed properly.

One of the instruments used by the government to realize this is by licensing. Licensing as intended for the community to follow the rules of the government's development plan. Permission is always aimed to develop people's lives and also to keep every activity undertaken by the community does not interfere with the good life order.

The number of developments in various fields, various problems, ranging from the development of public service facilities, transportation, natural resource management, all growing and increasingly complex.

It's just that if not limited will give a bad impact, because the development will be uncontrolled, so it can run a consensist with the goals set by the central government and local government. The granting of licenses granted by the government to the citizens, will go through a process which will provide the government with the opportunity to assess and investigate all aspects, and the provisions of legislation before issuing licensing decisions by the authorized government.

With the issuance of licenses granted by the competent government, a person or legal entity may carry out its activities, but this permission does not mean to grant full freedom, because in such licensing it must meet the terms and conditions in the licensing that must be fulfilled, along with the implications of violations of the licensing provisions that have been granted.

Violation of this will have implications on law enforcement by the authorities who have issued such licenses, as to what can be done by the authorities namely by applying the law enforcement instrument of state administration. instruments of law enforcement of state administrations such as in the form of government coercion, the withdrawal of favorable decisions (permits, subsidies, payments, and so on), the imposition of forced money, and the imposition of administrative penalties.

The government intended to have the authority in the implementation of administrative law enforcement is the government in the sense of executives. Included in it is the central government and local

government. Governments carrying out the administration of the state. In connection with the field of licensing, within the legal system in Indonesia, there is a distribution of authority in the case of licensing.

Implementation of local government in Indonesia as mandated in Article 18 of the 1945 Constitution of the Republic of Indonesia. The Unitary State of the Republic of Indonesia is divided into provincial areas consisting of districts and municipalities where each provision, district and city owns local government and also regulates and administers its own governmental affairs according to the principle of autonomy and duty of assistance.

Thus, local governments are given the authority to manage their own organizing and managing the affairs of the household or which can be referred to as the principle of decentralization. Therefore, licensing as one part of the task of local government, where local governments *memeilikikewenangan* to carry out licensing activities.

Licensing is one of the instruments in the implementation of government in the form of State Administration Decision (*beshikking*). Decision of state administration shall be a decision issued by a state administrative official in accordance with applicable laws and regulations, which are individual, concrete and final, applicable to a person or legal entity. So every permit must get the determination of the authorized body.

However, whether this provision can thoroughly guarantee, the implementation of all such activities has passed through the licensing process as determined by applicable law. In the event that the provision is met, if there is a violation of the terms and conditions established, the government has the authority to impose sanctions on the violation.

But what is the problem is, what about a person or legal entity doing activities that do not have permits, as it is known that the government conducts or issues licenses in order to create order, security, in society.

This is a concern, in some mass media, namely the use of foreign workers are in the spotlight in Indonesia. That is because some areas found found foreign workers who work in several regions or regions of Indonesia, work not in accordance with the terms of use foreign workforce.

How foreign workers can work does not comply with the procedures for the use of foreign workers, while the regulations governing foreign workers in Indonesia are very clear in giving restrictions, before granting licenses to the use of labor.

Therefore, considering the condition, especially in South Sulawesi region, many companies are currently using foreign workers, and the number of foreign workers is also increasing so that there is a possibility of violations related to the use of foreign workers. So that the local government in the realm of public law in this case related agencies namely the Office of Manpower and Transmigration Prov. South Sulawesi, is expected to take concrete action, on concrete events that occur. This clearly has a negative impact on Indonesian workers.

It should be with the opening of business fields, also provide a great opportunity for local workers to take advantage of these job opportunities. Despite the fact that positions occupied by foreign workers can still be done by domestic workers.

Furthermore, many other problems that often occur are foreign workers who work without permission to work, this is clearly contrary to the provisions of regulations related to the use of foreign workers. This has implications, as to how the foreign worker's permit is concerned, whether through the licensing process for the use of labor subject to the law.

What is the role of local government especially the Office of Manpower and Transmigration prov. South Sulawesi in exercising its authority to enforce the law against the violations that occurred. What is the administrative law enforcement instrument used in the event of a breach of foreign worker permit. As the Office of Manpower and Transmigration has been given the authority to organize labor inspection activities, in particular overseeing the implementation of labor norms, one of which is the implementation of the use of foreign workers.

Therefore, in carrying out law enforcement, namely the implementation of supervision and enforcement of sanctions, especially against violations of foreign worker permits, should be implemented as a function that has been given under applicable laws and regulations.

Based on the matters that have been put forward in this background, the authors believe that scientific studies on the implementation of the legal enforcement function, namely the function of labor inspection and the enforcement of sanctions against permission violations, especially the permit use of foreign worker should be done in depth.

II. FORMULATION OF THE PROBLEM

1. How effectiveness of law enforcement against work permit violation conducted by Foreign Workers in the area of Prov. South Sulawesi?
2. What factors affect the effectiveness of law enforcement against foreign workers who violate work permits?

III. THEORETICAL FRAMEWORK

1. Theory of the State of Law

Developed countries, such as, the United States, Britain and Continental Europe are the countries that keep the law above all in the running of government, the formulation of laws and courts. So that the government and citizens are very obedient to the law set by the state. The countries above, is a country that embraces the theory of rule of law or *rechstaat* or theory of law state.

The legal state in the formal sense is a state whose work is only to prevent violations of tranquility and public interest, as specified in the written law (law). Duties in the formal sense of protecting the soul, things, the rights of its citizens, and not interfering in the field of economy, the implementation of people's welfare; applied, that is *laissez faire*.

Meanwhile, the legal state in the material sense (widespread / modern), which is a country famous for the term welfare state, which is responsible for maintaining security in the broadest sense of the word, namely social security (social security) and general welfare, based on the principles of law right and just so that the basic rights of its citizens are completely protected.

Munir Fuady argued that the state of law is a state system governed by a law of credible law which is constituted in a constitution, in which all citizens in that country, whether governed or governed, shall be subject to the same law, so that every the same person is treated and everyone is treated differently from the basis of rational distinction, regardless of color, race, gender, religion, regional, and belief, and the authority of the government does not act arbitrarily and does not violate the rights of the people, to the people are given roles according to ability and role democratically. Bintan R. Sar agih said that the State of Law is a state in which the actions of the government and its people are based on the law to prevent any arbitrary acts from the government and the actions of the people undertaken by their own will.

The definition of legal state theory as proposed by Salim H.S, namely the opinion of the expert who examines that any action, whether committed by the government and the people must be based on the applicable laws and regulations. And not allowed to do vigilante action.¹

The concept of a state based on the law, which is now often referred to as the rule of law. It is the concept that is considered the most ideal at the moment, although it is run with different perceptions. In the continental European tradition known as *Rechstaat* while in the tradition of anglosaxondikinal law with the term Rule of law.

According to Philipus M. Hadjon, the term *rechstaat* became popular in Europe since the nineteenth century although the thought has existed for a long time. The term of rule of law became popular with the publication of the book of Albrt Venn Dicey in 1885 entitled *Introduction to the Study of the Law of The Constitution*. From the background and the legal system that sustains it, there is a difference between the concept of *rechstaat* and the concept of the rule of law, although in its development today there is no question of the difference between the two because basically the two concepts are directed itself to a major goal, namely the recognition and protection of human rights. Although with the same goals, both are still running with their own system of legal system itself.²

2. Theory of Legal Functions

Where there is a society there is a law (*ubi societas ibi ius*). The law exists in every society, anytime, anywhere, and whatever the circumstances of that society. This means that the existence of the law is very universal, regardless of the circumstances of the law itself is strongly influenced by the style and color of the community (the law also has distinctive characteristics, depending on the development and changes that occur in a community). In the history of legal jurisprudence, there are two notions of the function and role of law in society: First, to say that the function of law is to follow and justify the changes that take place in society, meaning law as a means of social control. So it seems, the law is in charge of maintaining the order or pattern of life that exists. This notion was pioneered by a jurist of history and culture from Germany which was introduced by Friedrich Carl von Savigny (1799-1861). Second, it states that the law serves as a means to make changes in society. This notion was spearheaded by British jurist Jeremy Bentham (1748-1852), to be popularized by American Jurists with the conception of "law (must also) serve as a tool for social change" (law as a tool of social engineering). In carrying out its functions as a means of control and social change, the law has the aim to create an orderly, peaceful, just and equitable community order that is supported by legal certainty so that the interests of individuals and communities can be protected.

¹ Ibid, hal 4

²Ni'matul Huda, *Hukum Tata Negara (Edisi Revisi)*, Raja Grafindo Persada, Jakarta, 2015, hal 81

Mochtar Kusumaatmadja said that to know what the meaning and function of law in society then "it can be restored to the basic question: what is the purpose of the law." The main purpose of the law is order.³ The need for this order is a fundamental condition for the existence of an orderly society. In addition to order, the other objective of law is the achievement of justice of different contents and sizes, according to society and time.

Further Mochtar Kusumaatmadja said that: to achieve order in this society, cultivated a certainty in the association between people and society. ... without the certainty of law and order, the society it embodies, man can not possibly develop his God-given talents and abilities optimally in the society in which he lives. "⁴ With this Soerjono Soekanto said, that the central task of the law is to create order, because order is a necessary condition rather than the existence of an orderly society, which applies to human society in all its forms. ... In addition to order, the law also aims to achieve justice which is essentially rooted in conditions which at any given time are desired by a particular society. "

"In order to achieve order in society, it is endeavored to make certainty in the interpersonal relationship within society ... It is essential not only for an orderly life of society, but it is an absolute requirement for an organization of life that transgresses -time limits. Without the certainty of law and order incarnated by the certainty, man would not be able to develop his abilities in society, because the order aims to create tranquility and calmness. "

More broadly B. Arief Sidharta said that: Basically, in general, the law serves to discipline society, to realize fundamental human values, to settle disputes in an orderly and fair manner, to maintain and maintain order and rules with if necessary using organized violence (applying legal sanctions) through the procedure of implementation certain that must be strictly enforced, regulating the order and maintenance of order, changing the rules and rules in order to adapt to (changing) the needs of society, regulating the way of forming and changing the rules and rules. Publicly speaking, the law aims to bring peace to society ".

In connection with the above opinion, it appears that in addition to order and security, the other legal task is to create justice. John Rawls says that justice is a major social institutional virtue, as is the truth in the system of thought. This opinion is in accordance with the opinion of Soediman who said that in every provision in the field of law there is an element of justice. The law aims to bring about an orderly society of justice. In this case John Rawls and Soediman suggest that justice is an essential element of the law. This opinion is also in accordance with the opinion of Satjipto Rahardjo who said that the law should provide justice. It can be said that the central task of law is to create order, security, and justice. Through order, security, and justice will be achieved legal certainty. Thus, order, security, and justice are the three pillars that sustain the law, and are the spirit of the law. This is importantly understood not only for an orderly life of society, but an absolute requirement for an organization that transcends the present time limits. Without order, security, and justice, human beings will not be able to carry out their activities properly. Based on this understanding, order, security, and justice are the three pillars that sustain human life within the state. With the creation of order, security and justice, man can freely act and work. These three pillars must be applied in the conduct of activities in order to create prosperity in the country. Notohamidjojo goes on to say that in all duties, the law aims to give guidance to all those seeking the order of society and seeking justice.

3. Theory of legal effectiveness

Legislation, both lower and higher, aims to enable the community and law enforcement officials to implement it consistently and without distinguishing between one community and another. Everyone is viewed equally before the law. However, in reality the established legislation is often dilangar, so the rule does not apply effectively. Ineffective laws are biased due to the law is blurred or unclear, its officers are inconsistent and or the community does not support the implementation of the law If the law is well implemented, then the law is said to be effective. It is said to be effective because the sound of the law is clear and does not need to be interpreted, the apparatus enforces the law consistently and the people affected by the rule are very supportive of it. The theory that examines and analyzes about it, namely the theory of legal effectiveness.

The term theory of legal effectiveness comes from the English translation, namely the effectiveness of the legal theory, the Dutch language is called the effectiviteit van de jurisdischetheorie, the German language, wirksamkeit der rechlichentheorie. Hereinafter the three major syllables contained in theory, effectiveness, and law. In the Big Indonesian Dictionary there are two terms related to egefectivity, which are effective and effectiveness. Effectively means (1) there is an effect (As a result, its effect, its impression) (2) efficacious and efficacious, (3) can bring results, effective (about business, action), (4) come into force (about laws, paraturan). Effectiveness means (1) keadaan influential, memorable things, (2)) efficacy; efficacy, (3) income (business,

³ Mochtar Kusumaatmadja-B. Arief Sidharta, *Pengantar Ilmu Hukum*, Bandung: Alumni, 2000, hlm. 49.

⁴ Mochtar Kusumaatmadja, *Konsep...Op.Cit*, hlm. 3.

action), and (4) matters coming into force (laws, regulations). Hans Kelsen, presents a definition of legal effectiveness. The effectiveness of the law is whether people in fact act in a way to avoid sanctions threatened by legal norms or not, and whether they are actually enforced if conditions are met or not met.⁵

The concept of effectiveness in Hans Kelsen's definition is focused on subjects and sanctions. Subjects who implement them, ie persons or legal entities. Such persons must carry out the law in accordance with the sound of legal norms. For people subject to legal sanctions, legal sanctions are actually implemented or not. Law is defined as legal norms, both written and unwritten legal norms. The written legal norm is the legal norm established by the authorized institution for it. The institutions that have an interest in it, namely the House of Representatives with the consent of the President, while the unwritten legal norms are the legal norms that live and thrive in indigenous peoples. Antony Allot argues about the effectiveness of the law, he argues that the law would be effective if the purpose of its existence and its application could prevent undesirable deeds from removing chaos. Effective law in general can make what is designed to be realized. If a failure, then the possibility of reconciliation easily if there is a necessity to implement or apply the law in a different new atmosphere, the law will be able to solve it.⁶

IV. DISCUSSION

This study is based on the concrete problems faced in Indonesia, namely the entry of foreign workers Indonesia. Akan but foreign workers who are intended are foreign workers do not meet the actual criteria as set in the existing regulations in Indonesia. The government has provided restrictions on foreign workers who will work in Indonesia. Especially in its aim to exchange knowledge and expertise to be distributed to Indonesian workers, in particular to improve the technical capability of the existing workforce in Indonesia. Therefore Foreign Workers residing in Indonesia should receive assistance from Indonesian workers, who have the same skills background. Besides, the government also provides limits on the types of work that can be given to foreign workers. And the most important thing is that foreign workers who will work in Indonesia must obtain permission from the authorized institution.

Foreign workers working in Indonesia must comply with the provisions of Law no. 13 of 2003 on Manpower, particularly in Articles 42 to 49 concerning the use of foreign workers. Furthermore, there is also the procedure for the use of foreign workers in Ministerial Regulation no. 16 of 2015 on the Procedures for the use of foreign workers, and Presidential Regulation no. 72 of 2014 on the use of foreign workers as well as companion worker education and training.

The government must have legitimacy, which is the authority granted by law. Furthermore, P. Nicolai explains that the authority in which the rights and obligations are contained is the ability to perform certain legal actions (ie actions intended to give rise to legal consequences, and include the arising and disappearance of legal consequences.) Rights contain freedom to exercise or not perform certain actions, while obligations contain the obligation to perform or not to take certain actions.

In addition, according to Bagir Manan, authority in legal language is not the same as power (macht). Power only describes the right to do or not to do. In law, authority as well as rights and obligations (rechten en plichten). In regard to regional autonomy, the right contains a self-regulating (zelfregelen) and self-managing (zelfbesturen) horizontally means the power to organize the government as it should be. Vertically it means the power to run the government in one order of ties of state governance as a whole.⁷

Therefore, the government can enforce administrative law on the basis of its own wewenanag using legal instruments owned by the government, as stated by olen P. Nicolai et al in Ridwan HR (2006: 296), that the means of enforcement of the Law of State Administration contains {1} government organs may exercise compliance with or under written legislation and oversight of decisions that lend to individuals, and {2} the exercise of government sanction authorities.⁸

Foreign workers who work in Indonesia, which are basically incompatible with the qualifications they ought to be, may work in the region, or in areas in Indonesia may be due to a lack of oversight of these foreign Workers, as well as the possibility of them working without work permits as foreign workers. This brings a negative impact because there are still many Indonesian workers who are ready to work not get this opportunity, especially for job positions that are basically work can still be done by domestic workers, this should create job opportunities and provide the widest possible opportunities. extent for Indonesian labor.

Therefore, the role of local government, especially the Manpower Office and the ransmigrasi in terms of responding to the problem, as this has a negative impact in the community. As for the duty of local government to maintain security, order, and also menyejahterahkan its people. Must be able to take concrete

⁵ Ibid, hal 302

⁶ Ibid, hal 302

⁷ Ridwan HR, Op.cit, hal 99

⁸ Ibid, Hal 296

steps to overcome the problem, as authority is given based on the Law. Therefore it takes careful action to give solution to the concrete problem.

The effectiveness of law enforcement is violation of License Using Foreign Workers at the Manpower Office Prov. South Sulawesi

The following will be presented attach the data of foreign workers located in the area of Manpower and Transmigration Office of South Sulawesi Province, in the year 2017.

Table 1
TKA data in Prov. Sul-Sel (January to December 2017)

Regency / City	amount (TKA)
Makassar	101
Gowa	4
Takalar	1
Jeneponto	269
Bantaeng	2
Bulukumba	2
Maros	65
Pangkajene	2
Barru	20
Parepare	1
Pinrang	20
Wajo	3
Palopo	3
Luwu Timur	30
Total	581

Source: Department of Manpower Data Prov. Sul-Sel

Based on the data above shows that, there are 3 (three) locations with the largest number of foreign workers namely Makassar with a total of 101 TKA, Kab. Jeneponto as many as 269 TKA, and Kab. Maros as many as 65 TKA. The TKA by citizenship working in the Disnaker Territory of Prov. South Sulawesi, 5 nationalities with the highest number of TKA in 2017, can be seen in the following table.

Table 2

Citizenship	Amount (TKA)
China	398
Japan	26
Netherlands	22
South Korea	22
Taiwan	19

Source; Secondary Data Processed, 2018

The data shows that the number of foreign workers located in Prov. South Sulawesi comes mostly from China, then Japan, the Netherlands, South Korea and Taiwan. Based on the available data, the number of active companies employing foreign workers in 2017 in South Sulawesi, which is as many as 83 companies spread across 19 districts and cities.

In a live interview on Tuesday 20 February 2018, with Mr. DR. Syamsi Alang, SE., M.Si, as the Job Introduction Functional Coordinator said that the current condition, there are still many perrahaan not yet reported Foreign Workers who are employed, which should after getting a new IMTA published from the Ministry of Manpower, immediately report to the Head The Provincial Service or the Head of the Regental / Municipal Service Office no later than 7 (seven) working days after employing the TKA, in accordance with the work location of the foreign worker. However, this has not been done properly, because the understanding of the company related to the use of foreign workers is still very low, so the Provincial Service, will only know the presence of foreign workers, when the company will make an extension of IMTA.⁹

The number of violations occurring, indicating that in 2015 there will be 1 (one) violation, 2016 will be 1 (one) violation, and 2017 will be 1 (one), it indicates that there is no increase or decrease from 3 (three) years

⁹ Interview with Functional Coordinator Introduction to Manpower & Transmigration Office of South Sulawesi Province, 20 February 2018

last. This condition indicates that the level of violation of work norms associated with foreign labor that occurred in the area of Disnakertrans Prov. South Sulawesi is very low.

Although the above data shows that, the number of violations that occurred is very small, but actually many violations that occurred in the district / city in South Sulawesi. Only some of the license of foreign workers, most of them are not reported in the Provincial Service, because previously the supervision is in the respective districts / cities, but since the authority of the supervisory execution is held by the Provincial Service, all inspectors of labor in the regency / municipal office, having offices at the Provincial Service Office, this has resulted in a lack of supervision in regencies / municipalities.

It should be understood that labor inspection works based on the working procedures set forth in Permenaker no. 33 of 2015 on the Procedures of Labor Inspection, through the stages of educational preventive, non-judicial, and repressive justicial precautions.

The implementation of labor inspection is done through activities, guidance, examination, testing, and / or investigation of labor crime. Such activities shall be set forth in the work plan and their implementation on the orders of the Head of the Working Unit on Labor Inspection. At the stage of coaching, which aims to improve compliance with Employment Norms. The coaching activities are conducted through technical advisory activities, socialization, training, consultation meeting, and mentoring, then the examination stage, performed in 4 (four) stages, namely the first inspection, periodic inspection, examination, special, and re-examination. In the first examination, a thorough examination of the implementation of the Employment Norm in the Company or Workplace is new or has not been examined, while periodic checks are conducted after the first inspection within the specified period. For special inspection, it is the inspection of labor norm for public complaint, company request, and / or command of work unit of labor inspection (complaint, reporting, media reporting and / or other information). If the bearer has conducted an inspection, it is obligatory to make a Memorandum of Notification containing a warning and / or written instruction of the labor inspector addressed to the employer or management to correct non-compliance with labor standards based on inspection results of the labor inspector. The memorandum of inspection consists of the Notes I, II and the Special Inspection Note, if the Inspection Note I, and II, have been granted in accordance with the applicable provisions, if still not executed by the employer it will be followed up with investigative action and legal action in accordance with the regulations legislation. Associated with labor crime, is a judicial repressive measure as the last step in the enforcement of labor law.

From the process of law enforcement in the field of labor inspection, then we know that the law enforcement process is done by three stages namely, the stages of coaching, supervision and enforcement of sanctions. So that law enforcement against labor norms violation always prioritize coaching stage before giving sanction enforcement to violation of labor norm. As for violations of the work norms such as: Compulsory labor report, rest time, provincial minimum wage, holiday allowance, company regulations / collective labor agreements, execution of P4D / P4P decisions, mandatory companies list, partial list of employment companies, partial list companies wages, Indonesian labor, and foreign workers.

The follow-up of violations that occurred, based on the above table, based on the results of interviews conducted to Mr. Akhriyanto, as Kapala Section of Law Enforcement, Field Supervision Office of Manpower & Transmigration Prov. South Sulawesi, that against the violations that occurred during the last 3 (three) years, has been done non-judicial repressive action, namely by providing a Note of Inspection. The inspection notes given are the Notes of Examination I, addressed to the Entrepreneur as a foreign labor user, and from the grant of the Notice of Examination I, it does not extend to the provision of the Inspection Note II, since the company has implemented an order to correct non-compliance with the Labor Norms based on the results inspection of labor inspector. For the past three years, there has been no violation of the labor norms of foreign workers, up to the judicial repressive stages or investigations in accordance with applicable law. Although it is recognized that supervision of foreign workers still needs to be improved, let alone the current condition of the number of registered companies using foreign workers in South Sulawesi that is 81 (eighty one) companies, spread over 10 (ten), and 3 (cities). With a workforce of 581 (five hundred and eighty one) people, so by looking at that amount, there is a possibility that there may be a violation of the permission to use foreign workers, if not properly supervised. Furthermore, it is argued that, in view of these conditions, the supervision needs to be well regulated, since the current labor inspectors are in Dinas Prov. South Sulawesi is 38 (thirty eight), with the number of companies in South Sulawesi. However, with the existing conditions, supervision will still be made to the maximum extent possible in the implementation of labor norms in the company can run in accordance with the provisions of legislation. especially the supervision of foreign workers in the area of Manpower and Transmigration Prov. South Sulawesi.¹⁰

¹⁰ Interview with Section Head of Law Enforcement Office of Manpower & Province of South Sulawesi, March 7, 2018

The respondent's answer is related to the implementation of supervision and enforcement of violation against the permit to use foreign worker. implemented in the Field of Placement and Expansion of Manpower and Field of Labor Inspection of the Office of Manpower and Transmigration Prov. South Sulawesi.

Table 3
Statement of respondents to the effectiveness of law enforcement on the violation of foreign work permit in South Sulawesi

No.	Respondents answer	Frequency	%
1.	Effective	5	16.67 %
2.	Less effective	23	76.67 %
3.	Ineffective	2	6.66 %
Amount		30	100 %

Source: Primary data processed, 2018

Based on the above table, we can see the respondents' relation regarding the effectiveness of law enforcement on the violation of foreign work permit in South Sulawesi. Most respondents gave less effective answers with frequency 23 with percentage 76.67%, while those who voted effectively with frequency 5 with percentage of 16.67%, and chose not effective as much as 2 with percentage of 6.66%.

From the above statement of respondents we can see that the effectiveness of law enforcement on violations of foreign work permits in the provincial labor disnaker region of South Sulawesi has not been effective enough. There is still a lack of law enforcement against these violations, as there are still many violations of foreign worker permits, which can not be reached by labor inspection.

As for Some violations of foreign worker permits are summarized by researchers from the results of interviews at the Office of Manpower and Transmigration Prov. South Sulawesi, among others are foreign workers who work without having IMTA, work not in accordance with the position listed in RPTKA, employing foreign workers not in accordance with the positions specified in the rules on the procedures for the use of foreign workers, expired IMTA, not carrying out TKI assistance, not reporting the presence of foreign workers.

Related to the lack of effective law enforcement, it can be seen that the existence of several factors that cause less effective law enforcement against violations of foreign workers, such as the lack of understanding of employers associated with the procedure of exploitation of foreign workers, the low kesadariah law of the employer, the need for improvement cooperation with relevant agencies, reporting the presence of foreign workers not properly implemented by the company, the number of supervisors who have not been sufficient, the low participation of the public to provide related information in case of violation of foreign workers, the high use of foreign workers, parties or individuals who protect foreign workers, companies tend to protect foreign workers who are not in accordance with the procedures.

Factors Affecting the Effectiveness of Law Enforcement Against Violations of Foreign Workers Permits In South Sulawesi Province

The use of foreign labor by employers is one of the options for employers in carrying out their business activities, but it does not mean that the use of foreign workers is the primary choice, since the employment provisions must keep the opportunity and placement of the domestic work force optimally. Therefore, licensing is done by the government for control, in addition to making it easier to perform supervisory functions in regulating the influx of foreign workers. So that the parties concerned with foreign workers, still obey the applicable legal provisions, especially for the employer as a sponsor for foreign workers themselves.

The government has the authority, in the conduct of supervision and enforcement of sanctions, in case of violation of the permit of the use of foreign workers, legal suppression is the main factor to regulate the existing labor norms, can be implemented in accordance with what is required in the law.

As stated by Soerjono Soekamto, that one of the factors affecting law enforcement is its own legal factor. The law in question is limited to the law only. The Factors that hamper law enforcement, which comes from the law itself are: Not followed the principles of the enactment of the law, the absence of implementing regulations that are urgently needed to apply the law, and Unclear meaning of the words in in laws that result in confusion in its interpretation and application.

In view of the above, if it is associated with the implementation of licensing the use of foreign workers, the Code of Law, which regulates the use of foreign workers, is regulated in Law no. 13 of 2003 on Manpower. In order to see the enforcement of the law, it is necessary to review the factors mentioned above, to see how such influence would have on the implementation of law enforcement of labor legislation.

The use of foreign workers is a consequence of government policy related to Indonesian investment, which opens huge opportunities for Foreign Investment, which allows investors to be in Indonesia in carrying

out its activities. In addition to the above, other things also the reason for the existence of foreign workers is, the need to run a certain position of positions that require certain skills which can not be run by the existing labor in the country.

The legal rules on the use of foreign workers and the supervision of foreign workers are regulated in Law no. 13 of 2003 on Employment, in CHAPTER VIII, Articles 42 - 49, which contain the main provisions on the use of foreign labor, and general provisions of Chapter XIV on supervision, Chapter XV on investigation, and Chapter XVI on Criminal provisions and sanctions administrative. In view of the importance of the use of foreign labor, the Law requires further stipulation in the implementation rules as mandated in the Manpower Act, concerning the use of foreign workers.

The provisions relating to the procedures for the use of foreign workers are stipulated in Presidential Regulation no. 72 of 2014 on the use of foreign workers as well as the implementation of foreign worker education and training. This presidential regulation is the implementation of the provision of Article 49 of Law no. 13 of 2003 on Manpower. Which essentially aims for foreign workers working in Indonesia are obliged to conduct education and training, in order to create a technology transfer process and the transfer of expertise from foreign workers to Indonesian workers, therefore every foreign worker must be accompanied by Indonesian workers appointed as a companion worker, so that the auxiliary personnel can have the ability which in due time is expected to replace the foreign worker who accompanied him. However, what happens at the level of implementation, according to the respondents said that the implementation of knowledge transfer, although in writing has fulfilled the provisions on the implementation of companion labor and training education plan, but this is not done as a proper

As for the other implementing regulations, concerning the permission of foreign workers, as such provisions are regulated in Minister of Manpower & Transmigration Regulation no. 12 of 2013 on the procedures for the use of foreign workers. However, this regulation does not last long, because of the increasingly dynamic conditions of employment development, it is deemed necessary to be improved so that it is issued Regulation of the Minister of Manpower no. 16 of 2015 on the procedures for the use of foreign workers, but in the same year made another change by issuing Regulation of the Minister of Manpower no. 35 of 2015, which makes changes to several chapters, and adds new chapters. These conditions indicate that the use of foreign workers in Indonesia is increasing so it must adjust to the conditions that exist today.

Regulation of the Minister of Manpower no. Law No. 16 Year 2015 on the procedures for the use of foreign workers, is the implementation of Article 42 paragraph (1), Article 43 paragraph (4), Article 44 paragraph (2) of Law. 13 of 2003, and Article 10 of Presidential Regulation no. 72 Year 2014.

Article 42 paragraph (1) of Law no. 13 of 2003, stipulates that any employer employing foreign workers, shall have written permission from the minister or appointed official. Permission in question is Permit Hiring Foreign Workers (IMTA). The necessity of IMTA in this case is aimed to make the government through licensing instrument to manage and control the foreign worker, so that the Indonesian workforce can be utilized optimally, because basically as long as the type of work can still be done by Indonesian workers, domestic. The provisions on the procedure for obtaining IMTA shall be regulated in CHAPTER VI Permenaker no. 16 of 2015.

Furthermore, in Article 43 paragraph (4), related to the provisions concerning the procedure of ratification of the Plan of Use of Foreign Workers (RPTKA). RPTKA is a mandatory requirement that must be owned by employers who will employ foreign workers before obtaining IMTA. In order to obtain RPTKA approved by the Minister or appointed official, the employer must submit an online application to the Director General, through the Director, by fulfilling some administrative requirements. The importance of RPTKA submitted by the grantor is to find out the reasons for the use of foreign workers, the employer's overview, the general description of the occupation of occupations, the educational plan and the training of the escort personnel, and so on. Therefore, if it has obtained a ratification decision, this RPTKA will become the basis for obtaining IMTA. Procedures for ratification of RPTKA are regulated in Regulation of the Minister of Manpower no. 16 of 2015, in Chapter II on the procedures for ratification of RPTKA.

Whereas Article 44 Paragraph (2), requires the employer to comply with the provisions concerning the applicant's position and standard of competence. In the eligibility of the Article, what is meant by the competency standard is the qualification that must be possessed by the foreign worker among other knowledge, expertise, skill in certain field, and understanding of Indonesian culture. This provision is further stipulated in Permenaker No. 16 of 2015, on the requirements of foreign workers, and some positions allowed for foreign workers.

In connection with the issuance of permits, the government in this case the provincial government, based on the Regulation of the Minister of Manpower no. 16 of 2015, the provincial government shall have the authority to ratify extension RPTKA which does not contain any change, within 1 (one) province territory, addressed to the Head of Provincial Service. issuing an extension of IMTA whose work location is cross-regency / municipality within 1 (one) Provincial Region.

Based on the authorized authority to the provincial government, the extension of RPTKA approval, especially in the territory of the Regional Government of Prov. Sul-Sel, carried out in the Office of Manpower and Transmigration Prov. South Sulawesi. after RPTKA get the recommendation, then IMTA issuance process will be conducted at the Office of Investment Board and Integrated Services One Door Prov. South Sulawesi. As for the basis of its implementation In addition to the presidential regulations and labor pementeri regulations, the extension of IMTA in Prov. South Sulawesi is regulated in Provincial Regulation. South Sulawesi No. 12 Year 2015 on Retribution Levy IMTA, and South Sulawesi Governor Regulation no. 64 Year 2015, concerning the enactment of the Provincial Regulation. Sul-Cell No. 12 Year 2015 on IMTA extension levy.

n relation to the issuance of IMTA, related to the new IMTA, as it is known that authorized to issue IMTA Baru, IMTA across provinces is the central government, including RPTKA Baru, RPTKA extension, and RPTKA Change. This becomes one of the obstacles for the Provincial Service, where the Provincial Government has little difficulty in controlling foreign workers, since there is no data owned by the provincial government regarding the new IMTA, whose work location is in Prov. Sul-Sel, so for example TKA concerned in the area of Prov. South Sulawesi, it will be difficult to know its existence.

From the foregoing description, we can see that the implementation of laws relating to the use of foreign labor and overseas labor inspection, when examined from the factors mentioned earlier, in relation to the principles of enactment of a law, it can be said that it has followed the principles of the enforcement of the law, whereby it is very clear in this sense that this regulation is established to control the use of foreign workers so that the use of domestic labor can be optimized. Then the legislation is established by the authorized institution, the implementation is very necessary and useful to regulate people's lives, especially related to the use of foreign workers.

Then from the side of the implementing regulations, it has been described that, in the case of the use of foreign labor and overseas labor inspection, it has been regulated in several related regulations, be it government regulations, presidential regulations, regional regulations, governor regulation, and ministerial regulations. As the implementation of Law no. 13 Year 2003 on Manpower, related to the use of foreign workers.

In relation to the interpretation, the enforcement of foreign labor law legislation, it can be said that it is very clear, because the regulations on the use of foreign labor more he tour in the implementing regulations which provide concrete explanation of the procedures for the use of foreign workers and supervision.

In another discussion, Soerjono Soekamto said that in order for the law to function properly one of the factors affecting its implementation is the legal or regulatory factor itself, where it is likely that there is a discrepancy in the laws and regulations concerning the area of life.

This can be seen from the government policy related to visa-free visit policy issued by the government based on Presidential Regulation no. 21 Year 2016 on Visa Free Visa, where there are 169 countries granted visa-free visits. However, this is widely misused, where visa visits are used for work, it is clear that this provision is contrary to labor regulations and immigration regulations. As expressed by Syamsi Alang, many foreigners who enter and work only use visa visits, so it is widely misused, which should everyone who will work must have a license that is IMTA.

The respondent's response to the effect of visa-free visit policy on the effectiveness of law enforcement on the violation of permits using foreign workers is as follows:

Table 4

Respondent's statement on visa free visa policy on the effectiveness of law enforcement of foreign worker permit in South Sulawesi

No	Respondents answer	Frequency	%
1	Take effect	25	83.33 %
2	Less Influential	4	13.33 %
3	No effect	1	03.34 %
	Amount	30	100 %

Source: Primary Data processed, 2018

Based on the above data, it shows that the influence of its own legal factor to the effectiveness of law enforcement, which gives influential statement with frequency 25 with percentage of (83.33%), then statement less influential with frequency 4 with 13.37%, and for statements have no effect with frequency 1 with percentage 3.34%.

The legal structural factors in question are law enforcers that make up the law as well as apply the law. Law enforcement in employment is carried out by employees of labor inspectors who are competent and independent to ensure the implementation of labor laws and regulations. Labor inspection aims to ensure the implementation of employment norms in the Company or workplace.

Employee inspector, berwenang conduct labor inspection, in order to guarantee the implementation of labor norms. This is in line with Law no. 23 of 2014 on Regional Government, where the implementation of labor inspection, implemented by Provincial Government.

Based on the results of research conducted in the Office of Manpower and Transmigration Prov. South Sulawesi, there are several obstacles faced related to law enforcement against violations of foreign worker permits. among others related to the implementation of labor inspection, pursuant to Article 30 of the regulation of the Minister of Manpower no. 33 year 2016, every labor inspector must make a memorandum of examination after the examination, the inspection note referred to is the Memorandum of Understanding I, Memorandum of Inspection II, and Special Inspection Note. if it is associated with a violation of the permission of a foreign worker, then in the case of any employment findings by the inspector of labor, then the action may be carried out that is to conduct an examination, and to provide the Inspection Note. this is an obstacle to supervision because there is an opportunity for the employer to commit an offense, because if it has been given the Notice of Examination I, but still not executed, the inspector of labor will issue a Notice of Inspection II. If the violation has been corrected, no further action will be given by the inspector of the labor force. Unless the Note of Inspection II is still not executed then the supervisor

In improving the effectiveness of law enforcement against foreign workers, it is realized that external factors are very influential, asaman intended to synergy and cooperation between several relevant agencies can run well. In addition to the labor service, agencies related to the supervision of foreign foreign workers including local governments in this case implemented by the Field of Kesbangpol, and of course the Immigration Agency. So far, the cooperation between related institutions is felt to be less effective. So that the supervision of foreign workers is still less effective.

Another thing that still needs attention is related to the low understanding of the employer in understanding related to the procedure of the use of foreign workers. It is acknowledged that many companies still do not understand the procedures and requirements that must be fulfilled by the employer if they want to hire foreign workers. Asaman proposed by DR. Syamsi Alang, SE., MM, as the Coordinator of the job introduction function, feels the need to provide publications to the employers in relation to the procedures for the implementation of the use of foreign workers, so that the employer understands the rights and obligations in using foreign workers, employers / employers who come to Dinas want to extend IMTA, but there are still many shortage of required documents.

Based on the above description, it can be seen that the failure in law enforcement conducted by the labor inspection is not due to inexperience, but because of the authority possessed by the ruling officers making it difficult to carry out the action, then the law enforcement SOP which requires the inspector to prioritize coaching related to the violation of work norms, in addition to coordination among agencies that still need to be improved so that they can be integrated in improving the supervision of foreign workers, as well as the important ones related to the socialization related to the procedures of the use of foreign labor which is still less implemented.

V. CONCLUSIONS AND RECOMMENDATIONS

1. Law Enforcement against violation of Foreign Workers Permit in the area of Manpower and Transmigration Office of Prov. South Sulawesi, Less Effective. Several factors affecting the lack of effective enforcement of law against the violation of foreign work permit are the factors of law substance, Legal Structure Factor, Facilities and Infrastructure, Community Factor, and Legal Cultural Factor.
2. Supervision of foreign labor users, it is necessary to improve, to see the increasing number of foreign workers, which need to be supported by the competence and availability of adequate labor inspectors, the availability of incomplete foreign labor data needs to be updated in order to do so planning of supervision well, cooperation with related institution to be able to do data exchange (data integration) need to be realized, and the need to socialize to the procedure of foreign labor user for foreign labor user company.

REFERENCES

- [1] Abdul Khakim, 2014, *Dasar-dasar Hukum Ketenagakerjaan Indonesia*, Citra AdityaBakti : Bandung
- [2] Achmad Ali, 2015, *Menguak Tabir Hukum*, Kencana : Jakarta
- [3] Ade Maman Suherman, 2004, *Pengantar Perbandingan Sistem Hukum*, PT. Raja Grafindo Persada : Jakarta
- [4] Adrian Sutedi, 2015, *Hukum Perizinan Dalam Sektor Pelayanan Publik*, SinarGrafika : Jakarta
- [5] Aminuddin Ilmar, 2014, *Hukum Tata Pemerintahan*, PrenadamediaGroup : Jakarta
- [6] Hans Kelsen, 2011, *Teori Hukum Murni*, Nusa Media : Bandung
- [7] Imam Sjahputra Tunggal, 2013, *Hukum Ketenagakerjaan (suatu Pengantar)*, Harvarindo : Jakarta
- [8] Jazim Hamidi dan Charles Vhristian, 2016, *Hukum Imigrasi Bagi Orang Asing di Indonesia*, Sinar Grafika : Jakarta

- [9] Jimmly Asshidiqie, 2009, *Pengantar Ilmu Hukum Tata Negara*, Raja Grafindo Persada : Jakarta
- [10] Luthfi J. Kurniawan dan Mustafa Lutfi, 2012, *Perihal Negara, Hukum & Kebijakan Publik, Perspektif Politik Kesejahteraan yang Berbasis Kearifan Lokal, Pro Civi Society, dan Gender*, Ssetara Press : Malang
- [11] Muchtar Kusumaatmadja, 1997, *Fungsi dan Perkembangan hukum Dalam Pembangunan Nasional*, Bina Cipta : Bandung.
- [12] Moh.Mahfud MD, 2017, *Politik Hukum di Indonesia*, Raja Grafindo Persada : Jakarta
- [13] Munir Fuady, 2011, *Teori Negara Hukum Modern (rechtstaat)*. Refika Aditama : Bandung
- [14] Satjipto Rahardjo, 2010, *Ilmu Hukum*, CibraAdityaBakti : Bandung
- [15] Soerjono Soekanto, 2005, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Raja Grafindo Persada : Jakarta
- [16] Zaenal Asikin, AgustianWahab, Lalu Husni, dan ZaeniAsyhadie, 2012, *Dasar-Dasar Hukum Perburuhan*, Raja Grafindo Persada : Jakarta

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